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

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Chapter I

[Doc. No. AMS–LRRS–19–0099]

Nomenclature Changes; Technical Amendment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; technical amendment.

SUMMARY: This document makes nomenclature changes to the headings for a subchapter and various parts, subparts, and sections of the Code of Federal Regulations administered by the Agricultural Marketing Service (AMS). This action is necessary to conform with Office of the Federal Register requirements for regulatory language.

DATES: This rule is effective March 11, 2020.

FOR FURTHER INFORMATION CONTACT: Laurel L. May, Regulatory Analyst, Agricultural Marketing Service, USDA, 1400 Independence Ave. SW, Stop 0231, Washington, DC 20250–0231; phone: (202) 690–1366, fax: (202) 690–0552, or email: *Laurel.May@usda.gov.*

SUPPLEMENTARY INFORMATION: This final rule makes technical amendments to certain headings in the Code of Federal Regulations (CFR). The CFR is divided into titles, subtitles, chapters, subchapters, parts, subparts, sections, and subsections. Currently, some of the regulations administered by AMS in 7 CFR chapter I contain headings or footnotes that do not comply with Office of the Federal Register (OFR) requirements, which require the use of descriptive terms in regulatory headings and require that subparts be properly designated. The technical amendments in this final rule will ensure that the headings in 7 CFR chapter I are consistent with OFR nomenclature and formatting used throughout the CFR. This rule addresses many of the necessary changes in 7 CFR chapter I; the remainder are being addressed in concurrent actions by the individual AMS programs that administer the particular regulations.

This 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 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).

The Administrative Procedure Act (APA) (5 U.S.C. 553(B)(3)(b)) provides that when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, an agency my issue a rule without providing notice and an opportunity for public comment. AMS has determined that there is good cause for making this technical amendment final without prior proposal and opportunity for comment because the revisions are not substantive and will have no impact on the regulatory requirements in the affected parts. AMS has determined that public comment on such administrative changes is unnecessary and that there is good cause under the APA for proceeding with a final rule.

Further, because a notice of proposed rulemaking an opportunity for public comment are not required to be given for this rule under the APA or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Accordingly, this rule is issued in final form. Although there is no formal comment period, public comments on this rule are welcome on an ongoing basis. Comments should be submitted to the address or email under **FOR FURTHER INFORMATION CONTACT**.

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7 CFR Part 27

Cotton.

7 CFR Part 28

Administrative practice and procedure, Cotton, Reporting and recordkeeping requirements, Warehouses.

7 CFR Part 29

Administrative practice and procedure, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping requirements, Tobacco.

7 CFR Part 33

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7 CFR Part 48

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7 CFR Part 50

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7 CFR Part 54

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7 CFR Part 110

Administrative practice and procedure, Agricultural commodities, Intergovernmental relations, Penalties, Pesticides and pests, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, and under the authority of 7 CFR 2.79, AMS amends 7 CFR chapter I as follows:

■ 1. Revise the heading of subchapter A to read as follows:

SUBCHAPTER A—COMMODITY STANDARDS AND CONTAINER REQUIREMENTS

PART 27—COTTON CLASSIFICATION UNDER COTTON FURTURES LEGISLATION

■ 2. The authority citation for part 27 continues to read as follows:

Authority: 7 U.S.C. 15b, 7 U.S.C. 473b, 7 U.S.C. 1622(g).

■ 3. Revise the heading for subpart A to read as follows:

Subpart A—Requirements

Subpart B [Added and Reserved]

■ 4. Add reserved subpart B.

PART 28—COTTON CLASSING, TESTING, AND STANDARDS

Subpart A—Requirements Under the United States Cotton Standards Act

■ 5. The authority citation for part 28, subpart A, continues to read as follows:

Authority: 7 U.S.C. 55 and 61.

■ 6. Revise the heading for subpart A to read as set forth above.

PART 29—TOBACCO INSPECTION

■ 7. The authority citation for part 29 continues to read as follows:

Authority: 7 U.S.C. 511–511s.

■ 8. Revise the heading for subpart A to read as follows:

Subpart A—Policy Statement and Provisions Governing the Extension of Tobacco Inspection and Price Support Services to New Markets and to Additional Sales on Designated Markets

■ 9. Revise the heading for subpart B to read as follows:

Subpart B—Requirements

■ 10. Revise the heading for subpart F to read as follows:

Subpart F—Policy Statement and Provisions Governing the Identification and Certification of Nonquota Tobacco Produced and Marketed in a Quota Area

■ 11. Revise the heading for subpart G to read as follows:

Subpart G—Policy Statement and Provisions Governing Availability of Tobacco Inspection and Price Support Services to Flue-Cured Tobacco on Designated Markets

PART 33—REQUIREMENTS UNDER THE EXPORT APPLE ACT

■ 12. The authority citation for part 33 continues to read as follows:

Authority: Sec. 7, 48 Stat. 124; 7 U.S.C. 587.

■ 13. Revise the heading for part 33 to read as set forth above.

■ 14. The undesignated center heading above § 33.10 is revised to read as follows:

PROVISIONS

■ 15. The undesignated center heading above § 33.50 is revised to read as follows:

MISCELLANEOUS

PART 35—EXPORT GRAPES AND PLUMS

■ 16. The authority citation for part 35 continues to read as follows:

Authority: 74 Stat. 734; 75 Stat. 220; 7 U.S.C. 591–599.

■ 17. Amend § 35.7 by removing the footnote and revising the parenthesized cross reference at the end of the paragraph to read as follows:

§ 35.7 Certificate.

* * * (7 CFR part 51).

Subchapter B—Marketing of Perishable Agricultural Commodities

PART 46—REQUIREMENTS (OTHER THAN ADMINISTRATIVE PROCEDURES) UNDER THE PERISHABLE AGRICULTURAL COMMODITIES ACT, 1930

■ 18. The authority citation for part 46 continues to read as follows:

Authority: 7 U.S.C. 499a–499t.

■ 19. Revise the heading for part 46 to read as set forth above.

PART 47—ADMINISTRATIVE PROCEDURES UNDER THE PERISHABLE AGRICULTURAL COMMODITIES ACT

■ 20. The authority citation for part 47 continues to read as follows:

Authority: 5 U.S.C. 553; 7 U.S.C. 499f; 7 U.S.C. 499o; 7 CFR 2.22(a)(1)(viii)(L), 2.79(a)(8)(xiii).

■ 21. Revise the heading for part 47 to read as set forth above.

■ 22. Revise the heading for § 47.5 to read as follows:

§ 47.5 Scope and applicability of administrative procedures.

* * * * *

■ 23. The undesignated center heading above § 47.6 is revised to read as follows:

PROVISIONS APPLICABLE TO REPARATION PROCEEDINGS

■ 24. The undesignated center heading above § 47.46 is revised to read as follows:

PROVISIONS APPLICABLE TO DISCIPLINARY PROCEEDINGS

■ 25. Revise the heading for § 47.46 to read as follows:

§ 47.46 Provision applicable to all proceedings.

* * * * *

■ 26. The undesignated center heading above § 47.47 is revised to read as follows:

PROVISIONS APPLICABLE TO THE DETERMINATION AS TO WHETHER A PERSON IS RESPONSIBLY CONNECTED WITH A LICENSEE UNDER THE PERISHABLE AGRICULTURAL COMMODITIES ACT

PART 48—REQUIREMENTS OF THE SECRETARY OF AGRICULTURE FOR THE ENFORCEMENT OF THE PRODUCE AGENCY ACT

■ 27. The authority citation for part 48 continues to read as follows:

Authority: Sec. 3, 44, Stat. 1355, as amended; 7 U.S.C. 494.

■ 28. Revise the heading for part 48 to read as set forth above.

PART 50—ADMINISTRATIVE PROCEDURES GOVERNING WITHDRAWAL OF INSPECTION AND GRADING SERVICES

■ 29. The authority citation for part 50 continues to read as follows:

Authority: 7 U.S.C. 1621 *et seq.;* 7 CFR 2.35, 2.41.

■ 30. Revise the heading for part 50 to read as set forth above.

■ 31. Revise the heading for § 50.1 to read as follows:

§ 50.1 Scope and applicability of administrative procedures.

* * * * *

■ 32. Revise the heading for subpart B to read as follows:

Subpart B—Supplemental Administrative Procedures

Subchapter C—Regulations and Standards Under the Agricultural Marketing Act of 1946 and the Egg Products Inspection Act

PART 54—MEATS, PREPARED MEATS, AND MEAT PRODUCTS (GRADING, CERTIFICATION, AND STANDARDS)

■ 33. The authority citation for part 54 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

■ 34. Revise the heading for subpart A to read as follows:

Subpart A—Grading of Meats, Prepared Meats, and Meat Products

■ 35. Revise the heading for subpart C to read as follows:

Subpart C—Provisions Governing the Certification of Sanitary Design and Fabrication of Equipment Used in the Slaughter, Processing, and Packaging of Livestock and Poultry Products

PART 56—VOLUNTARY GRADING OF SHELL EGGS

■ 36. The authority citation for part 56 continues to read as follows:

Authority: 7. U.S.C. 1621–1627.

Subpart B [Added and Reserved]

■ 37. Add reserved subpart B.

PART 57—INSPECTION OF EGGS (EGG PRODUCTS INSPECTION ACT)

■ 38. The authority citation for part 57 continues to read as follows:

Authority: 21 U.S.C. 1031–1056.

■ 39. Revise the heading for subpart A to read as follows:

Subpart A—Provisions Governing the Inspection of Eggs

■ 40. Revise the heading for subpart B to read as follows:

Subpart B—Administrative Provisions Governing Proceedings Under the Egg Products Inspection Act

■ 41. The undesignated center heading above § 57.1000 is revised to read as follows:

SCOPE AND APPLICABILITY OF ADMINISTRATIVE PROVISIONS

PART 58—GRADING AND INSPECTION, GENERAL SPECIFICATIONS FOR APPROVED PLANTS AND STANDARDS FOR GRADES OF DAIRY PRODUCTS

■ 41. The authority citation for part 58 continues to read as follows:

Authority: 7 U.S.C. 1621—1627.

■ 42. Revise the heading for part 58 to read as set forth above.

■ 43. Revise the heading for subpart A to read as follows:

Subpart A—Provisions Governing the Inspection and Grading Services of Manufactured or Processed Dairy Products

PART 61—COTTONSEED SOLD OR OFFERED FOR SALE FOR CRUSHING PURPOSES (INSPECTION, SAMPLING AND CERTIFICATION)

Subpart A—Requirements

■ 44. The authority citation for part 61, subpart A, continues to read as follows:

Authority: Sec. 205, 60 Stat. 1090, as amended, (7 U.S.C. 1624).

■ 45. Revise the heading for subpart A to read as set forth above.

■ 46. Revise the heading for § 61.5 to read as follows:

§ 61.5 Provisions to govern.

* * * * *

PART 75—PROVISIONS FOR INSPECTION AND CERTIFICATION OF QUALITY OF AGRICULTURAL AND VEGETABLE SEEDS

■ 47. The authority citation for part 75 continues to read as follows:

Authority: 7 U.S.C. 1622 and 1624.

■ 48. Revise the heading for part 75 to read as set forth above.

■ 49. Revise the heading for § 75.5 to read as follows:

§ 75.5 Exceptions.

* * * * *

Subchapter E—Commodity Laboratory Testing Programs

PART 110—RECORDKEEPING ON RESTRICTED USE PESTICIDES BY CERTIFIED APPLICATIONS; SURVEYS AND REPORTS

■ 50. The authority citation for part 110 continues to read as follows:

Authority: 7 U.S.C. 136a(d)(1)(c), 136i-1, and 450; 7 CFR 2.17, 2.50.

■ 51. Revise the heading for § 110.8 to read as follows:

§ 110.8 Administrative procedures.

* * * * *

Dated: January 27, 2020.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2020–01668 Filed 2–7–20; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0833; Airspace Docket No. 19–ASW–13]

RIN 2120–AA66

Revocation and Amendment of the Class E Airspace; Mansfield, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace extending upward from 700 feet above the surface at C E 'Rusty' Williams Airport, Mansfield, LA. This action is due to an airspace review caused by the decommissioning of the Mansfield non-directional radio beacon (NDB) which provided navigation information for the instrument procedures at this airport. The name and geographic coordinates of C E 'Rusty' Williams Airport would also be updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, May 21, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://*

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (84 FR 65038; November 26, 2019) for Docket No. FAA–2019–0833 to amend the Class E airspace extending upward from 700 feet above the surface at C E 'Rusty' Williams Airport, Mansfield, LA. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

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

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by amending the Class E airspace area extending upward from 700 feet above the surface to within a 6.4-mile radius (decreased from a 6.5-mile radius) at C E 'Rusty' Williams Airport, Mansfield, LA; removing the city associated with the airport to comply with changes to FAA Order 7400.2M, Procedures for Handling Airspace Matters; removing the Mansfield RBN and associated extension from the airspace legal description; and updating the name and geographic coordinates of the C E 'Rusty' Williams Airport (previously DeSoto Parish Airport) to coincide with the FAA's aeronautical database.

These actions are the result of an airspace review caused by the decommissioning of the Mansfield NDB, which provided navigation information for the instrument procedures at this airport.

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

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

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

* * * * *

ASW LA E5 Mansfield, LA [Amended]

C E 'Rusty' Williams Airport, LA
(Lat. 32°04′22″ N, long. 93°45′56″ W)

That airspace extending upward from 700 feet above the surface within 6.4-mile radius of the C E 'Rusty' Williams Airport.

Issued in Fort Worth, Texas, on February 3, 2020.

Marty Skinner,

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

[FR Doc. 2020–02490 Filed 2–7–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2019–0834; Airspace Docket No. 19–ASO–22]

RIN 2120–AA66

Amendment of the Class E Airspace; Bowling Green and Somerset, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Class E airspace area designated as a surface area and the Class E airspace extending upward from 700 feet above the surface at Bowling Green-Warren County Regional Airport, Bowling Green, KY, and Lake Cumberland Regional Airport, Somerset, KY. This action is due to an airspace review caused by the decommissioning of the Bowling Green VHF omnidirectional range (VOR) navigation aid, which provided navigation information for the instrument procedures at these airports, as part of the VOR Minimum Operational Network (MON) Program. The name and geographic coordinates of Lake Cumberland Regional Airport are also being updated to coincide with the FAA's aeronautical database.

DATES: Effective 0901 UTC, May 21, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (84 FR 65036; November 26, 2019) for Docket No. FAA–2019–0834 to amend the Class E airspace area designated as a surface area and the Class E airspace extending upward from 700 feet above the surface at Bowling Green-Warren County Regional Airport, Bowling Green, KY, and Lake Cumberland Regional Airport, Somerset, KY. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. One comment was received that did not pertain to this action. No response is provided.

Class E airspace designations are published in paragraph 6002, and 6005, respectively, of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

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

The Rule

This amendment to Title 14 Code of Federal Regulations (14 CFR) part 71:

Amends the Class E airspace area designated as a surface area at Bowling Green-Warren County Regional Airport, Bowling Green, KY, by removing the Bowling Green VORTAC and associated extension from the airspace legal description; and adds an extension within 1 mile each side of the 030° bearing from the airport extending from the 4.2-mile radius to 4.5 miles north of the airport;

Amends the Class E airspace area designated as a surface area at Lake Cumberland Regional Airport, Somerset, KY, by removing the Bowling Green VORTAC from the airspace legal description; adds an extension within 1 mile each side of the 043° bearing from the airport extending from the 4-mile radius to 4.8 miles northeast of the airport; and updates the name and geographic coordinates of Lake Cumberland Regional Airport (previously Somerset—Pulaski County—J.T. Wilson Field Airport) to coincide with the FAA's aeronautical database;

Amends the Class E airspace extending upward from 700 feet above the surface to within a 6.7-mile radius (increased from a 6.6-mile radius) of Bowling Green-Warren County Regional Airport; and removes the Bowling Green VORTAC and associated extension from the airspace legal description;

And amends the Class E airspace extending upward from 700 feet above the surface to within a 6.5-mile radius (decreased from an 8.6-mile radius) of Lake Cumberland Regional Airport; removes the Cumberland River NDB and associated extension as they are no longer required; adds an extension 8 miles south and 3.8 miles north of the 228° bearing from the Lake Cumberland Regional: RWY 05–LOC extending from the 6.5-mile radius of the Lake Cumberland Regional Airport to 10 miles southwest of the Lake Cumberland Regional: RWY 05–LOC; and updates the name and geographic coordinates of the Lake Cumberland Regional Airport (previously Somerset—Pulaski County—J.T. Wilson Field Airport) to coincide with the FAA's aeronautical database.

This action is the result of an airspace review caused by the decommissioning of the Bowling Green VOR, which provided navigation information for the instrument procedures at these airports, as part of the VOR MON Program.

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

Regulatory Notices and Analyses

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

Environmental Review

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

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area.

* * * * *

ASO KY E2 Bowling Green, KY [Amended]

Bowling Green-Warren County Regional Airport, KY
(Lat. 36°57′52″ N, long. 86°25′11″ W)

Within a 4.2-mile radius of Bowling Green-Warren County Regional Airport, and within 1 mile each side of the 030° bearing from the airport extending from the 4.2-mile radius to 4.5 miles north of the airport.

* * * * *

ASO KY E2 Somerset, KY [Amended]

Lake Cumberland Regional Airport, KY
(Lat. 37°03′13″ N, long. 84°36′56″ W)

Within a 4-mile radius of Lake Cumberland Regional Airport, and within 1 mile each side of the 043° bearing from the airport extending from the 4-mile radius to 4.8 miles northeast of the airport.

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

* * * * *

ASO KY E5 Bowling Green, KY [Amended]

Bowling Green-Warren County Regional Airport, KY
(Lat. 36°57′52″ N, long. 86°25′11″ W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Bowling Green-Warren County Regional Airport.

* * * * *

ASO KY E5 Somerset, KY [Amended]

Lake Cumberland Regional Airport, KY
(Lat. 37°03′13″ N, long. 84°36′56″ W)
Lake Cumberland Regional: RWY 05–LOC, KY
(Lat. 37°03′38″ N, long. 84°36′28″ W)

That airspace extending upward from 700 feet above the surface within an 6.5-mile radius of the Lake Cumberland Regional Airport, and within 8 miles south and 3.8 miles north of the 228° bearing from the Lake Cumberland Regional: RWY 05–LOC extending from the 6.5-mile radius of the Lake Cumberland Regional Airport to 10 miles southwest of the Lake Cumberland Regional: RWY 05–LOC.

Issued in Fort Worth, Texas, on February 3, 2020.

Marty Skinner,

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

[FR Doc. 2020–02491 Filed 2–7–20; 8:45 am]

BILLING CODE 4910–13–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

15 CFR Part 2013

RIN 0350–AA11

Removal of Rule Designating Developing and Least-Developed Country Designations Under the Countervailing Duty Law

AGENCY: Office of the United States Trade Representative.

ACTION: Final rule.

SUMMARY: Elsewhere in this issue of the **Federal Register**, the U.S. Trade Representative is publishing a notice updating the designations of World Trade Organization (WTO) Members that are eligible for special *de minimis* countervailable subsidy and negligible import volume standards under the countervailing duty (CVD) law. This rule removes the regulations of the Office of the United States Trade Representative (USTR), that contain the designations superseded by the notice.

DATES: The final rule will become effective February 10, 2020.

FOR FURTHER INFORMATION CONTACT: Assistant General Counsel David P. Lyons at 202–395–9446 or *David.P.Lyons@ustr.eop.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

USTR last updated part 2013 in 1998. *See* 63 FR 29945 (June 2, 1998). In order to provide more timely updates, USTR has determined that giving notice in the **Federal Register** rather than through a rulemaking is preferable. Accordingly, USTR is removing part 2013 and, elsewhere in this issue of the **Federal Register**, is publishing a notice updating the designations of WTO Members that are eligible for special *de minimis* countervailable subsidy and negligible import volume standards under the CVD law. Removal of part 2013 also is consistent with the goals of Executive Order 13771, *Reducing Regulation and Controlling Regulatory Cost* (January 30, 2017).

II. Regulatory Flexibility Act

USTR has considered the impact of the final rule and determined that it is not likely to have a significant economic impact on a substantial number of small business entities because it is applicable only to USTR's internal operations and legal obligations. *See* 5 U.S.C. 601 *et seq.*

III. Paperwork Reduction Act

The final rule does not contain any information collection requirement that

requires the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 15 CFR Part 2013

Countervailing duties, Foreign trade, Imports.

PART 2013—[REMOVED]

For the reasons stated in the preamble, and under the authority of 19 U.S.C. 1677(36), the Office of the United States Trade Representative removes part 2013 of chapter XX of title 15 of the Code of Federal Regulations.

Joseph Barloon,

General Counsel, Office of the U.S. Trade Representative.

[FR Doc. 2020–02445 Filed 2–7–20; 8:45 am]

BILLING CODE 3290–F0–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2019–0155; FRL–10004–69–Region 4]

Air Plan Approval; Kentucky: Cross-State Air Pollution Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving changes to the Kentucky State Implementation Plan (SIP) concerning the Cross-State Air Pollution Rule (CSAPR) submitted by Kentucky on September 14, 2018, as later clarified on December 18, 2018. Under CSAPR, large electricity generating units (EGUs) in Kentucky are subject to Federal Implementation Plans (FIPs) requiring the units to participate in CSAPR's federal trading program for annual emissions of nitrogen oxides (NO_X), one of CSAPR's two federal trading programs for ozone season emissions of NO_X, and one of CSAPR's two federal trading programs for annual emissions of sulfur dioxide (SO_2). This action approves into the SIP the Commonwealth's regulations requiring large Kentucky EGUs to participate in CSAPR state trading programs for annual NO_X emissions and annual SO_2 emissions integrated with the CSAPR federal trading programs, replacing the corresponding FIP requirements. EPA is approving the portions of the SIP revision concerning these CSAPR state trading programs because the SIP revision meets the requirements of the Clean Air Act (CAA or Act) and EPA's regulations for approval of a CSAPR full SIP revision replacing the requirements of a CSAPR FIP. Under the CSAPR regulations, approval of these portions of the SIP revision automatically eliminates Kentucky units' obligations to participate in CSAPR's federal trading programs for annual NO_X emissions and annual SO_2 emissions under the corresponding CSAPR FIPs addressing interstate transport requirements for the 1997 annual fine particulate matter ($PM_{2.5}$) national ambient air quality standard (NAAQS) and the 2006 24-hour $PM_{2.5}$ NAAQS. Approval of these portions of the SIP revision would also satisfy Kentucky's good neighbor obligation under the CAA to prohibit emissions which will significantly contribute to nonattainment or interfere with maintenance of the 1997 annual $PM_{2.5}$ NAAQS and 2006 24-hour $PM_{2.5}$ NAAQS.

DATES: This rule is effective March 11, 2020.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R04–OAR–2019–0155. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: D. Brad Akers, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Mr. Akers can be reached by telephone at (404) 562–9089 or via electronic mail at *akers.brad@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on CSAPR and CSAPR-Related SIP Revisions

EPA issued CSAPR in July 2011 to address the requirements of CAA section 110(a)(2)(D)(i)(I) concerning interstate transport of air pollution. As amended (including the 2016 CSAPR Update),[1] CSAPR requires 27 Eastern states to limit their statewide emissions of SO_2 and/or NO_X in order to mitigate transported air pollution unlawfully impacting other states' ability to attain or maintain four NAAQS: The 1997 annual $PM_{2.5}$ NAAQS, the 2006 24-hour $PM_{2.5}$ NAAQS, the 1997 8-hour ozone NAAQS, and the 2008 8-hour ozone NAAQS. The CSAPR emissions limitations are defined in terms of maximum statewide ''budgets'' for emissions of annual SO_2, annual NO_X, and/or ozone season NO_X by each covered state's large EGUs. The CSAPR state budgets are implemented in two phases of generally increasing stringency, with the Phase 1 budgets applying to emissions in 2015 and 2016 and the Phase 2 (and CSAPR Update) budgets applying to emissions in 2017 and later years. As a mechanism for achieving compliance with the emissions limitations, CSAPR establishes five federal emissions trading programs: A program for annual NO_X emissions, two geographically separate programs for annual SO_2 emissions, and two geographically separate programs for ozone-season NO_X emissions. CSAPR also establishes FIP requirements applicable to the large EGUs in each covered state. Currently, the CSAPR FIP provisions require each state's units to participate in up to three of the five CSAPR trading programs.

CSAPR includes provisions under which states may submit and EPA will approve SIP revisions to modify or replace the CSAPR FIP requirements while allowing states to continue to meet their transport-related obligations using either CSAPR's federal emissions

[1] *See* 81 FR 74504 (October 26, 2016). The CSAPR Update was promulgated to address interstate pollution with respect to the 2008 ozone NAAQS and to address a judicial remand of certain original CSAPR ozone season NO_X budgets promulgated with respect to the 1997 ozone NAAQS. *See* 81 FR at 74505. The CSAPR Update established new emission reduction requirements addressing the more recent NAAQS and coordinated them with the remaining emission reduction requirements addressing the older NAAQS, so that starting in 2017, CSAPR includes two geographically separate trading programs for ozone season NO_X emissions covering EGUs in a total of 23 states. *See* 40 CFR 52.38(b)(1)–(2). EPA acknowledges that the D.C. Circuit issued decisions in *Wisconsin* v. *EPA,* 938 F.3d 303 (Sept. 13, 2019) and *New York* v. *EPA,* 781 Fed. Appx. 4 (Oct. 1, 2019) regarding the CSAPR Update; however, those decisions did not address the annual programs designed to fulfill the requirements of the 1997 and 2006 $PM_{2.5}$ NAAQS.

trading programs or state emissions trading programs integrated with the federal programs.[2] Through such a SIP revision, a state may replace EPA's default provisions for allocating emission allowances among the state's units, employing any state-selected methodology to allocate or auction the allowances, subject to timing conditions and limits on overall allowance quantities. In the case of CSAPR's federal trading programs for ozone season NO_X emissions (or an integrated state trading program), a state may also expand trading program applicability to include certain smaller electricity generating units.[3] If a state wants to replace CSAPR FIP requirements with SIP requirements under which the state's units participate in a state trading program that is integrated with and identical to the federal trading program even as to the allocation and applicability provisions, the state may submit a SIP revision for that purpose as well. However, no emissions budget increases or other substantive changes to the trading program provisions are allowed. A state whose units are subject to multiple CSAPR FIPs and federal trading programs may submit SIP revisions to modify or replace either some or all of those FIP requirements.

States can submit two basic forms of CSAPR-related SIP revisions effective for emissions control periods in 2017 or later years (or 2019 or later years in the case of the CSAPR NO_X Ozone Season Group 2 Trading Program).[4] Under the first alternative—an ''abbreviated'' SIP revision—a state may submit a SIP revision that upon approval replaces the default allowance allocation and/or applicability provisions of a CSAPR federal trading program for the state.[5] Approval of an abbreviated SIP revision leaves the corresponding CSAPR FIP and all other provisions of the relevant federal trading program in place for the state's units.

Under the second alternative—a ''full'' SIP revision—a state may submit a SIP revision that upon approval replaces a CSAPR federal trading program for the state with a state trading program integrated with the federal trading program, so long as the state trading program is substantively identical to the federal trading program or does not substantively differ from the federal trading program except as discussed above with regard to the allowance allocation and/or applicability provisions.[6] For purposes of a full SIP revision, a state may either adopt state rules with complete trading program language, incorporate the federal trading program language into its state rules by reference (with appropriate conforming changes), or employ a combination of these approaches.

The CSAPR regulations identify several important consequences and limitations associated with approval of a full SIP revision. First, upon EPA's approval of a full SIP revision as correcting the deficiency in the state's implementation plan that was the basis for a particular set of CSAPR FIP requirements, the obligation to participate in the corresponding CSAPR federal trading program is automatically eliminated for units subject to the state's jurisdiction without the need for a separate EPA withdrawal action, so long as EPA's approval of the SIP is full and unconditional.[7] Second, approval of a full SIP revision does not terminate the obligation to participate in the corresponding CSAPR federal trading program for any units located in any Indian country within the borders of the state, and if and when a unit is located in Indian country within a state's borders, EPA may modify the SIP approval to exclude from the SIP, and include in the surviving CSAPR FIP instead, certain trading program provisions that apply jointly to units in the state and to units in Indian country within the state's borders.[8]

Finally, if at the time a full SIP revision is approved EPA has already started recording allocations of allowances for a given control period to a state's units, the federal trading program provisions authorizing EPA to complete the process of allocating and recording allowances for that control period to those units will continue to apply, unless EPA's approval of the SIP revision provides otherwise.[9]

In the 2011 CSAPR rulemaking, among other findings, EPA determined that air pollution transported from Kentucky would unlawfully affect other states' ability to attain and maintain the 1997 annual $PM_{2.5}$ NAAQS and the 2006 24-hour $PM_{2.5}$ NAAQS, established annual NO_X and SO_2 budgets for Kentucky's EGUs representing full remedies for the Commonwealth's interstate transport obligations with respect to these NAAQS, and implemented the budgets by including the EGUs in annual NO_X and SO_2 trading programs.[10] Consequently, Kentucky's units meeting the CSAPR applicability criteria are currently subject to CSAPR FIPs that require participation in the CSAPR NO_X Annual Trading Program and the CSAPR SO_2 Group 1 Trading Program in order to address, in full, the Commonwealth's interstate transport obligations with respect to both the 1997 annual $PM_{2.5}$ NAAQS and the 2006 24-hour $PM_{2.5}$ NAAQS.[11]

In a notice of proposed rulemaking (NPRM) published on July 30, 2019 (84 FR 36852), EPA proposed to approve Kentucky's September 14, 2018, SIP submittal designed to replace the CSAPR federal annual SO_2 and NO_X trading programs and ozone season NO_X trading program. Comments on the NPRM were due on or before August 29, 2019. EPA received adverse comments on the proposed action to approve the portions of Kentucky's submittal designed to replace the CSAPR federal ozone season NO_X trading program. However, EPA received no adverse comments on the proposed action to approve the portions of Kentucky's submittal designed to replace the CSAPR federal annual SO_2 and NO_X trading programs.

In this action, EPA is finalizing approval of the portions of Kentucky's SIP which replace the CSAPR federal annual SO_2 and NO_X trading programs only. EPA will address the remaining portions of the September 14, 2018, SIP submittal in a separate action. Please refer to the NPRM for more detailed information regarding the SIP revision and the Agency's rationale for today's final rulemaking.

II. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In

[2] *See* 40 CFR 52.38, 52.39. States also retain the ability to submit SIP revisions to meet their transport-related obligations using mechanisms other than the CSAPR federal trading programs or integrated state trading programs.

[3] States covered by both the CSAPR Update and the NO_X SIP Call have the additional option to expand applicability under the CSAPR NO_X Ozone Season Group 2 Trading Program to include non-electric generating units that would have participated in the former NO_X Budget Trading Program.

[4] CSAPR also provides for a third, more streamlined form of SIP revision that is effective only for control periods in 2016 (or 2018 in the case of the CSAPR NO_X Ozone Season Group 2 Trading Program) and is not relevant here. *See* 40 CFR 52.38(a)(3), (b)(3), (b)(7); 52.39(d), (g).

[5] *See* 40 CFR 52.38(a)(4), (b)(4), (b)(8); 52.39(e), (h).

[6] *See* 40 CFR 52.38(a)(5), (b)(5), (b)(9); 52.39(f), (i).

[7] *See* 40 CFR 52.38(a)(6), (b)(10)(i); 52.39(j).

[8] *See* 40 CFR 52.38(a)(5)(iv)–(v), (a)(6), (b)(5)(v)–(vi), (b)(9)(vi)–(vii), (b)(10)(i); 52.39(f)(4)–(5), (i)(4)–(5), (j).

[9] *See* 40 CFR 52.38(a)(7), (b)(11)(i); 52.39(k).

[10] *See* 76 FR at 48209–13.

[11] *See* 40 CFR 52.38(a)(2)(i); 52.39(b); 52.940(a)(1); 52.941(a).

accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Kentucky Regulations 401 KAR 51:240, entitled ''Cross-State Air Pollution Rule (CSAPR) NO_X annual trading program'' and 401 KAR 51.260, entitled ''Cross-State Air Pollution Rule (CSAPR) SO_2 group 1 trading program.'' EPA is approving the portions of the SIP revision concerning these CSAPR state trading programs because the SIP revision meets the requirements of the Act and EPA's regulations for approval of a CSAPR full SIP revision replacing the requirements of a CSAPR FIP. The rules became state-effective as of July 5, 2018. EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 4 Office (please contact the person identified in the ''For Further Information Contact'' section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[12]

III. Final Action

EPA is approving portions of Kentucky's September 14, 2018, SIP submittal, as clarified by the December 18, 2018, letter, concerning the establishment of CSAPR state trading programs for Kentucky units for annual NO_X and SO_2 emissions. These portions of this SIP revision adopt into the SIP state trading program rules codified in Kentucky regulations at 401 KAR 51:240, ''Cross-State Air Pollution Rule (CSAPR) NO_X annual trading program'' and 401 KAR 51.260, ''Cross-State Air Pollution Rule (CSAPR) SO_2 group 1 trading program.'' These Kentucky CSAPR state trading programs will be integrated with the federal CSAPR NO_X Annual Trading Program and the federal CSAPR SO_2 Group 1 Trading Program, respectively, and are substantively identical to the federal trading programs. Kentucky units therefore will generally be required to meet requirements under Kentucky's CSAPR state trading programs equivalent to the requirements the units otherwise would have been required to meet under the corresponding CSAPR federal trading programs. Under the Commonwealth's regulations, Kentucky will retain EPA's default allowance allocation methodology and EPA will remain the implementing authority for administration of the trading programs. EPA is approving the SIP revision because it meets the requirements of the CAA and EPA's regulations for approval of a CSAPR full SIP revision replacing a federal trading program with a state trading program that is integrated with and substantively identical to the federal trading program.

EPA promulgated the FIP provisions requiring Kentucky units to participate in the federal CSAPR NO_X Annual Trading Program and the federal CSAPR SO_2 Group 1 Trading Program in order to address Kentucky's obligations under CAA section 110(a)(2)(D)(i)(I) with respect to the 1997 Annual $PM_{2.5}$ NAAQS and the 2006 24-hour $PM_{2.5}$ NAAQS in the absence of SIP provisions addressing those requirements. Approving the Kentucky SIP submittal adopting CSAPR state trading program rules for annual NO_X and SO_2 substantively identical to the corresponding CSAPR federal trading program regulations (or differing only with respect to the allowance allocation methodology) corrects the same deficiencies in the SIP that otherwise would be corrected by those CSAPR FIPs. Under the CSAPR regulations, upon EPA's full and unconditional approval of a SIP revision as correcting the SIP's deficiency that is the basis for a particular CSAPR FIP, the obligation to participate in the corresponding CSAPR federal trading program is automatically eliminated for units subject to the state's jurisdiction (but not for any units located in any Indian country within the state's borders).[13] EPA's approval of portions of Kentucky's SIP submittal establishing CSAPR state trading program rules for annual NO_X emissions and annual SO_2 emissions therefore results in automatic termination of the obligations of Kentucky units to participate in the federal CSAPR NO_X Annual Trading Program and the federal CSAPR SO_2 Group 1 Trading Program.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. These actions merely approve state law as meeting Federal requirements and do not impose additional requirements beyond those imposed by state law. For that reason, these actions:

- Are not significant regulatory actions subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Are not Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory actions because SIP approvals are exempted under Executive Order 12866;
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not economically significant regulatory actions based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not significant regulatory actions subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a

[12] *See* 62 FR 27968 (May 22, 1997).

[13] *See* 40 CFR 52.38(a)(6); 52.39(j).

copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing these actions and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of these actions must be filed in the United States Court of Appeals for the appropriate circuit by *April 10, 2020.* Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of these actions for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. These actions may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: January 15, 2020.

Mary S. Walker,

Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart A–General Provisions

■ 2. Amend § 52.38 by revising paragraph (a)(8)(iii) to read as follows:

§ 52.38 What are the requirements of the Federal Implementation Plans (FIPs) for the Cross-State Air Pollution Rule (CSAPR) relating to emissions of nitrogen oxides?

(a) * * *

(8) * * *

(iii) For each of the following States, the Administrator has approved a SIP revision under paragraph (a)(5) of this section as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (a)(1), (a)(2)(i), and (a)(3) and (4) of this section with regard to sources in the State (but not sources in any Indian country within the borders of the State): Alabama, Georgia, Indiana, Kentucky, Missouri, and South Carolina.

* * * * *

■ 3. Amend § 52.39 by revising paragraph (l)(3) to read as follows:

§ 52.39 What are the requirements of the Federal Implementation Plans (FIPs) for the Cross-State Air Pollution Rule (CSAPR) relating to emissions of sulfur dioxide?

* * * * *

(l) * * *

(3) For each of the following States, the Administrator has approved a SIP revision under paragraph (f) of this section as correcting the SIP's deficiency that is the basis for the CSAPR Federal Implementation Plan set forth in paragraphs (a), (b), (d), and (e) of this section with regard to sources in the State (but not sources in any Indian country within the borders of the State): Indiana, Kentucky, and Missouri.

* * * * *

Subpart S—Kentucky

■ 4. Amend § 52.920, in paragraph (c), in Table 1 under the heading ''Chapter 51 Attainment and Maintenance of the National Ambient Air Quality Standards'' by adding in numerical order entries for ''401 KAR 51:240'' and ''401 KAR 51:260'' to read as follows:

§ 52.920 Identification of plan.

* * * * *

(c) * * *

TABLE 1—EPA-APPROVED KENTUCKY REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
*	*	*	*	*
Chapter 51 Attainment and Maintenance of the National Ambient Air Quality Standards				
*	*	*	*	*
401 KAR 51:240	Cross-State Air Pollution Rule (CSAPR) NO_X annual trading program.	7/5/2018	2/10/2020 [Insert **Federal Register** citation].	
401 KAR 51:260	Cross-State Air Pollution Rule (CSAPR) SO_2 group 1 trading program.	7/5/2018	2/10/2020 [Insert **Federal Register** citation].	
*	*	*	*	*

* * * * *

[FR Doc. 2020–01747 Filed 2–7–20; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 85, No. 27
Monday, February 10, 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.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303 and 337

RIN 3064–AE94

Unsafe and Unsound Banking Practices: Brokered Deposits Restrictions

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: The FDIC is inviting comment on proposed revisions to its regulations relating to the brokered deposits restrictions that apply to less than well capitalized insured depository institutions. The proposed rule would create a new framework for analyzing certain provisions of the ''deposit broker'' definition, including ''facilitating'' and ''primary purpose.'' The proposed rule would also establish an application and reporting process with respect to the primary purpose exception. The application process would be available to insured depository institutions and third parties that wish to utilize the exception.

DATES: Comments must be received by the FDIC no later than April 10, 2020.

ADDRESSES: You may submit comments on the notice of proposed rulemaking using any of the following methods:

- *Agency website: http://www.fdic.gov/regulations/laws/federal/.* Follow the instructions for submitting comments on the agency website.
- *Email: comments@fdic.gov.* Include RIN 3064–AE94 on the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand delivered to the guard station at the rear of the 550 17th Street NW Building (located on F Street) on business days between 7 a.m. and 5 p.m.
- *Public Inspection:* All comments received, including any personal information provided, will be posted generally without change to *http://www.fdic.gov/regulations/laws/federal.*

FOR FURTHER INFORMATION CONTACT: Division of Risk Management Supervision: Rae-Ann Miller, Associate Director, (202) 898–3898, *rmiller@fdic.gov.* Legal Division: Vivek V. Khare, Counsel, (202) 898–6847, *vkhare@fdic.gov.*

SUPPLEMENTARY INFORMATION:

I. Policy Objectives

On December 18, 2018, the FDIC Board adopted an advance notice of proposed rulemaking (ANPR) to obtain input from the public on its brokered deposit and interest rate regulations in light of significant changes in technology, business models, the economic environment, and products since the regulations were adopted.[1] After reviewing comments received, the FDIC is proposing changes to its regulations relating to brokered deposits.[2]

Through these proposed changes, the FDIC intends to modernize its brokered deposit regulations to reflect recent technological changes and innovations that have occurred. The FDIC recognizes that the definition of ''deposit broker,'' and its corresponding staff interpretations, may not be as relevant compared to the deposit placement arrangements that exist in the market today. Notably, in recent times, banks collaborate with third parties, including financial technology companies, for a variety of business purposes including access to deposits. Moreover, banks are increasingly relying on new technologies to engage and interact with their customers, and it appears that this trend will continue given rapid technological evolution. Through these proposed changes, the FDIC's brokered deposit regulations will continue to promote safe and sound practices while ensuring that the classification of a deposit as brokered appropriately reflects changes in the banking landscape since 1989, when the law on brokered deposits was first enacted.

II. Background

Section 29 of the Federal Deposit Insurance Act (FDI Act) restricts the acceptance of deposits by insured depository institutions from a ''deposit broker.''[3] Well capitalized insured depository institutions are not restricted from accepting deposits from a deposit broker. An ''adequately capitalized'' insured depository institution may accept deposits from a deposit broker only if it has received a waiver from the FDIC.[4] A waiver may be granted by the FDIC ''upon a finding that the acceptance of such deposits does not constitute an unsafe or unsound practice'' with respect to that institution.[5] An ''undercapitalized'' depository institution is prohibited from accepting deposits from a deposit broker.[6]

A. Current Law and Regulations

Section 29 of the Federal Deposit Insurance Act (FDI Act), titled ''Brokered Deposits,'' was originally added to the FDI Act by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). The law originally restricted troubled institutions (*i.e.,* those that did not meet the minimum capital requirements) from (1) accepting deposits from a deposit broker without a waiver and (2) soliciting deposits by offering rates of interest on deposits that were significantly higher than the prevailing rates of interest on deposits offered by other insured depository institutions (''IDIs'') having the same type of charter in such depository institution's normal market area.[7]

Two years later, Congress enacted the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), which added the Prompt Corrective Action (PCA) capital regime to the FDI Act and also amended the threshold for the brokered deposit and interest rate restrictions from a troubled institution to a bank falling below the ''well capitalized'' PCA level. At the same time, the FDIC was authorized to waive

[1] The ANPR was published for comment in the **Federal Register** on February 6, 2019. *See* 84 FR 2366 (February 6, 2019).

[2] On August 20, 2019, the FDIC proposed revisions to its regulations relating to the interest rate restrictions. *See* 84 FR 46470 (September 4, 2019).

[3] The statute also restricts a less than well capitalized institution generally from offering interest rates that significantly exceed the market rates offered in an institutions normal market area.

[4] *See* 12 U.S.C. 1831f.

[5] *See id.*

[6] *See id.*

[7] *See* Public Law 101–73, August 9, 1989, 103 Stat. 183.

the brokered deposit restrictions for a bank that is adequately capitalized upon a finding that the acceptance of such deposits does not constitute an unsafe or unsound practice with respect to the institution.[8] FDICIA did not authorize the FDIC to waive the brokered deposit restrictions for less than adequately capitalized institutions. Most recently, earlier this year, Section 29 of the FDI Act was amended as part of the Economic Growth, Regulatory Relief, and Consumer Protection Act, to except a capped amount of certain reciprocal deposits from treatment as brokered deposits.

Section 337.6 of the FDIC's Rules and Regulations implements and closely tracks the statutory text of Section 29, particularly with respect to the definition of ''deposit broker'' and its exceptions.[9] Section 29 of the FDI Act does not directly define a ''brokered deposit,'' rather, it defines a ''deposit broker'' for purposes of the restrictions.[10] Thus, the meaning of the term ''brokered deposit'' turns upon the definition of ''deposit broker.''

Section 29 and the FDIC's implementing regulation define the term ''deposit broker'' to include:

○ Any person engaged in the business of placing deposits, or facilitating the placement of deposits, of third parties with insured depository institutions or the business of placing deposits with insured depository institutions for the purpose of selling interests in those deposits to third parties; and

○ An agent or trustee who establishes a deposit account to facilitate a business arrangement with an insured depository institution to use the proceeds of the account to fund a prearranged loan.

This definition is subject to the following nine statutory exceptions:

1. An insured depository institution, with respect to funds placed with that depository institution;
2. An employee of an insured depository institution, with respect to funds placed with the employing depository institution;
3. A trust department of an insured depository institution, if the trust in question has not been established for the primary purpose of placing funds with insured depository institutions;
4. The trustee of a pension or other employee benefit plan, with respect to funds of the plan;
5. A person acting as a plan administrator or an investment adviser in connection with a pension plan or other employee benefit plan provided that that person is performing managerial functions with respect to the plan;
6. The trustee of a testamentary account;
7. The trustee of an irrevocable trust (other than one described in paragraph (1)(B)), as long as the trust in question has not been established for the primary purpose of placing funds with insured depository institutions;
8. A trustee or custodian of a pension or profit sharing plan qualified under section 401(d) or 430(a) of the Internal Revenue Code of 1986; or
9. An agent or nominee whose primary purpose is not the placement of funds with depository institutions.

The statute and regulation also define an ''employee'' to mean any employee: (1) Who is employed exclusively by the insured depository institution; (2) whose compensation is primarily in the form of a salary; (3) who does not share such employee's compensation with a deposit broker; and (4) whose office space or place of business is used exclusively for the benefit of the insured depository institution which employs such individual.

As listed above, the statute includes nine exceptions to the definition of ''deposit broker.'' In 1992, the FDIC amended its regulations to include the following tenth exception: ''An insured depository institution acting as an intermediary or agent of a U.S. government department or agency for a government sponsored minority or women-owned depository institution program.'' The FDIC indicated in the preamble for the 1992 final rule that implemented the FDICIA revisions to Section 29 that those revisions were not intended to apply to deposits placed by insured depository institutions assisting government departments and agencies in administration of minority or women-owned deposit programs.[11]

B. Issues Raised by Commenters

In response to the ANPR on brokered deposits and the interest rate restrictions applicable to less than well capitalized banks, the FDIC received over 130 comments from individuals, banking organizations, non-profits, as well as industry and trade groups, representing banks, insurance companies, and the broader financial services industry. Of the total comments, over 100 comments related to brokered deposits.

Generally, a common theme amongst the commenters was a desire for the FDIC to clarify its historical interpretation of the ''deposit broker'' definition and its corresponding statutory and regulatory exceptions.

Stable Funding. Seven commenters advanced their general point to be that brokered deposits are not inherently risky and that many types of deposits currently considered to be brokered are just as stable as core deposits and should be treated as such for supervisory purposes and assessments. A number of other commenters specifically noted that certain types of deposits (*e.g.,* health savings accounts (HSAs), deposits underlying prepaid cards, and ''relationship'' deposits) are stable sources of funding (these comments are discussed in more detail under separate headings). Several commenters suggested that the more relevant issue with respect to potential bank failures is not the source of funding but rather the oversight of asset growth, specifically the increase in risky loans. Similarly, one consulting firm suggested that the FDIC focus its supervisory concerns on bank asset growth rates, especially rapid growth in risky loan categories, and that the FDIC should view brokered deposits as an important, stable funding source that complements retail deposit-gathering. One bank commenter stated that in the bank's experience, brokered deposits have been a stable, relatively low-cost, convenient, non-volatile source of funds for the past ten years. Another bank noted that brokered deposits have been a safe, stable and useful funding source for the bank and that any additional restrictions on the use of brokered deposits would cause significant additional costs and risks to the bank.

Two commenters specifically discussed the use of brokered deposits by rural community banks. One urged the FDIC to revisit its views on brokered deposits because many rural institutions rely upon third-party funding to help provide loans to local agriculture and manufacturing businesses (that are capital-intensive) to support their operations. According to commenters, brokered deposits are more important now that many rural communities are seeing a decrease in the amount of deposits being placed by its local community. The other commenter stated that brokered deposits are a good source of supplemental funding for banks in rural areas or markets which lack ample local deposits to meet the legitimate credit needs of the community.

Definition and Scope of ''Brokered Deposit.'' While many commenters

[8] *See* Public Law 102–242, December 19, 1991, 105 Stat 2236.

[9] *See* 12 CFR 337.6. The FDIC issued two rulemakings related to the interest rate restrictions under this section. A discussion of those rulemakings, and the interest rate restrictions, is provided in Section (II)(B) of this Notice.

[10] *See* 12 U.S.C. 1831f.

[11] *See* 57 FR 23933, 23040 (1992).

focused on specific types of products that they believe should not meet the regulatory definition of ''brokered deposit,'' 11 commenters generally stated that the definition of brokered deposit should be revised. These commenters indicated that the definition is unclear and has been interpreted too broadly, capturing many products or transactions that were not intended to be covered. One bank stated that the current regulations lack definitional clarity and that FDIC staff interpretations unnecessarily capture any third party that is involved in the administering or marketing of an account.

Several of these commenters noted that technology has brought significant changes to the marketplace, including online advertising and deposit marketing through third parties. In particular, one banker stated that more institutions are being forced to rely upon funding channels that involve third parties due to the evolution of online banking activities and that this often triggers the definition of brokered deposit. Another commenter suggested that the definition be limited to those deposits that inherently pose risks to banks.

One commenter stated that the FDIC's current interpretation of what constitutes a ''deposit broker'' seemingly hinges on the involvement of any third party (including affiliates or subsidiaries of the bank) in sourcing the customer relationship or servicing the customer. By taking such a view, the commenter argued, the FDIC has significantly expanded the types of entities considered to be deposit brokers beyond what was originally contemplated when Section 29 was enacted. This commenter stated that as a result, entities such as retailers, employers, technology platforms, advertising and marketing partners, and Fintech partners may currently be classified as deposit brokers, even though their activities may only be incidentally linked to a deposit account. The commenter requested that the FDIC limit its determination of what constitutes a ''deposit broker'' to what they believe was a narrow scope contemplated by Section 29.

While the majority of the comments sought to constrict the definition of ''brokered deposits,'' one organization argued against any such a reduction in scope. The commenter stated that brokered deposits contributed to the savings and loan crisis of the 1980's that cost taxpayers hundreds of millions of dollars. The commenter also noted that brokered deposits have already received permissive regulatory treatment and that more than 99% of banks are considered ''well-capitalized'' and therefore can accept brokered deposits without any statutory or regulatory restriction.

Primary Purpose Exception. A number of commenters discussed the ''primary purpose exception'' to the deposit broker definition in various contexts. Many of those commenters focused on specific deposit placement arrangements relating to health savings accounts (HSAs), prepaid cards, and affiliated broker-dealers. These comments are discussed more specifically under those headings. In addition to these specific deposit placement arrangements, a number of comments focused more generally on how the primary purpose exception should be interpreted. One bank commented that third parties that are involved in placing deposits but do so to achieve some other purpose outside of providing a deposit account, where the deposits do not have the risks associated with traditional brokered deposits, should meet the primary purpose exception. Another commenter proposed amending the primary purpose exception and making it available to entities that place deposits but also offer consumers an array of financial services. The commenter argued that the correct way to determine such person's ''primary purpose'' is to review the entire range of services offered by the person to its customers and to exclude deposits that are facilitated or placed by persons for whom deposit brokerage revenue and income is less than 50 percent of their total consolidated revenue and income.

Alternatively, one commenter argued that one key test for whether a person meets the primary purpose exception should be if the person facilitating placement of a deposit is paid a fee by the bank, which the commenter stated is a prominent feature of a ''classic'' deposit broker. The commenter also stated that in contrast, a securities broker or mutual fund administrator is paid a fee by the owner of the funds. According to the commenter, that is the key distinction that should be used to define a brokered deposit is whether the broker drives the selection of bank or whether the depositor drives the selection.

A consulting firm asked the FDIC to take a ''principles-based'' approach toward the brokered deposit regulation and primary purpose exception that places the burden on the banks and their ability to explain, document and defend their operating and contingency management policies and practices.

Health Savings Accounts (HSAs). Nine separate commenters mentioned HSAs, in general arguing that third party administrators (or HSA custodians) that assist in placing HSA deposits at insured depository institutions meet one of two statutory exceptions to the deposit broker definitions. Specifically, commenters believe that the third party administrators fit within the statutory exception for plan administrators for employee benefit plans, or that these third party administrators should meet the ''primary purpose exemption.''

Commenters who argued that third party administrators fit within the primary purpose exception noted that HSAs are opened primarily for the purpose of facilitating savings in an effort to assist employees to meet deductibles and pay qualified medical expenses. One commenter noted that the primary purpose exception applies to HSAs because the funds are placed with banks incidental to providing a tax advantaged program for healthcare expenditures. Similarly, one commenter stated simply that placing HSA funds in banks is only incidental to the primary purpose of the non-bank administrators.

Others pointed out that HSAs placed at insured depository institutions by third parties do not represent ''hot money'' but rather are a stable source of funding. Third party administrators also do not have the same authority to control the HSAs in a manner comparable to the control of traditional deposit brokers. One trade association made a public policy argument in favor of HSAs not being considered brokered deposits, stating that HSAs are a desirable option for both employers and employees to offset high employee healthcare costs. Another commenter also articulated a public policy reason for HSAs not being brokered deposits, noting that HSAs benefit consumers through increased competition, innovation and reduced costs.

Prepaid Cards. Eight commenters discussed prepaid cards, generally stating that prepaid card companies are not deposit brokers because they are not engaged in the business of placing deposits, but rather are involved in a much larger economic activity of offering prepaid payments on products to replace inefficient and costlier, traditional payments. One commenter noted that program managers of prepaid card products meet the primary purpose exception because prepaid card managers place deposits to enable cardholders to make purchases throughout the interbank payment system and that prepaid cards are a source of stable funding. One trade association argued that funds underlying prepaid cards are not ''hot

money'' because they are typically held in pooled custodial accounts and the IDI is generally required to receive written approval of its primary federal regulator before assuming a large transfer of pooled funds. A few commenters noted that funds underlying prepaid cards should not be considered brokered deposits because they are low balance, stable, and relatively low-cost compared to other deposits. A large payments company similarly argued that funds underlying prepaid cards are not ''hot money'' and often have stable rates. The commenter further stated that prepaid card program managers provide consumers with a payment mechanism that substitutes for cash or a money order. Additionally, a commenter suggested that prepaid program structures that get paid based upon administrative services should qualify for the primary purpose exception, similar to the exception provided for government benefit programs.

Broker-Dealer Sweeps. Currently, certain affiliated broker dealer sweeps are not considered to be brokered deposits. Two commenters stated that unaffiliated broker-dealer sweeps should also not be considered brokered, with one commenter suggesting that unaffiliated broker dealers meet the primary purpose exception.

Several commenters suggested that the regulations should explicitly provide that affiliated broker dealers meet the primary purpose exception. Moreover, some commenters suggested that the FDIC reconsider the criteria that it has considered as part of its existing interpretation in Advisory Opinion 05–02.[12] A consulting company suggested that the FDIC incorporate that staff opinion into the regulatory exceptions, and that the FDIC also codify, through rulemaking, that a separately incorporated trust company affiliate of a bank that acts as a bona fide trust custodian in placing deposits at an IDI, meets the primary purpose exception.

Affiliate Transactions. Sixteen commenters suggested that deposit referrals made by affiliated entities should not be considered brokered deposits, and that affiliates making such referrals should not be considered deposit brokers. One bank argued that affiliate referrals serve to strengthen and deepen the customer relationship. The bank also urged the FDIC to clarify, by regulation, that an affiliate of a depository institution does not constitute a deposit broker. A trade association representing the banking industry suggested that employees of bank affiliates and subsidiaries should not be considered deposit brokers. One bank similarly argued that deposits sourced from affiliates generally are similar to traditional core deposits because they are funds of customers with long-term relationships with the firm. One commenter suggested that affiliates that refer customers to a bank should not be treated as deposit brokers as long as the customer establishes a direct account relationship with the bank, the affiliate institution does not have the legal authority to move customers' funds to another depository institution, and the bank retains complete control over setting rates, fees, terms, and conditions for the account as well as full discretion over the opening or closing of the account.

A trade association representing community banks stated that dual and affiliated employees who provide a suite of nonbanking and deposit products and services to customers, and are not paid commissions or fees based upon the volume of deposits placed, should not meet the deposit broker definition. Another banking trade association suggested that information sharing with affiliates should not be determinative factor for the FDIC in considering whether a deposit is brokered. A state banker's association stated that they found little evidence that so-called ''relationship deposits'' gathered through the normal course of providing banking services through affiliates or marketing partnerships pose an enhanced risk to safety and soundness or the deposit insurance fund. Two congressional commenters stated that there are characteristics of an affiliated broker-dealer's relationship with an insured depository institution that should result in deposits opened by them as being viewed as nonbrokered.

Two commenters argued that deposits placed into a parent bank by its wholly-owned operating subsidiary should not be brokered deposits. According to the commenter, this is because wholly-owned operating subsidiaries are treated as part of the bank under certain federal banking laws.

Insurance Agents. A bank suggested that the FDIC change its position regarding deposits marketed through non-employee, exclusive agents of, an insurance company engaged primarily in the sale of insurance if the bank is an affiliate of the insurance company and the agents market exclusively to such insurer's bank affiliate.

Government Accounts. One commenter stated that large government investment pools that place deposits on behalf of municipalities and other governmental entities should not be classified as ''deposit brokers'' because they invest their portfolio assets as principal fiduciary and not as agent. Therefore, such pools do not act for the ''primary purpose'' of investing fund assets in deposit accounts.

Listing Services. One commenter stated that brokered deposits expressly exclude deposits derived from listing services and that the ''deposit broker'' definition excludes listing services. The commenter suggested that the use of deposit listing services benefits the Deposit Insurance Fund by allowing bank customers to source multiple depository relationships, thereby minimizing losses to either the DIF or to the customer if deposits were placed at a single institution. Another commenter urged the FDIC to preserve its longstanding position regarding online listing services and stated that the position should remain even if a fee is paid for preferential placement on the listing service website.

Custodial Deposits. A management company stated that FDIC's regulations should clarify that so-called ''custodial deposits'' are nonbrokered deposits because custodial deposits level the playing field between community banks and larger money center banks by allowing a custodian bank to break down large corporate, municipal, and not-for-profit institutional deposits and distribute them to smaller banks.

Deposit Insurance Assessments. Three commenters suggested that the FDIC revise its deposit insurance assessment regulations with respect to valuation of brokered deposits. While this matter is outside the scope of this rulemaking process, the FDIC acknowledges the comments and will consider them, as appropriate, in any future assessment rulemaking.

III. Discussion of Proposed Rule

A. Deposit Broker Definition

A person meets the ''deposit broker'' definition under Section 29 of the FDI Act if it is engaged in the business of placing deposits, or facilitating the placement of deposits, of third parties with insured depository institutions or the business of placing deposits with insured depository institutions for the purpose of selling interests in those deposits to third parties. An agent or trustee meets the ''deposit broker'' definition when establishing a deposit account to facilitate a business arrangement with an insured depository institution to use the proceeds of the account to fund a prearranged loan. As discussed below, the FDIC is proposing to define certain prongs of the deposit broker definition.

[12] FDIC Staff Advisory Opinion 05–02 (February 3, 2005).

1. Engaged in the Business of Placing Deposits

The statute provides that a person meets the definition of ''deposit broker'' if it is ''engaged in the business of placing deposits'' on behalf of a third party (*i.e.,* a depositor) at insured depository institutions. The FDIC would view a person to be *engaged in the business of placing deposits* if that person has a business relationship with its customers, and as part of that relationship, places deposits on behalf of the customer (*e.g.,* acting as custodian or agent for the underlying depositor).

As such, any person that places deposits at insured depository institutions on behalf of a depositor, as part of its business relationship with that depositor, fits within the meaning of the ''deposit broker'' definition.

Question 1: Is the FDIC's proposed definition of ''engaged in the business of placing deposits'' appropriate?

2. Engaged in the Business of Facilitating the Placement of Deposits

a. Background and Comments Received

Section 29 of the FDI Act also provides that a person is a deposit broker when it is ''facilitating'' the placement of deposits of third parties with insured depository institutions. In contrast to the first prong of the definition, the ''facilitation'' prong of the deposit broker definition refers to activities where the person does not directly place deposits on behalf of its customers with an insured depository institution. Historically, the term ''facilitating the placement of deposits'' has been interpreted by staff at the FDIC to include actions taken by third parties to connect insured depository institutions with potential depositors.

Commenters argue that, under the current FDIC staff interpretations, the term ''facilitating'' has been broadly interpreted to include *any* actions taken by third parties to connect insured depository institutions with potential depositors. Commenters also contend that determining whether a third party is ''facilitating the placement of deposits'' is not always clear because the FDIC's staff interpretative letters do not always apply perfectly to new arrangements relating—for example—to whether deposits placed in new ways stemming from technological or marketplace changes would be considered brokered deposits.

Since enactment of Section 29, there have been significant technological advances in the way banks seek and source deposits, well beyond what was contemplated at that time and by staff at the FDIC in the following years. As a result, some of the historical factors that have been considered may not be relevant as compared to current deposit placement arrangements in the market.

Today, banks are increasingly relying on new technologies to engage and interact with their customers and, it appears that this trend will continue given rapid technological evolution. Specifically, the proliferation of various online marketing and advertising channels have provided new opportunities for insured depository institutions to attract depositors from different parts of the country. In an effort to ensure that the term brokered deposit appropriately reflects the banking landscape, and to ensure that the FDIC's regulations promote safe and sound practices, the FDIC is proposing to refine the activities that result in a person being ''engaged in the business of facilitating the placement'' of third party deposits at an insured depository institution.

b. Proposed Definition of Engaged in the Business of Facilitating the Placement of Deposits

Under the proposal, the FDIC proposes that a person would meet the ''facilitation'' prong of the ''deposit broker'' definition by, while engaged in business, engaging in any one, or more than one, of the following activities:

○ The person directly or indirectly shares any third party information with the insured depository institution;

○ The person has legal authority, contractual or otherwise, to close the account or move the third party's funds to another insured depository institution;

○ The person provides assistance or is involved in setting rates, fees, terms, or conditions for the deposit account; or,

○ The person is acting, directly or indirectly, with respect to the placement of deposits, as an intermediary between a third party that is placing deposits on behalf of a depositor and an insured depository institution, other than in a purely administrative capacity.

By engaging in one or more than one of the above listed activities, while engaged in business, the person would be engaged in the business of facilitating the placement of customer deposits at an insured depository and therefore meet the ''deposit broker'' definition. For example, if a person assists in setting rates, fees, or terms, then that person would be considered a deposit broker despite the fact that the person may not share third party information with the insured depository institution.

The proposed ''facilitation'' definition is intended to capture activities that indicate that the person takes an active role in the opening of an account or maintains a level of influence or control over the deposit account even after the account is open. It is the FDIC's view that a level of control or influence indicates that the deposit relationship is between the depositor and the person rather than the depositor and the insured depository institution. Having a level of control or influence over the depositor allows the person to influence the movement of funds between institutions and makes the deposits less stable than deposits brought to the insured depository institution through a single point of contact where that contact does not have influence over the movement of deposits between insured depository institutions. Ultimately, the FDIC believes that if the person is not engaged in any of the activities above, then the needs of the depositor are the primary drivers of the selection of a bank, and therefore the person is not facilitating the placement of deposits.

The proposal would also define any person that acts as an intermediary between another person that is placing deposits on behalf of a depositor and an insured depository institution, other than in a purely administrative capacity, as facilitating the placement of deposits. In other words, any assistance provided by such intermediaries, outside of providing purely administrative functions, would result in the intermediary meeting the ''deposit broker'' definition and any deposits placed through the assistance of such intermediaries would be brokered deposits. For example, if an agent or nominee that meets the primary purpose exception uses an intermediary (in a manner that is not purely administrative) in placing, or facilitating the placement of, deposits, then the intermediary would be a deposit broker, and the resulting deposits would be brokered. Administrative functions would include, for example, any reporting or bookkeeping assistance provided to the person placing its customers' deposits with insured depository institutions. Administrative functions would not include, for example, assisting in decision-making or steering persons (including the underlying depositors) to particular insured depository institutions. The FDIC believes such an interpretation is warranted, in part, because deposits placed through the assistance of such intermediaries are more likely to raise concerns traditionally associated with brokered deposits. For example, it is possible that such entities are able to directly or indirectly control or

influence the movement of funds between insured depository institutions without any involvement or input from the underlying depositor.

This proposal would provide industry participants with clarity over whether the actions of a person, in assisting with the placement of deposits, meet the ''facilitation'' part of the ''deposit broker'' definition.

Question 2: Is the FDIC's proposed definition of ''engaged in the business of facilitating the placement of deposits'' appropriate?

Question 3: Is the FDIC's list of activities that would determine whether a person meets the ''facilitation'' prong of the ''deposit broker'' definition appropriate?

Question 4: Has the FDIC provided sufficient clarity surrounding whether a third party intermediary would meet the ''facilitation'' prong of the ''deposit broker'' definition?

Question 5: Should the FDIC provide more clarity regarding whether any specific types of deposit placement arrangements would or would not meet the ''facilitation'' prong of the ''deposit broker'' definition? If so, please describe any such deposit placement arrangements.

3. Selling Interests in Deposits to Third Parties

The third prong of the ''deposit broker'' definition includes a person ''engaged in the business of placing deposits with insured depository institutions for the purpose of selling interests in those deposits to third parties.'' This part of the definition specifically captures the brokered certificates of deposit (CD) market (referred to herein as ''brokered CDs''). These are typically deposit placement arrangements where brokered CDs are issued in wholesale amounts by a bank seeking to place funds under certain terms and sold through a registered broker-dealer to investors, typically in fully-insured amounts. The brokers subdivide the bank-issued ''master CD'' and alter the terms of the original CD before selling the new CDs to its brokerage customers. These brokered CDs are (in most cases) held in book-entry form at the Depository Trust Corporation (''DTC'') and use the CUSIP system for identification and trading in a primary and secondary market.

Deposits placed through this market have always been marketed and classified as brokered deposits and are specifically captured under the placement of deposits ''for the purpose of selling interests in those deposits to third parties'' prong of the deposit broker definition. Through this rulemaking, the FDIC is not proposing any changes to the brokered classification of such deposits. In other words, under this proposal, without exception, and as further explained below in the section discussing the primary purpose exception, brokered CDs would continue to be classified as brokered.

In addition, the FDIC notes that the brokered CD market has evolved since Section 29 was first enacted, and will likely continue to evolve. As such, it is the FDIC's intention that third parties that assist in the placement of brokered CDs, or any similar deposit placement arrangement with a similar purpose, continue to meet the deposit broker definition.

B. Exceptions to the Deposit Broker Definition

Section 29 provides nine statutory exceptions to the definition of deposit broker and, as noted earlier, the FDIC added one regulatory exception to the definition. Through this rulemaking, the FDIC proposes amending two exceptions—(1) the exception for insured depository institutions, with respect to funds placed with that depository institution (the ''IDI exception'') and (2) the exception for an agent or nominee whose primary purpose is not the placement of funds with depository institutions (the ''primary purpose exception'').

1. Bank Operating Subsidiaries and the IDI Exception

Section 29 of the FDI Act expressly excludes from the definition of ''deposit broker'' an insured depository institution, with respect to funds placed with that depository institution, also known as the ''IDI Exception.'' [13] Under the IDI Exception, an IDI is not considered to be a deposit broker when it (or its employees) places funds at the bank.

In response to the ANPR, commenters suggest that funds deposited at an IDI through the IDI's relationship with a wholly-owned subsidiary should not be considered brokered deposits. The commenters state that operating subsidiaries of an IDI are under the exclusive control of the parent IDI, engage only in activities permissible for an IDI and are treated as a division of the IDI for a variety of regulatory purposes.

The FDIC recognizes that the exception currently is limited to IDIs only, and not their subsidiaries. The IDI Exception currently applies, for example, in the case of a division of an IDI that places deposits exclusively with the parent IDI, but does not apply if a separately incorporated subsidiary of the IDI places deposits exclusively with the parent. The FDIC also recognizes that a wholly-owned operating subsidiary that meets certain criteria can be considered similar to a division of an IDI for certain purposes. In fact, wholly-owned subsidiaries are treated differently under various legal and regulatory frameworks. For example, the Bank Merger Act and Receivership law treat wholly-owned subsidiaries as separate from its parent IDI, whereas Section 23A and Section 23B of the Federal Reserve Act and Call Reports treat wholly-owned subsidiaries as part of the parent IDI.

There is little practical difference between deposits placed at an IDI by a division of the IDI versus deposits placed by a wholly-owned subsidiary of the IDI. Therefore, the FDIC proposes that the IDI exception be available to wholly-owned operating subsidiaries provided that such a subsidiary meets the criteria discussed below. The FDIC believes that setting forth specific criteria is appropriate to limit the exception to wholly-owned subsidiaries that are functioning essentially as divisions of parent IDIs.

For the reasons described above, the FDIC is proposing that a subsidiary be eligible for the IDI exception, provided all of the following criteria are met:

- The subsidiary is a wholly owned operating subsidiary of the IDI, meaning that the IDI owns 100% of the subsidiary's outstanding stock;
- The subsidiary places deposits of retail customers exclusively with the parent IDI; and
- The subsidiary engages only in activities permissible for the parent IDI.

Under the proposal, wholly-owned subsidiaries, based on the above listed conditions, would be eligible for the IDI exception to the definition of deposit broker with respect to funds placed at the IDI. However, the FDIC notes that such deposits would be considered brokered if a third party is involved that is itself a deposit broker.

Question 6: Is it appropriate for a separately incorporated operating subsidiary to be included in the IDI exception?

Question 7: Are the criteria for including an operating subsidiary in the IDI exception too broad or too narrow?

2. Primary Purpose Exception

a. Background

The statute provides that the primary purpose exception applies to ''an agent or nominee whose primary purpose is

[13] 12 U.S.C. 1831f((g)(2)(A).

not the placement of funds with depository institutions.'' Generally, if a person is engaged in the business of either placing deposits for its customers, or facilitating the placement of deposits for its customers, at insured depository institutions, then it meets the ''deposit broker'' definition. However, if the person meets the primary purpose exception, then the person is excepted from the definition of ''deposit broker'' and any deposits that it places with insured depository institutions are not brokered deposits.

As noted in the ANPR, in evaluating whether a person meets the primary purpose exception, staff has focused on the relationship between the depositor and the person acting as agent or nominee for that depositor.[14] In particular, staff has generally analyzed whether the agent's placement of deposits is for a substantial purpose other than (1) to provide deposit insurance, or (2) for a deposit-placement service. In analyzing this principle, staff has considered whether the deposit-placement activity is incidental to some other purpose.

b. General Overview of Proposal

The FDIC is proposing to set forth regulatory changes to the primary purpose exception. Specifically, the FDIC is proposing that the application of the primary purpose exception be based on the business relationship between the agent or nominee and its customers. As such, the proposal would amend the primary purpose exception in the regulation to apply when the primary purpose of the agent's or nominee's business relationship with its customers is not the placement of funds with depository institutions.

The FDIC recognizes that, since Section 29 was first enacted, there have been a number of different agents and nominees that have sought views on the applicability of the primary purpose exception, and this proposed amendment to the primary purpose exception would expand the number of entities that meet the exception. The FDIC also recognizes that every deposit broker can claim a primary purpose other than the placement of funds at a depository institution, and Congress did not intend for every potential deposit broker to become exempt through the primary purpose exception. In order for the FDIC to properly scrutinize whether a primary purpose exception is warranted, the FDIC is proposing to establish an application and reporting process to ensure that the FDIC's role in protecting the Deposit Insurance Fund and ensuring safety and soundness is preserved.[15]

c. Business Relationships Deemed To Meet the Primary Purpose Exception Subject to the Application Process

1. Deposit Placements of Less Than 25 Percent of Customer Assets Under Management by the Third Party

Through this rulemaking, the FDIC proposes that the primary purpose of an agent's or nominee's business relationship with its customers will not be considered to be the placement of funds, subject to an application process, if less than 25 percent of the total assets that the agent or nominee has under management for its customers, in a particular business line, is placed at depository institutions. It is the FDIC's view that the primary purpose of a third party's business relationship with its customers is not the placement of funds with depository institutions if the third party places less than 25 percent of customer assets under management for its customers, for a particular business line, at insured depository institutions. The FDIC believes that if 75 percent or more of the customer assets under management of the third party is not being placed at depository institutions, for a particular business line, the third party has demonstrated that the primary purpose of that business line is not the placement of funds at depository institutions. The FDIC also believes that establishing a transparent, bright line test is beneficial for all parties.

To give an example, a broker dealer that sweeps uninvested cash balances into deposit accounts at depository institutions would meet the primary purpose exception if the amount of customer funds it places at deposit accounts represents less than a quarter of the total amount of customer assets it manages for its broker dealer business. However, if 25 percent or more of the customer assets the broker dealer manages is placed at depository institutions, the FDIC would, barring information to the contrary, likely conclude that the primary purpose of the broker dealer's business is placing funds at depository institutions, rather than the placing of funds at depository institutions being ancillary to its primary purpose.

An agent or nominee that seeks to avail itself of the primary purpose exception based on this standard would be required to submit an application, as discussed below.

Customer Assets Under Management. In determining the amount of customer assets under management by an agent or nominee, for a particular business line, the FDIC would measure the total market value of all the financial assets (including cash balances) that the agent or nominee manages on behalf of its customers that participate in a particular business line.

Question 8: Is it appropriate to interpret the primary purpose of a third party's business relationship with its customers as not placement of funds if the third party places less than 25 percent of customer assets under management for its customers, for a particular business line, at depository institutions? Is a bright line test appropriate? If so, is 25 percent an appropriate threshold?

Question 9: Should the FDIC specifically provide more clarity regarding what is meant by customer assets under ''management'' by a broker dealer or third party?

2. Deposit Placements That Enable Transactions

The FDIC proposes, subject to an application process, that the primary purpose of an agent's or nominee's business relationship with its customers will not be considered to be the placement of funds if the agent or nominee places depositors' funds into transactional accounts for the purpose of enabling payments. The FDIC does not intend for this exception to capture all third parties that place deposits into accounts that have transaction features and does not intend to create an incentive for deposit brokers to move customers from time deposits to transaction accounts in order to evade brokered deposits restrictions. Rather, the exception would be construed to apply only to third parties whose business purpose is to place funds in transactional accounts to enable transactions or make payments.

Under the proposal, if an agent or nominee places 100 percent of its customer funds into transaction accounts at depository institutions and no fees, interest, or other remuneration is provided to the depositor, then it would meet the primary purpose exception of enabling payments, subject to providing information as part of an application process. In such a case, the FDIC would conclude that the primary purpose of the agent's or nominee's business is to enable payments.

If the agent or nominee, or the depository institution, pays any sort of interest, fee, or provides any

[14] 84 FR 2366, 2372 (February 6, 2019).

[15] The proposed application and reporting process would be set forth in a new 12 CFR 303.243(b). The brokered deposit waiver procedures would be moved to 12 CFR 303.243(a)(1)–(7) with no change to the text.

remuneration, (*e.g.,* nominal interest paid to the deposit account), then the FDIC would more closely scrutinize the agent's or nominee's business to determine whether the primary purpose is truly to enable payments. In such a case, the FDIC would consider a number of factors, including the volume of transactions in customer accounts, and the interest, fees, or other remuneration provided, in determining the applicability of the primary purpose exception.

An agent or nominee that seeks to avail itself of the primary purpose exception based on this standard would be required to submit an application.

Question 10: Is it appropriate to make available the primary purpose exception to third parties whose business purpose is to place funds in transactional accounts to enable transactions or make payments?

d. Other Deposit Placements That May Meet the Primary Purpose Exception

Agents or nominees that do not fit within the business arrangements detailed above would also be eligible to apply for the primary purpose exception, subject to the application process.[16] In such a case, in order to qualify for the primary purpose exception, the FDIC would expect the agent or nominee to demonstrate through its application that the primary purpose of the agent or nominee is something other than the placement of funds at depository institutions. In such applications, the FDIC would consider a number of factors in determining whether the agent or nominee meets the primary purpose exception.

The FDIC notes that agents or nominees seeking a primary purpose exception under this category may be placing more than 25 percent of its customer assets under management, for a particular business line, into deposit accounts at depository institutions. As such, the applicant would be required to provide information sufficient to establish that its primary purpose is something other than the placement of funds, despite the fact that it places more than 25 percent of its customer assets under management, for a particular business line, in deposit accounts.

One factor the FDIC would review is the revenue structure for the agent or nominee. If the agent or nominee receives a majority of its revenue from its deposit placement activity, rather than for some other service it offers, then it would likely not meet the primary purpose exception. A second factor would be whether the agent's or nominee's marketing activities to prospective depositors is aimed at opening a deposit account or to provide some other service, and if there is some other service, whether the opening of the deposit account is incidental to that other service. As part of reviewing this factor, the FDIC would also consider whether it is necessary for the customer to open a deposit account first before receiving the other services provided by the agent or nominee. A third factor would be the fees, and type of fees, received by an agent or nominee for any deposit placement service it offers.

Ultimately, the FDIC's review of whether an agent or nominee meets the primary purpose exception would be a case-by-case review and depend upon a consideration of factors detailed in the application section below, as well as the information presented by the applicant as to why it should meet the primary purpose exception.

e. Business Relationships That Do Not Meet the Primary Purpose Exception

1. Deposit Placements of Brokered CDs

Through this proposal, the FDIC would continue to consider a person's placement of brokered CDs (as described in the third prong to the deposit broker definition and as discussed above) as deposit brokering. For purposes of establishing the person's primary purpose, the person's placement of brokered CDs would be considered a discrete and independent business line from other deposit placement businesses, and so the primary purpose for that particular business line will always be the placement of deposits at depository institutions. Accordingly, such deposits would continue to be considered brokered notwithstanding that the person may not be considered a deposit broker for other deposits that it places (or for which it facilitates the placement), which would be evaluated as a separate business line.

Brokered CD products are marketed to customers as a way to increase FDIC deposit insurance coverage and increase yield. One historical form of brokered CDs is CD participations, where a broker dealer purchases a CD issued by a bank and sells the interests in the CD to its customers. CD participations, at the time that Section 29 was being contemplated, were a core form of deposit brokering. This activity enables any insured depository institution to attract large volumes of funds irrespective of the institutions' managerial and financial characteristics. While such deposits can provide a helpful source of liquidity to institutions, their availability and pricing make it possible for poorly-managed institutions to continue operating beyond the time at which natural market forces would have otherwise resulted in failure. Moreover, and as provided in the ANPR, brokered CDs have caused significant losses to the deposit insurance fund.[17]

Accordingly, for purposes of effectuating the intent and policy of Section 29 (and Part 337 of the FDIC's regulations), brokered CDs, as has been the case since 1989, will be considered brokered, without exception. As discussed below, deposits related to brokered CDs would not be included for purposes of determining whether a person's other business line meets the primary purpose exception.

2. Deposit Placements for Purposes of Encouraging Savings

The FDIC would not grant a primary purpose exception if the third party's primary purpose for its business relationship with its customers is to place (or assist in the placement of) funds into deposit accounts to ''encourage savings,'' ''maximize yield,'' ''provide deposit insurance'', or any similar purpose. The FDIC is concerned that these types of purposes evade the purposes of Section 29. It is the FDIC's view that there is no meaningful distinction between these objectives and the objectives for placing funds into a deposit account. As such, third parties that either place or assist in the placement of deposits to provide these core deposit-placement services for its customers would not meet the primary purpose exception.

f. Applicability of Prior FDIC Staff Advisory Opinions

The FDIC recognizes that some insured depository institutions may have met the primary propose exception based on a previous FDIC staff advisory opinion. As part of this rulemaking process, the FDIC intends to evaluate existing staff opinions to identify those that are no longer relevant or applicable based on any revisions made to the brokered deposit regulations. The FDIC plans as part of any final rule to codify staff opinions of general applicability that continue to be relevant and applicable, and to rescind any staff opinions that are superseded or obsolete or are no longer relevant or applicable.

Question 11: Are there particular FDIC staff opinions of general

[16] Persons that meet the deposit broker definition because they are ''facilitating the placement'' of deposits would also be eligible to submit an application under this process.

[17] 84 FR 2366, 2370 (February 6, 2019).

applicability that should or should not be codified as part of the final rule? If so, which ones, and why?

g. Evaluation of Business Lines

In evaluating whether the primary purpose would apply, the FDIC believes it is necessary to analyze specific business lines. Otherwise, any agent or nominee engaged in the brokering of deposits could evade the statutory restrictions by adding or combining its brokering business with another business such that the deposit broker business is no longer its primary purpose. In this proposal, the term business line would refer to the business relationships an agent or nominee has with a group of customers for whom the business places or facilitates the placement of deposits. For example, a company that offered brokerage accounts to various types of customers that allowed customers to buy and sell assets, with a traditional cash sweep option, would be considered a business line. Brokerage accounts that did not offer a cash sweep option would not be considered part of the business line (because those customers are not part of the group of customers for whom the person is placing deposits), and any accounts in which customers are only able to place money in accounts at depository institutions (and not invest in other types of assets) would also be considered a separate business line. Ultimately, the determination of what constitutes a business line will depend on the facts and circumstances of a particular case, and the FDIC retains discretion to determine the appropriate business line to which the primary purpose exception would apply.

Question 12: Has the FDIC provided sufficient clarity regarding what will be considered a ''business line''? How can the FDIC provide more clarity? Are there other factors that should be considered in determining an agent's or nominee's business line(s)?

h. Application Process for the Primary Purpose Exception

1. General Overview of the Application Process

For purposes of the application process, the term applicant includes an insured depository institution or a nonbank third party [18] that meets the ''deposit broker'' definition by either placing (or facilitating the placement of) customer deposits at insured depository institutions and seeks to be excluded from that definition by application of the primary purpose exception. Under the proposal, the FDIC would establish an application process under which any agent or nominee that seeks to avail itself of the primary purpose exception, or an insured depository institution acting on behalf of an agent or nominee, could request that the FDIC consider certain deposits as nonbrokered as a result of the primary purpose exception. If an application from the agent or nominee is approved, deposits placed or facilitated by that party would be considered nonbrokered for a particular business line.

As mentioned, an applicant may be an insured depository institution that applies to the FDIC on behalf of a third party seeking a determination that the third party meets the primary purpose exception. In this case, if appropriate, the FDIC would evaluate the third party's relationships with all IDIs in which the third party places, or facilitates the placement of, deposits. An approval that a third party meets the primary purpose exception (based on an application by an IDI on behalf of the third party) could be applicable to all deposit placements by that third party at other IDI(s) to the extent that the deposit placement arrangements with the other IDI(s) are the same as the arrangement between the applicant and the third party. The FDIC anticipates that an agent or nominee who places, or facilitates the placement of, deposits at multiple IDIs and seeks a primary purpose exception is likely to apply on its own behalf, given that the information required to complete an application will be in possession of the agent or nominee.

Question 13: Are there scenarios where a nonbank third party, as part of the same business line, has different deposit placement arrangements with IDIs?

Applicants would receive a written determination from the FDIC within 120 days of a complete application. For applications seeking the primary purpose exception as described above in paragraphs C(1) and C(2) (with the exception of applicants seeking a primary purpose exception based on enabling payments where interest, fees, or remuneration, is provided to depositors), if the application is simple and straightforward and meets the relevant standards, the FDIC intends to provide an expedited processing of the application. The FDIC expects such applications to generally be simple and straightforward, but recognizes there may be some cases, such as when defining the scope of the ''business line'' is complicated, in which the FDIC may need more time to process the application.

Question 14: Is the application process proposed for the primary purpose exception appropriate? Are there ways the application process could be modified to make it more effective or efficient?

Question 15: Is the application process for IDIs that apply on behalf of a third party workable? Are there ways to improve the process for IDIs that apply on behalf of third parties?

Question 16: Are there additional ways that the FDIC could better ensure that the primary purpose exception is applied consistently, transparently, and in accordance with the statute?

Question 17: Should some or all FDIC decisions on applications for the primary purpose exception be publicly available? If so, in what format?

Question 18: Are there commonly known deposit placement arrangements not mentioned above that are sufficiently simple and straightforward that applications for such arrangements should receive expedited application processing, as described above?

Question 19: Are there other deposit placement arrangements with respect to which the FDIC should provide additional clarity as part of this rulemaking?

2. Application Contents

An applicant would need to submit certain information, depending on the basis on which the primary purpose exception is being sought. Below are the application contents that would be required for each of the three types of previously discussed business arrangements.

Application Contents for Third Parties that Seek Primary Purpose Based on Placing Less Than 25 Percent of Customer Assets Under Management at IDIs. The applicant would be required to provide (1) a description of the business line for which the applicant is filing an application; (2) the total amount of customer assets under management by the third party for that particular business line and (3) the total amount of deposits placed by the third party on behalf of its customers, for that particular business line, at all depository institutions. The total amount of deposits placed by the third party should be exclusive of the amount of brokered CDs being placed by the third party, which is treated as a separate business line. An application would also need to include a description of the deposit placement arrangement(s) with the IDI or IDIs and the services provided by any other third parties involved. The FDIC would be

[18] The FDIC will look to each separately incorporated legal entity as its own ''third party'' for purposes of this application process.

permitted to request additional information at any time during the review of the application to render the application complete and initiate its review.

The FDIC will approve primary purpose applications if the total amount of customer funds placed at insured depository institutions by the third party is less than 25 percent of total customer assets under management by the third party for a particular business line.

Question 20: Are the criteria for considering and approving primary purpose applications for third parties that seek a primary purpose exception based on placing less than 25 percent of customer assets under management at depository institutions appropriate?

Application Contents for Third Parties that Seek Primary Purpose Based on Enabling Transactions. The applicant would need to submit information, including contracts with customers and with the depository institutions in which the third party is placing deposits, showing that all of its customer deposits are in transaction accounts. An application would also need to include a description of the deposit placement arrangement(s) with the IDI or IDIs and the services provided by any other third parties involved. The applicant would also need to submit information on the amount of interest, fees, or remuneration being provided or paid for the transaction accounts. For third parties that pay interest, fees, or provide other remuneration, the applicant would need to provide information regarding the volume of transactions in customer accounts. In addition, for third parties that pay interest, fees, or provide other remuneration, applicants would need to provide an explanation of how its customers utilize its services *for the purpose* of making payments and not for the receipt of a deposit placement service or deposit insurance. The FDIC would be permitted to request additional information at any time during the review of the application to render the application complete and initiate its review.

The FDIC would approve primary purpose applications if an agent or nominee places funds into transactional accounts for the purpose of enabling payments, and no fees, interest, or other remuneration is being provided to the depositor.

Question 21: Are the criteria for considering and approving primary purpose applications based on enabling transactions appropriate?

Application Contents for Other Business Relationships That May Meet the Primary Purpose Exception. Applicants seeking the primary purpose exception not based on business relationships described above (in paragraphs C(1) and C(2)) would request that the FDIC view a particular business relationship between a third party and an IDI as meeting the primary purpose exception. This process would be available, for example, to third parties that place more than 25 percent of the total assets under management for its customers, for a particular business line, into deposit accounts at insured depository institutions.

Application Contents. In order for an application to be considered, the following information, at a minimum, would be required, to the extent applicable:

(1) A description of the deposit placement arrangements with all entities involved;

(2) A description of the business line for which the applicant is filing an application;

(3) A description of the primary purpose of the particular business line;

(4) The total amount of assets under management by the third party;

(5) The total amount of deposits placed by the third party at all insured depository institutions, including the amounts placed with the applicant, if the applicant is an insured depository institution. This includes the total amount of term deposits and transactional deposits placed by the third party, but should be exclusive of the amount of brokered CDs being placed by that third party;

(6) Revenue generated from the third party's activities related to the placement, or the facilitating of the placement, of deposits;

(7) Revenue generated from the third party's activities not related to the placement, or the facilitating of the placement, of deposits;

(8) A description of the marketing activities provided by the third party to prospective depositors;

(9) The reasons the third party meets the primary purpose exception;

(10) Any other information the applicant deems relevant; and

(11) Any other information that the FDIC requires to initiate its review and render the application complete.

Supporting documentation and contracts related to the items above would also be required. The FDIC would be permitted to request additional information at any time during its review to render the application complete and initiate its review. The FDIC's review of whether a third party meets the primary purpose exception would be based on the application and all supporting information provided. After receipt of a complete application, the FDIC will notify the applicant, in writing, of its response within 120 days.

Under the proposal, the FDIC would approve applications submitted under this process if the application demonstrates, with respect to the particular business line under which the third party places or facilitates the placement of deposits, that the primary purpose of the third party, for that business line, is a purpose other than the placement or facilitation of placement of deposits.

Question 22: Are proposed requirements for the application process for business relationships, other than those described in paragraphs (C)(1) and (C)(2), appropriate?

3. Ongoing Reporting

An agent or nominee that meets the primary purpose exception, or an IDI that applies on behalf of the agent or nominee, would need to provide reports to the FDIC and, if applicable, in the case of insured depository institutions, its primary federal regulator. The FDIC will describe the reporting requirements, including the frequency and any calculation methodology, as part of its written approval for a primary purpose exception. The FDIC anticipates that the reporting would be required on a quarterly basis. As an example, if a primary purpose approval is granted based, in part, on the representation that a nonbank third party places less than 25 percent of its customer assets under management into deposit accounts, then the FDIC would likely require as a condition of the approval that the nonbank third party provide reporting of the amount of deposits, based upon the average daily balances, placed by the nonbank third party at all depository institutions and the total amount of assets, based upon the average daily balances, under the third party's management. The FDIC believes it is more efficient for the nonbank third party to report directly to the FDIC, rather than for the nonbank third party to send the same information to each IDI in which it places deposits, each of which would then in turn report this identical information to the FDIC.

Question 23: Is it appropriate to require reporting from nonbank entities that have received approval for a primary purpose exception? Should the FDIC require IDIs to report on behalf of such nonbank entities instead? Are there other ways the FDIC should consider to ensure that applicants that receive the primary purpose exception remain within the relevant standards?

Question 24: How frequently should the FDIC require reporting?

IDIs would be responsible for monitoring a nonbank third parties' eligibility for the primary purpose exception. For example, if a certain percentage of a nonbank third party's revenue is from some activity other than deposit placement, and the FDIC approves a primary purpose exception in reliance of this factor, among other factors, then the FDIC would require that an insured depository institution that receives such deposits provide a notice to the FDIC and the primary federal regulator if there are any material change to the nonbank third party's revenue structure. When establishing a contractual relationship with a nonbank third party for the placement of deposits that may be classified as nonbrokered due to the primary purpose exception, an IDI may wish to consider the reporting and monitoring requirements described here.

Question 25: Is it appropriate for the FDIC to require IDIs to monitor third parties for eligibility for the primary purpose exception? Are there additional or better ways to ensure that third parties continue to remain eligible for the exception?

4. Modification and Withdrawals

At any time after approval, the FDIC proposes that it may, with notice and as appropriate, require additional information to ensure that the approval is still appropriate, or to verify the accuracy of the information that was provided by a third party to an IDI or submitted to the FDIC. In addition, in certain circumstances, such as if an entity previously approved for a primary purpose exception has undergone material changes to its business, the FDIC would be able to require that the applicant reapply for approval, impose additional conditions on the approval, or withdraw a previously granted approval, if warranted and with sufficient notice.

C. Brokered Deposits and Assessments

Under the proposal, some deposits that are currently considered brokered will no longer be considered brokered. In a future rulemaking, the FDIC plans to consider modifications to the assessment regulations in light of any changes made to the brokered deposits regulation.

D. Reporting of Certain Deposits on Call Reports

Also, after a final rule is adopted, the FDIC will consider requiring reporting of deposits that are excluded from being reported as brokered deposits because of the application of the primary purpose exception. The FDIC will monitor this information to assess the risk factors associated with the deposits and determine assessment implications, if any. Any changes to reporting requirements applicable to the Consolidated Reports of Condition and Income (''Call Reports''), and its instructions, would be effectuated in coordination with the Federal Financial Institutions Examination Council in a separate Paperwork Reduction Act notice.

E. Treatment of Non-Maturity Deposits for Purposes of the Brokered Deposits Restrictions

As discussed in the FDIC's notice of proposed rulemaking for interest rate restrictions, the FDIC is looking at the question of when non-maturity deposits in an existing account are considered ''accepted.'' The FDIC is in the process of considering comments received in response to that notice of proposed rulemaking.

The FDIC is considering a similar approach for brokered deposits as it did for interest rate restrictions. For brokered nonmaturity deposits, through this proposal, the FDIC is considering an interpretation under which non-maturity brokered deposits are viewed as ''accepted'' for the brokered deposits restrictions at the time any new non-maturity deposits are placed at an institution by or through a deposit broker.

Under this proposed interpretation, brokered balances in a money market demand account or other savings account, as well as transaction accounts, at the time an institution falls below well capitalized, would not be subject to the brokered deposits restrictions. However, if brokered funds were deposited into such an account after the institution became less than well capitalized, the entire balance of the account would be subject to the brokered deposits restrictions. If, however, the same customer deposited brokered funds into a new account and the balance in that account was subject to the brokered deposits restrictions, the balance in the initial account would continue to not be subject to the brokered deposits restrictions so long as no additional funds were accepted. Brokered deposits restrictions also generally apply to any new non-maturity brokered deposit accounts opened after the institution falls to below well capitalized.

The term ''accept'' is also used in PCA-triggered restrictions related to employee benefit plan deposits.[19] The FDIC plans to address in a future rulemaking when deposits are ''accepted'' for purposes of these PCA-related restrictions, both for non-maturity deposits, such as transaction accounts and MMDAs, as well as for certificates of deposits and other time deposits.

Question 26: Is the FDIC's proposed definition of ''accept'' appropriate? Would there be substantial operational difficulties for institutions to monitor additions into these existing accounts? Is there another interpretation that would be more appropriate and consistent with the statute?

F. Additional Supervisory Matters

The FDIC recognizes that, under this proposal, numerous categories of deposits that are currently considered brokered would instead be nonbrokered. The FDIC will continue to take such supervisory efforts as may be necessary to ensure that banks are operating in a safe and sound manner. Nothing in this proposal is intended to limit the FDIC's ability to review or take supervisory action with respect to funding-related matters, including funding concentrations, that may affect the safety and soundness of individual banks or the industry generally.

IV. Alternatives

The FDIC is proposing these comprehensive changes to the brokered deposit regulations after considering comments received pursuant to the ANPR and evaluating alternative options for modernizing the regulations. The FDIC considered a number of alternative approaches, including taking more incremental approaches through which more limited changes would be made. Additionally, the FDIC considered more narrowly revisiting certain existing staff interpretations to identify those that should be updated. However, the FDIC ultimately determined that the best course of action was to take a fresh, holistic look at the regulations and interpretations, and propose a new framework that reflects technological and other changes in the banking industry over the past three decades and is consistent with the FDI Act.

V. Expected Effects

As described previously, the proposed rule would amend the FDIC's regulations that implement provisions of the Federal Deposit Insurance Act regarding brokered deposits. The proposed rule creates a new framework

[19] *See* 12 U.S.C. 1821(a)(1)(D).

for analyzing certain provisions of the statutory definition of ''deposit broker.'' Further, the proposed rule amends two of the ten current regulatory exceptions to the definition of ''deposit broker.'' The aggregate effect likely would be some amount of deposits currently designated as brokered deposits to no longer be so designated.

As of June 30th, 2019, there were 5,303 insured depository institutions holding approximately $18 trillion in assets and $13 trillion in domestic deposits. Of those domestic deposits, $1.1 trillion (8.5 percent) are currently classified as brokered deposits. Approximately 41 percent (2,154) of FDIC-insured institutions reported some positive amount of brokered deposits. These insured institutions accounted for the vast majority of banking industry holdings—almost $17 trillion (92 percent) of assets and almost $12 trillion (91 percent) of domestic deposits.

Traditional brokered CDs would still be defined by the rule as brokered and subject to the associated statutory and regulatory restrictions. Certain types of deposits, notably deposits placed by agents or nominees that satisfy criteria set forth in the proposed revisions to the primary purpose exception, would not be considered brokered deposits subject to an application process. The amount of deposits currently reported as brokered that may be re-designated as non-brokered as a result of the rule may be material. However, a reliable estimate of this change in designation is not possible with the information currently available to the FDIC.

There are potentially four broad categories of effects of the proposed rule: effects on consumers and economic activity; effects applicable to potentially any insured institution; effects applicable to less than well-capitalized institutions; and effects applicable to nonbank entities that may or may not be deemed deposit brokers.

A. Consumers and the Economy

The proposed rule would amend the FDIC's brokered deposit regulations to better reflect recent technological changes and innovations. There are benefits to banks and consumers if innovative deposit placement arrangements that do not present undue funding risk are not classified as brokered deposits. Changes and innovations in deposit placement activity are likely to continue, suggesting that demand for, and utilization of, certain types of deposit accounts currently classified as brokered are likely to grow in the years to come. These could include the use of technology services that help enable payments and online marketing channels that refer customers to certain banks. To the extent that the proposed rule would treat such deposits as nonbrokered, it could support ease of access to deposit placement services for U.S. consumers. Unbanked or underbanked customers, for example, may benefit from increased ease of access to deposit placement services because banks would be more willing to accept deposits that would be no longer considered brokered under the proposal. Additionally, to the extent that the proposed rule supports greater utilization of deposits currently classified as brokered deposits, but classified as non-brokered under the proposed rule, it could increase the funds available to insured depository institutions for lending to U.S. consumers. If the proposed rule does result in an increase in bank lending, some associated increase in measured U.S. economic output would be expected, in part because the imputed value of the credit services banks provide is a component of measured GDP.

B. All Insured Institutions

The proposed rule could immediately affect the 2,154 FDIC-insured institutions currently reporting brokered deposits. Going forward, the rule could affect all 5,303 FDIC-insured institutions whose decisions regarding the types of deposits to accept could be affected.

The proposed rule would benefit insured institutions and other interested parties by providing greater legal clarity regarding the treatment of brokered deposits. As result of this increased clarity, the proposed rule would reduce the extent of reliance by banks and third parties on FDIC Staff Advisory opinions and informal written and telephonic inquiries with FDIC staff. This would have two important benefits. First, the likelihood of inconsistent outcomes, where some institutions may report certain types of deposits as brokered and others do not, would be reduced. Second, to the extent the classification of deposits as brokered or non-brokered can be clearly addressed in regulation, the need for potentially time-consuming staff analyses can be minimized.

The FDIC has heard from a number of insured institutions that they perceive a stigma associated with accepting brokered deposits. Historical experience has been that higher use of deposits currently reported to the FDIC as brokered has been associated with higher probability of bank failure and higher deposit insurance fund loss rates.[20] The funding characteristics of brokered deposits, however, are non-uniform. For example, brokered CDs are often used by bank customers searching for relatively high yields on their insured deposits, and as such these deposits may be less stable and more subject to deposit interest rate competition. The behavior of other types of deposit placement arrangements, such as deposits placed through sweeps or that underlie prepaid card programs, may be more based on a business relationship than on interest rate competition. Given limitations on available data, however, historical studies have not been able to differentiate the experience of banks based on the different types of deposits accepted. To the extent the proposed rule reduces bankers' perception of a stigma associated with certain types of deposits, more institutions may be incentivized to accept such deposits.

The proposed rule could incentivize the development of banking relationships between banks and other firms. The new opportunities could spur growth in the third party deposit placement industry, particularly for third parties that receive the primary purpose exception, potentially resulting in greater access to, or use of, bank deposits by a greater variety of customers. It is difficult to accurately estimate such potential effects with the information currently available to the FDIC, because such effects depend, in part, on the future commercial development of such activities.

FDIC deposit insurance assessments would be affected by the proposed changes, potentially affecting any insured institution that currently accepts brokered deposits or might do so in the future. Since 2009, insured institutions with a significant concentration of brokered deposits may pay higher quarterly assessments, depending on other factors. To the extent that deposits currently defined as brokered would no longer be considered brokered deposits under this NPR, a bank's assessment may decrease, all else equal. However, as noted above, in a future rulemaking the FDIC plans to consider modifications to its assessment regulations in light of the proposed rule. Certain calculations required under the Liquidity Coverage Ratio rule applicable to some large banks could also be affected by the proposed rule. Available data do not allow for a reliable estimate of the amount of deposits currently designated as brokered that would no longer be designated as such under the

[20] *See* FDIC's *2011 Study on Core and Brokered Deposits,* July 8, 2011.

proposed rule, and consequently do not allow for an estimate of effects on assessments or the reported Liquidity Coverage Ratio.

Insured institutions could benefit from the rule by having greater certainty and greater access to funding sources that would no longer be designated as brokered deposits, thereby easing their liquidity planning and reducing the likelihood that a liquidity failure of an otherwise viable institution might be precipitated by the brokered deposit regulations. Another benefit of the rule could result if greater access to funding sources supported insured institutions' ability to provide credit. However, these effects are difficult to estimate because the decision to receive third party deposits depends on the specific financial conditions of each bank, fluctuating market conditions for third party deposits, and future management decisions.

C. Less Than Well-Capitalized Institutions

As discussed previously, the acceptance of brokered deposits is subject to statutory and regulatory restrictions for banks that are not well capitalized. Adequately capitalized banks may not accept brokered deposits without a waiver from the FDIC, and banks that are less than adequately capitalized may not accept them at all. As a result, adequately capitalized and undercapitalized banks generally hold less brokered deposits—as of June 30, 2019, brokered deposits make up approximately 3 percent of domestic deposits held by not well capitalized banks, well below the 9 percent held by all IDIs. By generally reducing the scope of deposits that are considered brokered, the proposed rule would allow not well capitalized banks to increase their holdings of deposits that are currently reported as brokered but would not be reported as brokered under the proposal. As of June 30, 2019, there are only 16 adequately capitalized and undercapitalized banks.[21] These banks hold approximately $2.2 billion in assets, $2.0 billion in domestic deposits, and $61 million in brokered deposits. These banks could be directly affected by the proposed rule in that they could potentially accept more or different types of deposits currently designated as brokered.

More broadly speaking with respect to future developments, another aspect of brokered deposit restrictions is that, consistent with their statutory purpose, they act as a constraint on growth and risk-taking by troubled institutions. Conversely, as noted previously, access to funding can prevent needless liquidity failures of viable institutions.

D. Entities That May or May Not Be Deposit Brokers

The proposed revisions to the brokered deposit regulations would likely give rise to some activity by non-bank third parties seeking to determine whether they are, or are not, deposit brokers under the rule. This may include the filing of applications by some parties that seek to avail themselves of the primary purpose exception. Ongoing activity by these entities to ensure compliance with the revised rule would also be expected.

The FDIC is interested in commenters' views on the effects, costs, and benefits of the proposed rule.

VI. Administrative Law Matters

A. Paperwork Reduction Act

Certain provisions of the proposed rule contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the FDIC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The information collection requirements contained in this proposed rule are being submitted to the Office of Management and Budget (OMB) for review and approval under section 3507(d) of the PRA (44 U.S.C. 3507(d)) and section 1320.11 of the OMB's implementing regulations (5 CFR 1320). FDIC is revising its existing information collection entitled ''Application for Waiver of Prohibition on Acceptance of Brokered Deposits'' (OMB Control Number 3064–0099) and will rename the information collection ''Reporting and Recordkeeping Requirements for Brokered Deposits.''

Current Actions

Under the proposed rulemaking:

○ Respondents may file an application with the FDIC for a ''Primary Purpose Exception'' based on the placement of less than 25% of customer assets under management (reporting requirement to obtain or retain a benefit);

○ Respondents may file an application with the FDIC for a ''Primary Purpose Exception'' based on ''Enabling Transactions'' (reporting requirement to obtain or retain a benefit); and

○ Respondents may file an application with the FDIC for a ''Primary Purpose Exception'' based on factors other than ''Enabling Transactions'' or the placement of less than 25% of customer assets under management (reporting requirement to obtain or retain a benefit).

The proposed rule would establish recordkeeping and reporting requirements for third parties that apply for and maintain a primary purpose exception under § 303.243.[22] The FDIC estimated the annual burden associated with the proposal based on the following assumptions and according to the methodology described below:

○ First, the FDIC lacks the data necessary to determine the number of third parties which will take advantage of the applications relating to exceptions from the definition of ''deposit broker,'' and invites comments on how its estimates could be improved. The first type of exception, that based on placing less than 25 percent of customer assets under management, is expected to be sought largely by broker-dealers. With few exceptions, broker-dealers must register with the Securities and Exchange Commission and be members of FINRA.[23] There were 3,607 FINRA registered broker-dealer firms in 2018.[24] Some of the 3,607 broker-dealers may not engage in activity which meets the definition of ''deposit broker,'' while some firms which do engage in such activity may not be among the 3,607 FINRA registered broker-dealers. However, in the absence of a more refined figure, the FDIC estimated that 1,203 firms will apply for an exception based on placing less than 25 percent of customer assets under management on average each year over three years.

○ Second, the FDIC expects that the exceptions based on enabling transactions and on other business arrangements will be sought by firms engaged in deposit brokering. However, the FDIC is unable to determine the number of firms which engage in deposit brokering. According to Census data, there are 1,105 establishments

[21] Information based on June 30, 2019 Consolidated Reports of Condition and Income. The 16 institutions do not include any quantitatively well capitalized institutions that may have been administratively classified as less than well capitalized. *See generally,* FDIC—12 CFR 324.403(b)(1)(v); Board of Governors of the Federal Reserve System—12 CFR 208.43(b)(1)(v); Office of the Comptroller of the Currency—12 CFR 6.4(c)(1)(v).

[22] IDIs can apply for an exception on behalf of a third party, and third parties can apply directly for an exception. *See* § 303.243(b)(3)(i) and (ii).

[23] FINRA, *https://www.finra.org/investors/learn-to-invest/choosing-investment-professional/brokers.*

[24] *2019 FINRA Industry Snapshot,* pg. 13, *https://www.finra.org/sites/default/files/2019%20Industry%20Snapshot.pdf.*

within the industry in which deposit brokers are classified.[25] Not all 1,105 establishments engage in deposit brokering, and some firms which engage in deposit brokering may be classified in another industry. In the absence of better data, the FDIC estimated that, over the three-year period covered by this information collection request, an average of 369 firms will apply for an exception based on enabling transactions and other business arrangements.

○ Third, the FDIC lacks the data necessary to determine the number of business lines for which firms may submit applications, and in the absence of a more refined estimate, assumed that all respondents submit one application.

○ Fourth, the FDIC estimated the amount of time required to complete each application type. The most straightforward application type is that for which a primary purpose exception to the definition of deposit broker is sought based on placing less than 25 percent of customer assets under management, by business line, with IDIs. For this type of application, three items are required: (1) A description of the business line for which the applicant is filing an application, (2) the total amount of customer assets under control by the third party for that particular business line, and (3) the total amount of deposits placed by the third party on behalf of its customers, for that particular business line, at all IDIs, exclusive of the amount of brokered CDs being placed by that third party. Given the ''bright line'' nature of this application type, and the limited number of line items required, the FDIC estimated it would take each respondent three hours on average to gather the material and submit the request required for this application type.

The second application type is that for which a primary purpose exception to the definition of deposit broker is sought based on placing funds to enable transactions. Under this application type, the applicant would need to submit information, including a copy of the form of contracts used with customers and with the IDIs in which the third party is placing deposits, showing that all of its customer deposits are in transaction accounts, and that no interest, fees, or other remuneration is being provided to or paid for the transaction accounts. In addition, applicants would need to submit a description of the deposit placement arrangement between the entities involved. For third parties that pay interest, fees, or provide other remuneration, the applicant would need to provide information regarding the volume of transactions in customer accounts. In addition, for applications where the third party pays interest, fees, or provides other remuneration, applicants would also need to provide an explanation of how its customers utilize its services *for the purpose* of making payments and not for the receipt of a deposit placement service or deposit insurance. Because the second application type should require more time to prepare than the first, the FDIC estimated it would take each respondent five hours on average the gather the required material and submit the application.

The third application type is for a primary purpose exception where the business arrangement is not covered by the other two types described above. This third type requires the items enumerated in this proposal, and due to the number of items requested, the FDIC estimates it would take each respondent 10 hours on average to gather the material required for this application type and submit the application.

○ Fifth, each application type would have associated quarterly (ongoing) reporting requirements, which are to be spelled out by the FDIC in its written approval of the application. For the first two application types, the FDIC estimates it would take each respondent an average of 30 minutes per quarter to gather the information and submit the report for an annual average of 2 burden hours. In FDIC assumes that initial quarterly report may take longer to prepare, but once reporting and recordkeeping systems are in place, the FDIC believes an average of 30 minutes per quarter is a reasonable estimate for this. The third application type, due to its greater number of required items, is estimated to take each respondent an average of one hour per quarter to gather the information and submit the report for an annual average of 4 burden hours.

○ In addition, the FDIC revised its estimates for the information collection ''Application for Waiver of Prohibition on Acceptance of Brokered Deposits.'' Based on consultations with subject matter experts, the FDIC estimates nine IDIs will file this application each year, on average. Each IDI applicant will spend six hours, on average, to file. Thus, the FDIC estimates the average annual burden at 54 hours.

○ Based on the above assumptions and methodology, the FDIC estimates the proposed rule imposes new annual reporting burden of 22,988 hours, or approximately 15 hours per deposit broker and broker-dealer.

○ Finally, to estimate the annual dollar cost of the total estimated annual hourly burdens, the FDIC used the occupational breakdown associated with the Application for Waiver of Prohibition on Acceptance of Brokered Deposits for the new information collection requirements contained in the proposed rule. FDIC assumes that all of the 23,042 estimated burden hours are broken down into hours worked by managers and executives (5 percent), lawyers (5 percent), compliance officers (10 percent), IT specialists (30 percent), financial analysts (40 percent), and clerical staff (10 percent), so that 100 percent of the hours are allocated to an occupation.

The FDIC then used the 75th percentile wage estimates for each occupation, based on the industry of the expected applicant, from the Bureau of Labor Statistics, and adjusted them for inflation and to account for the value of non-wage benefits, to produce an annual labor cost associated with the hours estimated above.[26] This resulted in an estimated weighted average hourly wage of $106.11 for applications relating to exceptions from the definition of ''deposit broker,'' and $83.88 for the Application for Waiver of Prohibition on Acceptance of Brokered Deposits. Based on the inflation adjusted wages, and accounting for non-wage benefits,

[25] Deposit brokers are classified according to the 2017 North American Industry Classification System as belonging to the ''Miscellaneous Financial Investment Activities'' industry (NAICS code 523999). *See* U.S. Census Bureau, 2017 County Business Patterns Data, available at *https://www.census.gov/data/datasets/2017/econ/cbp/2017-cbp.html.*

[26] Specifically, for the applications relating to exceptions from the definition of ''deposit broker,'' the FDIC used the wage estimates from the Bureau of Labor Statistics (BLS) ''National Industry-Specific Occupational Employment and Wage Estimates: Securities, Commodity Contracts, and Other Financial Investments and Related Activities Sector'' (May 2018), while for the Application for Waiver of Prohibition on Acceptance of Brokered Deposits, the FDIC used the wage estimates from the BLS ''National Industry-Specific Occupational Employment and Wage Estimates: Depository Credit Intermediation Sector'' (May 2018). Other BLS data used were the Employer Cost of Employee Compensation data (June 2019), and the Consumer Price Index (June 2019). Hourly wage estimates at the 75th percentile wage were used, except when the estimate was greater than $100, in which case $100 per hour was used, as the BLS does not report hourly wages in excess of $100. The 75th percentile wage information reported by the BLS in the Specific Occupational Employment and Wage Estimates does not include health benefits and other non-monetary benefits. According to the June 2019 Employer Cost of Employee Compensation data, compensation rates for health and other benefits are 33.8 percent of total compensation. Additionally, the wage has been adjusted for inflation according to BLS data on the Consumer Price Index for Urban Consumers (CPI–U), so that it is contemporaneous with the non-wage compensation statistic. The inflation rate was 1.86 percent between May 2018 and June 2019.

the FDIC estimates that the average annual average reporting cost associated with the proposal is approximately $2.4 million, or approximately $1,545.70 per respondent.

Burden Estimate:

SUMMARY OF ANNUAL BURDEN

Information collection (IC) description	Type of burden	Obligation to respond	Estimated number of respondents	Estimated number of responses	Estimated time per response (hours)	Frequency of response	Total estimated annual burden (hours)
Initial Implementation:							
Application for Primary Purpose Exception Based on the Placement of Less Than 25 Percent of Customer Assets Under Management.	Reporting	Obtain or Retain a Benefit.	1,203	1	3	On Occasion	3,609
Application for Primary Purpose Exception Based on Enabling Transactions.	Reporting	Obtain or Retain a Benefit.	369	1	5	On Occasion	1,845
Application for Primary Purpose Exception Not Based on Enabling Transactions or Placement of Less Than 25 Percent of Customer Assets Under Management.	Reporting	Obtain or Retain a Benefit.	369	1	10	On Occasion	3,690
Ongoing:							
Reporting for Primary Purpose Exception Based on the Placement of Less Than 25 Percent of Customer Assets Under Management.	Reporting	Obtain or Retain a Benefit.	3,607	4	0.5	Quarterly	7,214
Reporting for Primary Purpose Exception Based on Enabling Transactions.	Reporting	Obtain or Retain a Benefit.	1,105	4	0.5	Quarterly	2,210
Reporting for Primary Purpose Exception Not Based on Enabling Transactions or Placement of Less Than 25 Percent of Customer Assets Under Management.	Reporting	Obtain or Retain a Benefit.	1,105	4	1	Quarterly	4,420
Application for Waiver of Prohibition on Acceptance of Brokered Deposits.	Reporting	Obtain or Retain a Benefit.	9	1	6	On Occasion	54
Total Estimated Annual Burden Hours.							23,042

Note: The estimated number of respondents in the *Initial Implementation* section is an annual average calculated over three years.

Comments are invited on:

a. Whether the collections of information are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy or the estimate of the burden of the information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record. Comments on aspects of this notice that may affect reporting, recordkeeping, or disclosure requirements and burden estimates should be sent to the addresses listed in the **ADDRESSES** section of this document. A copy of the comments may also be submitted to the OMB desk officer by mail to U.S. Office of Management and Budget, 725 17th Street NW, #10235, Washington, DC 20503; facsimile to (202) 395–6974; or email to *oira_submission@omb.eop.gov,* Attention, Federal Banking Agency Desk Officer.

B. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach Bliley Act,[27] requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The FDIC invites your comments on how to make this revised proposal easier to understand. For example:

○ Has the FDIC organized the material to suit your needs? If not, how could the material be better organized?

○ Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be stated more clearly?

○ Does the proposed regulation contain language or jargon that is unclear? If so, which language requires clarification?

○ Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand?

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires that, in connection with a proposed rule, an agency prepare and make available for public comment an initial regulatory flexibility analysis describing the impact of the proposal on small entities.[28] A regulatory flexibility analysis is not required, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Small Business Administration (SBA) has defined ''small entities'' to include banking organizations with total assets less than or equal to $600 million.[29] Generally, the FDIC considers

[27] Public Law 106–102, 113 Stat. 1338, 1471 (Nov. 12, 1999).

[28] 5 U.S.C. 601 *et seq.*

[29] The SBA defines a small banking organization as having $600 million or less in assets, where an organization's ''assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' *See* 13 CFR 121.201 (as amended by 84 FR 34261, effective August 19, 2019). In its determination, the ''SBA

Continued

a significant effect to be a quantified effect in excess of 5 percent of total annual salaries and benefits per institution, or 2.5 percent of total non-interest expenses. The FDIC believes that effects in excess of these thresholds typically represent significant effects for FDIC-insured institutions. The FDIC does not believe that the proposed rule, if adopted, will have a significant economic effect on a substantial number of small entities. However, some expected effects of the proposed rule are difficult to assess or accurately quantify given current information, therefore the FDIC has included an Initial Regulatory Flexibility Act Analysis in this section.

Reasons Why This Action Is Being Considered

As previously discussed in Section II. Background, the agencies issued an ANPR in 2018 to obtain input from the public on its brokered deposit and interest rate regulations in light of significant changes in technology, business models, the economic environment, and products since the agency's regulations relating to brokered deposits were adopted. Generally speaking, commenters offered information and expressed options that suggested the FDIC needed to clarify and update its historical interpretation of the ''deposit broker'' definition to better align with current market practices and risks associated with brokered deposits.

Policy Objectives

As previously discussed in Section I. Policy Objectives, the FDIC is proposing amendments to its regulations relating to brokered deposits in order to modernize those regulations to reflect recent technological changes and innovations that have occurred. Additionally, the FDIC seeks to continue to promote safe and sound practices by FDIC-insured depository institutions.

Legal Basis

The FDIC is proposing this rule under authorities granted by Section 29 of the Federal Deposit Insurance Act (FDI Act). The law restricts troubled institutions (*i.e.* those that are not well capitalized) from (1) accepting deposits by or through a deposit broker without a waiver and (2) soliciting deposits by offering rates of interest on deposits that were significantly higher than the prevailing rates of interest on deposits offered by other insured depository institutions in such depository institution's normal market area. For a more detailed discussion of the proposed rule's legal basis please refer to Section A. Current Law and Regulation, within Section II. Background.

Description of the Rule

A person meets the ''deposit broker'' definition under Section 29 of the FDI Act if it is engaged in the business of placing deposits, or facilitating the placement of deposits, of third parties with insured depository institutions or the business of placing deposits with insured depository institutions for the purpose of selling interests in those deposits to third parties. An agent or trustee meets the ''deposit broker'' definition when establishing a deposit account to facilitate a business arrangement with an insured depository institution to use the proceeds of the account to fund a prearranged loan. Additionally, Section 29 provides nine statutory exceptions to the definition of deposit broker and, as noted earlier, the FDIC added one regulatory exception to the definition. The FDIC is proposing a new framework for analyzing certain provisions of the statutory definition. Among other things, through this rulemaking, the FDIC proposes amending the IDI exception and the primary purpose exception. For a more detailed description of the proposed rule please refer to Section III. Discussion of the Proposed Rule.

Small Entities Affected

The FDIC insures 5,303 depository institutions, of which 3,947 are defined as small institutions by the terms of the RFA.[30] Additionally, of those 3,947 small, FDIC-insured institutions, 1,297 currently report holding some volume of brokered deposits. Further, of those 3,947 small, FDIC-insured institutions, 3,931 are currently classified as well capitalized, while 16 are less than well capitalized based on capital ratios reported in their Call Reports.[31]

Expected Effects

There are potentially three broad categories of effects of the proposed rule on small, FDIC-insured institutions: Effects applicable to potentially any small, insured institution; effects applicable to small, less than well-capitalized institutions; and effects applicable to nonbank subsidiaries of small, FDIC-insured institutions that may or may not be deemed deposit brokers.

All Small, FDIC-Insured Institutions

The proposed rule could immediately affect the 1,297 small, FDIC-insured institutions currently reporting brokered deposits. Going forward, the rule could affect all 3,947 small, FDIC-insured institutions whose decisions regarding the types of deposits to accept could be affected.

The proposed rule would benefit insured institutions and other interested parties by providing greater legal clarity regarding the treatment of brokered deposits. The FDIC believes that as result of this increased clarity, the proposed rule would reduce the extent of reliance by banks and third parties on FDIC Staff Advisory Opinions and informal written and telephonic inquiries with FDIC staff. This would have two important benefits. First, the likelihood of inconsistent outcomes, where some institutions may report certain types of deposits as brokered and others do not, would be reduced. Second, to the extent the classification of deposits as brokered or non-brokered can be clearly addressed in regulation, the need for potentially time-consuming analyses can be minimized.

The FDIC has heard from a number of insured institutions that they perceive a stigma associated with accepting brokered deposits. Historical experience has been that higher use of deposits currently reported to the FDIC as brokered has been associated with higher probability of bank failure and higher deposit insurance fund loss rates.[32] The funding characteristics of brokered deposits, however, are non-uniform. For example, brokered CDs are often used by bank customers searching for relatively high yields on their insured deposits, and as such these deposits may be less stable and more subject to deposit interest rate competition. The behavior of deposits placed through sweeps or that underlie prepaid card programs may be more based on a business relationship than on

counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates.'' *See* 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is ''small'' for the purposes of RFA.

[30] Call Report, June 30, 2019. Nine insured domestic branches of foreign banks are excluded from the count of FDIC-insured depository institutions. These branches of foreign banks are not ''small entities'' for purposes of the RFA.

[31] Information based on June 30, 2019 Consolidated Reports of Condition and Income. The 16 institutions do not include any quantitatively well capitalized institutions that may have been administratively classified as less than well capitalized. *See generally,* FDIC—12 CFR 324.403(b)(1)(v); Board of Governors of the Federal Reserve System—12 CFR 208.43(b)(1)(v); Office of the Comptroller of the Currency—12 CFR 6.4(c)(1)(v).

[32] *See* FDIC's *2011 Study on Core and Brokered Deposits,* July 8, 2011.

interest rate competition. Given limitations on available data, however, historical studies have not been able to differentiate the experience of banks based on the different types of deposits accepted. To the extent the proposed rule reduces bankers' perception of a stigma associated with certain types of deposits, more institutions may be incentivized to accept such deposits.

The proposed rule could incentivize the development of banking relationships between small, FDIC-insured institutions and other firms. The new opportunities could spur growth in the third party deposit placement industry, potentially resulting in greater access to, or use of, bank deposits by a greater variety of customers. Further, such growth could be of benefit to small, FDIC-insured institutions allowing them to compete against large financial institutions that are utilizing internet based deposit gathering methods across the country. It is difficult to accurately estimate such potential effects with the information currently available to the FDIC, because such effects depend, in part, on the future commercial development of such activities.

FDIC deposit insurance assessments would be affected by the proposed changes to the definition of deposit broker, potentially affecting any insured institution that currently accepts brokered deposits or might do so in the future. Since 2009, significant concentrations of brokered deposits can increase an institution's quarterly assessments, depending on other factors. To the extent that certain deposits would no longer be considered brokered deposits under this NPR, a bank's assessment may decrease, all else equal. However, as noted above, in a future rulemaking the FDIC plans to consider modifications to its assessment regulations in light of this rule.

Small, FDIC-insured institutions could benefit from the rule by having greater certainty and greater access to funding sources that would no longer be designated as brokered deposits, thereby easing their liquidity planning and reducing the likelihood that a liquidity failure of an otherwise viable institution might be precipitated by the brokered deposit regulations. Another benefit of the rule could result if greater access to funding sources supported small FDIC-insured institutions' ability to provide credit. However, these effects are difficult to estimate because the decision to receive third party deposits depends on the specific financial conditions of each bank, fluctuating market conditions for third party deposits, and future management decisions.

The proposed rule would establish recordkeeping and reporting requirements for IDIs and other nonbank third parties that apply for and maintain a primary purpose exception under § 303.243.[33] As noted previously, however, the FDIC anticipates that nonbank third parties are likely to apply on their own behalf, given that the information required to complete an application will be in possession of the nonbank third party (rather than the bank). The FDIC views the potential burden on small FDIC-insured institutions under the proposed rule as minimal.

Less Than Well-Capitalized Institutions

As discussed previously, the acceptance of brokered deposits is subject to statutory and regulatory restrictions for those banks that are less than well capitalized. Adequately capitalized banks may not accept brokered deposits without a waiver from the FDIC, and banks that are less than adequately capitalized may not accept them at all. As a result, adequately capitalized and undercapitalized banks generally hold less brokered deposits—as of June 30, 2019, brokered deposits make up approximately 3 percent of domestic deposits held by less than well capitalized banks, well below the 9 percent held by all IDIs. By generally reducing the scope of deposits that are considered brokered, the proposed rule would allow less than well capitalized banks to increase their holdings of deposits that are currently reported as brokered but would not be reported as brokered under the proposal. As of June 30, 2019, there are only 16 less than well capitalized small, FDIC-insured institutions based on Call report information. These banks hold approximately $2.2 billion in assets, $2.0 billion in domestic deposits, and $61 million in brokered deposits. These banks could be directly affected by the proposed rule in that they could potentially accept more or different types of deposits currently designated as brokered.

More broadly speaking with respect to future developments, another aspect of brokered deposit restrictions is that, consistent with their statutory purpose, they act as a constraint on growth and risk-taking by troubled institutions. Conversely, as noted previously, access to funding can prevent needless liquidity failures of viable institutions.

Nonbank Subsidiaries of Small, FDIC-insured Institutions That May or May Not Be Deposit Brokers

The proposed revisions to the brokered deposit regulations could have effects on some nonbank subsidiaries of small, FDIC-insured institutions. For example, wholly owned subsidiaries of small, FDIC-insured institutions that may currently meet the deposit broker definition would no longer be a deposit broker under the proposed rule if they meet the parameters of the rule. Additionally, some nonbank subsidiaries of small, FDIC-insured institutions could seek to determine whether they meet the primary purpose exception, as defined under the IDI exception (as proposed). This may include the filing of applications by some parties that seek to avail themselves of the primary purpose exception. Ongoing activity by these entities to ensure that they continue to meet the relevant exceptions would also be expected.

Other Statutes and Federal Rules

The FDIC has not identified any likely duplication, overlap, and/or potential conflict between this proposed rule and any other federal rule.

The FDIC invites comments on all aspects of the supporting information provided in this section, and in particular, whether the proposed rule would have any significant effects on small entities that the FDIC has not identified.

D. Riegle Community Development and Regulatory Improvement Act

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (RCDRIA), 12 U.S.C. 4701, requires that each Federal banking agency, in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations.[34] In addition, new regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions generally must take effect on the first day of a calendar quarter that begins on or after the date on which

[33] IDIs can apply for an exception on behalf of a third party, and third parties can apply directly for an exception. *See* § 303.243(b)(3)(i) and (ii).

[34] 12 U.S.C. 4802.

the regulations are published in final form.

The FDIC invites comments that further will inform the FDIC's consideration of RCDRIA.

VII. Request for Comments

The FDIC invites comment from all members of the public regarding all aspects of the proposal. This request for comment is limited to this proposal. The FDIC will carefully consider all comments that relate to the proposal.

List of Subjects

12 CFR Part 303

Administrative practice and procedure; Bank deposit insurance; Banks, banking; Reporting and recordkeeping requirements; Savings associations.

12 CFR Part 337

Banks, banking; Reports and recordkeeping requirements; Savings associations; Securities.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons stated in the preamble, the FDIC proposes to amend parts 303 and 337 of chapter III of Title 12, Code of Federal Regulations as follows:

PART 303—FILING PROCEDURES

■ 1. The authority citation for part 303 continues to read as follows:

Authority: 12 U.S.C. 378, 1464, 1813, 1815, 1817, 1818, 1819(a) (Seventh and Tenth), 1820, 1823, 1828, 1831a, 1831e, 1831o, 1831p–1, 1831w, 1835a, 1843(l), 3104, 3105, 3108, 3207, 5414, 5415 and 15 U.S.C. 1601–1607.

■ 2. Revise § 303.243 to read as follows:

§ 303.243 Brokered deposits.

(a) *Brokered deposit waivers*—(1) *Scope.* Pursuant to section 29 of the FDI Act (12 U.S.C. 1831f) and part 337 of this chapter, an adequately capitalized insured depository institution may not accept, renew or roll over any brokered deposits unless it has obtained a waiver from the FDIC. A well-capitalized insured depository institution may accept brokered deposits without a waiver, and an undercapitalized insured depository institution may not accept, renew or roll over any brokered deposits under any circumstances. This section contains the procedures to be followed to file with the FDIC for a brokered deposit waiver. The FDIC will provide notice to the depository institution's appropriate federal banking agency and any state regulatory agency, as appropriate, that a request for a waiver has been filed and will consult with such agency or agencies, prior to taking action on the institution's request for a waiver. Prior notice and/or consultation shall not be required in any particular case if the FDIC determines that the circumstances require it to take action without giving such notice and opportunity for consultation.

(2) *Where to file.* Applicants shall submit a letter application to the appropriate FDIC office.

(3) *Content of filing.* The application shall contain the following:

(i) The time period for which the waiver is requested;

(ii) A statement of the policy governing the use of brokered deposits in the institution's overall funding and liquidity management program;

(iii) The volume, rates and maturities of the brokered deposits held currently and anticipated during the waiver period sought, including any internal limits placed on the terms, solicitation and use of brokered deposits;

(iv) How brokered deposits are costed and compared to other funding alternatives and how they are used in the institution's lending and investment activities, including a detailed discussion of asset growth plans;

(v) Procedures and practices used to solicit brokered deposits, including an identification of the principal sources of such deposits;

(vi) Management systems overseeing the solicitation, acceptance and use of brokered deposits;

(vii) A recent consolidated financial statement with balance sheet and income statements; and

(viii) The reasons the institution believes its acceptance, renewal or rollover of brokered deposits would pose no undue risk.

(4) Additional information. The FDIC may request additional information at any time during processing of the application.

(5) Expedited processing for eligible depository institutions. An application filed under this section by an eligible depository institution as defined in this paragraph will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided with the basis for that decision. For the purpose of this section, an applicant will be deemed an eligible depository institution if it satisfies all of the criteria contained in *§ 303.2(r)* except that the applicant may be adequately capitalized rather than well-capitalized. The FDIC may remove an application from expedited processing for any of the reasons set forth in *§ 303.11(c)(2).* Absent such removal, an application processed under expedited procedures will be deemed approved 21 days after the FDIC's receipt of a substantially complete application.

(6) Standard processing. For those filings which are not processed pursuant to the expedited procedures, the FDIC will provide the applicant with written notification of the final action as soon as the decision is rendered.

(7) Conditions for approval. A waiver issued pursuant to this section shall:

(i) Be for a fixed period, generally no longer than two years, but may be extended upon refiling; and

(ii) May be revoked by the FDIC at any time by written notice to the institution.

(b) *Application for primary purpose exception*—(1) *Scope.* Section 29 of the FDI Act (12 U.S.C. 1831f) provides that an agent or nominee is excluded from the definition of deposit broker if its primary purpose is not the placement of funds with depository institutions. This paragraph (b) sets forth the application procedures for insured depository institutions and agents or nominees that seek the FDIC's determination that it, or a nonbank agent or nominee on whose behalf an insured depository institution is submitting an application, is excluded from the definition of deposit broker pursuant to the primary purpose exception.

(2) *Definitions.* For purposes of this paragraph (b):

(i) *Third party* means an agent or nominee that is applying to be excluded from the definition of deposit broker pursuant to the primary purpose exception.

(ii) *Applicant* means a third party as defined in paragraph (b)(2)(i) of this section, or an insured depository institution that is applying on behalf of a third party for that third party to be excluded from the definition of deposit broker pursuant to the primary purpose exception.

(iii) *Appropriate FDIC office* means the office designated by the appropriate regional director or designee.

(iv) *Appropriate Regional Director* means the Director of the FDIC Region in which the applicant is located.

(v) *Brokered CD* means a deposit placement arrangement in which certificates of deposit are issued in wholesale amounts by a depository institution, subdivided by a non-bank entity or a depository institution, and then sold by a nonbank entity or depository institution to investors, or a similar deposit placement arrangement

that the FDIC determines is arranged for a similar purpose.

(3) *Filing procedures.* (i) A third party may submit a written application to the appropriate FDIC office seeking a primary purpose exception.

(ii) An insured depository institution may submit a written application, on behalf of a nonbank third party, to the appropriate FDIC office of the insured depository institution, seeking a determination that the primary purpose exception applies to the nonbank third party.

(4) *Content for filing.* (i) Applications that seek the primary purpose exception for third parties based on the placement of less than 25 percent of the total amount of customer assets under management by the third party, for a particular business line, at depository institutions shall contain the following information:

(A) A description of the particular business line;

(B) Total amount of customer assets under management by the third party for that particular business line;

(C) Total amount of deposits placed by the third party on behalf of its customers, for that particular business line, at all depository institutions, but exclusive of the amount of brokered CDs being placed by that third party;

(D) A description of the deposit placement arrangements with all entities involved;

(E) Any other information the applicant deems relevant; and

(F) Any other information that the FDIC requires to initiate its review and render the application complete.

(ii) Applications that seek the primary purpose exception for third parties based on the placement of customer funds, with respect to a particular business line, at insured depository institutions to enable its customers to make transactions shall contain the following information:

(A) Contracts with customers evidencing the amount of interest, fees, or other remuneration, accrued for all customer accounts, and that all customer deposits are in transaction accounts;

(B) For third parties, or insured depository institutions that pay interest, fees, or provide other remuneration:

(*1*) The average volume of transactions for all customer accounts; and

(*2*) An explanation of how its customers utilize its services for the purpose of making payments and not for the receipt of a deposit placement service or deposit insurance;

(C) A description of the deposit placement arrangements with all entities involved;

(D) Any other information the applicant deems relevant; and

(E) Any other information that the FDIC requires to initiate its review and render the application complete.

(iii) Applications that seek the primary purpose exception for third parties, other than applications under paragraphs (b)(4)(i) and (ii) of this section, with respect to a particular business line, must include, to the extent applicable:

(A) A description of the deposit placement arrangements with all entities involved;

(B) A description of the particular business line;

(C) A description of the primary purpose of the particular business line;

(D) The total amount of customer assets under management by the third party;

(E) The total amount of deposits placed by the third party at all insured depository institutions, including the amounts placed with the applicant, if the applicant is an insured depository institution. This includes the total amount of term deposits and transactional deposits placed by the third party, but should be exclusive of the amount of brokered CDs being placed by that third party;

(F) Revenue generated from the third party's activities related to the placement, or facilitating the placement, of deposits;

(G) Revenue generated from the third party's activities not related to the placement, or facilitating the placement, of deposits;

(H) A description of the marketing activities provided by the third party;

(I) The reasons the third party meets the primary purpose exception;

(J) Any other information the applicant deems relevant; and

(K) Any other information that the FDIC requires to initiate its review and render the application complete.

(5) *Brokered CD placements not eligible for primary purpose exception.* An agent or nominees' placement of brokered certificates of deposit as described in 12 U.S.C. 1831f(g)(1)(A) shall be considered a discrete and independent business line from other deposit placement businesses in which the agent or nominee may be engaged.

(6) *Additional information.* The FDIC may request additional information from the applicant at any time during processing of the application.

(7) *Timing.* (i) An applicant that submits a complete application seeking the primary purpose exception will receive a written determination by the FDIC within 120 days of receipt of a complete application.

(ii) The FDIC may extend the 120-day timeframe, if necessary, to complete its review of a complete application, with proper notice to the applicant.

(8) *Approvals.* The FDIC will approve an application –

(i) Submitted under paragraph (b)(4)(i) of this section, if the total amount of customer funds placed at insured depository institutions by the third party is less than 25 percent of total customer assets under management by the third party, for purposes of a particular business line.

(ii) Submitted under paragraph (b)(4)(ii), if no interest, fees, or other remuneration, is being provided or paid on any customer accounts by the third party.

(iii) Submitted under paragraph (b)(4)(ii) in which interest, fees, or other remuneration is being provided or paid on any customer accounts by the third party, if the applicant demonstrates that the primary purpose of the particular business line under which customer accounts are offered is to enable its customers to make transactions.

(iv) Submitted under paragraph (b)(4)(iii), if the applicant demonstrates that, with respect to the particular business line under which the third party places or facilitates the placement of deposits, the primary purpose of the third party, for the particular business line, is a purpose other than the placement or facilitation of placement of deposits.

(9) *Ongoing reporting*—(i) *General.* The FDIC will describe any reporting requirements as part of its written approval for a primary purpose exception.

(ii) *Reporting.* Third parties, or insured depository institutions that apply on behalf of the third party, that receive a written approval for the primary purpose exception, shall provide reporting to the appropriate FDIC office and, in the case of an insured depository institution, to its primary federal regulator.

(10) *Modification and withdrawal of a previously granted approval.* At any time after approval of an application for the primary purpose exception, the FDIC may, with written notice and adequate justification:

(i) Require additional information from an applicant for which the FDIC has approved the primary purpose exception to ensure that the approval is still appropriate, or for purposes of verifying the accuracy and correctness of the information provided to an insured depository institution or

submitted to the FDIC as part of the application under this section;

(ii) Require the applicant for which the FDIC has approved the primary purpose exception to reapply for approval;

(iii) Impose additional conditions on an approval; or

(iv) Withdraw an approval.

PART 337—UNSAFE AND UNSOUND BANKING PRACTICES

■ 3. The authority for part 337 continues to read as follows:

Authority: 12 U.S.C. 375a(4), 375b, 1463(a)(1),1816, 1818(a), 1818(b), 1819, 1820(d), 1828(j)(2), 1831, 1831f, 5412.

■ 4. Amend § 337.6 as follows:

■ a. Revise paragraph (a)(5)(i);

■ b. Redesignate paragraphs (a)(5)(ii) and (iii) as paragrapahs (a)(5)(iii) and (iv), respectively;

■ c. Add a new paragraph (a)(5)(ii);

■ d. Revise newly redesignated paragraphs (a)(5)(iii)(A) and (I);

The revision and addition read as follows:

§ 337.6 Brokered deposits.

(a) * * *

(5) * * *

(i) The term *deposit broker* means:

(A) Any person engaged in the business of placing deposits of third parties with insured depository institutions;

(B) Any person engaged in the business of facilitating the placement of deposits of third parties with insured depository institutions;

(C) Any person engaged in the business of placing deposits with insured depository institutions for the purpose of selling interests in those deposits to third parties; and

(D) An agent or trustee who establishes a deposit account to facilitate a business arrangement with an insured depository institution to use the proceeds of the account to fund a prearranged loan.

(ii) *Engaged in the business of facilitating the placement of deposits.* A person is engaged in the business of facilitating the placement of deposits of third parties with insured depository institutions, by, while engaged in business, engaging in one or more of the following activities:

(A) The person directly or indirectly shares any third party information with the insured depository institution;

(B) The person has legal authority, contractual or otherwise, to close the account or move the third party's funds to another insured depository institution;

(C) The person provides assistance or is involved in setting rates, fees, terms, or conditions for the deposit account; or

(D) the person is acting, directly or indirectly, with respect to the placement of deposits, as an intermediary between a third party that is placing deposits on behalf of a depositor and an insured depository institution, other than in a purely administrative capacity.

(iii) * * *

(A) An insured depository institution, with respect to funds placed with that depository institution;

(*1*) A wholly owned operating subsidiary is considered a part of its parent insured depository institution, for purposes of this section, if it meets the following criteria:

(*i*) The parent insured depository institution owns 100 percent of the subsidiary's outstanding stock;

(*ii*) The wholly owned subsidiary places deposits of retail customers exclusively with its parent insured depository institution; and

(*iii*) The wholly owned subsidiary engages only in activities permissible for the parent insured depository institution.

* * * * *

(I) An agent or nominee whose primary purpose is not the placement of funds with depository institutions if and to the extent, the FDIC determines that the agent or nominee meets this exception under the application process in 12 CFR 303.243(b); or

* * * * *

Federal Deposit Insurance Corporation. By order of the Board of Directors.

Dated at Washington, DC, on December 12, 2019.

Annmarie H. Boyd,

Assistant Executive Secretary.

[FR Doc. 2019–28275 Filed 2–7–20; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0110; Airspace Docket No. 20–AGL–5]

RIN 2120–AA66

Proposed Establishment of Class E Airspace; Killdeer and New Town, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace extending upward from 700 feet above the surface at Dunn County Weydahl Field, Killdeer, ND, and New Town Municipal Airport, New Town, ND. The FAA is proposing this action due to the establishment of new public instrument procedures at these airports. Airspace design is necessary for the safety and management of instrument flight rules (IFR) operations at these airports.

DATES: Comments must be received on or before March 26, 2020.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2020–0110/Airspace Docket No. 20–AGL–5, at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that

section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish Class E airspace extending upward from 700 feet above the surface at Dunn County Weydahl Field, Killdeer, ND, and New Town Municipal Airport, New Town, ND, to support IFR operations at these airports.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2020–0110/Airspace Docket No. 20–AGL–5.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by:

Establishing Class E airspace extending upward from 700 feet above the surface within a 6.4-mile radius Dunn County Weydahl Field, Killdeer, ND, with an extension 1.1 miles each side of the 293° bearing from the airport extending from the 6.4-mile radius to 7.9 miles west of the airport;

And establishing Class E airspace extending upward from 700 feet above the surface within a 6.5-mile radius of New Town Municipal Airport, New Town, ND.

These actions are the result of new public instrument procedures being established at these airports.

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

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

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

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

* * * * *

AGL ND E5 Killdeer, ND [Establish]

Dunn County Weydahl Field, ND
(Lat. 47°23′29″ N, long. 102°46′19″ W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Dunn County Weydahl Field, and within 1.1 miles each side of the 293° bearing from the airport extending from the 6.4-mile radius to 7.9 miles west of the airport.

* * * * *

AGL ND E5 New Town, ND [Establish]

New Town Municipal Airport, ND
(Lat. 47°58′04″ N, long. 102°28′41″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the airport.

Issued in Fort Worth, Texas, on February 3, 2020.

Marty Skinner,

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

[FR Doc. 2020–02492 Filed 2–7–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0079; Airspace Docket No. 19–AGL–30]

RIN 2120–AA66

Proposed Amendment of Class E Airspace; Baraboo and Boscobel, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend the Class E airspace extending upward from 700 feet above the surface at Reedsburg Municipal Airport, Reedsburg, WI, contained within the Baraboo, WI, airspace legal description, and Boscobel Airport, Boscobel, WI. The FAA is proposing these actions as the result of airspace reviews caused by the decommissioning of the Lone Rock VHF omnidirectional range (VOR) navigation aid, which provided navigation information for the instrument procedures at these airports, as part of the VOR Minimum Operational Network (MON) Program. The name and geographic coordinates of Baraboo-Wisconsin Dells Regional Airport, Baraboo, WI, and geographic coordinates of Boscobel Airport would also be updated to coincide with the FAA's aeronautical database. Airspace redesign is necessary for the safety and management of instrument flight rules (IFR) operations at these airports.

DATES: Comments must be received on or before March 26, 2020.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366–9826, or (800) 647–5527. You must identify FAA Docket No. FAA–2020–0079; Airspace Docket No. 19–AGL–30, at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays.

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

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2020–0079; Airspace Docket No. 19–AGL–30.'' The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except federal holidays. An informal docket may also be examined during normal business hours at the Federal Aviation Administration, Air Traffic Organization, Central Service Center, Operations Support Group, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

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

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by:

Amending the Class E airspace extending upward from 700 feet above the surface to within a 6.5-mile radius (decreased from a 9.6-mile radius) of Reedsburg Municipal Airport, Reedsburg, WI; amending the extension to the south of the airport to extend to 10.8 miles (increased from 10.5 miles); adding an extension 2 miles each side of the 330° bearing from TUSME extending from the 6.5-mile radius of Reedsburg Municipal Airport to 5.6 miles northwest of TUSME; and updating the name and geographic coordinates of Baraboo-Wisconsin Dells Regional Airport (previously Baraboo Wisconsin Dells Airport), Baraboo, WI, to coincide with the FAA's aeronautical database;

And amending the Class E airspace extending upward from 700 feet above the surface to within a 6.7-mile radius (increased from a 6.3-mile radius) of Boscobel Airport, Boscobel, WI; adding an extension 1 mile each side of the 247° bearing from the airport extending from the 6.7-mile radius to 6.8 miles southwest of the airport; and updating the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

These actions are the result of airspace reviews caused by the decommissioning of the Lone Rock VOR, which provided navigation information for the instrument procedures at these airports, as part of the VOR MON Program.

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

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

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

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

* * * * *

AGL WI E5 Baraboo, WI [Amended]

Baraboo-Wisconsin Dells Regional Airport, WI
(Lat. 43°31′19″ N, long. 89°46′17″ W)
Reedsburg Municipal Airport, WI
(Lat. 43°31′33″ N, long. 89°59′00″ W)
TUSME, WI
(Lat. 43°36′41″ N, long. 89°58′52″ W)
Portage Municipal Airport, WI
(Lat. 43°33′37″ N, long. 89°28′58″ W)

That airspace extending upward from 700 feet above the surface within a 9.6-mile radius of Baraboo-Wisconsin Dells Regional Airport, and within a 6.5-mile radius of Reedsburg Municipal Airport, and within 2 miles each side of the 180° bearing from Reedsburg Municipal Airport extending from the 6.5-mile radius to 10.8 miles south of the Reedsburg Municipal Airport, and within 2 miles each side of the 330° bearing from TUSME extending from the 6.5-mile radius to 5.6 miles northwest of TUSME, and within an 8.7-mile radius of Portage Municipal Airport.

* * * * *

AGL WI E5 Boscobel, WI [Amended]

Boscobel Airport, WI
(Lat. 43°09′39″ N, long. 90°40′25″ W)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Boscobel Airport, and within 1 mile each side of the 247° bearing from the airport extending from the 6.7-mile radius to 6.8 miles southwest of the airport.

Issued in Fort Worth, Texas, on February 3, 2020.

Marty Skinner,

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

[FR Doc. 2020–02489 Filed 2–7–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–123–FOR; Docket ID: OSM–2016–0010 S1D1S SS08011000 SX064A000 201S180110; S2D2S SS08011000 SX064A000 20XS501520]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendments.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are announcing receipt of proposed amendments to the West Virginia regulatory program (hereinafter, the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Through these proposed amendments, West Virginia seeks to revise its program to amend its statutory and regulatory provisions that involve blasting and make organizational changes within the West Virginia Department of Environmental Protection (WVDEP).

DATES: We will accept written comments on these amendments until 4:00 p.m., Eastern Standard Time (e.s.t.), March 11, 2020. If requested, we will hold a public hearing on the amendments on March 6, 2020. We will accept requests to speak at a hearing until 4:00 p.m., e.s.t. on February 25, 2020.

ADDRESSES: You may submit comments, identified as SATS No. WV–123–FOR, by any of the following methods:

• *Mail/Hand Delivery:* Mr. Ben Owens, Field Office Director, Pittsburgh Field Office, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center South, 2nd Floor, Pittsburgh, Pennsylvania 15220.
• *Fax:* (412) 937–2177.
• *Federal eRulemaking Portal:* The amendment has been assigned Docket ID: OSM–2016–0010. If you would like to submit comments go to *http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' below under the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the West Virginia program, these amendments, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendments by contacting OSMRE's Charleston Field Office or the full text of the program amendments are available for you to read at *www.regulations.gov.*

Mr. Ben Owens, Pittsburgh Field Office Director, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center South, 2nd Floor, Pittsburgh, PA 15220, Telephone: (412) 937–2827, Email: *chfo@osmre.gov*

In addition, you may review a copy of the amendment during regular business hours at the following location:

West Virginia Department of Environmental Protection, 601 57th Street SE, Charleston, West Virginia 25304, Telephone: (304) 926–0490

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 604 Cheat Road, Suite 150, Morgantown, WV 26508, Telephone: (304) 291–4004 (By Appointment only)

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 313 Harper Park Drive, Suite 3, Beckley, WV 25801, Telephone: (304) 255–5265.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Owens, Pittsburgh Field Office Director. Telephone: (412) 937–2827. Email: *chfo@osmre.gov*.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program
II. Description of the Proposed Amendments
III. Public Comment Procedures
IV. Statutory and Executive Order Reviews

I. Background on the West Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, State laws and regulations that govern surface coal mining and reclamation operations in accordance with the Act and consistent with the Federal regulations. See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find additional background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval in the January 21, 1981, **Federal Register** (46 FR 5915–5956). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15 and 948.16.

II. Description of the Proposed Amendments

On three occasions, April 4, 2016, (Administrative Record No. 1607), May 3, 2017, (Administrative Record No. 1608), and May 2, 2018, (Administrative Record No. 1613), West Virginia sent us proposed revisions to its approved program. These first two submissions included, among other things, blasting regulations and provisions that OSMRE decided to incorporate with the third submission so as not to cause confusion. In the first submission, the State proposes to eliminate the Office of Explosives and Blasting and consolidate the remaining duties and responsibilities related to blasting under the Division of Mining and Reclamation. This submission also authorizes WVDEP to promulgate its own blasting regulations. The second submission modifies the State's pre-blast survey statutory provisions. In the third submission, the Division of Mining and Reclamation (DMR) submitted its own blasting regulations which relate to blasting plans, public notices, blasting procedures, blast records, pre-blast surveys, certification of blasters, blasting claims and arbitration, and explosive material fee. By combining these, the public will have an opportunity to evaluate and comment on both the State's revised blasting law and the newly promulgated blasting regulations as set forth in these submissions.

First Submission: House Bill (HB) 4726: By letter dated April 4, 2016, WVDEP sent us an amendment to its program under SMCRA (30 U.S.C.1201 *et seq.*) that included provisions enacted by HB 4726. The bill was passed by the West Virginia Legislature on March 11, 2016, and approved by the Governor on April 1, 2016. HB 4726 terminated the Office of Explosives and Blasting (OEB) with the passage of W.Va. Code 22–3–34 and transferred the duties and responsibilities relating to blasting to the Division of Mining and Reclamation (DMR). The bill also provides that the regulatory provisions of the State's *Surface Mining Blasting Rule* set forth in the Code of State Regulations (CSR) 199–1 remain in effect until DMR develops its own blasting rules. The bill involves changes to West Virginia's statutory provisions relating to blasting, pre-blast surveys, and the authority to promulgate regulations. In addition, the bill added new sections 22–3–35 through 22–3–38 to reflect organizational changes; transfer of functions; disciplinary procedures for certified blasters; blasting damage claims; rules, orders and permits to remain in effect regarding blasting; and the transfer of personnel and assets.

Second Submission: Senate Bill (SB) 687: By letter dated May 3, 2017, WVDEP sent us an amendment to its program under SMCRA (30 U.S.C.1201 *et seq.*). SB 687 was passed by the West Virginia Legislature on April 8, 2017, and approved by the Governor on April 9, 2017. SB 687 modified the State's pre-blast survey statutory requirements for notifications to owners and occupants regarding blasting associated with construction and requests for new pre-blast surveys.

Third Submission: Senate Bill 163: By letter dated May 2, 2018, WVDEP sent us an amendment to its program under SMCRA (30 U.S. C. 1201 *et seq.*) to amend its regulations at CSR 38–2–1. SB 163 was passed by the West Virginia Legislature on February 16, 2018, and signed by the Governor on February 27, 2018. SB 163 authorized WVDEP to promulgate legislative rules filed in the State Register on July 27, 2017. SB 163 consolidated all State blasting requirements under WVDEP's *Surface Mining Reclamation Regulations*. This amendment modifies Section 6 relating to blasting and creates new Sections 25 through 27 relating to certification of blasters, blasting damage claim and arbitration for blasting damage claims, and the explosive material fee. It also modifies the notification requirements for pre-blast surveys to be consistent

with changes made at W.Va. Code 22–3–13a.

A. Proposed Statutory Revisions Authorized by HB 4726 to W.Va. Code 22–1–7, 22–3–2, 4, 13a, 22a, 34, 35, 36, 37, and 38—Abolish Office of Explosives and Blasting; Legislative Findings and Purpose; Duties of Secretary; Pre-Blast Survey Requirements; Site-Specific Blasting Design; Office of Explosives and Blasting Terminated; Legislative Blasting Rules; Disciplinary Procedures for Certified Blasters; Claims Processing for Blasting; Blasting Rules, Orders and Permits to Remain in Effect; Proceedings not Affected; and Transfer of Personnel and Assets

HB 4726, which was passed by the West Virginia Legislature, repealed section 22–3A of the W.Va. Code and added new sections designated 22–3–34 through 38 as a result of the elimination of the OEB. This bill consolidates the remaining duties and responsibilities related to blasting into the DMR. It also provides that the *Blasting Rule,* CSR 199–1, remains in effect until the DMR develops its own rules for blasting. Some changes, within the bill and subsequent bills, are non-substantive (*i.e.,* changes in organizational structure, prior effective dates, and designated authorities) and will not be further elaborated on within this proposed rule.

1. W.Va. Code 22–1–7—Offices Within the Department of Environmental Protection

West Virginia seeks to revise its statutory provisions by deleting subsection 6. That subsection created the OEB and charged it with administering and enforcing the provisions of article 3 of this chapter.

2. W.Va. Code 22–3–2—Legislative Findings and Purpose

West Virginia seeks to revise its statutory provisions by adding subdivisions (a)(3) and (b)(9). Section 22–3–2(a)(3) provides that the West Virginia Legislature finds that the reasonable control of blasting associated with surface mining within the State is in the public interest and will promote the protection of the citizens and their property without sacrificing economic development. In addition, it is the policy of the State . . . to use reasonable means and measures to prevent harm from the effects of blasting to its property and citizens. Section 22–3–2(b)(9) provides in part that it is the purpose of the article to vest in the Secretary the authority to enforce all of the laws, regulations, and rules established to regulate blasting consistent with the authority granted in sections 34 through 39 of this article.

3. W.Va. Code 22–3–4—Duties and Functions of Secretary

West Virginia seeks to revise its statutory provisions by adding subdivision (b)(6). Section 22–3–4(b)(6) provides that the Secretary may, in relation to blasting on all surface mining operations and all surface blasting activities related to underground mining operations, regulate blasting on all surface mining operations; implement and oversee the pre-blast survey process, as set forth in section 22–3–13a; maintain and operate a system to receive and address questions, concerns and complaints relating to mining operations; set the qualifications for individuals and firms performing pre-blast surveys; educate, train, examine, and certify blasters; and propose rules for legislative approvals pursuant to section 29a–3–15 for the implementation of sections 34 through 39 of this article.

4. W.Va. Code 22–3–13a—Pre-Blast Survey Requirements

West Virginia seeks to revise its statutory provisions by modifying subsection (c), subdivision (f)(7), subsection (g), subsection (h), and subsection (i). Section 22–3–13a(c) provides that the DMR may not determine the pre-blast survey to be incomplete because it indicates that access to a particular structure, underground water supply or well was refused, impossible or impractical. In addition, the operator must send copies of all written waivers and affidavits executed pursuant to this subsection to the DMR. Section 22–3–13a(f)(7) provides that pre-blast survey must include the date of the pre-blast survey and the date it was mailed or delivered to the DMR. Section 22–3–13a(g) provides that the pre-blast survey must be submitted to the DMR at least 15 days prior to the commencement of any production blasting. The DMR must review each pre-blast survey as to form and completeness only and notify the operator of any deficiencies: Provided, that once all required surveys have been reviewed and accepted by the DMR, blasting may commence sooner than 15 days after submittal. In addition, the DMR must provide a copy of the pre-blast survey to the owner or occupant. Section 22–3–13a(h) provides that the pre-blast survey notice must be on a form prescribed by the DMR. Finally, section 22–3–13a(i) provides that all authority to promulgate blasting rules is transferred from the OEB to the DMR. Other statutory provisions relating to pre-blast surveys are included in this section of the State's submittal.

5. W.Va. Code 22–3–22a—Site-Specific Blasting Design Requirement

West Virginia seeks to revise its statutory provisions at subsections (e) and (f). Section 22–3–22a(e) provides that blasting within 1,000 feet of a protected structure must have a site-specific blast design approved by the DMR. In addition, section 22–3–22a(f) provides that the operator must send copies of all written waivers executed pursuant to this subsection the DMR. Written waivers executed and filed with the DMR are valid during the life of the permit or any renewal of the permit and are enforceable against any subsequent owners or occupants of the protected structure.

6. W.Va. Code 22–3–34—Office of Explosives and Blasting Terminated; Transfer of Functions; Responsibilities

West Virginia seeks to revise its statutory provisions by adding section 22–3–34, which states that the OEB will be terminated.

7. W.Va. Code 22–3–35—Legislative Rules on Surface Mining Blasting; Disciplinary Procedures for Certified Blasters

West Virginia seeks to revise its statutory provisions by adding section 22–3–35, which provides that the DMR will apply and enforce OEB's rules at 199 CSR 1 until it adopts rules of its own. DMR must promulgate rules for legislative approval in accordance with the provisions of section 29(a)–3–15 as necessary to reflect the repeal of section 22–3a–7, as amended. This section includes statutory provisions relating to blasting and blaster certification as submitted by West Virginia.

8. W.Va. Code 22–3–36—Claims Process for Blasting

West Virginia seeks to revise its statutory provisions by adding section 22–3–36, which establishes a blasting claims process. WVDEP must establish and manage the process for filing, administering, and resolving claims related to blasting. Other State statutory provisions relating to the claims process are presented in this section of the submittal.

9. W.Va. Code 22–3–37—Rules, Orders, and Permits To Remain in Effect Regarding Blasting; Proceedings not Affected

West Virginia seeks to revise its statutory provisions by adding section 22–3–37. This section provides that all orders, determinations, rules, permits,

grants, contracts, certificates, licenses, waivers, bonds, authorizations and privileges that have been issued, made, granted or allowed to become effective prior to the enactment of this article will remain in effect according to their terms until modified, terminated, superseded, set aside or revoked pursuant to this article, by a court of competent jurisdiction, or by operation of law. Any proceedings, including notices of proposed rulemaking, or any application for any license, permit, or certificate pending before the DMR are not affected by the enactment of this statute.

10. W.Va. Code 22–3–38—Transfer of Personnel and Assets

West Virginia seeks to revise its statutory provisions by adding section 22–3–38, which provides that the Secretary must transfer to the DMR any personnel and assets presently used to perform or used in the performance of the duties and functions required by sections 34 through 39.

B. Proposed Statutory Revisions Authorized by SB 687 to W.Va. Code 22–3–13a—Pre-Blast Survey Requirements

1. W.Va. Code 22–3–13a(a)(1), (2), (b) and (f)—Pre-Blast Survey Requirements

West Virginia seeks to revise its statutory provisions at section 22–3–13a(1) for all surface mining operations to send notifications of pre-blast surveys to all owners and occupants of man-made dwellings or structures within one half mile of the permitted area or areas. Section 22–3–13a(2) provides that for blasting associated with permitted surface disturbance of underground mines and blasting associated with specified construction, including but not limited to, haul roads, shafts, and/or drainage structures, the operator may send written request to the Secretary asking that the required notifications be limited to all owner and occupants of man-made dwellings or structures within one-half mile of the proposed blasting area. Other pre-blast survey requirements are included within this section as submitted by the State.

C. Proposed Regulatory Changes Authorized by SB 163 to CSR 38–2–6 Regarding Blasting; and CSR 38–2–25 Through 27 Relating to Certification of Blasters; Blasting Damage Claim and Arbitration for Blasting Damage Claims; Explosive Material Fee

West Virginia seeks to add new language to its regulatory provisions relating to blasting in general; certification of blasters; blasting damage claims; arbitration for blasting damage claims; and explosive material fee by consolidating all blasting requirements into its *Surface Mining Reclamation Regulations* at CSR 38–2–6, 25, 26 and 27. Most of these requirements are being transferred from the State's *Surface Mining Blasting Rule* at 199 CSR 1 due to the proposed elimination of the OEB. With the consolidation of its rules and approval of these requirements by OSMRE, 199 CSR 1 will be rescinded by the State.

1. CSR 38–2–6.1—General Requirements

West Virginia seeks to revise its blasting regulations by deleting existing language at subsection 6.1 and adding new language which provides that each blaster will comply with all applicable State and Federal laws in the use of explosives, and each blaster that is certified by the Secretary will be responsible for all blasting operations in accordance with the blasting plan.

2. CSR 38–2–6.2—Blasting Plans

West Virginia seeks to revise its blasting regulations by deleting existing language at subsection 6.2 and adding new language which provides that all surface mining operations that propose blasting must include a blasting plan that will include, at a minimum, information setting forth the limitation the operator will meet with regard to ground vibration and air blast, the basis for those limitation, and the methods to be applied in preventing the adverse effects of blasting operations. The blasting plan will delineate the type of explosives and detonation equipment, the size, the timing and frequency of blasts, and the effect of geologic and topographic conditions on specific blasts. Other regulatory provisions relating to blasting plans are included within this section.

3. CSR 38–2–6.3—Public Notice of Blasting Operations

West Virginia seeks to add new language to its blasting regulations which provides that at least ten (10) days but not more than thirty (30) days prior to commencing any blasting operations which detonate five (5) pounds or more of explosives at any given time, the operator must publish a blasting schedule in a newspaper of general circulation in all the counties of the proposed permit area. Copies of the schedule shall be distributed by certified mail to local governments, public utilities, and each resident within one half mile of the blasting sites. Unless blasting will occur on drainage structures and roads, these structures will be exempt for the purpose of measuring the notification area. A list of residents, utilities and owners of man-made structures within the notification area will be made a part of the blasting plan, and will be updated on an annual basis. The operator must republish and redistribute the schedule at least every twelve (12) months in the same manner above. The operator will revise, republish, and redistribute the schedule at least ten (10) days, but not more than thirty (30) days prior to blasting whenever the area covered by the schedule changes or actual time periods for blasting significantly differ from that set forth in the prior schedule. Proof of notification must be retained by the permittee. Other specific requirements relating to notifying the public of all blasting operations are included within this section.

4. CSR 38–2–6.4—Surface Blasting on Underground Mines (Face-up Area, Slopes and Shafts) and Construction Blasting

West Virginia seeks to add new language to its blasting regulations which provides that construction blasting means incidental blasting to develop haul roads, mine access roads, coal preparation plants and drainage structures, and cannot include blasting that removes the overburden to expose underlying coal seams for the surface extraction. Surface blasting activities related to underground coal mining and construction blasting are not subject to the requirements of subdivision 6.3.a. of this rule so long as all local governments and residents and workplaces or owners of dwellings or structures located within one-half (½,) mile of the blast site are notified in writing by the operator of proposed times and locations of the blasting operation. Such notice of times that blasting is to be conducted may be announced weekly, but in no case less than twenty-four (24) hours before the blasting will occur.

Blasting activities for underground coal mining and construction blasting will be subject to this rule and regulated as surface blasting and the operator must submit a blast plan that considers all aspects of blasting contained in this section. For shafts and slopes related to underground mining, the operator will submit a blast plan for the initial developmental blast of shafts and slopes, which will consider all aspects of surface coal mine blasting contained in this section. The Secretary will then only regulate and monitor for surface effects from ground vibration and air blast for the remainder of the shaft or slope until it intersects the coal seam to be mined.

5. CSR 38–2–6.5—Blast Record

West Virginia seeks to add new language to its blasting regulations which provides that a blasting log book on forms formatted in a manner prescribed by the Secretary will be kept current daily and made available for inspection at the site by the Secretary and upon written request by the public. Other provisions relating to what information blasting records should contain are included within this section.

6. CSR 38–2–6.6—Blasting Procedures

West Virginia seeks to add new language to its blasting regulations which provides that all blasting will be conducted during daytime hours, between sunrise and sunset; provided, that the Secretary may specify more restrictive time periods based on public requests or other consideration, including the proximity to residential areas. No blasting will be conducted on Sunday. Provided, however, the Secretary may grant approval of a request for Sunday blasting if the operator demonstrates to the satisfaction of the Secretary that the blasting is necessary and there has been an opportunity for a public hearing. Blasting cannot be conducted at times different from those announced in the blasting schedule except in emergency situations where rain, lightning, or other atmospheric conditions or operator or public safety requires unscheduled detonations. Blasting will be conducted in such a way so as to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine, and change in the course, channel, or availability of surface or groundwater outside the permit area. Other specific blasting and safety provisions relating to air blast and ground vibration limits are set forth within this section.

7. CSR 38–2–6.7—Blasting Control for ''Other Structures''

West Virginia seeks to add new language to its blasting regulations which provides that all ''other structures'' in the vicinity of the blasting area which are not defined as protected structures must be protected from damage by the limits specified in paragraph 6.6.c.1 subdivisions 6.6.h., 6.6.i. and 6.6j of this rule, unless waived in total or in part by the owner of the structure. The waiver of the protective structures may be accomplished by the establishment of a maximum allowable limit on ground vibration or air blast limits or both for the structure in the written waiver agreement between the operator and the structure owner. The waiver may be presented at the time of application, in the blasting plan, or provided at a later date and made available for review and approval by the Secretary. All waivers must be acquired before any blasts may be conducted as designed based on that waiver. The plan submitted under this subsection cannot reduce the level of protection for other structures otherwise provided for in this rule.

8. CSR 38–2–6.8—Pre-Blast Surveys

West Virginia seeks to add new language to its blasting regulations which provides that at least thirty days prior to commencing blasting, an operator's designee must notify in writing all owners and occupants of manmade dwellings or structures with a ½ mile of the permit area or for those that the meet the requirements of 6.4 of this subsection within ½ mile of the blast site that the operator or operator's designee will perform pre-blast surveys. The operator must conduct the pre-blast survey in a manner that will determine the condition of the dwelling or structure, to document any pre-blasting damage and to document other physical factors that could reasonably be affected by the blasting. Assessments of the pre-blasting condition of structures such as pipes, cables, transmission lines, wells, and water systems must be based on the exterior or ground surface conditions and other available data. Attention must be given to documenting and establishing the pre-blasting condition of wells and other water systems. The pre-blast survey must include a description of the water source and water delivery system. When the water supply is a well, the pre-blast survey must include written documentation about the type of well, and where available, the well log and information about the depth, age, depth and type of casing, the static water level, flow and data, the pump the name of the drilling contractor and the source or sources of the information. Other specific pre-blast survey requirements are included within this section.

9. CSR 38–2–25—Certification of Blasters

West Virginia seeks to add new language to its blasting regulations which provides that in every surface mine and surface area of an underground mine when blasting operations are being conducted, a certified blaster must be responsible for the storage, handling, transportation, and use of explosives for each and every blast, and for conducting the blasting operations in accordance with the blasting plans approved in a permit issued pursuant to W. Va. Code 22–3–1 *et seq.,* and the rules promulgated under that article. Each person acting in the capacity of a blaster and responsible for the blasting operations must be certified by the Secretary. Each certified blaster must have proof of certification either on his or her person or on file at the permit area during blasting operations. Other specific provisions relating to the testing and certification of blasters are included within this section.

10. CSR 38–2–26—Blasting Damage Claim and Arbitration for Blasting Damage Claims

West Virginia seeks to add new language to its blasting regulations which provides that a claim of damage to surface structures from blasting will be the result of one or more of the following:

- Fly rock damage is based on the presence of debris from the blast site and the presence of impact damage;
- Air blast damage is characterized by broken or cracked window glass; and
- Blasting vibration damage is investigated by experienced and specially trained personnel to accurately determine the presence of such damage. Examples are explained in, but not limited to, the American Insurance Association publication, Blasting Damage, A Guide for Adjusters and Engineers.

It is the responsibility of the property owner to notify the Secretary of the alleged blasting damage. An investigation will be conducted to determine the initial merit of the damage claim. Other specific provisions pertaining to filing claims for blaster damage and requests for arbitration involving those claims are included within this section.

11. CSR 38–2–27—Explosive Material Fee

West Virginia seeks to add new language to its blasting regulations which provides that pursuant to W.Va. Code 22–3A–7 and 5B–2a–2, there is hereby assessed a fee of one-quarter cent ($.0025) per pound on explosive material used for any purpose on surface mining operations. Provided, that the operators exempted from the application of W. Va. Code 5B–B1–2A *et seq.* must pay one-eighth ($.00125) cent per pound on explosive material. Other requirements regarding the payment, collection and use of the material handling fee are more fully described within this section.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether these amendments satisfy the applicable program approval criteria of 30 CFR 732.15. If we approve the amendments, they will become part of the State program.

Electronic or Written Comments

If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information, may be made publicly available at any time. While you 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.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t. on February 25, 2020. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak, and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Statutory and Executive Order Reviews

Executive Order 12866—Regulatory Planning and Review and Executive Order 13563—Improving Regulation and Regulatory Review

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget (OMB) will review all significant rules. Pursuant to OMB Guidance dated October 12, 1993, the approval of State program amendments is exempted from OMB review under Executive Order 12866. Executive Order 13563, which reaffirms and supplements Executive Order 12866, retains this exemption.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 30, 2019.

Thomas D. Shope,

Regional Director, North Atlantic—Appalachian Region.

Editorial Note: This document was received at the Office of the Federal Register on February 5, 2020.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2019–0008; FRL–10005–27–Region 4]

Air Plan Approval; FL; 2010 1-Hour SO_2 NAAQS Transport Infrastructure

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve Florida's September 18, 2018, State Implementation Plan (SIP) submission pertaining to the ''good neighbor'' provision of the Clean Air Act (CAA or Act) for the 2010 1-hour sulfur dioxide (SO_2) National Ambient Air Quality Standard (NAAQS). The good neighbor provision requires each state's implementation plan to address the interstate transport of air pollution in amounts that contribute significantly to nonattainment, or interfere with maintenance, of a NAAQS in any other state. In this action, EPA is proposing to determine that Florida will not contribute significantly to nonattainment or interfere with maintenance of the 2010 1-hour SO_2 NAAQS in any other state. Therefore, EPA is proposing to approve the September 18, 2018, SIP revision as meeting the requirements of the good neighbor provision for the 2010 1-hour SO_2 NAAQS.

DATES: Written comments must be received on or before March 11, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2019–0008 at *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written

comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Michele Notarianni, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Ms. Notarianni can be reached via phone number (404) 562–9031 or via electronic mail at *notarianni.michele@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Infrastructure SIPs

On June 2, 2010, EPA promulgated a revised primary SO_2 NAAQS with a level of 75 parts per billion (ppb), based on a 3-year average of the annual 99th percentile of 1-hour daily maximum concentrations. *See* 75 FR 35520 (June 22, 2010). Whenever EPA promulgates a new or revised NAAQS, CAA section 110(a)(1) requires states to make SIP submissions to provide for the implementation, maintenance, and enforcement of the NAAQS. This particular type of SIP submission is commonly referred to as an ''infrastructure SIP.'' These submissions must meet the various requirements of CAA section 110(a)(2), as applicable.

Section 110(a)(2)(D)(i)(I) of the CAA requires SIPs to include provisions prohibiting any source or other type of emissions activity in one state from emitting any air pollutant in amounts that will contribute significantly to nonattainment, or interfere with maintenance, of the NAAQS in another state. The two clauses of this section are referred to as prong 1 (significant contribution to nonattainment) and prong 2 (interference with maintenance of the NAAQS).

On September 18, 2018, the Florida Department of Environmental Protection (FDEP) submitted a revision to the Florida SIP addressing prongs 1 and 2 of CAA section 110(a)(2)(D)(i)(I) for the 2010 1-hour SO_2 NAAQS.[1] EPA is proposing to approve FDEP's September 18, 2018, SIP submission because, based on the information available at the time of this rulemaking, the State demonstrated that Florida will not contribute significantly to nonattainment, or interfere with maintenance, of the 2010 1-hour SO_2 NAAQS in any other state. All other elements related to the infrastructure requirements of section 110(a)(2) for the 2010 1-hour SO_2 NAAQS for Florida have been addressed in separate rulemakings.[2]

B. 2010 1-Hour SO_2 NAAQS Designations Background

In this action, EPA has considered information from the 2010 1-hour SO_2 NAAQS designations process, as discussed in more detail in section III.C of this notice. For this reason, a brief summary of EPA's designations process for the 2010 1-hour SO_2 NAAQS is included here.[3]

After the promulgation of a new or revised NAAQS, EPA is required to designate areas as ''nonattainment,'' ''attainment,'' or ''unclassifiable'' pursuant to section 107(d)(1) of the CAA. The process for designating areas following promulgation of a new or revised NAAQS is contained in section 107(d) of the CAA. The CAA requires EPA to complete the initial designations process within two years of promulgating a new or revised standard. If the Administrator has insufficient information to make these designations by that deadline, EPA has the authority to extend the deadline for completing designations by up to one year.

EPA promulgated the 2010 1-hour SO_2 NAAQS on June 2, 2010. *See* 75 FR 35520 (June 22, 2010). EPA completed the first round of designations (''round 1'')[4] for the 2010 1-hour SO_2 NAAQS on July 25, 2013, designating 29 areas in 16 states as nonattainment for the 2010 1-hour SO_2 NAAQS. *See* 78 FR 47191 (August 5, 2013). EPA signed **Federal Register** notices of promulgation for round 2 designations[5] on June 30, 2016 (81 FR 45039 (July 12, 2016)) and on November 29, 2016 (81 FR 89870 (December 13, 2016)), and round 3 designations[6] on December 21, 2017 (83 FR 1098 (January 9, 2018)).[7]

On August 21, 2015 (80 FR 51052), EPA separately promulgated air quality characterization requirements for the 2010 1-hour SO_2 NAAQS in the Data Requirements Rule (DRR). The DRR requires state air agencies to characterize air quality, through air dispersion modeling or monitoring, in areas associated with sources that emitted 2,000 tons per year (tpy) or more of SO_2, or that have otherwise been listed under the DRR by EPA or state air agencies. In lieu of modeling or monitoring, state air agencies, by specified dates, could elect to impose federally-enforceable emissions limitations on those sources restricting their annual SO_2 emissions to less than 2,000 tpy, or provide documentation that the sources have been shut down. EPA expected that the information generated by implementation of the DRR would help inform designations for the 2010 1-hour SO_2 NAAQS that must be completed by December 31, 2020 (''round 4'').

In rounds 1 and 3 of designations, EPA designated three SO_2 nonattainment areas and one unclassifiable area in Florida. In round 1, EPA designated portions of Nassau and Hillsborough counties as

[1] On June 3, 2013, and supplemented on January 8, 2014, FDEP submitted SIP revisions addressing all infrastructure elements with respect to the 2010 1-hour SO_2 NAAQS with the exception of prongs 1 and 2 of CAA 110(a)(2)(D)(i)(I).

[2] EPA acted on the other elements of Florida's June 3, 2013, infrastructure SIP submission, as supplemented on January 8, 2014, for the 2010 1-hour SO_2 NAAQS on September 30, 2016 (81 FR 67179).

[3] While designations may provide useful information for purposes of analyzing transport, particularly for a more source-specific pollutant such as SO_2, EPA notes that designations themselves are not dispositive of whether or not upwind emissions are impacting areas in downwind states. EPA has consistently taken the position that CAA section 110(a)(2)(D)(i)(I) addresses ''nonattainment'' anywhere it may occur in other states, not only in designated nonattainment areas nor any similar formulation requiring that designations for downwind nonattainment areas must first have occurred. *See e.g.,* Clean Air Interstate Rule, 70 FR 25162, 25265 (May 12, 2005); Cross-State Air Pollution Rule, 76 FR 48208, 48211 (August 8, 2011); Final Response to Petition from New Jersey Regarding SO_2 Emissions From the Portland Generating Station, 76 FR 69052 (November 7, 2011) (finding facility in violation of the prohibitions of CAA section 110(a)(2)(D)(i)(I) with respect to the 2010 1-hour SO_2 NAAQS prior to issuance of designations for that standard).

[4] The term ''round'' in this instance refers to which ''round of designations.''

[5] EPA and state documents and public comments related to the round 2 final designations are in the docket at regulations.gov with Docket ID No. EPA–HQ–OAR–2014–0464 and at EPA's website for SO_2 designations at *https://www.epa.gov/sulfur-dioxide-designations.*

[6] EPA and state documents and public comments related to round 3 final designations are in the docket at *regulations.gov* with Docket ID No. EPA–HQ–OAR–2017–0003 and at EPA's website for SO_2 designations at *https://www.epa.gov/sulfur-dioxide-designations.*

[7] Consent Decree, *Sierra Club* v. *McCarthy,* Case No. 3:13–cv–3953–SI (N.D. Cal. Mar. 2, 2015). This consent decree requires EPA to sign for publication in the **Federal Register** notices of the Agency's promulgation of area designations for the 2010 1-hour SO_2 NAAQS by three specific deadlines: July 2, 2016 (''round 2''); December 31, 2017 (''round 3''); and December 31, 2020 (''round 4'').

nonattainment for the 2010 1-hour SO_2 NAAQS based on air quality monitoring data (Nassau, FL Area and Hillsborough, FL Area, respectively).[8] In round 3, EPA designated portions of Hillsborough and Polk counties (Hillsborough-Polk, FL Area) as nonattainment for the 2010 1-hour SO_2 NAAQS based on air quality modeling.[9] EPA also designated portions of Hillsborough and Polk counties (Mulberry, FL Area) as unclassifiable for the 2010 1-hour SO_2 NAAQS in round 3. The remaining counties in Florida were designated as attainment/unclassifiable in round 3; therefore, no areas in Florida will be designated in round 4.[10]

[8] The Nassau and Hillsborough Areas are currently attaining the 2010 1-hour SO_2 NAAQS based on complete, quality-assured, and certified air quality monitoring data for 2016–2018 and air dispersion modeling showing attainment of the 2010 1-hour SO_2 NAAQS in the area. Florida submitted a request that EPA redesignate both areas to attainment, and EPA approved the redesignation request and associated maintenance plan for the Nassau Area on April 24, 2019 (84 FR 17085). EPA approved the redesignation request and associated maintenance plan for the Hillsborough Area on November 12, 2019 (84 FR 60927). EPA approved the attainment demonstration for the Nassau Area on July 3, 2017, and incorporated the new allowable emission rates and control measures into the SIP, making them permanent and enforceable. *See* 82 FR 30749. EPA's redesignation of the Nassau Area was based, in part, on a modeled attainment demonstration that included permanent and enforceable SO_2 controls and emissions limits at the Rayonier and WestRock facilities showing attainment of the 2010 1-hour SO_2 standard by the statutory deadline.

[9] EPA designated a portion of Citrus County, Florida as unclassifiable in round 3 designations on December 21, 2017 (83 FR 1098). However, on March 28, 2018, EPA withdrew the designation of unclassifiable for the area and established a designation of attainment/unclassifiable for that area based on complete, quality-assured and certified air quality monitoring data from 2017 submitted by FDEP, and modeling showing attainment of the 2010 1-hour SO_2 NAAQS in the area. *See* 83 FR 14597 (April 5, 2018). On September 9, 2019 (84 FR 47216), EPA proposed approval of Florida's February 15, 2019, draft redesignation requests and maintenance plan for the round 3 Hillsborough-Polk County SO_2 nonattainment area, the redesignation request for the Mulberry unclassifiable area, and adoption of new 24-hour SO_2 emission limits for the two primary emission sources in the areas. The public comment period has closed, and EPA is not reopening that comment period through this infrastructure proposal.

[10] *See Technical Support Document: Chapter 9 Final Round 3 Area Designations for the 2010 1-Hour SO_2 Primary National Ambient Air Quality Standard for Florida* at *https://www.epa.gov/sites/production/files/2017-12/documents/09-fl-so2-rd3-final.pdf. See also Technical Support Document: Chapter 9 Intended Round 3 Area Designations for the 2010 1-Hour SO_2 Primary National Ambient Air Quality Standard for Florida* at *https://www.epa.gov/sites/production/files/2017-08/documents/9_fl_so2_rd3-final.pdf.*

II. Relevant Factors Used To Evaluate 2010 1-Hour SO_2 Interstate Transport SIPs

Although SO_2 is emitted from a similar universe of point and nonpoint sources as is directly emitted fine particulate matter ($PM_{2.5}$) and the precursors to ozone and $PM_{2.5}$, interstate transport of SO_2 is unlike the transport of $PM_{2.5}$ or ozone because SO_2 emissions sources usually do not have long range SO_2 impacts. The transport of SO_2 relative to the 2010 1-hour SO_2 NAAQS is more analogous to the transport of lead (Pb) relative to the Pb NAAQS in that emissions of SO_2 typically result in 1-hour pollutant impacts of possible concern only near the emissions source. However, ambient 1-hour concentrations of SO_2 do not decrease as quickly with distance from the source as do 3-month average concentrations of Pb, because SO_2 gas is not removed by deposition as rapidly as are Pb particles and because SO_2 typically has a higher emissions release height than Pb. Emitted SO_2 has wider ranging impacts than emitted Pb, but it does not have such wide-ranging impacts that treatment in a manner similar to ozone or $PM_{2.5}$ would be appropriate. Accordingly, while the approaches that EPA has adopted for ozone or $PM_{2.5}$ transport are too regionally focused, the approach for Pb transport is too tightly circumscribed to the source. SO_2 transport is therefore a unique case and requires a different approach.

In this proposed rulemaking, as in prior SO_2 transport analyses, EPA focuses on a 50 km-wide zone because the physical properties of SO_2 result in relatively localized pollutant impacts near an emissions source that drop off with distance. Given the properties of SO_2, EPA selected a spatial scale with dimensions from four to 50 kilometers (km) from point sources—the ''urban scale''—to assess trends in area-wide air quality that might impact downwind states.[11]

In its SIP submission, FDEP identified a distance threshold to reflect the transport properties of SO_2. FDEP selected the ''urban scale'' as appropriate in assessing trends in both area-wide air quality and the effectiveness of large-scale pollution control strategies at such point sources. FDEP supported this transport distance threshold with references to the March 1, 2011, EPA memorandum titled ''Additional Clarification Regarding Application of Appendix W Modeling Guidance for the 1-hour NO_2 National Ambient Air Quality Standard,'' and noted that this clarification applies equally to the 2010 1-hour SO_2 standard.[12] The memorandum offers a general guideline for estimating the distance to maximum 1-hour impact and the region of significant concentration gradients that may apply in relatively flat terrain, which is approximately 10 times the source's release height.[13] FDEP states that no SO_2 source in Florida (which has flat terrain) has a stack height of more than 205 meters and thus, the maximum distance to a significant concentration gradient from a Florida source is approximately 2,050 meters (*i.e.,* 2.05 km) from the source, after which a source's impacts decrease significantly. Additionally, the memorandum indicates that the inclusion of all emissions sources within 50 km of the source under analysis is likely to produce an overly conservative result in most cases.

Given the properties of SO_2, EPA preliminarily agrees with Florida's selection of the urban scale to assess trends in area-wide air quality that might impact downwind states. As discussed further in section III.B, EPA believes that Florida's selection of the urban scale is appropriate for assessing trends in both area-wide air quality and the effectiveness of large-scale pollution control strategies at SO_2 point sources. Florida's selection of this transport distance for SO_2 is consistent with 40 CFR 58, Appendix D, Section 4.4.4(4) ''Urban scale,'' which states that measurements in this scale would be used to estimate SO_2 concentrations over large portions of an urban area with dimensions from four to 50 km. The American Meteorological Society/Environmental Protection Agency Regulatory Model (AERMOD) is EPA's preferred modeling platform for regulatory purposes for near-field dispersion of emissions for distances up to 50 km. *See* Appendix W of 40 CFR part 51. Thus, EPA concurs with Florida's application of the 50-km threshold as a reasonable distance to evaluate emission source impacts into neighboring states and to assess air quality monitors within 50 km of the State's border, which is discussed further in section III.C.

[11] For the definition of spatial scales for SO_2, see 40 CFR part 58, Appendix D, section 4.4 (''Sulfur Dioxide (SO_2) Design Criteria''). For further discussion on how EPA applies these definitions with respect to interstate transport of SO_2, *see* EPA's proposed rulemaking on Connecticut's SO_2 transport SIP. *See* 82 FR 21351, 21352, 21354 (May 8, 2017).

[12] EPA's March 1, 2011, memorandum, *Additional Clarification Regarding Application of Appendix W Modeling Guidance for the 1-hour NO_2 National Ambient Air Quality Standard,* is available at: *https://www.epa.gov/sites/production/files/2015-07/documents/appwno2_2.pdf.*

[13] Id. at pp. 15–16.

As discussed in sections III.C and III.D, EPA first reviewed Florida's analysis to assess how the State evaluated the transport of SO_2 to other states, the types of information used in the analysis, and the conclusions drawn by the State. EPA then conducted a weight of evidence analysis based on a review of the State's submission and other available information, including SO_2 air quality and available source modeling for other states' sources within 50 km of the Florida border.[14]

III. Florida's SIP Submission and EPA's Analysis

A. State Submission

On September 18, 2018, FDEP submitted a revision to the Florida SIP addressing prongs 1 and 2 of CAA section 110(a)(2)(D)(i)(I) for the 2010 1-hour SO_2 NAAQS. Florida conducted a weight of evidence analysis to examine whether SO_2 emissions from the State adversely affect attainment or maintenance of the 2010 1-hour SO_2 NAAQS in downwind states.

FDEP concluded that the State is meeting its prong 1 and prong 2 obligations for the 2010 1-hour SO_2 NAAQS. FDEP based its conclusions on: Trends in SO_2 design values (DVs) [15] at the State's air quality monitors from 2007–2017; SO_2 DVs for monitors located within 50 km of the Florida border; SO_2 emissions trends statewide from 2000–2017; the change in SO_2 emissions from 2014–2017 at the largest sources of SO_2 within 50 km of the border; available SO_2 modeling data for the State's round 3 DRR sources; and SIP-approved State and federal regulations that establish requirements for sources of SO_2 emissions. EPA's evaluation of Florida's September 18, 2018, SIP submission is detailed in sections III.B, C, and D.

B. EPA's Evaluation Methodology

EPA believes that a reasonable starting point for determining which sources and emissions activities in Florida are likely to impact downwind air quality in other states with respect to the 2010 1-hour SO_2 NAAQS is by using information in EPA's National Emissions Inventory (NEI).[16] The NEI is a comprehensive and detailed estimate of air emissions for criteria pollutants, criteria pollutant precursors, and hazardous air pollutants from air emissions sources, that is updated every three years using information provided by the states and other information available to EPA. EPA evaluated data from the 2014 NEI (version 2), the most recently available, complete, and quality assured dataset of the NEI.

FDEP provided 2014 NEI SO_2 emissions data statewide by source category. FDEP states that fuel combustion by electric generating units (EGUs) is the largest source of SO_2 emissions in Florida, representing 60 percent of the State's SO_2 emissions. FDEP also states that other large sources of SO_2 emissions in Florida include chemical and allied product manufacturing and fuel combustion at industrial sources, which, when added to the EGU SO_2 emissions, comprise 80 percent of Florida's total SO_2 emissions.

As shown in Table 1, the majority of SO_2 emissions in Florida originate from fuel combustion at point sources.[17] In 2014, the total SO_2 emissions from point sources in Florida comprised approximately 83 percent of the total SO_2 emissions in the State. Further analysis of these data show that SO_2 emissions from fuel combustion from point sources make up approximately 68 percent of the State's total SO_2 emissions. Because emissions from the other listed source categories are more dispersed throughout the State, those categories are less likely to cause high ambient concentrations when compared to a point source on a ton-for-ton basis. Based on EPA's analysis of the 2014 NEI, EPA believes that it is appropriate to focus the analysis on SO_2 emissions from Florida's larger point sources (*i.e.,* emitting over 100 tpy of SO_2 in 2017), which are located within the ''urban scale,'' *i.e.,* within 50 km of one or more state borders.

TABLE 1—SUMMARY OF 2014 NEI (VERSION 2) SO_2 DATA FOR FLORIDA BY SOURCE TYPE

Category	Emissions (tpy)	Percent of total SO_2 emissions
Fuel Combustion: EGUs (All Fuel Types)	99,362.87	60.4
Fuel Combustion: Industrial Boilers/Internal Combustion Engines (All Fuel Types)	11,868.39	7.2
Fuel Combustion: Commercial/Institutional (All Fuel Types)	188.60	0.1
Fuel Combustion: Residential (All Fuel Types)	91.66	0.1
Industrial Processes (All Categories)	24,904.24	15.1
Mobile Sources (All Categories)	12,534.89	7.6
Fires (All Types)	13,342.46	8.1
Waste Disposal	2,161.72	1.3
Solvent Processes	0.15	0
Miscellaneous (Non-Industrial)	13.50	0
SO_2 Emissions Total	164,468.48	100

[14] This proposed approval action is based on the information contained in the administrative record for this action and does not prejudge any other future EPA action that may make other determinations regarding Florida's or any neighboring state's air quality status. Any such future actions, such as area designations under any NAAQS, will be based on their own administrative records and EPA's analyses of information that become available at those times. Future available information may include, and is not limited to, monitoring data and modeling analyses conducted pursuant to the DRR and information submitted to EPA by states, air agencies, and third-party stakeholders such as citizen groups and industry representatives.

[15] A ''Design Value'' is a statistic that describes the air quality status of a given location relative to the level of the NAAQS. The DV for the primary 2010 1-hour SO_2 NAAQS is the 3-year average of annual 99th percentile daily maximum 1-hour values for a monitoring site. For example, the 2017 DV is calculated based on the three-year average from 2015–2017. The interpretation of the primary 2010 1-hour SO_2 NAAQS including the data handling conventions and calculations necessary for determining compliance with the NAAQS can be found in Appendix T to 40 CFR part 50.

[16] EPA's NEI is available at *https://www.epa.gov/air-emissions-inventories/national-emissions-inventory.*

[17] Florida's point sources listed in Table 1, for the purposes of this proposed action, are comprised of all of the ''Fuel Combustion'' categories and ''Industrial Processes (All Categories),'' with the exception of residential fuel combustion. Residential fuel consumption is considered a nonpoint source, and thus, residential fuel combustion data is not included in the point source fuel combustion data and related calculations.

As explained in Section II, because the physical properties of SO_2 result in relatively localized pollutant impacts near an emissions source that drop off with distance, in SO_2 transport analyses, EPA focuses on a 50 km-wide zone. Thus, EPA focused its evaluation on Florida's point sources of SO_2 emissions located within approximately 50 km of another state and their potential impact on neighboring states.

As discussed in section I.B., EPA's current implementation strategy for the 2010 1-hour SO_2 NAAQS includes the flexibility to characterize air quality for stationary sources subject to the DRR via either data collected at ambient air quality monitors sited to capture the points of maximum concentration, or air dispersion modeling (hereinafter referred to as ''DRR monitors'' or ''DRR modeling,'' respectively). EPA's assessment of SO_2 emissions from Florida's point sources located within approximately 50 km of another state and their potential impacts on neighboring states (see sections III.C.1. and II.C.2 of this notice) and SO_2 air quality data at monitors within 50 km of the Florida border (see section III.C.3. of this notice) is informed by all available data at the time of this proposed rulemaking.[18]

As described in Section III, EPA proposes to conclude that an assessment of Florida's satisfaction of the prong 1 and 2 requirements under section 110(a)(2)(D)(i)(I) of the CAA for the 2010 1-hour SO_2 NAAQS may be reasonably based upon evaluating the downwind impacts via modeling and an assessment of SO_2 emissions from Florida's point sources emitting more than 100 tpy of SO_2 (including fuel combustion sources) that are located within approximately 50 km of another state, and upon any federal regulations and SIP-approved regulations affecting SO_2 emissions of Florida's sources.

C. EPA's Prong 1 Evaluation—Significant Contribution to Nonattainment

Prong 1 of the good neighbor provision requires states' plans to prohibit emissions that will contribute significantly to nonattainment of a NAAQS in another state. FDEP asserts in its submission that Florida will not contribute significantly to nonattainment in any other state with respect to the 2010 1-hour SO_2 standard. To evaluate Florida's satisfaction of prong 1, EPA assessed the State's SIP submission with respect to the following factors: (1) Potential ambient impacts of SO_2 emissions from certain facilities in Florida on neighboring states based on available SO_2 designation air dispersion modeling results; (2) SO_2 emissions from Florida sources; (3) SO_2 ambient air quality for Florida and neighboring states; (4) SIP-approved Florida regulations that address SO_2 emissions; and (5) federal regulations that reduce SO_2 emissions at Florida sources. A detailed discussion of Florida's SIP submission with respect to each of these factors follows.[19] EPA proposes, based on the information available at the time of this rulemaking, that these factors, taken together, support the Agency's proposed determination that Florida will not contribute significantly to nonattainment of the 2010 1-hour SO_2 NAAQS in another state. As discussed in the following sections, EPA's proposed conclusion is based, in part, on the fact that modeling results for Florida's four DRR sources within 50 km of another state's border indicate that the maximum impacts do not exceed the level of the 2010 1-hour SO_2 NAAQS. Regarding three out-of-state DRR sources within 50 km of the Florida border which are located in Alabama, the information available to the Agency does not indicate there are violations of the 2010 1-hour SO_2 NAAQS in Alabama to which Florida sources could contribute. In addition, 2017 SO_2 emissions for Florida's non-DRR sources emitting over 100 tons of SO_2 within 50 km of another state are at distances or emit levels of SO_2 that make it unlikely that these SO_2 emissions could interact with SO_2 emissions from the neighboring states' sources in such a way as to contribute significantly to nonattainment in neighboring states. Finally, the downward trends in SO_2 emissions and DVs for air quality monitors in the State, combined with federal regulations and SIP-approved regulations affecting SO_2 emissions of Florida's sources, further support EPA's proposed conclusion.

1. SO_2 Designations Air Dispersion Modeling

a. State Submission

In Appendix 2 to Florida's SIP revision, FDEP included the State's January 13, 2017, modeling reports for the four DRR sources in the State within 50 km of the Florida border: Jacksonville Electric Authority (JEA)—Northside Generating Station (NGS)/St. Johns River Power Park (SJRPP);[20] [21] WestRock CP, LLC—Fernandina Beach Mill (WestRock); Gulf Power Crist Plant (Crist Plant); and White Springs Agricultural Chemical—Swift Creek Chemical Complex (White Springs). Florida used AERMOD to evaluate the area around each of these sources to satisfy the requirements of the DRR and ran the model for the years 2012–2014 using actual emissions data and monitored SO_2 background concentrations. FDEP asserts that the modeling results indicate that the area surrounding each facility is in attainment of the 2010 1-hour SO_2 NAAQS, as shown in the modeling reports included in Appendix 2 of the State's 2018 submission. FDEP included a table showing emissions decreases for these DRR sources from 2014 to 2017 (see Table 2 of Appendix 1 to Florida's SIP submission), and states that since 2014, actual emissions from these sources have collectively decreased by 74 percent.[22] A summary of the modeling results for Florida's DRR sources within 50 km of the State's border, including supplemental data EPA has reviewed as part of the Agency's analysis, is shown in Table 2 of section III.C.1.b.

b. EPA Analysis

EPA evaluated the DRR modeling data in Florida's SIP submission for sources in the State and supplemented this data with available DRR modeling results for sources in adjacent states (*i.e.,* Alabama and Georgia) that are within 50 km of the Florida border.[23] The purpose of

[18] EPA notes that the evaluation of other states' satisfaction of section 110(a)(2)(D)(i)(I) for the 2010 1-hour SO_2 NAAQS can be informed by similar factors found in this proposed rulemaking but may not be identical to the approach taken in this or any future rulemaking for Florida, depending on available information and state-specific circumstances.

[19] EPA has reviewed Florida's submission, and where new or more current information has become available, is including this information as part of the Agency's evaluation of this submission.

[20] JEA owns and operates the combined NGS and SJRPP facility in Jacksonville, Florida. Table 2 of Appendix 1 in Florida's September 18, 2018, SIP submission lists JEA NGS and JEA SJRRP separately; however, these sources are modeled as one source under the DRR.

[21] Units 1 and 2 at St. John River Power Park shut down, effective December 31, 2017.

[22] EPA notes that on page 5 of the State's September 18, 2018, SIP submission, FDEP inadvertently states that since 2014, actual emissions from the four DRR sources in Florida within 50 km of the border have decreased by 65 percent. EPA has confirmed that the value of 74 percent in Table 2 of Appendix 1 is correct.

[23] As discussed in section I.B., Florida used air dispersion modeling to characterize air quality in the vicinity of certain SO_2 emitting sources to identify the maximum 1-hour SO_2 concentrations in ambient air which informed EPA's round 3 SO_2 designations. EPA's preferred modeling platform for regulatory purposes is AERMOD (Appendix W of 40 CFR part 51). In these DRR modeling analyses using AERMOD, the impacts of the actual emissions for one or more of the recent 3-year periods (*e.g.,* 2012–2014, 2013–2015, 2014–2016) were considered, and in some cases, the modeling was of currently effective limits on allowable emissions in lieu of or

evaluating modeling results in adjacent states within 50 km of the Florida border is to ascertain whether any nearby sources in Florida are impacting a violation of the 2010 1-hour SO_2 NAAQS in another state.

Table 2 provides a summary of the modeling results for the four modeled DRR sources in Florida which are located within 50 km of another state. The modeling analyses for these four DRR sources resulted in no modeled violations of the 2010 1-hour SO_2 NAAQS within the modeling domains for each facility. As a result, no further analysis is necessary for assessing the impacts of the interstate transport of SO_2 pollution from these sources.

TABLE 2—FLORIDA SOURCES WITH DRR MODELING LOCATED WITHIN 50 km OF ANOTHER STATE

DRR source	County	Approximate distance from source to adjacent state (km)	Other facilities included in modeling?	Modeled 99th percentile daily maximum 1-hour SO_2 concentration (ppb)	Model grid extends into another state?
Crist Plant	Escambia	17 (AL)	Yes—International Paper Pensacola Facility (FL).	33.81 *(based on 2012–2014 actual emissions for both facilities).*	No.
JEA-NGS/SJRPP	Duval	35 (GA)	Yes—Cedar Bay/Generating Plant, Renessenz Jacksonville Facility (now Symrise, Inc.), Anchor Glass Jacksonville Plant, and IFF Chemical Holdings (FL).	56.22 *(based on 2012–2014 actual emissions for SJRPP and Renessenz Jacksonville Facility (now Symrise, Inc.); allowable emission rates for Cedar Bay, Anchor Glass, and IFF Chemical facilities).*	No.
WestRock[24]	Nassau	<5 (GA)	Yes—Rayonier Performance Fibers (FL).	66.09 *(based on 2012–2014 actual emissions for WestRock and Rayonier and permitted allowable emissions for three minor units at WestRock).*	Yes (approximately 3 km into a portion of southern Georgia).
White Springs	Hamilton	16 (GA)	Yes—PCS Suwannee River Plant* (FL).	56.34 *(based on 2012–2014 actual emissions for sulfuric acid plants E & F and permitted allowable emissions for the PCS Suwaneee River Plant and the remaining sources at White Springs River Plant equivalent to 1,276 tpy).*	No.

*The PCS Suwannee River Plant shut down most of its operations in 2014.

There are three DRR sources in neighboring states which are located within 50 km of Florida and which elected to provide air dispersion modeling under the DRR: Alabama Power Company—James M. Barry Electric Generating Plant (Plant Barry); Akzo Nobel Functional Chemicals—LeMoyne Site (AkzoNobel); and Escambia Operating Company—Big Escambia Creek Plant (Big Escambia), which are located approximately 36, 41, and 8 km, respectively, from the Florida border. These sources are all located in Alabama. With respect to the modeling and other information submitted by Alabama under the DRR for these modeled Alabama sources, EPA previously stated that the Agency does not have sufficient information to determine whether the areas around these sources meet or do not meet the 2010 1-hour SO_2 NAAQS or contribute to an area that does not meet the standard, and thus designated these areas as unclassifiable.[25] Accordingly, the Agency has further assessed AkzoNobel and Plant Barry in section III.C.2.b. of this action to determine whether there is evidence of a violation in Alabama with respect to interstate transport for the 2010 1-hour SO_2 NAAQS.

Regarding Big Escambia, the Alabama Department of Environmental Management (ADEM) provided supplemental information to EPA in correspondence dated September 5, 2019, September 20, 2019, and September 25, 2019, December 2, 2019, and December 6, 2019 (collectively, the ''Big Escambia Supplement'') to address interstate transport by evaluating potential SO_2 ambient air impacts in the neighboring state of Florida.[26] On December 31, 2019 (84 FR 72278), EPA published a notice of proposed rulemaking containing an evaluation of this supplemental information[27] and proposing to determine that ADEM's revised modeling for Big Escambia can be used for evaluating interstate transport of SO_2 emissions from this facility to locations in Florida. Big Escambia is located 8 km from the Florida border, 21 km northwest from Breitburn Operating, L.P (Breitburn), the nearest SO_2 source in Florida. Breitburn is located less than 5 km from the Florida-Alabama border. Florida's submittal indicates that Breitburn's 2017 SO_2 emissions are 1,491 tons. Due to its proximity to Big Escambia, Alabama's modeling analysis includes Breitburn as a modeled nearby source using its permitted allowable emissions of 2,181 pounds per hour (9,553 tpy). This modeling indicates that the maximum impacts do not exceed the

as a supplement to modeling of actual emissions. The available air dispersion modeling of certain SO_2 sources can support transport related conclusions about whether sources in one state will potentially contribute significantly to nonattainment or interfere with maintenance of the 2010 1-hour SO_2 standard in other states. While AERMOD was not designed specifically to address interstate transport, the 50-km distance that EPA recommends for use with AERMOD aligns with the concept that there are localized pollutant impacts of SO_2 near an emissions source that drop off with distance. Thus, EPA believes that the use of AERMOD provides a reliable indication of air quality for transport purposes.

[24] As discussed in footnote 8, EPA's redesignation of the Nassau Area was based, in part, on a modeled attainment demonstration that included permanent and enforceable SO_2 controls and emissions limits at the Rayonier and WestRock facilities showing attainment of the 2010 1-hour SO_2 standard.

[25] *See* EPA's initial and final technical support document (TSDs) for Alabama at: *https://www.epa.gov/sites/production/files/2017-08/documents/3_al_so2_rd3-final.pdf* and *https://www.epa.gov/sites/production/files/2017-12/documents/03-al-so2-rd3-final.pdf.*

[26] The Big Escambia Supplement is available in Docket ID: EPA–R04–OAR–2018–0792.

[27] EPA prepared a TSD—titled ''Technical Support Document (TSD) Addressing Big Escambia Data Requirements Rule (DRR) Modeling for the Purpose of Evaluating Interstate Transport''—analyzing the sufficiency of the model for use in evaluating interstate transport from Big Escambia. The TSD is located in the docket for that proposed rulemaking at Docket ID: EPA–R04–OAR–2018–0792.

level of the 2010 1-hour SO_2 NAAQS. EPA believes that the modeling provides a conservative estimate of Breitburn's SO_2 impacts at locations in Alabama near the Florida-Alabama border, because the Big Escambia modeling used allowable emissions of SO_2 for Breitburn, which are approximately 6.4 times Breitburn's actual SO_2 emissions for 2017 (9,533 tons/1,491 tons = 6.4). Breitburn's 2014–2018 SO_2 emissions contained in EPA's Emissions Inventory System (EIS) are shown in Table 3 below. SO_2 emissions have remained fairly constant from 2014–2018, with the 2018 emissions representing the lowest emissions over that time period. Breitburn's 2014–2018 emissions profile demonstrates that Breitburn has consistently operated well below its permitted allowable emission rate. Thus, Breitburn's actual contribution to SO_2 concentrations in Alabama would likely be much less than the predicted concentrations in the Big Escambia modeling. Based upon this information, EPA proposes to find that SO_2 emissions from Breitburn will not contribute significantly to nonattainment in Alabama.

TABLE 3—BREITBURN SO_2 EMISSIONS TRENDS (2014–2018)

[Tons]

Source	2014	2015	2016	2017	2018
Breitburn	1,327	1,454	1,461	1,491	* 1,242

* Data submitted to EIS by FDEP.

EPA believes that the modeling results for the DRR sources located in Florida (summarized in Table 2) and available information for the areas surrounding the DRR sources in Alabama within 50 km of the Florida border do not indicate there are violations of the 2010 1-hour SO_2 NAAQS in Alabama to which Florida sources could contribute, based partially on the updated modeling completed by Alabama which addresses the Breitburn facility, weighed along with the other factors in this notice, support EPA's proposed conclusion that sources in Florida will not contribute significantly to nonattainment of the 2010 1-hour SO_2 NAAQS in any other state.

2. SO_2 Emissions Analysis

a. State Submission

As discussed in section III.B, Florida's SIP revision presents SO_2 emissions from EPA's 2014 NEI by source category and statewide SO_2 emission trends for stationary industrial, on-road, nonroad, and nonpoint sources from 2000 to 2017. The State notes that SO_2 emissions from stationary, on-road, nonroad, and nonpoint sources have decreased by 90, 95, 99, and 61 percent, respectively, since 2000. FDEP states that the largest source categories of SO_2 emissions in Florida according to the 2014 NEI are chemical and allied product manufacturing and fuel combustion at electric utilities and industrial facilities. SO_2 emissions from industrial sources have decreased by 90 percent since the year 2000 due to unit shut downs, fuel switches from higher sulfur-emitting fuels to lower sulfur-emitting fuels, and SO_2 reductions due to sources' compliance with EPA's Mercury and Air Toxics Standards (MATS). FDEP anticipates that emissions are expected to decrease further in the coming years due to additional emission unit shutdowns and fuel switches.

In addition, FDEP included 2014 and 2017 emissions for Florida's four DRR sources within 50 km of the State's border (discussed in section III.C.1 and listed in Table 2). From 2014 to 2017, total annual SO_2 emissions from these four sources have decreased by 22,021 tons (74 percent) from 29,762 tons to 7,741 tons.

b. EPA Analysis

EPA reviewed the SO_2 emissions data from 1990 to 2017 for Florida and the adjacent states of Alabama and Georgia. EPA notes that statewide SO_2 emissions for these states, including Florida, have decreased significantly over this time period. This data specifically shows that Florida's statewide SO_2 emissions decreased from approximately 799,150 tons in 1990 to 100,850 tons in 2017.[28]

As discussed in section III.B, EPA also finds that it is appropriate to examine the impacts of SO_2 emissions from stationary sources emitting greater than 100 tons of SO_2 in Florida at distances ranging from zero km to 50 km from a neighboring state's border. Therefore, in addition to those sources addressed in section III.C.1.b. of this notice, EPA also assessed the potential impacts of SO_2 emissions from stationary sources not subject to the DRR that emitted over 100 tons of SO_2 in 2017 and are located in Florida within 50 km from the border. EPA assessed this information to evaluate whether the SO_2 emissions from these sources could interact with SO_2 emissions from the nearest source in a neighboring state in such a way as to impact a violation of the 2010 1-hour SO_2 NAAQS in that state. Table 4 lists the four sources in Florida not regulated under the DRR that emitted greater than 100 tpy of SO_2 in 2017 and are located within 50 km of the State's border (*i.e.,* Anchor Glass Container Corporation (Anchor), Breitburn, IFF Chemical Holdings, Inc. (IFF), and Symrise).

TABLE 4—FLORIDA NON-DRR SO_2 SOURCES EMITTING GREATER THAN 100 TPY NEAR NEIGHBORING STATES

Florida source	2017 Annual SO_2 emissions (tons)	Approximate distance to Florida border (km)	Closest neighboring state	Approximate distance to nearest neighboring state SO_2 source (km)	Nearest neighboring state non-DRR SO_2 source & 2017 emissions (>100 tons SO_2)
Anchor	117.1	26	Georgia	92	Brunswick Cellulose LLC (281.4 tons).
Breitburn	1,491	<5	Alabama	16	Georgia-Pacific Brewton LLC (103 tons).
IFF	494.1	27	Georgia	91	Brunswick Cellulose LLC (281.4 tons).

[28] State annual emissions trends for criteria pollutants of 14 emission source categories ("Tier 1") from 1990 to 2017 are available at: *https://www.epa.gov/air-emissions-inventories/air-pollutant-emissions-trends-data.*

TABLE 4—FLORIDA NON-DRR SO_2 SOURCES EMITTING GREATER THAN 100 TPY NEAR NEIGHBORING STATES—Continued

Florida source	2017 Annual SO_2 emissions (tons)	Approximate distance to Florida border (km)	Closest neighboring state	Approximate distance to nearest neighboring state SO_2 source (km)	Nearest neighboring state non-DRR SO_2 source & 2017 emissions (>100 tons SO_2)
Symrise	824.9	38	Georgia	81	Brunswick Cellulose LLC (281.4 tons).

Currently, the monitoring and modeling data available to EPA does not suggest that Alabama and Florida are impacted by SO_2 emissions from the four Florida sources not subject to the DRR listed in Table 4. Of these four Florida sources, Anchor, IFF, and Symrise are located over 50 km from the nearest source in another state emitting over 100 tons of SO_2. EPA believes that the distances greater than 50 km between sources make it unlikely that SO_2 emissions from these three Florida sources could interact with SO_2 emissions from these out-of-state sources in such a way as to contribute significantly to nonattainment in Alabama and Georgia.

The remaining source, Breitburn, is located at or less than 50 km from the nearest source in Alabama (Georgia-Pacific Brewton LLC) which emits greater than 100 tons of SO_2. EPA's evaluation of potential SO_2 impacts from Breitburn on Alabama is discussed in Section III.C.1.b of this notice. Based upon the analysis of the modeling for Alabama's Big Escambia in Section III.C.1.b, EPA believes that emissions from Breitburn are not contributing significantly to nonattainment in Alabama.

In addition, EPA evaluated the 2017 SO_2 emissions data for AkzoNobel and Plant Barry, two of the DRR sources in Alabama located within 50 km of the Florida border for which EPA could not rely on existing DRR modeling. This was done to assess whether Florida sources may potentially be impacting the areas surrounding these Alabama sources under the 2010 1-hour SO_2 NAAQS. Table 5 provides annual 2017 SO_2 emissions data for AkzoNobel and Plant Barry, along with the distances to the closest neighboring state's non-DRR sources emitting over 100 tpy of SO_2. Table 6 shows the SO_2 emissions trends for AkzoNobel and Plant Barry from 2012–2017 (and 2018 if data is available).

TABLE 5—ALABAMA DRR SO_2 SOURCES EMITTING GREATER THAN 100 TPY NEAR NEIGHBORING STATES

Alabama source	2017 Annual SO_2 emissions (tons)	Approximate distance to Alabama (km)	Closest neighboring state	Approximate distance to nearest neighboring state SO_2 source (km)	Nearest neighboring state SO_2 source & 2017 emissions (>100 tons SO_2)
Plant Barry	4,218	40	Mississippi	74	Mississippi Power Company—Plant Daniel (Plant Daniel) (204 tons).
AkzoNobel	2,201	39	Mississippi	71	Plant Daniel (204 tons).

TABLE 6—ALABAMA DRR SO_2 SOURCES EMITTING GREATER THAN 100 TPY NEAR NEIGHBORING STATES—EMISSIONS TRENDS

Alabama source	2012	2013	2014	2015	2016	2017	2018
Plant Barry *	10,731	13,448	10,690	8,688	5,421	4,218	5,257
AkzoNobel	3,293	2,752	2,320	3,587	3,646	2,201	** N/A

* SO_2 emissions for Plant Barry are from EPA's Air Markets Program Data (AMPD) accessible at: *https://ampd.epa.gov/ampd/.*
** 2018 SO_2 emissions not available for AkzoNobel.

Table 5 shows that the distances between each facility and the nearest state's source to each facility which emits over 100 tpy of SO_2, exceed 50 km. The closest sources in another state to AkzoNobel and Plant Barry are located in Mississippi; therefore, there are no Florida sources within 50 km of AkzoNobel and Plant Barry which could interact with SO_2 emissions from these Alabama sources in Table 4 in such a way as to contribute significantly to nonattainment in Alabama. Table 5 shows that SO_2 emissions have declined from 2012 to 2017/2018 for these Alabama sources.

EPA also considered whether any changes in controls or operations had occurred at AkzoNobel and Plant Barry. AkzoNobel entered into a consent decree with EPA which required more stringent emissions limits that have reduced SO_2 emissions at the facility by 2,340 tpy.[29] Plant Barry has retired Unit 3, and Units 1 and 2 are restricted to burn only natural gas as of January 1, 2017.

[29] The consent decree, entered on November 21, 2019, is available at: *https://www.justice.gov/enrd/consent-decree/file/1201231/download.* A press release is available at: *https://www.epa.gov/newsreleases/settlement-reached-nouryon-functional-chemicals-llc-fka-akzo-nobel-functional-chemicals.*

EPA also evaluated data from the Agency's Air Quality System (AQS)[30] from the SO_2 monitors in the surrounding areas of AkzoNobel and Plant Barry. The only monitor within 50 km of these sources is located in Mobile County, Alabama (AQS ID: 01–097–0003) and is approximately 23 km from AkzoNobel. The 2018 DV for this monitor is 11 ppb. EPA believes that the SO_2 emissions trends information in Florida's submission, the Agency's analysis of the sources in Tables 4 and 5, and the SO_2 emissions trends for AkzoNobel and Plant Barry in Table 6, support the Agency's conclusion that sources in Florida will not contribute significantly to nonattainment of the 2010 1-hour SO_2 NAAQS in a nearby state.

3. SO_2 Ambient Air Quality

a. State Submission

In its September 18, 2018, SIP submission, FDEP included a table showing DV trends from 2007 to 2017 for Florida's 23 existing SO_2 air quality monitors. All of Florida's SO_2 air quality monitors have 2015–2017 SO_2 DVs below the level of the 2010 1-hour SO_2 NAAQS. FDEP notes that the majority of these 2015–2017 DVs are ''well below'' the 2010 1-hour SO_2 NAAQS and that several monitors show ''significant decreases'' in their SO_2 DVs over time.[31]

FDEP also identified recent maximum 1-hour SO_2 concentrations at the one monitor in Mobile County, Alabama, that is within 50 km of the Florida border and notes that these concentrations—30.1 ppb in 2016 and 23.9 ppb in 2017—are well below the level of the 2010 1-hour SO_2 NAAQS. FDEP also included the 2017 DV (5 ppb) for the next nearest SO_2 monitor—located in Georgia—and notes that this monitor's DV is seven percent of the 2010 1-hour SO_2 NAAQS.[32] In addition, FDEP identified the closest SO_2 nonattainment areas outside of Florida, with the nearest one located approximately 145 km away in St. Bernard Parish in New Orleans, Louisiana.

FDEP notes that on August 5, 2013 (78 FR 47191), EPA designated an area in Nassau County, Florida, as nonattainment for the 2010 1-hour SO_2 NAAQS based on ambient SO_2 monitoring data in the area for the three-year period 2009–2011 (round 1 designations). In Florida's SIP submission, the State indicates that this is the only SO_2 nonattainment area within 50 km of another state (approximately 4 km from the Georgia border). FDEP submitted a redesignation request and maintenance plan for the area on June 7, 2018. EPA notes that, subsequent to the state's submission, the Agency approved Florida's request to redesignate the Nassau County area to attainment for the 2010 1-hour SO_2 NAAQS and the accompanying SIP revision containing the maintenance plan for the area on April 24, 2019 (effective May 24, 2019). *See* 84 FR 17085.

b. EPA Analysis

Since the time of development of Florida's SIP submission, DVs based on more recent certified monitoring data from monitors in EPA's AQS (''AQS monitors'') have become available for Florida and the surrounding states. The most recent certified 3-year DV period is 2016–2018. EPA has summarized the DVs from 2012 to 2018 for AQS monitors in Florida within 50 km of another state in Table 7. The 2010 1-hour SO_2 standard is violated at an ambient air quality monitoring site (or in the case of dispersion modeling, at an ambient air quality receptor location) when the 3-year average of the annual 99th percentile of the daily maximum 1-hour average concentrations exceeds 75 ppb, as determined in accordance with Appendix T of 40 CFR part 50.

TABLE 7—TREND IN 1-HOUR SO_2 DVS (ppb) FOR AQS MONITORS IN FLORIDA WITHIN 50 km OF ANOTHER STATE

County	AQS site code	2010–2012	2011–2013	2012–2014	2013–2015	2014–2016	2015–2017	2016–2018	Approximate distance to state border (km)
Duval	12–031–0032	16	17	17	16	16	16	18	39 (GA)
Duval	* 12–031–0080	13	11	17	17	17	10	** ND	37 (GA)
Duval	12–031–0081	29	29	27	23	20	12	11	38 (GA)
Duval	* 12–031–0097	18	21	21	23	18	14	** ND	43 (GA)
Escambia	12–033–0004	27	22	25	24	16	8	6	20 (AL)
Hamilton	12–047–0015	23	25	** ND	** ND	** ND	** ND	** ND	19 (GA)
Nassau	12–089–0005	122	70	57	58	51	43	37	6 (GA)

* EPA approved the discontinuation of two SO_2 monitors in Duval County (AQS IDs: 12–031–0080 and 12–031–0097) in 2018.
** ND indicates ''No Data'' due to monitor startup or shutdown (operated less than three years), data quality issues, or incomplete data.

As shown in Table 7, the 2012–2018 DVs for six of the seven monitoring sites in Florida within 50 km of another state's border have remained below the level of the 2010 1-hour SO_2 NAAQS, with the exception of the Nassau County monitor which had a 122 ppb DV for the 2010–2012 period. The DVs at the Nassau County monitor have declined over the 2013 through 2018 DV time periods, and these DVs are all below the level of the 2010 1-hour SO_2 NAAQS. The Hamilton County monitor has 2012 and 2013 DVs of 23 and 25 ppb, respectively, and incomplete data for the remaining DV time periods (2014–2018). The Hamilton County monitor has not measured a daily exceedance of the 2010 1-hour SO_2 NAAQS since 2013.

There is one AQS monitor in Alabama (Mobile County) which is located within 50 km of the Florida border. This monitor is approximately 45 km from Florida and began operation on January 1, 2016. The monitor has a complete, quality-assured 2016–2018 DV of 11 ppb, which is 85 percent below the level of the 2010 1-hour SO_2 NAAQS. The Mobile County monitor has measured no daily exceedances of the 2010 1-hour SO_2 NAAQS during its years of operation.

EPA also evaluated monitoring data provided to date for AQS monitors located in states adjacent to Florida and neighboring states within 50 km of the State's border that were established to characterize the air quality around

[30] EPA's AQS contains ambient air pollution data collected by EPA, state, local, and tribal air pollution control agencies. This data is available at *https://www.epa.gov/air-trends/air-quality-design-values.*

[31] See Table 3 of Appendix 1 of Florida's September 18, 2018, SIP submission.

[32] FDEP inadvertently identified the nearest monitor in Georgia—located in Savannah, Georgia, approximately 155 km from the State's border—as AQS ID 13–021–0012. EPA has confirmed that the monitor with this ID is located in Macon, Georgia, approximately 241 km from the Florida border, and it has 2016, 2017, and 2018 DVs of 9, 5, and 4 ppb, respectively. The monitor located in Savannah, Georgia, is AQS ID 13–051–1002, and it has 2016, 2017, and 2018 DVs of 52, 48, 45 ppb, respectively.

specific sources subject to EPA's DRR to inform the Agency's future round 4 designations for the 2010 1-hour SO_2 NAAQS in lieu of modeling. No sources in Florida elected to establish monitors under the DRR and there are no DRR monitors within 50 km of the Florida border located in the adjacent states of Alabama and Georgia.

EPA believes that the air quality data for monitors within 50 km of the Florida border within the State and in surrounding states support EPA's proposed conclusion that Florida will not contribute significantly to nonattainment of the 2010 1-hour SO_2 NAAQS in any other state.

4. SIP-Approved Regulations Addressing SO_2 Emissions

a. State Submission

In its September 18, 2018, SIP submission, Florida identified SIP-approved measures which help ensure that SO_2 emissions in the State do not contribute significantly to nonattainment of the 2010 1-hour SO_2 NAAQS in any other state. FDEP indicates that many of the current SIP-approved rules are adopted under the authority of subsection 403.061(35), Florida Statutes. FDEP lists the following SIP-approved Florida rule chapters of the Florida Administrative Code (F.A.C.) which establish emission limits and other control measures for SO_2: Chapter 62–210, F.A.C., *Stationary Sources—General Requirements;* Chapter 62–212, F.A.C., *Stationary Sources—Preconstruction Review;* and Chapter 62–296, F.A.C., *Stationary Sources—Emission Standards.* Chapter 62–210, F.A.C establishes definitions and the general requirements for major and minor stationary sources of air pollutant emissions. Chapter 62–212, F.A.C. establishes the preconstruction review requirements for proposed new emissions units, new facilities, and modifications to existing units and facilities. Chapter 62–296, F.A.C. establishes emission limiting standards and compliance requirements for stationary sources of air pollutant emissions, including SIP emission limits that restrict SO_2 emissions from various source categories (*e.g.,* EGUs (Rule 62–296.405, F.A.C.) and sulfuric acid plants (Rule 62–296.402, F.A.C.)) and source-specific SO_2 emission limits that form the basis of Florida's SO_2 nonattainment area SIPs.

b. EPA Analysis

As part of EPA's weight of evidence approach to evaluating 2010 SO_2 transport SIPs, EPA considered Florida's SIP-approved measures summarized in III.C.4.a. of this notice, which establish emission limits, permitting requirements, and other control measures for SO_2. For the purposes of ensuring that SO_2 emissions at new major sources or major modifications at existing major sources in Florida do not contribute significantly to nonattainment of the NAAQS, the State has a SIP-approved major source new source review (NSR) program. Chapters 62–210 and 62–212, F.A.C. collectively regulate the construction of any new major stationary source or any modification at an existing major stationary source in an area designated as nonattainment, attainment, or unclassifiable. The State's SIP-approved prevention of significant deterioration (PSD) regulations are found in Chapters 62–210, F.A.C., *Stationary Sources—General Requirements,* and 62–212, F.A.C., *Stationary Sources—Preconstruction Review,* F.A.C., which apply to the construction of any new major stationary source or major modification at an existing major stationary source in an area designated as attainment or unclassifiable or not yet designated. Florida's SIP-approved rules, 62–210.300, F.A.C., and 62–212.300, F.A.C., collectively govern the preconstruction permitting of modifications to and construction of minor stationary sources. These major and minor NSR rules are designed to ensure that SO_2 emissions due to major modifications at existing major stationary sources, modifications at minor stationary sources, and the construction of new major and minor sources subject to these rules will not contribute significantly to nonattainment of the 2010 1-hour SO_2 NAAQS in neighboring states.

5. Federal Regulations Addressing SO_2 Emissions in Florida

a. State Submission

FDEP notes that MATS has helped to reduce SO_2 emissions from industrial sources as discussed in section III.C.2.a of this notice.

b. EPA Analysis

EPA agrees that MATS is a federal control measure which has helped to reduce SO_2 emissions in Florida, along with other federal regulatory programs such as: 2007 Heavy-Duty Highway Rule; Acid Rain Program; National Emission Standards for Hazardous Air Pollutants; New Source Performance Standards; Nonroad Diesel Rule; and Tier 1 and 2 Mobile Source Rules. EPA believes that MATS, along with the other federal measures EPA identified, have and continue to lower SO_2 emissions, which, in turn, supports EPA's proposed conclusion that SO_2 emissions from Florida will not contribute significantly to nonattainment of the 2010 1-hour SO_2 NAAQS in another state.

6. Conclusion

EPA proposes to determine that Florida's September 18, 2018, SIP submission satisfies the requirements of prong 1 of CAA section 110(a)(2)(D)(i)(I). This proposed determination is based on the following considerations: DVs for six of Florida's seven AQS SO_2 monitors within 50 km of another state's border have remained below the 2010 1-hour SO_2 NAAQS since 2013 and six of these monitors have had DVs well below the 2010 1-hour SO_2 NAAQS since 2011 (the seventh monitor in Hamilton County, Florida, has no data to calculate DVs for the 2012–2014 through the 2016–2018 time periods); the 2018 99th percentile 1-hour SO_2 concentrations for Alabama's Mobile County monitor within 50 km of Florida's border is well below the level of the 2010 1-hour SO_2 NAAQS for the 2016–2018 time period; modeling for the DRR sources within 50 km of the Florida border both within the State and in Alabama estimates impacts below the level of the 2010 1-hour SO_2 NAAQS; downward SO_2 emissions trends in Florida; SO_2 emissions from Florida sources not subject to the DRR which each emitted over 100 tons of SO_2 in 2017 are not likely interacting with SO_2 emissions from the nearest out-of-state source in a bordering state in such a way as to cause a violation in Alabama and Georgia due to either distances over 50 km between the sources or, in the case of Breitburn, modeling which includes this source at much higher permitted emissions shows impacts below the level of the 2010 1-hour SO_2 NAAQS; and current Florida SIP-approved measures and federal emissions control programs ensure control of SO_2 emissions from sources within Florida.

Based on the analysis provided by Florida in its SIP submission and EPA's analysis of the factors described in section III.C, EPA proposes to find that sources within Florida will not contribute significantly to nonattainment of the 2010 1-hour SO_2 NAAQS in any other state.

D. EPA's Prong 2 Evaluation—Interference With Maintenance of the NAAQS

Prong 2 of the good neighbor provision requires state plans to prohibit emissions that will interfere

with maintenance of a NAAQS in another state.

1. State Submission

In its September 18, 2018, SIP submission, FDEP confirms that Florida will not interfere with maintenance of the 2010 1-hour SO_2 standard in any other state. FDEP bases its conclusion for prong 2 on: The localized nature of SO_2 dispersion, emissions, and monitoring data presented in the submission and discussed in sections III.C.2.a and III.C.3.a of this notice, and DRR modeling for large SO_2 sources within 50 km of the State border which shows the areas around these sources are not exceeding the level of the 2010 1-hour SO_2 NAAQS. As discussed in sections III.C.4 and III.C.5, FDEP has SIP-approved measures which address sources of SO_2 emissions in Florida and there are also federal measures that control SO_2 emissions in the State. Specifically, FDEP notes that SIP-approved sections of Chapters 62–210 and 62–212, F.A.C., require any new major source or major modification to undergo PSD or nonattainment NSR permitting to demonstrate that the source will not cause or contribute to a violation of any NAAQS in Florida or any other state. FDEP also states that Florida's SIP contains other emission limiting standards such as Chapter 62–296, F.A.C., which includes SIP emissions limits that restrict SO_2 emissions from various source categories.

2. EPA Analysis

In *North Carolina* v. *EPA,* the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) explained that the regulating authority must give prong 2 ''independent significance'' from prong 1 by evaluating the impact of upwind state emissions on downwind areas that, while currently in attainment, are at risk of future nonattainment. *North Carolina* v. *EPA,* 531 F.3d 896, 910–11 (D.C. Cir. 2008). EPA interprets prong 2 to require an evaluation of the potential impact of a state's emissions on areas that are currently measuring clean data, but that may have issues maintaining that air quality. Therefore, in addition to the analysis presented by Florida, EPA has also reviewed additional information on SO_2 air quality and emission trends to evaluate the State's conclusion that Florida will not interfere with maintenance of the 2010 1-hour SO_2 NAAQS in downwind states. This evaluation builds on the analysis regarding significant contribution to nonattainment (prong 1).

For the prong 2 analysis, EPA evaluated the data discussed in section III.C. of this notice for prong 1, with a specific focus on evaluating emissions trends in Florida, analyzing air quality data, and assessing how future sources of SO_2 are addressed through existing SIP-approved and federal regulations. Given the continuing trend of decreasing SO_2 emissions from sources within Florida, and the fact that all areas in other states within 50 km of the Florida border which have existing monitors have DVs attaining the 2010 1-hour SO_2 NAAQS, EPA believes that evaluating whether these decreases in emissions can be maintained over time is a reasonable criterion to ensure that sources within Florida do not interfere with its neighboring states' ability to maintain the 2010 1-hour SO_2 NAAQS.

With respect to air quality data trends, the 2016–2018 DVs for AQS SO_2 monitors both in Florida within 50 km of another state's border and in Alabama within 50 km of Florida's border are below the 2010 1-hour SO_2 NAAQS. Further, modeling results for DRR sources within 50 km of Florida's border within the State demonstrate attainment of the 2010 1-hour SO_2 NAAQS, and thus, demonstrate that Florida's largest point sources of SO_2 are not expected to interfere with maintenance of the 2010 1-hour SO_2 NAAQS in another state.

EPA believes that federal and SIP-approved State regulations discussed in sections III.C.4 and III.C.5 that both directly and indirectly reduce emissions of SO_2 in Florida help ensure that the State does not interfere with maintenance of the NAAQS in another state. SO_2 emissions from future major modifications and new major sources will be addressed by Florida's SIP-approved major NSR regulations described in section III.C.4. In addition, Florida has a SIP-approved minor NSR permit program addressing small emission sources of SO_2. The permitting regulations contained within these programs are designed to ensure that emissions from these activities do not interfere with maintenance of the 2010 1-hour SO_2 NAAQS in the State or in any other state.

3. Conclusion

EPA proposes to determine that Florida's September 18, 2018, SIP submission satisfies the requirements of prong 2 of CAA section 110(a)(2)(D)(i)(I). This determination is based on the following considerations: SO_2 emissions statewide from 2000 to 2017 in Florida have declined significantly; SO_2 emissions from Florida's non-DRR sources emitting greater than 100 tpy in 2017 listed in Table 4 of this notice are not likely interacting with SO_2 emissions from the nearest out-of-state source in a bordering state in such a way as to interfere with maintenance of the 2010 1-hour SO_2 NAAQS in Alabama and Georgia due to either distances over 50 km between the sources or, in the case of Breitburn modeling which includes this source at much higher permitted emissions shows impacts below the level of the 2010 1-hour SO_2 NAAQS; current Florida SIP-approved measures and federal emissions control programs ensure control of SO_2 emissions from sources within Florida; Florida's SIP-approved PSD and minor source NSR permit programs will address future large and small SO_2 sources; current DVs for AQS SO_2 monitors both in Florida within 50 km of another state's border and in Alabama within 50 km of Florida's border are below the level of the 2010 1-hour SO_2 NAAQS; and modeling for DRR sources within 50 km of Florida's border both within the State and in Alabama demonstrate that Florida's largest point sources of SO_2 are not expected to interfere with maintenance of current attainment of the 2010 1-hour SO_2 NAAQS in another state. Based on the analysis provided by Florida in its SIP submission and EPA's supplemental analysis of the factors described in section III.C and III.D of this notice, EPA proposes to find that emission sources within Florida will not interfere with maintenance of the 2010 1-hour SO_2 NAAQS in any other state.

IV. Proposed Action

In light of the above analysis, EPA is proposing to approve Florida's September 18, 2018, SIP submission as demonstrating that emissions from Florida will not contribute significantly to nonattainment or interfere with maintenance of the 2010 1-hour SO_2 NAAQS in another state.

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under

Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

• Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;

• Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

• Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

• Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the 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).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

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

Dated: January 30, 2020.

Mary S. Walker,

Regional Administrator, Region 4.

[FR Doc. 2020–02502 Filed 2–7–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2019–0305; FRL–10005–29–Region 4]

Air Plan Approval; Tennessee; Chattanooga Miscellaneous Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Chattanooga portion of the Tennessee State Implementation Plan (SIP) submitted by the State of Tennessee through the Tennessee Department of Environment and Conservation (TDEC) on behalf of the Chattanooga/Hamilton County Air Pollution Control Bureau (Bureau) on September 12, 2018. The SIP submittal removes and replaces the Chattanooga City Code, Air Pollution Control Ordinances pertaining to the Chattanooga-Hamilton County Air Pollution Control Board (Board), powers and duties of the Board, penalties, enforcement and permit fees. The SIP revision that EPA is proposing to approve is consistent with the requirements of the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before March 2, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2019–0305 at *www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Sean Lakeman, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9043. Mr. Lakeman can also be reached via electronic mail at *lakeman.sean@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Through a letter dated September 12, 2018, TDEC submitted a SIP revision on behalf of the Bureau requesting removal and replacement of certain air quality rules in the Chattanooga portion of the Tennessee SIP.[1] [2] This rulemaking proposes to approve the Chattanooga City Code Part II, Chapter 4, Section 4–4, ''Penalties for violation of chapter, permit or order,'' [3] Section 4–6, ''Air pollution control board; bureau of air pollution control; persons required to comply with chapter,'' [4] Section 4–7,

[1] The Bureau is comprised of Hamilton County and the municipalities of Chattanooga, Collegedale, East Ridge, Lakesite, Lookout Mountain, Red Bank, Ridgeside, Signal Mountain, Soddy Daisy, and Walden. The Bureau recommends regulatory revisions, which are subsequently adopted by the eleven jurisdictions. The Bureau then implements and enforces the regulations, as necessary, in each jurisdiction. Because the air pollution control regulations/ordinances adopted by the jurisdictions within the Bureau are substantively identical (except as noted later in this notice), EPA refers solely to Chattanooga and the Chattanooga rules throughout the notice as representative of the other ten jurisdictions for brevity and simplicity. *See* footnotes 3 through 8, later in this notice.

[2] EPA received the SIP revision on September 18, 2018.

[3] In this proposed action, EPA is also proposing to approve similar changes in the following sections of the Air Pollution Control Regulations/Ordinances for the remaining jurisdictions within the Bureau, which were locally effective as of the relevant dates below: Hamilton County—Section 4 (9/6/17); City of Collegedale—Section 14–304 (10/16/17); City of East Ridge—Section 8–4 (10/26/17); City of Lakesite—Section 14–4 (11/2/17); Town of Lookout Mountain—Section 4 (11/14/17); City of Red Bank—Section 20–4 (11/21/17); City of Ridgeside—Section 4 (1/16/18); City of Signal Mountain—Section 4 (10/20/17); City of Soddy-Daisy—Section 8–4 (10/5/17); and Town of Walden—Section 4 (10/16/17). The only substantive difference between the various jurisdictions' regulations is that Chattanooga Ordinance Part II, Chapter 4, Section 4–4 contains an additional sentence regarding fines and fees, which is discussed later in this notice.

[4] In this proposed action, EPA is also proposing to approve substantively similar changes in the following sections of the Air Pollution Control Regulations/Ordinances for the remaining

Continued

''Powers and duties of the board; delegation,'' [5] Paragraphs 4–8(a)(14), 4–8(c)(12), 4–8(d)(4) and 4–8(d)(6) in Section 4–8, ''Installation permit and certificate of operation,'' [6] Paragraph 4–10(a), ''Records,'' [7] and Section 4–17, ''Enforcement of chapter; procedure for adjudicatory hearings for violations'' into the Chattanooga portion of the Tennessee SIP.[8] [9] Tennessee's September 12, 2018, SIP revision can be found in the docket for this rulemaking at *www.regulations.gov* and is further summarized in this notice.[10]

II. EPA's Analysis of Tennessee's SIP Revision

EPA evaluated several sections of the Chattanooga city code under the CAA. As discussed later in this notice, the September 12, 2018, SIP submission removes and replaces the Chattanooga city code Part II, Chapter 4, Section 4–4, ''Penalties for violation of chapter, permit or order,'' Section 4–6, ''Air pollution control board; bureau of air pollution control; persons required to comply with chapter,'' Section 4–7, ''Powers and duties of the board; delegation,'' Paragraphs 4–8(a)(14), 4–8(c)(12), 4–8(d)(4) and 4–8(d)(6) in Section 4–8, ''Installation permit and certificate of operation,'' Paragraph 4–10(a), ''Records,'' and Section 4–17, ''Enforcement of chapter; procedure for adjudicatory hearings for violations'' into the Chattanooga portion of the Tennessee SIP. The changes are related to the Board's administrative functions in general and do not impact emissions. As discussed in greater detail later in this notice, the removal and replacement of these rule provisions will not interfere with attainment or maintenance of the NAAQS or any other requirement of the Act.

A. Section 4–4, ''Penalties for violation of chapter, permit or order''

Tennessee's September 12, 2018, SIP revision includes a request to remove and replace Section 4–4, ''Penalties for violation of chapter, permit or order'' of the Chattanooga-Hamilton County portion of the Tennessee SIP. Section 4–4 governs penalties for any person who violates or fails to comply with any provision of Chattanooga City Code Chapter 4, or any order of the Board or of the director; or who makes false material statement, representation, or certification in, or omits material information from, any record, report, plan or other document required either to be filed or submitted or maintained pursuant to the chapter; or who falsifies, tampers with, renders inaccurate, or fails to install any monitoring device or method required to be maintained or followed under the chapter; or fails to pay a fee established under the chapter.[11] EPA has reviewed Section 4–4 and preliminarily finds the provision to be consistent with the CAA.

The current SIP-approved version of Section 4–4 also governed penalties for any person who violates or fails to comply with any provision of the Chattanooga City Code Chapter 4, or any order of the Board or of the director; or who makes false material statement, representation, or certification in, or omits material information from, any record, report, plan or other document required either to be filed or submitted or maintained pursuant to the chapter; or who falsifies, tampers with, renders inaccurate, or fails to install any monitoring device or method required to be maintained or followed under the chapter; or fails to pay a fee established under the chapter. Chattanooga requested that EPA approve the version of the rule submitted in the September 12, 2018, SIP revision in its entirety to ensure the federally-approved version and the local version are consistent. EPA does not anticipate that removal of the current SIP-approved version of section 4–4 and replacement with the version locally effective on October 3, 2017, will lead to a change in emissions. EPA is therefore proposing to conclude that the removal and replacement will not interfere with the attainment or maintenance of air quality standards.

EPA has reviewed the changes to the SIP and is proposing to approve the version of section 4–4 locally effective on October 3, 2017, into the SIP.

B. Section 4–6, ''Air pollution control board; bureau of air pollution control; persons required to comply with chapter''

Tennessee's September 12, 2018, SIP revision includes a request to remove and replace Section 4–6, ''Air pollution control board; bureau of air pollution

jurisdictions within the Bureau, which were locally effective as of the relevant dates below: Hamilton County—Section 6 (9/6/17); City of Collegedale—Section 14–306 (10/16/17); City of East Ridge—Section 8–6 (10/26/17); City of Lakesite—Section 14–6 (11/2/17); Town of Lookout Mountain—Section 6 (11/14/17); City of Red Bank—Section 20–6 (11/21/17); City of Ridgeside—Section 6 (1/16/18); City of Signal Mountain—Section 6 (10/20/17); City of Soddy-Daisy—Section 8–6 (10/5/17); and Town of Walden—Section 6 (10/16/17).

[5] In this proposed action, EPA is also proposing to approve substantively similar changes in the following sections of the Air Pollution Control Regulations/Ordinances for the remaining jurisdictions within the Bureau, which were locally effective as of the relevant dates below: Hamilton County—Section 7 (9/6/17); City of Collegedale—Section 14–307 (10/16/17); City of East Ridge—Section 8–7 (10/26/17); City of Lakesite—Section 14–7 (11/2/17); Town of Lookout Mountain—Section 7 (11/14/17); City of Red Bank—Section 20–7 (11/21/17); City of Ridgeside—Section 7 (1/16/18); City of Signal Mountain—Section 7 (10/20/17); City of Soddy-Daisy—Section 8–7 (10/5/17); and Town of Walden—Section 7 (10/16/17).

[6] In this proposed action, EPA is also proposing to approve substantively similar changes in the following sections of the Air Pollution Control Regulations/Ordinances for the remaining jurisdictions within the Bureau, which were locally effective as of the relevant dates below: Hamilton County—Section 8 (9/6/17); City of Collegedale—Section 14–308 (10/16/17); City of East Ridge—Section 8–8 (10/26/17); City of Lakesite—Section 14–8 (11/2/17); Town of Lookout Mountain—Section 8 (11/14/17); City of Red Bank—Section 20–8 (11/21/17); City of Ridgeside—Section 8 (1/16/18); City of Signal Mountain—Section 8 (10/20/17); City of Soddy-Daisy—Section 8–8 (10/5/17); and Town of Walden—Section 8 (10/16/17).

[7] In this proposed action, EPA is also proposing to approve substantively similar changes in the following sections of the Air Pollution Control Regulations/Ordinances for the remaining jurisdictions within the Bureau, which were locally effective as of the relevant dates below: Hamilton County—Section 10 (9/6/17); City of Collegedale—Section 14–310 (10/16/17); City of East Ridge—Section 8–10 (10/26/17); City of Lakesite—Section 14–10 (11/2/17); Town of Lookout Mountain—Section 10 (11/14/17); City of Red Bank—Section 20–10 (11/21/17); City of Ridgeside—Section 10 (1/16/18); City of Signal Mountain—Section 10 (10/20/17); City of Soddy-Daisy—Section 8–10 (10/5/17); and Town of Walden—Section 10 (10/16/17).

[8] In this proposed action, EPA is also proposing to approve similar changes in the following sections of the Air Pollution Control Regulations/Ordinances for the remaining jurisdictions within the Bureau, which were locally effective as of the relevant dates below: Hamilton County—Section 17 (9/6/17); City of Collegedale—Section 14–17 (10/16/17); City of East Ridge—Section 8–17 (10/26/17); City of Lakesite—Section 14–17 (11/2/17); Town of Lookout Mountain—Section 17 (11/14/17); City of Red Bank—Section 20–17 (11/21/17); City of Ridgeside—Section 17 (1/16/18); City of Signal Mountain—Section 17 (10/20/17); City of Soddy-Daisy—Section 8–17 (10/5/17); and Town of Walden—Section 17 (10/16/17). The only substantive difference between the various jurisdictions' regulations is that Chattanooga City Code Part II, Chapter 4, Section 4–17 contains an additional paragraph concerning citation of violators to municipal court, which is discussed below.

[9] EPA received other revisions to the Chattanooga portion of the Tennessee SIP transmitted with the same September 12, 2018, cover letter. EPA will be considering action for those other SIP revisions in a separate rulemaking.

[10] Tennessee requested that EPA remove and replace rules 4–4, 4–6, 4–7, 4–8(a)(14), 4–8(c)(12), 4–8(d)(4), 4–8(d)(6), 4–10(a), and 4–17 in their entirety and provided a redline/strikeout. The redline/strikeout does not show all the differences between the federally-approved SIP version of rules 4–4, 4–6, 4–7, 4–8(a)(14), 4–8(c)(12), 4–8(d)(4), 4–8(d)(6), 4–10(a), 4–17 and the version locally effective on October 3, 2017. EPA's evaluation is of the removal and replacement of rules 4–4, 4–6, 4–7, 4–8(a)(14), 4–8(c)(12), 4–8(d)(4), 4–8(d)(6), 4–10(a), and 4–17 in their entirety.

[11] As discussed above, the last sentence in Paragraph 4–4(a), regarding a fee of $50 if cited under Chapter 4, is not included in the regulations from the other jurisdictions this action proposes to approve. *See* note 3. However, as this addition serves to strengthen the SIP and is not required by the CAA, similar language in the other jurisdictions' regulations is not necessary. Accordingly, EPA is proposing to approve all 11 jurisdictions' regulations identified in footnote 3.

control; persons required to comply with chapter'' of the Chattanooga-Hamilton County portion of the Tennessee SIP. Chattanooga Rule 4–6 establishes the Board and governs the constituency of the Board, outlines roles and responsibilities, and explains how vacancies are filled among other general operational procedures and expectations related to the Board. EPA has reviewed Section 4–6 and preliminarily finds the provision to be consistent with the CAA.

The current SIP-approved version of Section 4–6 also established the Board and governed the constituency of the Board, outlines roles and responsibilities, and explains how vacancies are filled among other general operational procedures and expectations related to the Board. Chattanooga requested that EPA approve the version of the rule in the September 12, 2018, SIP revision in its entirety to ensure the federally-approved version and the local version are consistent. EPA does not anticipate that removal of the current SIP-approved version of section 4–6 and replacement with the version locally effective on October 3, 2017, will lead to a change in emissions. EPA is therefore proposing to conclude that the removal and replacement will not interfere with the attainment or maintenance of air quality standards.

EPA has reviewed the changes to the SIP and is proposing to approve the version of section 4–6 locally effective on October 3, 2017, into the SIP.

C. Section 4–7, ''Powers and duties of the board; delegation''

Tennessee's September 12, 2018, SIP revision includes a request to remove and replace Section 4–7, ''Powers and duties of the board; delegation'' of the Chattanooga-Hamilton County portion of the Tennessee SIP. Chattanooga Rule 4–7 governs the powers and duties of the Board, and also provides for delegation of the powers to the Director of the Board (Director), and through him the personnel of the Bureau. EPA has reviewed Section 4–7 and preliminarily finds the provision to be consistent with the CAA.

The current SIP-approved version of Section 4–7 also governed the powers and duties of the Board, and delegation. Chattanooga requested that EPA approve the version of the rule submitted in the September 12, 2018, SIP revision in its entirety to ensure the federally-approved version and the local version are consistent. EPA does not anticipate that removal of the current SIP-approved version of section 4–7 and replacement with the version locally effective on October 3, 2017, will lead to a change in emissions. EPA is therefore proposing to conclude that the removal and replacement will not interfere with the attainment or maintenance of air quality standards.

EPA has reviewed the changes to the SIP and is proposing to approve the version of section 4–7 locally effective on October 3, 2017, into the SIP.

D. Section 4–8, ''Installation permit and certificate of operation''

Tennessee's September 12, 2018, SIP revision includes a request to remove and replace Paragraphs 4–8(a)(14), 4–8(c)(12), 4–8(d)(4), and 4–8(d)(6) of the Chattanooga-Hamilton County portion of the Tennessee SIP. These paragraphs address to whom permit fees apply and the permit fee schedules. EPA has reviewed Paragraphs 4–8(a)(14), 4–8(c)(12), 4–8(d)(4), and 4–8(d)(6) and preliminarily finds the provisions to be consistent with the CAA.

EPA does not anticipate that removal of the current SIP-approved version of Paragraphs 4–8(a)(16), 4–8(c)(5), 4–8(d)(5), and 4–8(d)(8) [12] and replacement with the version locally effective on October 3, 2017, will lead to a change in emissions. EPA is therefore proposing to conclude that the removal and replacement will not interfere with the attainment or maintenance of air quality standards.

E. Paragraph 4–10(a), ''Records''

Tennessee's September 12, 2018, SIP revision includes a request to remove and replace Paragraph 4–10(a), ''Records'' of the Chattanooga-Hamilton County portion of the Tennessee SIP. Chattanooga Rule 4–10(a) addresses records kept by the Bureau. It requires the Bureau to keep records of applications, permits, and certificates, as well as all official business of the Bureau generally. This section requires the Director to keep records pertaining to permitted facilities in perpetuity but allows the Director to destroy records pertaining to shutdown facilities after seven years and other records after seven years unless federal requirements provide for a shorter retention period. EPA notes that Tennessee has record retention statutes, regulations, and policies at the state level that require certain records to be kept on a permanent basis, such as agency rule adoption files. *See* Tenn. Code Ann. § 4–5–222, Tennessee Records Disposition Authorization SW 40. The Chattanooga rule also requires that records be open for inspection, with some limitations for certain confidential documents. EPA has reviewed Paragraph 4–10(a) and preliminarily finds the provision to be consistent with the CAA.

The current SIP-approved version of Paragraph 4–10(a) also governed records retention policies by the Bureau. Chattanooga requested that EPA approve the version of the rule submitted in the September 12, 2018, SIP revision in its entirety to ensure the federally-approved version and the local version are consistent. EPA does not anticipate that removal of the current SIP-approved version of Paragraph 4–10(a) and replacement with the version locally effective on October 3, 2017, will lead to a change in emissions. EPA is therefore proposing to conclude that the removal and replacement will not interfere with the attainment or maintenance of air quality standards.

EPA has reviewed the changes to the SIP and is proposing to approve the version of section 4–10(a) locally effective on October 3, 2017, into the SIP.

F. Section 4–17, ''Enforcement of chapter; procedure for adjudicatory hearings for violations''

Tennessee's September 12, 2018, SIP revision includes a request to remove and replace Section 4–17, ''Enforcement of chapter; procedure for adjudicatory hearings for violations'' of the Chattanooga-Hamilton County portion of the Tennessee SIP. Chattanooga Rule 4–17 governs the enforcement of Chapter 4 of the Chattanooga City Code and outlines the procedure for adjudicatory hearings for violations.[13] EPA has reviewed Section 4–17 and preliminarily finds the provision to be consistent with the CAA.

The current SIP-approved version of Section 4–17 also governed the enforcement of Chapter 4 of the Chattanooga City Code and outlines the procedure for adjudicatory hearings for violations. Chattanooga requested that EPA approve the version of the rule submitted in the September 12, 2018, SIP revision in its entirety to ensure the federally-approved version and the local

[12] There have been intervening numbering changes to the local regulations since section 4–8 was last approved into the Chattanooga-Hamilton County portion of the Tennessee SIP. *See* 62 FR 7163 (February 18, 1997). Thus, Paragraphs 4–8(a)(14), 4–8(c)(12), 4–8(d)(4), and 4–8(d)(6) locally effective October 3, 2017, will replace the previously approved Paragraphs 4–8(a)(16), 4–8(c)(5), 4–8(d)(5), and 4–8(d)(8), respectively.

[13] As discussed above, Paragraph 4–17(d), regarding citation to municipal court, is not included in the regulations from the other jurisdictions this action proposes to approve. *See* note 8. However, as this addition serves to strengthen the SIP and is not required by the CAA, similar language in the other jurisdictions' regulations is not necessary. Accordingly, EPA is proposing to approve all 11 jurisdictions' regulations identified in footnote 8.

version are consistent. EPA does not anticipate that removal of the current SIP-approved version of section 4–17 and replacement with the version locally effective on October 3, 2017, will lead to increased emissions. EPA is therefore proposing to conclude that the removal and replacement will not interfere with the attainment or maintenance of air quality standards.

EPA has reviewed the changes to the SIP and is proposing to approve the version of section 4–17 locally effective on October 3, 2017, into the SIP.

III. Incorporation by Reference

In this rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the following changes to Chattanooga City Code Chapter 4 of Part II, locally effective on October 3, 2017: Section 4–4, ''Penalties for violation of chapter, permit or order;'' Section 4–6, ''Air pollution control board; bureau of air pollution control; persons required to comply with chapter;'' Section 4–7, ''Powers and duties of the board; delegation;'' Paragraphs 4–8(a)(14), 4–8(c)(12), 4–8(d)(4) and 4–8(d)(6) in Section 4–8, ''Installation permit and certificate of operation;'' Paragraph 4–10(a), ''Records;'' and Section 4–17, ''Enforcement of chapter; procedure for adjudicatory hearings for violations.'' [14] EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 4 office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

IV. Proposed Action

EPA is proposing to approve the removal and replacement in the entirety of the following rules in the Chattanooga-Hamilton County portion of the Tennessee SIP with the version of the rules submitted on September 12, 2018: Chapter 4, Section 4–4, ''Penalties for violation of chapter, permit or order,'' Section 4–6, ''Air pollution control board; bureau of air pollution control; persons required to comply with chapter,'' Section 4–7, ''Powers and duties of the board; delegation,'' Paragraphs 4–8(a)(14), 4–8(c)(12), 4–8(d)(4) and 4–8(d)(6) in Section 4–8,[15] ''Installation permit and certificate of operation,'' Paragraph 4–10(a), ''Records,'' and Section 4–17, ''Enforcement of chapter; procedure for adjudicatory hearings for violations.''

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the 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).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations.

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

Dated: January 31, 2020.

Mary S. Walker,

Regional Administrator, Region 4.

[FR Doc. 2020–02504 Filed 2–7–20; 8:45 am]

BILLING CODE 6560–50–P

[14] EPA's approval also includes regulations/ordinances submitted for the other ten jurisdictions within the Bureau. See footnotes 3 through 8, above.

[15] See footnote 12 regarding the paragraphs that EPA is proposing to remove.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2019–0663; FRL–10005–15–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Infrastructure Requirements for the 2015 Ozone Standard and Revisions to Modeling Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing rulemaking action on two state implementation plan (SIP) revisions submitted by the State of Delaware. Whenever EPA promulgates a new or revised National Ambient Air Quality Standard (NAAQS), states are required to make a SIP submission showing how the existing approved SIP has all the provisions necessary to meet the requirements of the new or revised NAAQS, or to add any needed provisions necessary to meet the revised NAAQS. The SIP revision is required to address basic program elements, including, but not limited to, regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. These elements are referred to as infrastructure requirements. Delaware has made a submittal addressing the infrastructure

requirements for the 2015 ozone NAAQS and EPA is proposing to approve Delaware's SIP revision addressing the infrastructure requirements for the 2015 ozone NAAQS in accordance with the requirements of Clean Air Act (CAA) section 110(a). EPA is also approving a second submittal from Delaware which updates a reference to the current version of EPA's modeling guidance.

DATES: Written comments must be received on or before March 11, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2019–0663 at *https://www.regulations.gov,* or via email to *spielberger.susan@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Joseph Schulingkamp, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2021. Mr. Schulingkamp can also be reached via electronic mail at *schulingkamp.joseph@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 26, 2015, EPA revised both the primary and secondary NAAQS for ozone based on 8-hour average concentrations to 0.070 parts per million (ppm). *See* 80 FR 65292.

I. Delaware's Submissions

On October 11, 2018, the Delaware Department of Natural Resources (DNREC) submitted a revision to its SIP to satisfy the requirements of CAA section 110(a)(2) for the 2015 ozone NAAQS. This submittal addressed the following elements of CAA section 110(a)(2): (A), (B), (C), (D)(i)(I), (D)(i)(II), (E), (F), (G), (H), (J), (K), (L), and (M). On November 4, 2019, DNREC submitted a letter identifying outdated references in its October 11, 2018 submission and committing to submit a future SIP revision in order to address the deficiency. With this letter, Delaware requested EPA conditionally approve the State's submission with respect to CAA section 110(a)(2)(K) based on the commitment to submit a future SIP revision.

On December 16, 2019, DNREC submitted a revision to its SIP to amend Title 7 of the Delaware Administrative Code (DE Admin. Code), Regulation 1125, *Requirements for Preconstruction Review.* This submittal is intended to meet the commitment described in the state's November 4, 2019 letter as previously described. This submittal revises a section of Regulation 1125 to incorporate by reference the most recent revision to EPA's Guideline on Air Quality Models into state regulation. Specifically, the revision changes Delaware's regulation that references the ''Guideline on Air Quality Models'' as published by EPA's Office of Air Quality Planning and Standards in July 1986 and supplemented in July 1987 to the ''Guideline on Air Quality Models (40 CFR part 51, appendix W, July 1, 2019 ed.).'' Because Delaware has submitted the intended SIP revision outlined in the State's November 4, 2019 letter, EPA is considering CAA section 110(a)(2)(K) of Delaware's October 11, 2018 SIP submission for full approval instead of the November 4, 2019 request for conditional approval.

II. EPA's Approach To Review Infrastructure SIPs

Pursuant to CAA section 110(a), states must provide SIP revisions addressing relevant infrastructure SIP elements from section 110(a)(2)(A) through (M) or provide certification that the existing SIP contains provisions adequately addressing these elements for the 2015 ozone NAAQS. Due to ambiguity in some of the language of CAA section 110(a)(2), EPA believes that it is appropriate to interpret these provisions in the specific context of acting on infrastructure SIP submissions. EPA has previously provided comprehensive guidance on the application of these provisions through a guidance document for infrastructure SIP submissions and through regional actions on infrastructure submissions.[1] Unless otherwise noted in this rulemaking action, EPA is following that existing approach in acting on this submission. In addition, in the context of acting on such infrastructure submissions, EPA evaluates the submitting state's SIP for facial compliance with statutory and regulatory requirements, not for the state's implementation of its SIP.[2] EPA has other authority to address any issues concerning a state's implementation of the rules, regulations, consent orders, etc. that comprise its SIP.

III. EPA's Analysis

EPA has analyzed Delaware's October 11, 2018 submission and is proposing to make a determination that the submittal meets the requirements of CAA section 110(a)(2). EPA also reviewed Delaware's revisions to 7 DE Admin. Code 1125 and concludes that the revised references to 40 CFR part 51, appendix W, as published in the July 2019 edition of the CFR, are the correct modeling guidelines to use for purposes of preconstruction permitting review. A detailed summary of EPA's review and rationale for approving Delaware's submittals may be found in the technical support document (TSD) for this proposed rulemaking action which is available online at *www.regulations.gov,* docket number EPA–R03–OAR–2019–0663.

IV. Proposed Action

EPA is proposing to approve Delaware's October 11, 2018 submittal which provides the basic program elements, or portions thereof, specified in section 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) necessary to implement, maintain, and enforce the 2015 ozone NAAQS. This proposed rulemaking action does not include action on section 110(a)(2)(I) which pertains to the nonattainment planning requirements of part D, title I of the CAA, because this element is not required to be submitted by the 3-year submission deadline of

[1] EPA explains its approach in its September 13, 2013 Infrastructure SIP Guidance (available at *https://www3.epa.gov/airquality/urbanair/sipstatus/docs/Guidance_on_Infrastructure_SIP_Elements_Multipollutant_FINAL_Sept_2013.pdf*), as well as in numerous agency actions, including EPA's prior action on Delaware's infrastructure SIP to address the 2012 fine particulate matter NAAQS, specifically in EPA's TSD, document number EPA–R03–OAR–2017–0152–0028 (82 FR 44318 (September 22, 2017)).

[2] See *Montana Environ. Info. Center* v. *EPA,* 902 F.3d 971 (9th Cir. 2018).

section 110(a)(1) of the CAA and will be addressed in a separate process. EPA is also proposing to approve Delaware's December 16, 2019 submittal which updates 7 DE Admin. Code 1125 in order to incorporate by reference the correct modeling guidelines contained in 40 CFR 51, Appendix W. EPA is soliciting public comments on the issues discussed in this document which will be considered before taking final rulemaking action.

V. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the revised section 3.10 of 7 DE Admin. Code, Regulation 1125, effective January 11, 2020. EPA has made, and will continue to make, these materials generally available through *https://www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the 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 approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the 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 rule, pertaining to Delaware's section 110(a)(2) infrastructure requirements for the 2015 ozone NAAQS and revisions to Regulation 1125, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Volatile organic compounds.

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

Dated: January 29, 2020.

Cosmo Servidio,

Regional Administrator, Region III.

[FR Doc. 2020–02505 Filed 2–7–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2019–0694; FRL–10005–12–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Emissions Statement Certification for the 2015 Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision formally submitted by the Commonwealth of Virginia (Virginia). Under the Clean Air Act (CAA), a state's SIP must require stationary sources in ozone nonattainment areas classified as marginal or above to report annual emissions of nitrogen oxides (NO_X) and volatile organic compounds (VOC). The SIP revision provides Virginia's certification that its existing emissions statement program satisfies the emissions statement requirements of the CAA for the 2015 ozone National Ambient Air Quality Standard (NAAQS). EPA is proposing to approve Virginia's emissions statement program certification for the 2015 ozone NAAQS as a SIP revision in accordance with the requirements of the CAA.

DATES: Written comments must be received on or before March 11, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2019–0694 at *https://www.regulations.gov,* or via email to *spielberger.susan@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Erin Malone, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2190.

Ms. Malone can also be reached via electronic mail at *malone.erin@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Under the CAA, EPA establishes NAAQS for criteria pollutants in order to protect human health and the environment. In response to scientific evidence linking ozone exposure to adverse health effects, EPA promulgated the first ozone NAAQS, the 0.12 part per million (ppm) 1-hour ozone NAAQS, in 1979. See 44 FR 8202 (February 8, 1979). The CAA requires EPA to review and reevaluate the NAAQS every five years in order to consider updated information regarding the effects of the criteria pollutants on human health and the environment. On July 18, 1997, EPA promulgated a revised ozone NAAQS, referred to as the 1997 ozone NAAQS, of 0.08 ppm averaged over eight hours. 62 FR 38855. This 8-hour ozone NAAQS was determined to be more protective of public health than the previous 1979 1-hour ozone NAAQS. In 2008, EPA strengthened the 8-hour ozone NAAQS from 0.08 to 0.075 ppm. See 73 FR 16436 (March 27, 2008). In 2015, EPA further refined the 8-hour ozone NAAQS from 0.075 ppm to 0.070 ppm. The 0.070 ppm standard is referred to as the 2015 ozone NAAQS. See 80 FR 65452 (October 26, 2015).

On June 4, 2018 and July 25, 2018, EPA designated nonattainment areas for the 2015 ozone NAAQS. 83 FR 25776 and 83 FR 35136. Effective August 3, 2018, the Washington, DC-MD-VA area was designated as marginal nonattainment for the 2015 ozone NAAQS. The Virginia portion of the Washington, DC-MD-VA nonattainment area comprises Arlington County, Fairfax County, Loudoun County, Prince William County, Alexandria City, Fairfax City, Falls Church City, Manassas City, and Manassas Park City, Virginia. See 40 CFR 81.347.

Section 182 of the CAA identifies plan submissions and requirements for ozone nonattainment areas. Specifically, section 182(a)(3)(B) requires that states develop and submit, as a revision to their SIP, rules which establish annual reporting requirements for certain stationary sources. Sources that are within ozone nonattainment areas must annually report the actual emissions of NO_X and VOC to the state. However, states may waive this requirement for sources that emit under 25 tons per year (tpy) of NO_X and VOC if the state provides an inventory of emissions from such class or category of sources as required by CAA sections 172 and 182. See CAA section 182(a)(3)(B)(ii).

EPA published guidance on source emissions statements in a July 1992 memorandum titled, ''Guidance on the Implementation of an Emission Statement Program'' and in a March 14, 2006 memorandum titled, ''Emission Statement Requirements Under 8-hour Ozone NAAQS Implementation'' (2006 memorandum). In addition, on December 6, 2018, EPA issued a final rule addressing a range of nonattainment area SIP requirements for the 2015 ozone NAAQS, including the emission statement requirements of CAA section 182(a)(3)(B) (2018 final rule). 83 FR 62998, codified at 40 CFR part 51, subpart CC. The 2006 memorandum clarified that the source emissions statement requirement of CAA section 182(a)(3)(B) was applicable to all areas designated nonattainment for the 1997 ozone NAAQS and classified as marginal or above under subpart 2, part D, title I of the CAA. Per EPA's 2018 final rule, the source emissions statement requirement also applies to all areas designated nonattainment for the 2015 ozone NAAQS. 83 FR 62998, 63023.

According to the preamble to EPA's 2018 final rule, most areas that are required to have an emissions statement program for the 2015 ozone NAAQS already have one in place due to a nonattainment designation for an earlier ozone NAAQS. 83 FR 62998, 63001. EPA's 2018 final rule states that, ''Many air agencies already have regulations in place to address certain nonattainment area planning requirements due to nonattainment designations for a prior ozone NAAQS. Air agencies should review any existing regulation that was previously approved by the EPA to determine whether it is sufficient to fulfill obligations triggered by the revised ozone NAAQS.'' Id. In cases where an existing emissions statement rule is still adequate to meet the emissions statement requirement under the 2015 ozone NAAQS, states may provide the rationale for that determination to EPA in a written statement for approval in the SIP to meet the requirements of CAA section 182(a)(3)(B). 83 FR 62998, 63002. In this statement, states should identify how the emissions statement requirements of CAA section 182(a)(3)(B) are met by their existing emissions statement rule. Id.

In summary, the Commonwealth of Virginia is required to submit, as a formal revision to its SIP, a statement certifying that Virginia's existing emissions statement program satisfies the requirements of CAA section 182(a)(3)(B) and covers Virginia's portion of the Washington, DC-MD-VA nonattainment area for the 2015 ozone NAAQS.

II. Summary of SIP Revision and EPA Analysis

On July 30, 2019, the Commonwealth of Virginia, through the Virginia Department of Environmental Quality (VADEQ), submitted, as a formal revision to its SIP, a statement certifying that Virginia's existing SIP-approved emissions statement program covers the Virginia portion of the Washington, DC-MD-VA nonattainment area for the 2015 ozone NAAQS and is at least as stringent as the requirements of CAA section 182(a)(3)(B). In its submittal, Virginia states that the emissions statement requirements of CAA section 182(a)(3)(B) are contained under 9VAC5–20–160 (Registration) of the Virginia Administrative Code and are SIP-approved under 40 CFR 52.2420(c). According to Virginia, these provisions mandate that facilities emitting more than 25 tpy of NO_X or VOC must submit emission statements to Virginia while those emitting less than 25 tpy must comply with inventory requirements.

The provisions under 9VAC5–20–160 that implement Virginia's emissions statement program were approved into the Virginia SIP on May 2, 1995 (60 FR 21451).[1] These provisions require the owner of any stationary source that emits 25 tpy or more of VOC or NO_X and is located in an emissions control area designated under 9VAC5–20–206 (Volatile Organic Compound and Nitrogen Oxides Emissions Control Areas) to submit an emissions statement to the Virginia State Air Pollution Control Board by April 15 of each year for the emissions discharged during the

[1] The provisions under 9VAC5–20–160 were derived from VR120–02–31. EPA's May 2, 1995 direct final rulemaking (DFR) approved a SIP revision submitted by the Commonwealth of Virginia requesting the addition of provisions under VR120–02–31 paragraph B, which established Virginia's emissions statement program, and Appendix S (Air Quality Program Policies and Procedures), which described the procedure for preparing and submitting emissions statements for stationary sources, to the Virginia SIP. See 60 FR 21451. On March 6, 1992, the Virginia State Assembly enacted Chapter 216—an act to amend Section 9–77.7, Code of Virginia, which authorized reorganization of the Virginia Administrative Code, including reorganization of the air pollution control regulations, effective July 1, 1992. Beginning April 17, 1995, Virginia began publication of its air quality control regulations in the new format. On April 21, 2000, EPA approved a SIP revision from Virginia requesting the reorganization and renumbering of the Virginia SIP to match the recodification of Virginia's air pollution control regulations under the Virginia Administrative Code. See 65 FR 21315. As a result, the SIP approved provisions under VR120–02–31 and Appendix S are now under 9VAC5–20–160 and 9VAC5–20–121, respectively.

previous calendar year.[2] Emissions statements are required to be prepared and submitted in accordance with 9VAC5–20–121 (Air Quality Program Policies and Procedures), which references Virginia's January 1, 1993 document AQP- 8 titled, ''Procedures for Preparing and Submitting Emission Statements for Stationary Sources.'' The provisions under 9VAC5–20–121 were also approved into the Virginia SIP on May 2, 1995 (60 FR 21451).

EPA's review of the Commonwealth of Virginia's submittal finds that Virginia's existing, SIP-approved emissions statement program under 9VAC5–20–160 satisfies the emission statements requirements of CAA section 182(a)(3)(B) for stationary sources located in nonattainment areas in Virginia, including such sources in the Virginia portion of the Washington, DC-MD-VA nonattainment area, for the 2015 ozone NAAQS. Pursuant to CAA section 182, Virginia is required to have an emissions statement program for sources located in nonattainment areas. EPA finds the provisions under 9VAC5–20–160 satisfy the requirements of CAA section 182(a)(3)(B) for the 2015 ozone NAAQS because they apply to the Northern Virginia Emissions Control Area, which includes the Virginia portion of the Washington, DC-MD-VA 2015 ozone NAAQS nonattainment area (*i.e.* Arlington County, Fairfax County, Loudoun County, Prince William County, Alexandria City, Fairfax City, Falls Church City, Manassas City, and Manassas Park City). EPA also finds Virginia's emissions thresholds for sources that are required to submit an emissions statement meet the requirements of CAA section 182(a)(3)(B)(ii). As stated above, 9VAC5–20–160 requires the owner of any stationary source located in an emissions control area that emits 25 tpy or more of VOC or NO_X to annually submit an emissions statement. This 25 tpy threshold is equivalent to the threshold required by CAA section 182(a)(3)(B)(ii). As previously mentioned, per CAA section 182(a)(3)(B)(ii), states may waive this requirement for sources that emit less than 25 tpy of NO_X or VOC if the state provides an inventory of emissions from such class or category of sources as required by CAA sections 172 and 182. Virginia provides emissions inventories for nonattainment areas as required by CAA section 172(c)(3).[3] Therefore, EPA has determined that 9VAC5–20–160, which is currently in the Virginia SIP, is appropriate to address the emissions statement requirements in section 182(a)(3)(B) for the 2015 ozone NAAQS. EPA is proposing to approve, as a SIP revision, the Commonwealth of Virginia's July 30, 2019 emissions statement program certification for the 2015 ozone NAAQS as approvable under CAA section 182(a)(3)(B).

III. Proposed Action

EPA is proposing to approve the Commonwealth of Virginia's SIP revision submitted on July 30, 2019, which certifies that Virginia's existing SIP-approved emissions statement program under 9VAC5–20–160 satisfies the requirements of the CAA section 182(a)(3)(B) for the 2015 ozone NAAQS. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege Law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. . . .'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state

[2] The emissions control areas defined under 9VAC5–20–206 include the Northern Virginia Emissions Control Area, the Fredericksburg Emissions Control Area, the Richmond Emissions Control Area, the Hampton Roads Emissions Control Area, and the Western Virginia Emissions Control Area. The Northern Virginia Emissions Control Area consists of the localities of Arlington County, Fairfax County, Loudoun County, Prince William County, Stafford County, Alexandra City, Fairfax City, Falls Church City, Manassas City, and Manassas Park City.

[3] See *e.g.,* ''Approval and Promulgation of Air Quality Implementation Plans; District of Columbia, Maryland, and Virginia; 2011 Base Year Emissions Inventories for the Washington DC-MD-VA Nonattainment Area for the 2008 Ozone National Ambient Air Quality Standard,'' 80 FR 27255 (May 13, 2015).

plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

V. Statutory and Executive Order Reviews

Under the CAA, the EPA 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 approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the 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).

The SIP is not approved to apply on any Indian reservation land as defined in 18 U.S.C. 1151 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 consisting of Virginia's certification that its existing SIP-approved emissions statement program under 9VAC5–20–160 satisfies the requirements of CAA section 182(a)(3)(B) for the 2015 ozone NAAQS does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: January 28, 2020.

Cosmo Servidio,

Regional Administrator, Region III.

[FR Doc. 2020–02503 Filed 2–7–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2019–0041; FRL–10004–54]

Receipt of Several Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities (December 2019)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petitions and request for comment.

SUMMARY: This document announces the Agency's receipt of several initial filings of pesticide petitions requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before March 11, 2020.

ADDRESSES: Submit your comments, identified by the docket identification (ID) number and pesticide petition number (PP) of interest as shown in the body of this document, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (RD) (7505P), main telephone number: (703) 305–7090, email address: *RDFRNotices@epa.gov;* or Robert McNally, Biopesticides and Pollution Prevention Division (BPPD) (7511P), main telephone number: (703) 305–7090, email address: *BPPDFRNotices@epa.gov.* The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each pesticide petition summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI

information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the Agency taking?

EPA is announcing its receipt of several pesticide petitions filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the requests before responding to the petitioners. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petitions described in this document contain data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petitions. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on these pesticide petitions.

Pursuant to 40 CFR 180.7(f), a summary of each of the petitions that are the subject of this document, prepared by the petitioner, is included in a docket EPA has created for each rulemaking. The docket for each of the petitions is available at *http://www.regulations.gov.*

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petitions so that the public has an opportunity to comment on these requests for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petitions may be obtained through the petition summaries referenced in this unit.

Amended Tolerance Exemptions for Non-Inerts (Except Pips)

PP 9F8780. (EPA–HQ–OPP–2019–0692). Syngenta Crop Protection, LLC, 410 South Swing Rd., Greensboro, NC 27409, requests to amend an exemption from the requirement of a tolerance in 40 CFR 180.1254 to include residues of the fungicide *Aspergillus flavus* strain NRRL 21882 in or on almond and pistachio. The petitioner believes no analytical method is needed because a petition for an amendment to the currently existing exemption from tolerance for *Aspergillus flavus* strain NRRL 21882 has been submitted. Contact: BPPD.

New Tolerances for Non-Inerts

1. PP 9E8793. (EPA–HQ–OPP–2019–0626). Syngenta Crop Protection, LLC, P.O. Box 18300, Greensboro, NC, 27419–8300, requests to establish a tolerance in 40 CFR part 180 for residues of the fungicide, difenoconazole, in or on persimmon, Japanese at 0.7 parts per million (ppm). Gas chromatography equipped with a nitrogen-phosphorous detector and liquid chromatography/mass spectrometry are used to measure and evaluate the chemical difenoconazole. Contact: RD.

2. PP 9F8754. EPA–HQ–OPP–2019–0659. Syngenta Crop Protection, LLC, 410 Swing Road, Greensboro, NC 27409, requests to establish tolerance in 40 CFR part 180 for residues of the fungicide Fludioxonil: [4-(2, 2-difluoro-1,3-benzodioxol-4-yl)-1H-pyrrole-3-carbonitrile] in or on the raw agricultural commodities Brassica leafy greens subgroup 4–16B at 10.0 parts per million (ppm), Vegetable, Head and Stem Brassica, Group 5–16 at 2.0 ppm, and Kohlrabi at 2.0 ppm. The analytical methodology Syngenta Crop Protection Method AG- 597B is used to measure and evaluate the chemical fludioxonil. Contact: RD.

Authority: 21 U.S.C. 346a.

Dated: January 24, 2020.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2020–02551 Filed 2–7–20; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 600

[CMS–2432–PN]

RIN 0938–ZB56

Basic Health Program; Federal Funding Methodology for Program Year 2021

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed methodology.

SUMMARY: This document proposes the methodology and data sources necessary to determine federal payment amounts to be made for program year 2021 to states that elect to establish a Basic Health Program under the Affordable Care Act to offer health benefits coverage to low-income individuals otherwise eligible to purchase coverage through Affordable Insurance Exchanges.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on March 11, 2020.

ADDRESSES: In commenting, refer to file code CMS–2432–PN. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2432–PN, P.O. Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2432–PN, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

For information on viewing public comments, see the beginning of the SUPPLEMENTARY INFORMATION section.

FOR FURTHER INFORMATION CONTACT: Christopher Truffer, (410) 786–1264; or Cassandra Lagorio, (410) 786–4554.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that website to view public comments.

I. Background

A. Overview of the Basic Health Program

Section 1331 of the Patient Protection and Affordable Care Act (Pub. L. 111–148, enacted on March 23, 2010), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152, enacted on March 30, 2010) (collectively referred to as the Affordable Care Act) provides states with an option to establish a Basic Health Program (BHP). In the states that elect to operate a BHP, the BHP will make affordable health benefits coverage available for individuals under age 65 with household incomes between 133 percent and 200 percent of the federal poverty level (FPL) who are not otherwise eligible for Medicaid, the Children's Health Insurance Program (CHIP), or affordable employer-sponsored coverage, or for individuals whose income is below these levels but are lawfully present non-citizens ineligible for Medicaid. For those states that have expanded Medicaid coverage under section 1902(a)(10)(A)(i)(VIII) of the Social Security Act (the Act), the lower income threshold for BHP eligibility is effectively 138 percent due to the application of a required 5 percent income disregard in determining the upper limits of Medicaid income eligibility (section 1902(e)(14)(I) of the Act).

A BHP provides another option for states in providing affordable health benefits to individuals with incomes in the ranges described above. States may find a BHP a useful option for several reasons, including the ability to potentially coordinate standard health plans in the BHP with their Medicaid managed care plans, or to potentially reduce the costs to individuals by lowering premiums or cost-sharing requirements.

Federal funding for a BHP under section 1331(d)(3)(A) of the Affordable Care Act is based on the amount of premium tax credit (PTC) and cost-sharing reductions (CSRs) that would have been provided for the fiscal year to eligible individuals enrolled in BHP standard health plans in the state if such eligible individuals were allowed to enroll in a qualified health plan (QHP) through Affordable Insurance Exchanges (''Exchanges''). These funds are paid to trusts established by the states and dedicated to the BHP, and the states then administer the payments to standard health plans within the BHP.

In the March 12, 2014 **Federal Register** (79 FR 14112), we published a final rule entitled the ''Basic Health Program: State Administration of Basic Health Programs; Eligibility and Enrollment in Standard Health Plans; Essential Health Benefits in Standard Health Plans; Performance Standards for Basic Health Programs; Premium and Cost Sharing for Basic Health Programs; Federal Funding Process; Trust Fund and Financial Integrity'' (hereinafter referred to as the BHP final rule) implementing section 1331 of the Affordable Care Act, which governs the establishment of BHPs. The BHP final rule establishes the standards for state and federal administration of BHPs, including provisions regarding eligibility and enrollment, benefits, cost-sharing requirements and oversight activities. While the BHP final rule codifies the overall statutory requirements and basic procedural framework for the funding methodology, it does not contain the specific information necessary to determine federal payments. We anticipated that the methodology would be based on data and assumptions that would reflect ongoing operations and experience of BHPs, as well as the operation of the Exchanges. For this reason, the BHP final rule indicated that the development and publication of the funding methodology, including any data sources, would be addressed in a separate annual BHP Payment Notice.

In the BHP final rule, we specified that the BHP Payment Notice process would include the annual publication of both a proposed and final BHP Payment Notice. The proposed BHP Payment Notice would be published in the **Federal Register** each October, 2 years prior to the applicable program year, and would describe the proposed funding methodology for the relevant BHP year,[1] including how the Secretary considered the factors specified in section 1331(d)(3) of the Affordable Care Act, along with the proposed data sources used to determine the federal BHP payment rates for the applicable program year. The final BHP Payment Notice would be published in the **Federal Register** in February, and would include the final BHP funding methodology, as well as the federal BHP payment rates for the applicable BHP program year. For example, payment rates in the final BHP Payment Notice published in February 2015 applied to BHP program year 2016, beginning in January 2016. As discussed in section II.C. of this proposed notice, and as referenced in 42 CFR 600.610(b)(2), state data needed to calculate the federal BHP payment rates for the final BHP Payment Notice must be submitted to CMS.

As described in the BHP final rule, once the final methodology for the applicable program year has been published, we will generally make modifications to the BHP funding methodology on a prospective basis, but with limited exceptions. The BHP final rule provided that retrospective adjustments to the state's BHP payment amount may occur to the extent that the prevailing BHP funding methodology for a given program year permits adjustments to a state's federal BHP payment amount due to insufficient data for prospective determination of the relevant factors specified in the applicable final BHP Payment Notice. For example, the population health factor adjustment described in section II.D.3. of this proposed notice allows for a retrospective adjustment (at the state's option) to account for the impact that BHP may have had on the risk pool and QHP premiums in the Exchange. Additional adjustments could be made to the payment rates to correct errors in applying the methodology (such as mathematical errors).

Under section 1331(d)(3)(ii) of the Affordable Care Act, the funding methodology and payment rates are expressed as an amount per eligible individual enrolled in a BHP standard health plan (BHP enrollee) for each month of enrollment. These payment rates may vary based on categories or

[1] BHP program years span from January 1 through December 31.

classes of enrollees. Actual payment to a state would depend on the actual enrollment of individuals found eligible in accordance with a state's certified BHP Blueprint eligibility and verification methodologies in coverage through the state BHP. A state that is approved to implement a BHP must provide data showing quarterly enrollment of eligible individuals in the various federal BHP payment rate cells. Such data must include the following:

- Personal identifier;
- Date of birth;
- County of residence;
- Indian status;
- Family size;
- Household income;
- Number of persons in household enrolled in BHP;
- Family identifier;
- Months of coverage;
- Plan information; and
- Any other data required by CMS to properly calculate the payment.

B. The 2018 Final Administrative Order, 2019 Payment Methodology, and 2020 Payment Methodology

On October 11, 2017, the Attorney General of the United States provided the Department of Health and Human Services and the Department of the Treasury with a legal opinion indicating that the permanent appropriation at 31 U.S.C. 1324, from which the Departments had historically drawn funds to make CSR payments, cannot be used to fund CSR payments to insurers. In light of this opinion—and in the absence of any other appropriation that could be used to fund CSR payments—the Department of Health and Human Services directed us to discontinue CSR payments to issuers until Congress provides for an appropriation. In the absence of a Congressional appropriation for federal funding for CSRs, we cannot provide states with a federal payment attributable to CSRs that BHP enrollees would have received had they been enrolled in a QHP through an Exchange.

Starting with the payment for the first quarter (Q1) of 2018 (which began on January 1, 2018), we stopped paying the CSR component of the quarterly BHP payments to New York and Minnesota (the states), the only states operating a BHP in 2018. The states then sued the Secretary for declaratory and injunctive relief in the United States District Court for the Southern District of New York. *See State of New York, et al,* v. *U.S. Department of Health and Human Services,* 18–cv–00683 (S.D.N.Y. filed Jan. 26, 2018). On May 2, 2018, the parties filed a stipulation requesting a stay of the litigation so that HHS could issue an administrative order revising the 2018 BHP payment methodology. As a result of the stipulation, the court dismissed the BHP litigation. On July 6, 2018, we issued a Draft Administrative Order on which New York and Minnesota had an opportunity to comment. Each state submitted comments. We considered the states' comments and issued a Final Administrative Order on August 24, 2018 (Final Administrative Order) setting forth the payment methodology that would apply to the 2018 BHP program year.

In the November 5, 2019 **Federal Register** (84 FR 59529 through 59548) (hereinafter referred to as the November 2019 final payment notice), we finalized the payment methodologies for BHP program years 2019 and 2020. The 2019 payment methodology is the same payment methodology described in the Final Administrative Order. The 2020 payment methodology is the same methodology as the 2019 payment methodology with one additional adjustment to account for the impact of individuals selecting different metal tier level plans in the Exchange, referred to as the Metal Tier Selection Factor (MTSF).[2] Through this proposed notice, and as we explain in more detail below, we propose to apply the same payment methodology that is applied to program year 2020 to program year 2021, with one modification to the calculation of the income reconciliation factor (IRF).

II. Provisions of the Proposed Notice

A. Overview of the Funding Methodology and Calculation of the Payment Amount

Section 1331(d)(3) of the Affordable Care Act directs the Secretary to consider several factors when determining the federal BHP payment amount, which, as specified in the statute, must equal 95 percent of the value of the PTC and CSRs that BHP enrollees would have been provided had they enrolled in a QHP through an Exchange. Thus, the BHP funding methodology is designed to calculate the PTC and CSRs as consistently as possible and in general alignment with the methodology used by Exchanges to calculate the advance payments of the PTC and CSRs, and by the Internal Revenue Service (IRS) to calculate final PTCs. In general, we have relied on values for factors in the payment methodology specified in statute or other regulations as available, and have developed values for other factors not otherwise specified in statute, or previously calculated in other regulations, to simulate the values of the PTC and CSRs that BHP enrollees would have received if they had enrolled in QHPs offered through an Exchange. In accordance with section 1331(d)(3)(A)(iii) of the Affordable Care Act, the final funding methodology must be certified by the Chief Actuary of CMS, in consultation with the Office of Tax Analysis (OTA) of the Department of the Treasury, as having met the requirements of section 1331(d)(3)(A)(ii) of the Affordable Care Act.

Section 1331(d)(3)(A)(ii) of the Affordable Care Act specifies that the payment determination shall take into account all relevant factors necessary to determine the value of the PTCs and CSRs that would have been provided to eligible individuals, including but not limited to, the age and income of the enrollee, whether the enrollment is for self-only or family coverage, geographic differences in average spending for health care across rating areas, the health status of the enrollee for purposes of determining risk adjustment payments and reinsurance payments that would have been made if the enrollee had enrolled in a QHP through an Exchange, and whether any reconciliation of PTC and CSR would have occurred if the enrollee had been so enrolled. Under the payment methodologies for 2015 (79 FR 13887) (published in March 2014), for 2016 (80 FR 9636) (published in February 2015), for 2017 and 2018 (81 FR 10091) (published in February 2016), and for 2019 and 2020 (84 FR 59529) (published in November 2019), the total federal BHP payment amount has been calculated using multiple rate cells in each state. Each rate cell represents a unique combination of age range (if applicable), geographic area, coverage category (for example, self-only or two-adult coverage through the BHP), household size, and income range as a percentage of FPL, and there is a distinct rate cell for individuals in each coverage category within a particular age range who reside in a specific geographic area and are in households of the same size and income range. The BHP payment rates developed also are consistent with the state's rules on age rating. Thus, in the case of a state that does not use age as a rating factor on an Exchange, the BHP payment rates would not vary by age.

Under the methodology in the November 2019 final payment notice,

[2] ''Metal tiers'' refer to the different actuarial value plan levels offered on the Exchanges. Bronze-level plans generally must provide 60 percent actuarial value; silver-level 70 percent actuarial value; gold-level 80 percent actuarial value; and platinum-level 90 percent actuarial value. See 45 CFR 156.140.

the rate for each rate cell is calculated in two parts. The first part is equal to 95 percent of the estimated PTC that would have been paid if a BHP enrollee in that rate cell had instead enrolled in a QHP in an Exchange. The second part is equal to 95 percent of the estimated CSR payment that would have been made if a BHP enrollee in that rate cell had instead enrolled in a QHP in an Exchange. These two parts are added together and the total rate for that rate cell would be equal to the sum of the PTC and CSR rates. As noted in the November 2019 final payment notice, we currently assign a value of zero to the CSR portion of the BHP payment rate calculation, because there is presently no available appropriation from which we can make the CSR portion of any BHP Payment.

We propose that Equation (1) would be used to calculate the estimated PTC for eligible individuals enrolled in the BHP in each rate cell. We note that throughout this proposed notice, when we refer to enrollees and enrollment data, we mean data regarding individuals who are enrolled in the BHP who have been found eligible for the BHP using the eligibility and verification requirements that are applicable in the state's most recent certified Blueprint. By applying the equations separately to rate cells based on age (if applicable), income and other factors, we would effectively take those factors into account in the calculation. In addition, the equations would reflect the estimated experience of individuals in each rate cell if enrolled in coverage through an Exchange, taking into account additional relevant variables. Each of the variables in the equations is defined in this section, and further detail is provided later in this section of this proposed notice. In addition, we describe in Equation (2a) and Equation (2b) (below) how we propose to calculate the adjusted reference premium (ARP) that is used in Equation (1).

Equation 1: Estimated PTC by Rate Cell

We propose that the estimated PTC, on a per enrollee basis, would continue to be calculated for each rate cell for each state based on age range (if applicable), geographic area, coverage category, household size, and income range. The PTC portion of the rate would be calculated in a manner consistent with the methodology used to calculate the PTC for persons enrolled in a QHP, with 5 adjustments. First, the PTC portion of the rate for each rate cell would represent the mean, or average, expected PTC that all persons in the rate cell would receive, rather than being calculated for each individual enrollee. Second, the reference premium (RP) (described in section II.D.1 of this proposed notice) used to calculate the PTC would be adjusted for the BHP population health status, and in the case of a state that elects to use 2020 premiums for the basis of the BHP federal payment, for the projected change in the premium from 2020 to 2021, to which the rates announced in the final payment methodology would apply. These adjustments are described in Equation (2a) and Equation (2b). Third, the PTC would be adjusted prospectively to reflect the mean, or average, net expected impact of income reconciliation on the combination of all persons enrolled in the BHP; this adjustment, the IRF, as described in section II.D.7. of this proposed notice, would account for the impact on the PTC that would have occurred had such reconciliation been performed. Fourth, the PTC would be adjusted to account for the estimated impacts of plan selection; this adjustment, the MTSF, would reflect the effect on the average PTC of individuals choosing different metal tier levels of QHPs. Finally, the rate is multiplied by 95 percent, consistent with section 1331(d)(3)(A)(i) of the Affordable Care Act. We note that in the situation where the average income contribution of an enrollee would exceed the ARP, we would calculate the PTC to be equal to 0 and would not allow the value of the PTC to be negative.

We propose using Equation (1) to calculate the PTC rate, consistent with the methodology described above:

$$\textbf{Equation (1)}:\ PTC_{a,g,c,h,i} = \left[ARP_{a,g,c} - \frac{\sum_j I_{h,i,j} \times PTCF_{h,i,j}}{n} \right] \times IRF \times MTSF \times 95\%$$

$PTC_{a,g,c,h,i}$ = Premium tax credit portion of BHP payment rate
a = Age range
g = Geographic area
c = Coverage status (self-only or applicable category of family coverage) obtained through BHP
h = Household size
i = Income range (as percentage of FPL)
$ARP_{a,g,c}$ = Adjusted reference premium
$I_{h,i,j}$ = Income (in dollars per month) at each 1 percentage-point increment of FPL
j = *jth* percentage-point increment FPL
n = Number of income increments used to calculate the mean PTC
$PTCF_{h,i,j}$ = Premium tax credit formula percentage
IRF = Income reconciliation factor
$MTSF$ = Metal tier selection factor

Equation (2a) and Equation (2b): Adjusted Reference Premium (ARP) Variable (Used in Equation 1)

As part of the calculations for the PTC component, we propose to continue to calculate the value of the ARP as described below. Consistent with the existing approach, we are proposing to allow states to choose between using the actual current year premiums or the prior year's premiums multiplied by the premium trend factor (PTF) (as described in section II.E. of this proposed notice). Below we describe how we would continue to calculate the ARP under each option.

In the case of a state that elected to use the reference premium (RP) based on the current program year (for example, 2021 premiums for the 2021 program year), we propose to calculate the value of the ARP as specified in Equation (2a). The ARP would be equal to the RP, which would be based on the second lowest cost silver plan premium in the applicable program year, multiplied by the BHP population health factor (PHF) (described in section II.D. of this proposed notice), which would reflect the projected impact that enrolling BHP-eligible individuals in QHPs through an Exchange would have had on the average QHP premium, and multiplied by the premium adjustment factor (PAF) (described in section II.D of this proposed notice), which would account for the change in silver-level premiums due to the discontinuance of CSR payments.

$$\textbf{Equation (2a)}: \; ARP_{a,g,c} = RP_{a,g,c} \times PHF \times PAF$$

$ARP_{a,g,c}$ = Adjusted reference premium
a = Age range
g = Geographic area
c = Coverage status (self-only or applicable category of family coverage) obtained through BHP
$RP_{a,g,c}$ = Reference premium
PHF = Population health factor
PAF = Premium adjustment factor

In the case of a state that elected to use the RP based on the prior program year (for example, 2020 premiums for the 2021 program year, as described in more detail in section II.E. of this proposed notice), we propose to calculate the value of the ARP as specified in Equation (2b). The ARP would be equal to the RP, which would be based on the second lowest cost silver plan premium in 2020, multiplied by the BHP PHF (described in section II.D of this proposed notice), which would reflect the projected impact that enrolling BHP-eligible individuals in QHPs on an Exchange would have had on the average QHP premium, multiplied by the PAF (described in section II.D. of this proposed notice), which would account for the change in silver-level premiums due to the discontinuance of CSR payments, and multiplied by the premium trend factor (PTF) (described in section II.E. of this proposed notice), which would reflect the projected change in the premium level between 2020 and 2021.

$$\textbf{Equation (2a)}: \; ARP_{a,g,c} = RP_{a,g,c} \times PHF \times PAF$$

$ARP_{a,g,c}$ = Adjusted reference premium
a = Age range
g = Geographic area
c = Coverage status (self-only or applicable category of family coverage) obtained through BHP
$RP_{a,g,c}$ = Reference premium
PHF = Population health factor
PAF = Premium adjustment factor
PTF = Premium trend factor

Equation 3: Determination of Total Monthly Payment for BHP Enrollees in Each Rate Cell

In general, the rate for each rate cell would be multiplied by the number of BHP enrollees in that cell (that is, the number of enrollees that meet the criteria for each rate cell) to calculate the total monthly BHP payment. This calculation is shown in Equation (3).

$$\textbf{Equation (3)}: PMT = \sum \left[(PTC_{a,g,c,h,i} + CSR_{a,g,c,h,i}) \times E_{a,g,c,h,i} \right]$$

PMT = Total monthly BHP payment
$PTC_{a,g,c,h,i}$ = Premium tax credit portion of BHP payment rate
$CSR_{a,g,c,h,i}$ = Cost sharing reduction portion of BHP payment rate
$E_{a,g,c,h,i}$ = Number of BHP enrollees
a = Age range
g = Geographic area
c = Coverage status (self-only or applicable category of family coverage) obtained through BHP
h = Household size
i = Income range (as percentage of FPL)
i = Income range (as percentage of FPL)

In this equation, we would assign a value of zero to the CSR part of the BHP payment rate calculation ($CSR_{a,g,c,h,i}$) because there is presently no available appropriation from which we can make the CSR portion of any BHP payment. In the event that an appropriation for CSRs for 2021 is made, we would determine whether and how to modify the CSR part of the BHP payment rate calculation ($CSR_{a,g,c,h,i}$) or the PAF and the MTSF in the payment methodology.

B. Federal BHP Payment Rate Cells

Consistent with the previous payment methodologies, we propose that a state implementing a BHP provide us an estimate of the number of BHP enrollees it projects will enroll in the upcoming BHP program quarter, by applicable rate cell, prior to the first quarter and each subsequent quarter of program operations until actual enrollment data is available. Upon our approval of such estimates as reasonable, we will use those estimates to calculate the prospective payment for the first and subsequent quarters of program operation until the state provides us with actual enrollment data for those periods. The actual enrollment data is required to calculate the final BHP payment amount and make any necessary reconciliation adjustments to the prior quarters' prospective payment amounts due to differences between projected and actual enrollment. Subsequent quarterly deposits to the state's trust fund would be based on the most recent actual enrollment data submitted to us. Actual enrollment data must be based on individuals enrolled for the quarter who the state found eligible and whose eligibility was verified using eligibility and verification requirements as agreed to by the state in its applicable BHP Blueprint for the quarter that enrollment data is submitted. Procedures will ensure that federal payments to a state reflect actual BHP enrollment during a year, within each applicable category, and prospectively determined federal payment rates for each category of BHP enrollment, with such categories defined in terms of age range (if applicable), geographic area, coverage status, household size, and income range, as explained above.

We propose requiring the use of certain rate cells as part of the proposed methodology. For each state, we propose using rate cells that separate the BHP population into separate cells based on the five factors described as follows:

Factor 1—Age: We propose to continue separating enrollees into rate cells by age (if applicable), using the following age ranges that capture the widest variations in premiums under HHS's Default Age Curve: [3]

[3] This curve is used to implement the Affordable Care Act's 3:1 limit on age-rating in states that do not create an alternative rate structure to comply with that limit. The curve applies to all individual market plans, both within and outside the Exchange. The age bands capture the principal allowed age-based variations in premiums as permitted by this curve. The default age curve was updated for plan or policy years beginning on or after January 1, 2018 to include different age rating factors between children 0–14 and for persons at each age between 15 and 20. More information is available at *https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Market-Reforms/Downloads/StateSpecAgeCrv053117.pdf.* Both children and adults under age 21 are charged the same premium. For adults age 21–64, the age bands in this notice divide the total age-based premium variation into the three most equally-sized ranges (defining size by the ratio between the highest and lowest premiums within the band) that are consistent with the age-bands used for risk-

- Ages 0–20.
- Ages 21–34.
- Ages 35–44.
- Ages 45–54.
- Ages 55–64.

This proposed provision is unchanged from the current methodology.[4]

Factor 2—Geographic area: For each state, we propose separating enrollees into rate cells by geographic areas within which a single RP is charged by QHPs offered through the state's Exchange. Multiple, non-contiguous geographic areas would be incorporated within a single cell, so long as those areas share a common RP.[5] This proposed provision is also unchanged from the current methodology.

Factor 3—Coverage status: We propose to continue separating enrollees into rate cells by coverage status, reflecting whether an individual is enrolled in self-only coverage or persons are enrolled in family coverage through the BHP, as provided in section 1331(d)(3)(A)(ii) of the Affordable Care Act. Among recipients of family coverage through the BHP, separate rate cells, as explained below, would apply based on whether such coverage involves two adults alone or whether it involves children. This proposed provision is unchanged from the current methodology.

Factor 4—Household size: We propose to continue the current methods for separating enrollees into rate cells by household size that states use to determine BHP enrollees' household income as a percentage of the FPL under § 600.320 (Determination of eligibility for and enrollment in a standard health plan). We propose to require separate rate cells for several specific household sizes. For each additional member above the largest specified size, we propose to publish instructions for how we would develop additional rate cells and calculate an appropriate payment rate based on data for the rate cell with the closest specified household size. We propose to publish separate rate cells for household sizes of 1 through 10. This proposed provision is unchanged from the current methodology.

Factor 5—Household Income: For households of each applicable size, we propose to continue the current methods for creating separate rate cells by income range, as a percentage of FPL. The PTC that a person would receive if enrolled in a QHP through an Exchange varies by household income, both in level and as a ratio to the FPL. Thus, we propose that separate rate cells would be used to calculate federal BHP payment rates to reflect different bands of income measured as a percentage of FPL. We propose using the following income ranges, measured as a percentage of the FPL:

- 0 to 50 percent of the FPL.
- 51 to 100 percent of the FPL.
- 101 to 138 percent of the FPL.[6]
- 139 to 150 percent of the FPL.
- 151 to 175 percent of the FPL.
- 176 to 200 percent of the FPL.

This proposed provision is unchanged from the current methodology.

These rate cells would only be used to calculate the federal BHP payment amount. A state implementing a BHP would not be required to use these rate cells or any of the factors in these rate cells as part of the state payment to the standard health plans participating in the BHP or to help define BHP enrollees' covered benefits, premium costs, or out-of-pocket cost-sharing levels.

Consistent with the current methodology, we propose using averages to define federal payment rates, both for income ranges and age ranges (if applicable), rather than varying such rates to correspond to each individual BHP enrollee's age (if applicable) and income level. We believe that the proposed approach will increase the administrative feasibility of making federal BHP payments and reduce the likelihood of inadvertently erroneous payments resulting from highly complex methodologies. We also believe this approach should not significantly change federal payment amounts, since within applicable ranges, the BHP-eligible population is distributed relatively evenly.

The number of factors contributing to rate cells, when combined, can result in over 350,000 rate cells which can increase the complexity when generating quarterly payment amounts. In future years, and in the interest of administrative simplification, we will consider whether to combine or eliminate certain rate cells, once we are certain that the effect on payment would be insignificant.

C. Sources and State Data Considerations

To the extent possible, unless otherwise provided, we intend to continue to use data submitted to the federal government by QHP issuers seeking to offer coverage through the Exchange in the relevant BHP state to perform the calculations that determine federal BHP payment cell rates.

States operating a State-based Exchange in the individual market, however, must provide certain data, including premiums for second lowest cost silver plans, by geographic area, for CMS to calculate the federal BHP payment rates in those states. We propose that a State-based Exchange interested in obtaining the applicable 2021 program year federal BHP payment rates for its state must submit such data accurately, completely, and as specified by CMS, by no later than October 15, 2020. If additional state data (that is, in addition to the second lowest cost silver plan premium data) are needed to determine the federal BHP payment rate, such data must be submitted in a timely manner, and in a format specified by us to support the development and timely release of annual BHP payment notices. The specifications for data collection to support the development of BHP payment rates are published in CMS guidance and are available in the Federal Policy Guidance section at *https://www.medicaid.gov/federal-policy-Guidance/index.html.*

States operating a BHP must submit enrollment data to us on a quarterly basis and should be technologically prepared to begin submitting data at the start of their BHP, starting with the beginning of the first program year. This differs from the enrollment estimates used to calculate the initial BHP payment, which states would generally submit to CMS 60 days before the start of the first quarter of the program start date. This requirement is necessary for us to implement the payment methodology that is tied to a quarterly reconciliation based on actual enrollment data.

We propose to continue the policy first adopted in the February 2016 payment notice that in states that have BHP enrollees who do not file federal tax returns (non-filers), the state must

adjustment purposes in the HHS-Developed Risk Adjustment Model. For such age bands, see HHS-Developed Risk Adjustment Model Algorithm ''Do It Yourself (DIY)'' Software Instructions for the 2018 Benefit Year, April 4, 2019 Update, *https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Updated-CY2018-DIY-instructions.pdf.*

[4] In this document, references to the ''current methodology'' refer to the 2020 program year methodology as outlined in November 2019 final payment notice.

[5] For example, a cell within a particular state might refer to ''County Group 1,'' ''County Group 2,'' etc., and a table for the state would list all the counties included in each such group. These geographic areas are consistent with the geographic areas established under the 2014 Market Reform Rules. They also reflect the service area requirements applicable to QHPs, as described in 45 CFR 155.1055, except that service areas smaller than counties are addressed as explained in this notice.

[6] The three lowest income ranges would be limited to lawfully present immigrants who are ineligible for Medicaid because of immigration status.

develop a methodology to determine the enrollees' household income and household size consistently with Marketplace requirements.[7] The state must submit this methodology to us at the time of their Blueprint submission. We reserve the right to approve or disapprove the state's methodology to determine household income and household size for non-filers if the household composition and/or household income resulting from application of the methodology are different than what typically would be expected to result if the individual or head of household in the family were to file a tax return. States currently operating a BHP that wish to change the methodology for non-filers must submit a revised Blueprint outlining the revisions to its methodology, consistent with § 600.125.

In addition, as the federal payments are determined quarterly and the enrollment data is required to be submitted by the states to us quarterly, we propose that the quarterly payment would be based on the characteristics of the enrollee at the beginning of the quarter (or their first month of enrollment in the BHP in each quarter). Thus, if an enrollee were to experience a change in county of residence, household income, household size, or other factors related to the BHP payment determination during the quarter, the payment for the quarter would be based on the data as of the beginning of the quarter (or their first month of enrollment in the BHP in the applicable quarter). Payments would still be made only for months that the person is enrolled in and eligible for the BHP. We do not anticipate that this would have a significant effect on the federal BHP payment. The states must maintain data that are consistent with CMS' verification requirements, including auditable records for each individual enrolled, indicating an eligibility determination and a determination of income and other criteria relevant to the payment methodology as of the beginning of each quarter.

Consistent with § 600.610 (Secretarial determination of BHP payment amount), the state is required to submit certain data in accordance with this notice. We require that this data be collected and validated by states operating a BHP, and that this data be submitted to CMS.

[7] See 81 FR at 10097.

D. Discussion of Specific Variables Used in Payment Equations

1. Reference Premium (RP)

To calculate the estimated PTC that would be paid if BHP-eligible individuals enrolled in QHPs through an Exchange, we must calculate a RP because the PTC is based, in part, on the premiums for the applicable second lowest cost silver plan as explained in section II.D.5. of this proposed notice, regarding the premium tax credit formula (PTCF). The proposal is unchanged from the current methodology except to update the reference years, and to provide additional methodological details to simplify calculations and to deal with potential ambiguities. Accordingly, for the purposes of calculating the BHP payment rates, the RP, in accordance with 26 U.S.C. 36B(b)(3)(C), is defined as the adjusted monthly premium for an applicable second lowest cost silver plan. The applicable second lowest cost silver plan is defined in 26 U.S.C. 36B(b)(3)(B) as the second lowest cost silver plan of the individual market in the rating area in which the taxpayer resides that is offered through the same Exchange. We propose to use the adjusted monthly premium for an applicable second lowest cost silver plan in the applicable program year (2021) as the RP (except in the case of a state that elects to use the prior plan year's premium as the basis for the federal BHP payment for 2021, as described in section II.E. of this proposed notice).

The RP would be the premium applicable to non-tobacco users. This is consistent with the provision in 26 U.S.C. 36B(b)(3)(C) that bases the PTC on premiums that are adjusted for age alone, without regard to tobacco use, even for states that allow insurers to vary premiums based on tobacco use in accordance with 42 U.S.C. 300gg(a)(1)(A)(iv).

Consistent with the policy set forth in 26 CFR 1.36B–3(f)(6), to calculate the PTC for those enrolled in a QHP through an Exchange, we propose not to update the payment methodology, and subsequently the federal BHP payment rates, in the event that the second lowest cost silver plan used as the RP, or the lowest cost silver plan, changes (that is, terminates or closes enrollment during the year).

The applicable second lowest cost silver plan premium will be included in the BHP payment methodology by age range (if applicable), geographic area, and self-only or applicable category of family coverage obtained through the BHP.

We note that the choice of the second lowest cost silver plan for calculating BHP payments would rely on several simplifying assumptions in its selection. For the purposes of determining the second lowest cost silver plan for calculating PTC for a person enrolled in a QHP through an Exchange, the applicable plan may differ for various reasons. For example, a different second lowest cost silver plan may apply to a family consisting of 2 adults, their child, and their niece than to a family with 2 adults and their children, because 1 or more QHPs in the family's geographic area might not offer family coverage that includes the niece. We believe that it would not be possible to replicate such variations for calculating the BHP payment and believe that in the aggregate, they would not result in a significant difference in the payment. Thus, we propose to use the second lowest cost silver plan available to any enrollee for a given age, geographic area, and coverage category.

This choice of RP relies on an assumption about enrollment in the Exchanges. In the payment methodologies for program years 2015 through 2019, we had assumed that all persons enrolled in the BHP would have elected to enroll in a silver level plan if they had instead enrolled in a QHP through an Exchange (and that the QHP premium would not be lower than the value of the PTC). In the November 2019 final payment notice, we continued to use the second-lowest cost silver plan premium as the RP, but for the 2020 payments we changed the assumption about which metal tier plans enrollees would choose (see section II.D.6 on the MTSF in this proposed notice). Therefore, for the 2021 payment methodology, we propose to continue to use the second-lowest cost silver plan premium as the RP, but account for how enrollees may choose other metal tier plans by applying the MTSF.

We do not believe it is appropriate to adjust the payment for an assumption that some BHP enrollees would not have enrolled in QHPs for purposes of calculating the BHP payment rates, since section 1331(d)(3)(A)(ii) of the Affordable Care Act requires the calculation of such rates as if the enrollee had enrolled in a QHP through an Exchange.

The applicable age bracket (if any) will be one dimension of each rate cell. We propose to assume a uniform distribution of ages and estimate the average premium amount within each rate cell. We believe that assuming a uniform distribution of ages within these ranges is a reasonable approach and would produce a reliable

determination of the total monthly payment for BHP enrollees. We also believe this approach would avoid potential inaccuracies that could otherwise occur in relatively small payment cells if age distribution were measured by the number of persons eligible or enrolled.

We propose to use geographic areas based on the rating areas used in the Exchanges. We propose to define each geographic area so that the RP is the same throughout the geographic area. When the RP varies within a rating area, we propose defining geographic areas as aggregations of counties with the same RP. Although plans are allowed to serve geographic areas smaller than counties after obtaining our approval, we propose that no geographic area, for purposes of defining BHP payment rate cells, will be smaller than a county. We do not believe that this assumption will have a significant impact on federal payment levels and it would simplify both the calculation of BHP payment rates and the operation of the BHP.

Finally, in terms of the coverage category, we propose that federal payment rates only recognize self-only and two-adult coverage, with exceptions that account for children who are potentially eligible for the BHP. First, in states that set the upper income threshold for children's Medicaid and CHIP eligibility below 200 percent of FPL (based on modified adjusted gross income (MAGI)), children in households with incomes between that threshold and 200 percent of FPL would be potentially eligible for the BHP. Currently, the only states in this category are Idaho and North Dakota.[8] Second, the BHP would include lawfully present immigrant children with household incomes at or below 200 percent of FPL in states that have not exercised the option under sections 1903(v)(4)(A)(ii) and 2107(e)(1)(E) of the Act to qualify all otherwise eligible, lawfully present immigrant children for Medicaid and CHIP. States that fall within these exceptions would be identified based on their Medicaid and CHIP State Plans, and the rate cells would include appropriate categories of BHP family coverage for children. For example, Idaho's Medicaid and CHIP eligibility is limited to families with MAGI at or below 185 percent FPL. If Idaho implemented a BHP, Idaho children with household incomes between 185 and 200 percent could qualify. In other states, BHP eligibility will generally be restricted to adults, since children who are citizens or lawfully present immigrants and live in households with incomes at or below 200 percent of FPL will qualify for Medicaid or CHIP, and thus be ineligible for a BHP under section 1331(e)(1)(C) of the Affordable Care Act, which limits a BHP to individuals who are ineligible for minimum essential coverage (as defined in 26 U.S.C. 5000A(f)).

2. Premium Adjustment Factor (PAF)

The PAF considers the premium increases in other states that took effect after we discontinued payments to issuers for CSRs provided to enrollees in QHPs offered through Exchanges. Despite the discontinuance of federal payments for CSRs, QHP issuers are required to provide CSRs to eligible enrollees. As a result, many QHP issuers increased the silver-level plan premiums to account for those additional costs; adjustments and how those were applied (for example, to only silver-level plans or to all metal tier plans) varied across states. For the states operating BHPs in 2018, the increases in premiums were relatively minor, because the majority of enrollees eligible for CSRs (and all who were eligible for the largest CSRs) were enrolled in the BHP and not in QHPs on the Exchanges, and therefore issuers in BHP states did not significantly raise premiums to cover unpaid CSR costs.

In the Final Administrative Order and the November 2019 final payment notice, we incorporated the PAF into the BHP payment methodologies for 2018, 2019, and 2020 to capture the impact of how other states responded to us ceasing to pay CSRs. We propose to include the PAF in the 2021 payment methodology and to calculate it in the same manner as in the Final Administrative Order.

Under the Final Administrative Order, we calculated the PAF by using information sought from QHP issuers in each state and the District of Columbia, and determined the premium adjustment that the responding QHP issuers made to each silver level plan in 2018 to account for the discontinuation of CSR payments to QHP issuers. Based on the data collected, we estimated the median adjustment for silver level QHPs nationwide (excluding those in the two BHP states). To the extent that QHP issuers made no adjustment (or the adjustment was 0), this would be counted as 0 in determining the median adjustment made to all silver level QHPs nationwide. If the amount of the adjustment was unknown—or we determined that it should be excluded for methodological reasons (for example, the adjustment was negative, an outlier, or unreasonable)—then we did not count the adjustment towards determining the median adjustment.[9] The median adjustment for silver level QHPs is the nationwide median adjustment.

For each of the two BHP states, we determined the median premium adjustment for all silver level QHPs in that state, which we refer to as the state median adjustment. The PAF for each BHP state equaled 1 plus the nationwide median adjustment divided by 1 plus the state median adjustment for the BHP state. In other words,

PAF = (1 + Nationwide Median Adjustment) ÷ (1 + State Median Adjustment).

To determine the PAF described above, we sought to collect QHP information from QHP issuers in each state and the District of Columbia to determine the premium adjustment those issuers made to each silver level plan offered through the Exchange in 2018 to account for the end of CSR payments. Specifically, we sought information showing the percentage change that QHP issuers made to the premium for each of their silver level plans to cover benefit expenditures associated with the CSRs, given the lack of CSR payments in 2018. This percentage change was a portion of the overall premium increase from 2017 to 2018.

According to our records, there were 1,233 silver-level QHPs operating on Exchanges in 2018. Of these 1,233 QHPs, 318 QHPs (25.8 percent) responded to our request for the percentage adjustment applied to silver-level QHP premiums in 2018 to account for the discontinuance of the CSRs. These 318 QHPs operated in 26 different states, with 10 of those states running State-based Exchanges (SBEs) (while we requested information only from QHP issuers in states serviced by an FFE, many of those issuers also had QHPs in states operating SBEs and submitted information for those states as well). Thirteen of these 318 QHPs were in New York (and none were in Minnesota). Excluding these 13 QHPs from the analysis, the nationwide median adjustment was 20.0 percent. Of the 13 QHPs in New York that responded, the state median adjustment was 1.0 percent. We believe that this is an appropriate adjustment for QHPs in Minnesota, as well, based on the

[8] CMCS. ''State Medicaid, CHIP and BHP Income Eligibility Standards Effective April 1, 2019.''

[9] Some examples of outliers or unreasonable adjustments include (but are not limited to) values over 100 percent (implying the premiums doubled or more as a result of the adjustment), values more than double the otherwise highest adjustment, or non-numerical entries.

observed changes in New York's QHP premiums in response to the discontinuance of CSR payments (and the operation of the BHP in that state) and our analysis of expected QHP premium adjustments for states with BHPs. We calculated the proposed PAF as (1 + 20%) ÷ (1 + 1%) (or 1.20/1.01), which results in a value of 1.188.

We propose that the PAF continue to be set to 1.188 for program year 2021. We believe that this value for the PAF continues to reasonably account for the increase in silver-level premiums experienced in non-BHP states that took effect after the discontinuance of the CSR payments. We believe that the impact of the increase in silver-level premiums in 2021 can reasonably be expected to be similar to that in 2018, because the discontinuation of CSR payments has not changed. Moreover, we believe that states and QHP issuers have not significantly changed the manner and degree to which they are increasing QHP silver-level premiums to account for the discontinuation of CSR payments since 2018, and we expect the same for 2021.

In addition, the percentage difference between the average second lowest-cost silver level QHP and the bronze-level QHP premiums has not changed significantly since 2018, and we do not expect a significant change for 2021. In 2018, the average second lowest-cost silver level QHP premium was 41.1 percent higher than the average lowest-cost bronze-level QHP premium ($481 and $341, respectively). By 2020, the difference is similar; the average second lowest-cost silver-level QHP premium is 39.6 percent higher than the average lowest-cost bronze-level QHP premium ($462 and $331, respectively).[10] In contrast, the average second lowest-cost silver-level QHP premium was only 23.8 percent higher than the average lowest-cost bronze-level QHP premium in 2017 ($359 and $290, respectively).[11] If there were a significant difference in the amounts that QHP issuers were increasing premiums for silver-level QHPs to account for the discontinuation of CSR payments over time, then we would expect the difference between the bronze-level and silver-level QHP premiums to change significantly over time, and that this would be apparent in comparing the lowest-cost bronze-level QHP premium to the second lowest-cost silver-level QHP premium.

We request comments on our proposal that the PAF continue to be set to 1.188 for program year 2021. We request comments on whether sources of data other than what we sought in 2018 are available to account for the adjustment to the silver-level QHP premiums to account for the discontinuation of CSRs beyond 2018. We are considering if we could obtain these data from the rate filings that include QHPs that issuers are required to submit to HHS [12] or if we can obtain this data by conducting another survey of the QHP issuers. We are also considering whether we could request information on how much premiums are adjusted to account for the discontinuance of CSR payments in the QHP applications for 2021 or as supplemental information with the QHP applications. We are also considering whether we could survey issuers after the submission of QHP applications for 2021 (likely mid-year 2020) to request information on these adjustments, similar to the approach we used in the 2018 Final Administrative Order.

We are also considering if we should calculate the PAF value for 2021 by estimating the adjustment to the QHP premiums for the discontinuance of CSR payments rather than relying on information from QHP issuers. We are considering whether we should calculate this adjustment by estimating the percentage of enrollees in silver-level QHPs who would be eligible for CSRs, the relative amount of CSRs these enrollees would receive, and those amounts as a percentage of the QHP premium absent any adjustment. Finally, we are also considering whether to make a retrospective adjustment to the PAF for 2021 using the authority under § 600.610(c)(2)(iii) to reflect actual 2021 experience from states not operating a BHP once the necessary data for 2021 are available, which would be after the end of the program year.

3. Population Health Factor (PHF)

We propose that the PHF be included in the methodology to account for the potential differences in the average health status between BHP enrollees and persons enrolled through the Exchanges. To the extent that BHP enrollees would have been enrolled through an Exchange in the absence of a BHP in a state, the exclusion of those BHP enrollees in the Exchange may affect the average health status of the overall population and the expected QHP premiums.

We currently do not believe that there is evidence that the BHP population would have better or poorer health status than the Exchange population. At this time, there continues to be a lack of data on the experience in the Exchanges that limits the ability to analyze the potential health differences between these groups of enrollees. More specifically, Exchanges have been in operation since 2014, and 2 states have operated BHPs since 2015, but data is not available to do the analysis necessary to determine if there are differences in the average health status between BHP and Exchange enrollees. In addition, differences in population health may vary across states. We also do not believe that sufficient data would be available to permit us to make a prospective adjustment to the PHF under § 600.610(c)(2) for the 2021 program year.

Given these analytic challenges and the limited data about Exchange coverage and the characteristics of BHP-eligible consumers, we propose that the PHF continue to be 1.00 for program year 2021.

In previous years BHP payment methodologies, we included an option for states to include a retrospective population health status adjustment. We propose that states be provided with the same option for 2021 to include a retrospective population health status adjustment in the certified methodology, which is subject to our review and approval. This option is described further in section II.F. of this proposed notice. Regardless of whether a state elects to include a retrospective population health status adjustment, we anticipate that, in future years, when additional data becomes available about Exchange coverage and the characteristics of BHP enrollees, we may propose a different PHF.

While the statute requires consideration of risk adjustment payments and reinsurance payments insofar as they would have affected the PTC that would have been provided to BHP-eligible individuals had they enrolled in QHPs, we are not proposing to require that a BHP's standard health plans receive such payments. As explained in the BHP final rule, BHP standard health plans are not included in the federally-operated risk adjustment program.[13] Further, standard health plans did not qualify for payments under the transitional reinsurance program established under section 1341 of the Affordable Care Act for the years the program was

[10] *See* Kaiser Family Foundation, ''Average Marketplace Premiums by Metal Tier, 2018–2020,'' *https://www.kff.org/health-reform/state-indicator/average-marketplace-premiums-by-metal-tier/*.

[11] See Basic Health Program: Federal Funding Methodology for Program Years 2019 and 2020; Final Methodology, 84 FR 59529 through 59532 (November 5, 2019).

[12] See 45 CFR 154.215 and 156.210.

[13] See 79 FR at 14131.

operational (2014 through 2016).[14] To the extent that a state operating a BHP determines that, because of the distinctive risk profile of BHP-eligible consumers, BHP standard health plans should be included in mechanisms that share risk with other plans in the state's individual market, the state would need to use other methods for achieving this goal.

4. Household Income (I)

Household income is a significant determinant of the amount of the PTC that is provided for persons enrolled in a QHP through an Exchange. Accordingly, both the current and proposed BHP payment methodologies incorporate household income into the calculations of the payment rates through the use of income-based rate cells. We propose defining household income in accordance with the definition of modified adjusted gross income in 26 U.S.C. 36B(d)(2)(B) and consistent with the definition in 45 CFR 155.300. Income would be measured relative to the FPL, which is updated periodically in the **Federal Register** by the Secretary under the authority of 42 U.S.C. 9902(2). In our proposed methodology, household size and income as a percentage of FPL would be used as factors in developing the rate cells. We propose using the following income ranges measured as a percentage of FPL: [15]

- 0–50 percent.
- 51–100 percent.
- 101–138 percent.
- 139–150 percent.
- 151–175 percent.
- 176–200 percent.

We further propose to assume a uniform income distribution for each federal BHP payment cell. We believe that assuming a uniform income distribution for the income ranges proposed would be reasonably accurate for the purposes of calculating the BHP payment and would avoid potential errors that could result if other sources of data were used to estimate the specific income distribution of persons who are eligible for or enrolled in the BHP within rate cells that may be relatively small.

Thus, when calculating the mean, or average, PTC for a rate cell, we propose to calculate the value of the PTC at each 1 percentage point interval of the income range for each federal BHP payment cell and then calculate the average of the PTC across all intervals. This calculation would rely on the PTC formula described in section II.D.5. of this proposed notice.

As the advance payment of PTC (APTC) for persons enrolled in QHPs would be calculated based on their household income during the open enrollment period, and that income would be measured against the FPL at that time, we propose to adjust the FPL by multiplying the FPL by a projected increase in the CPI–U between the time that the BHP payment rates are calculated and the QHP open enrollment period, if the FPL is expected to be updated during that time. We propose that the projected increase in the CPI–U would be based on the intermediate inflation forecasts from the most recent OASDI and Medicare Trustees Reports.[16]

5. Premium Tax Credit Formula (PTCF)

In Equation 1 described in section II.A.1. of this proposed notice, we propose to use the formula described in 26 U.S.C. 36B(b) to calculate the estimated PTC that would be paid on behalf of a person enrolled in a QHP on an Exchange as part of the BHP payment methodology. This formula is used to determine the contribution amount (the amount of premium that an individual or household theoretically would be required to pay for coverage in a QHP on an Exchange), which is based on (A) the household income; (B) the household income as a percentage of FPL for the family size; and (C) the schedule specified in 26 U.S.C. 36B(b)(3)(A) and shown below.

The difference between the contribution amount and the adjusted monthly premium (that is, the monthly premium adjusted for the age of the enrollee) for the applicable second lowest cost silver plan is the estimated amount of the PTC that would be provided for the enrollee.

The PTC amount provided for a person enrolled in a QHP through an Exchange is calculated in accordance with the methodology described in 26 U.S.C. 36B(b)(2). The amount is equal to the lesser of the premium for the plan in which the person or household enrolls, or the adjusted premium for the applicable second lowest cost silver plan minus the contribution amount.

The applicable percentage is defined in 26 U.S.C. 36B(b)(3)(A) and 26 CFR 1.36B–3(g) as the percentage that applies to a taxpayer's household income that is within an income tier specified in Table 1, increasing on a sliding scale in a linear manner from an initial premium percentage to a final premium percentage specified in Table 1. We propose to continue to use applicable percentages to calculate the estimated PTC that would be paid on behalf of a person enrolled in a QHP on an Exchange as part of the BHP payment methodology as part of Equation 1. We propose that the applicable percentages in Table 1 for calendar year (CY) 2020 would be effective for BHP program year 2021. The applicable percentages will be updated in future years in accordance with 26 U.S.C. 36B(b)(3)(A)(ii).

TABLE 1—APPLICABLE PERCENTAGE TABLE FOR CY 2020 [a]

In the case of household income (expressed as a percent of poverty line) within the following income tier:	The initial premium percentage is—	The final premium percentage is—
Up to 133%	2.06%	2.06%
133% but less than 150%	3.09	4.12
150% but less than 200%	4.12	6.49
200% but less than 250%	6.49	8.29
250% but less than 300%	8.29	9.78
300% but not more than 400%	9.78	9.78

[a] IRS Revenue Procedure 2019–29. *https//www.irs.gov/pub/irs-drop/rp-19-29.pdf.*

[14] See 45 CFR 153.400(a)(2)(iv) (BHP standard health plans are not required to submit reinsurance contributions), 153.20 (definition of ''Reinsurance-eligible plan'' as not including ''health insurance coverage not required to submit reinsurance contributions''), 153.230(a) (reinsurance payments under the national reinsurance parameters are available only for ''Reinsurance-eligible plans'').

[15] These income ranges and this analysis of income apply to the calculation of the PTC.

[16] *See* Table IV A1 from the 2019 Annual Report of the Boards of Trustees of the Federal Hospital Insurance and Federal Supplementary Medical Insurance Trust Funds, available at *https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/ReportsTrustFunds/Downloads/TR2019.pdf.*

6. Metal Tier Selection Factor (MTSF)

On the Exchange, if an enrollee chooses a QHP and the value of the PTC to which the enrollee is entitled is greater than the premium of the plan selected, then the PTC is reduced to be equal to the premium. This usually occurs when enrollees eligible for larger PTCs choose bronze-level QHPs, which typically have lower premiums on the Exchange than silver-level QHPs. Prior to 2018, we believed that the impact of these choices and plan selections on the amount of PTCs that the federal government paid was relatively small. During this time, most enrollees in income ranges up to 200 percent FPL chose silver-level QHPs, and in most cases where enrollees chose bronze-level QHPs, the premium was still more than the PTC. Based on our analysis of the percentage of persons with incomes below 200 percent FPL choosing bronze-level QHPs and the average reduction in the PTCs paid for those enrollees, we believe that the total PTCs paid for persons with incomes below 200 percent FPL were reduced by about 1 percent in 2017. Therefore, we did not seek to make an adjustment based on the effect of enrollees choosing non-silver-level QHPs in developing the BHP payment methodology applicable to program years prior to 2018. However, after the discontinuance of the CSR payments in October 2017, several changes occurred that increased the expected impact of enrollees' plan selection choices on the amount of PTC the government paid. These changes led to a larger percentage of individuals choosing bronze-level QHPs, and for those individuals who chose bronze-level QHPs, these changes also generally led to larger reductions in PTCs paid by the federal government per individual. The combination of more individuals with incomes below 200 percent of FPL choosing bronze-level QHPs and the reduction in PTCs had an impact on PTCs paid by the federal government for enrollees with incomes below 200 percent FPL. Silver-level QHP premiums for the 2018 benefit year increased substantially relative to other metal tier plans in many states (on average, by about 20 percent). We believe this contributed to an increase in the percentage of enrollees with lower incomes choosing bronze-level QHPs, despite being eligible for CSRs in silver-level QHPs, because many were able to purchase bronze-level QHPs and pay $0 in premium; according to CMS data, the percentage of persons with incomes between 0 percent and 200 percent of FPL eligible for CSRs (those who would be eligible for the BHP if the state operated a BHP) selecting bronze-level QHPs increased from about 11 percent in 2017 to about 13 percent in 2018. In addition, the likelihood that a person choosing a bronze-level QHP would pay $0 premium increased, and the difference between the bronze-level QHP premium and the available PTC widened. Between 2017 and 2018, the ratio of the average silver-level QHP premium to the average bronze-level QHP premium increased: The average silver-level QHP premium was 17 percent higher than the average bronze-level QHP premium in 2017, whereas the average silver-level QHP premium was 33 percent higher than the average bronze-level QHP premium in 2018. Similarly, the average estimated reduction in APTC for enrollees with incomes between 0 percent and 200 percent FPL that chose bronze-level QHPs increased from about 11 percent in 2017 to about 23 percent in 2018 (after adjusting for the average age of bronze-level QHP and silver-level QHP enrollees); that is, in 2017, enrollees with incomes in this range who chose bronze-level QHPs received 11 percent less than the full value of the APTC, and in 2018, those enrollees who chose bronze-level QHPs received 23 percent less than the full value of the APTC.

The discontinuance of the CSR payments led to increases in silver-level QHP premiums (and thus in the total potential PTCs), but did not generally increase the bronze-level QHP premiums in most states; we believe this is the primary reason for the increase in the percentage reduction in PTCs paid by the government for those who enrolled in bronze-level QHPs between 2017 and 2018. Therefore, we now believe that the impacts on the amount of PTC the government would pay due to enrollees' plan selection choices are larger and thus more significant, and we are proposing to include an adjustment (the MTSF) in the BHP payment methodology to account for the effects of these choices. Section 1331(d)(3) of the Affordable Care Act requires that the BHP payments to states be based on what would have been provided if such eligible individuals were allowed to enroll in QHPs, and we believe that it is appropriate to consider how individuals would have chosen different plans—including across different metal tiers—as part of the BHP payment methodology.

We finalized the application of the MTSF for the first time in the 2020 payment methodology, and here we propose to calculate the MTSF using the same approach as finalized there (84 FR 59543). First, we would calculate the percentage of enrollees with incomes below 200 percent of the FPL (those who would be potentially eligible for the BHP) in non-BHP states who enrolled in bronze-level QHPs in 2018. Second, we would calculate the ratio of the average PTC paid for enrollees in this income range who selected bronze-level QHPs compared to the average PTC paid for enrollees in the same income range who selected silver-level QHPs. Both of these calculations would be done using CMS data on Exchange enrollment and payments.

The MTSF would then be set to the value of 1 minus the product of the percentage of enrollees who chose bronze-level QHPs and 1 minus the ratio of the average PTC paid for enrollees in bronze-level QHPs to the average PTC paid for enrollees in silver-level QHPs:

MTSF = 1 − (percentage of enrollees in bronze-level QHPs × (1 − average PTC paid for bronze-level QHP enrollees/average PTC paid for silver-level QHP enrollees))

We have calculated that 12.68 percent of enrollees in households with incomes below 200 percent of the FPL selected bronze-level QHPs in 2018. We also have calculated that the ratio of the average PTC paid for those enrollees in bronze-level QHPs to the average PTCs paid for enrollees in silver-level QHPs was 76.66 percent after adjusting for the average age of bronze-level and silver-level QHP enrollees. The MTSF is equal to 1 minus the product of the percentage of enrollees in bronze-level QHPs (12.68 percent) and 1 minus the ratio of the average PTC paid for bronze-level QHP enrollees to the average PTC paid for silver-level QHP enrollees (76.66 percent). Thus, the MTSF would be calculated as:

MTSF = 1 − (12.68% × (1 − 76.66%))

Therefore, we propose that the value of the MTSF for 2021 would be 97.04 percent.

We believe it is reasonable to use the same value for the MTSF as was used in the 2020 payment methodology. First, we currently do not have more recent and complete data available than the 2018 data that was used to calculate the value of the MTSF finalized in the 2020 payment methodology. At this time, we only have data for several months of 2019. Second, the MTSF reflects the percentage of enrollees choosing bronze-level QHPs and the accompanying reduction in the PTCs paid. We recognize that there may be changes to these over time, but we do not expect significant year-to-year differences absent other changes to the operations of the Exchanges (for example, the discontinuance of CSR payments). As detailed above, we believe that states

and QHP issuers have not significantly changed their approaches to add adjustments to account for the discontinuation of CSR payments to QHP premiums, and that most states and QHP issuers are using similar approaches as were used in 2018. We further believe that consumers will continue to react to these adjustments and increases in silver-level QHP premiums in the same manner; meaning that consumers will continue to select bronze-level QHPs and the impact on PTCs paid by the government will generally remain the same. Therefore, we believe that our proposal to maintain the value of the MTSF at 97.04 percent is reasonable for program year 2021.

We request comments on this proposal. In particular, we welcome comments on whether other sources of data beyond 2018 are available and should be used to calculate the MTSF for 2021. For example, one potential alternative would be to update the MTSF with partial 2019 data collected by CMS for Exchange plan selection and enrollment (by income and by metal tier selection) and for APTC paid for 2021 (based on the number of months available at the time the final payment methodology is published). Another potential alternative would be to leverage the ability to make retrospective adjustments under § 600.610(c)(2)(iii) to update the value for the MTSF for program year 2021 to reflect actual 2021 experience once the necessary data for 2021 are available, which would be after the end of the program year.

7. Income Reconciliation Factor (IRF)

For persons enrolled in a QHP through an Exchange who receive APTC, there will be an annual reconciliation following the end of the year to compare the advance payments to the correct amount of PTC based on household circumstances shown on the federal income tax return. Any difference between the latter amounts and the advance payments made during the year would either be paid to the taxpayer (if too little APTC was paid) or charged to the taxpayer as additional tax (if too much APTC was paid, subject to any limitations in statute or regulation), as provided in 26 U.S.C. 36B(f).

Section 1331(e)(2) of the Affordable Care Act specifies that an individual eligible for the BHP may not be treated as a ''qualified individual'' under section 1312 of the Affordable Care Act who is eligible for enrollment in a QHP offered through an Exchange. We are defining ''eligible'' to mean anyone for whom the state agency or the Exchange assesses or determines, based on the single streamlined application or renewal form, as eligible for enrollment in the BHP. Because enrollment in a QHP is a requirement for individuals to receive PTC, individuals determined or assessed as eligible for a BHP are not eligible to receive APTC assistance for coverage in the Exchange. Because they do not receive APTC assistance, BHP enrollees, on whom the BHP payment methodology is generally based, are not subject to the same income reconciliation as Exchange consumers.

Nonetheless, there may still be differences between a BHP enrollee's household income reported at the beginning of the year and the actual household income over the year. These may include small changes (reflecting changes in hourly wage rates, hours worked per week, and other fluctuations in income during the year) and large changes (reflecting significant changes in employment status, hourly wage rates, or substantial fluctuations in income). There may also be changes in household composition. Thus, we believe that using unadjusted income as reported prior to the BHP program year may result in calculations of estimated PTC that are inconsistent with the actual household incomes of BHP enrollees during the year. Even if the BHP adjusts household income determinations and corresponding claims of federal payment amounts based on household reports during the year or data from third-party sources, such adjustments may not fully capture the effects of tax reconciliation that BHP enrollees would have experienced had they been enrolled in a QHP through an Exchange and received APTC assistance.

Therefore, in accordance with current practice, we propose including in Equation 1 an adjustment, the IRF, that would account for the difference between calculating estimated PTC using: (a) Household income relative to FPL as determined at initial application and potentially revised mid-year under § 600.320, for purposes of determining BHP eligibility and claiming federal BHP payments; and (b) actual household income relative to FPL received during the plan year, as it would be reflected on individual federal income tax returns. This adjustment would seek prospectively to capture the average effect of income reconciliation aggregated across the BHP population had those BHP enrollees been subject to tax reconciliation after receiving APTC assistance for coverage provided through QHPs offered on an Exchange. Consistent with the methodology used in past years, we propose estimating reconciliation effects based on tax data for 2 years, reflecting income and tax unit composition changes over time among BHP-eligible individuals.

The OTA maintains a model that combines detailed tax and other data, including Exchange enrollment and PTC claimed, to project Exchange premiums, enrollment, and tax credits. For each enrollee, this model compares the APTC based on household income and family size estimated at the point of enrollment with the PTC based on household income and family size reported at the end of the tax year. The former reflects the determination using enrollee information furnished by the applicant and tax data furnished by the IRS. The latter would reflect the PTC eligibility based on information on the tax return, which would have been determined if the individual had not enrolled in the BHP. Consistent with prior years, we propose to use the ratio of the reconciled PTC to the initial estimation of PTC as the IRF in Equations (1a) and (1b) for estimating the PTC portion of the BHP payment rate.

For 2021, OTA has estimated that the IRF for states that have implemented the Medicaid eligibility expansion to cover adults up to 133 percent of the FPL will be 99.23 percent, and for states that have not implemented the Medicaid eligibility expansion and do not cover adults up to 133 percent of the FPL will be 98.41 percent.

In previous program years, we used the average of these two values to set the value for the IRF. At the outset of the BHP, we did not know which states would choose to operate a BHP and whether they would be states that implemented the Medicaid eligibility expansion for adults up to 133 of the FPL or states that have not. In addition, there was not a meaningful difference between the two estimated values in the initial program years.[17] Therefore, at that time we believed that using the average of the factors was the appropriate approach. However, to date, the only states that have operated a BHP are states that implemented the Medicaid eligibility expansion and the majority of enrolles in these BHPs have incomes between 133 percent and 200 percent FPL. In addition, no other states have chosen to operate a BHP, and in recent years we have seen estimated IRF

[17] For example, the estimated 2016 IRF value was 100.25 percent for states that had expanded Medicaid eligibility and 100.24 percent for states that had not expanded eligibility. See 80 FR 9636 at 9644. Similary, the estimated 2017 IRF value was 100.40 percent for states that expanded Medicaid eligibility and 100.35 percent for those that had not. See 81 FR 10091 at 10101. Additionally, the estimated 2018 IRF values were 97.37 for Medicaid expansion states and 97.45 for non-Medicaid expansion states. See 84 FR 12552 at 12562.

values that suggests there is a meaningful difference in the expected results of income reconciliation between states that have and have not expanded Medicaid eligibility.[18]

For these reasons, we believe that it is appropriate to refine the calculation of the IRF and only use data regarding Exchange enrollees with incomes between 133 percent and 200 percent FPL, as in Medicaid expansion states, instead of an average that also includes data regarding Exchange enrollees with incomes between 100 percent and 200 percent FPL, as in non-Medicaid expansion states. For the IRF, given that we have the values for this factor for individuals with incomes between 100 percent and 200 percent FPL and between 133 percent and 200 percent FPL separately, and the estimated 2021 IRF values demonstrate there is a meaningful difference in the expected results of income reconciliation between states that have and have not expanded Medicaid eligibility, we propose to set the value of the IRF for program year 2021 based on those with incomes between 133 percent and 200 percent FPL only, as in Medicaid expansion states. For other factors used in the BHP payment methodology, it may not always be possible to separate the experiences between different types of states and there may not be meaningful differences between the experiences of such states. Therefore, we propose to set the value of the IRF equal to the value of the IRF for states that have expanded Medicaid eligibility, which is 99.23 percent for program year 2021.

E. State Option To Use Prior Program Year QHP Premiums for BHP Payments

In the interest of allowing states greater certainty in the total BHP federal payments for a given plan year, we have given states the option to have their final federal BHP payment rates calculated using a projected ARP (that is, using premium data from the prior program year multiplied by the premium trend factor (PTF)), as described in Equation (2b). We propose to continue to require states to make their election to have their final federal BHP payment rates calculated using a projected ARP by May 15 of the year preceding the applicable program year. Therefore, we propose states inform CMS in writing of their election for the 2021 program year by May 15, 2020.

For Equation (2b), we propose to continue to define the PTF, with minor proposed changes in calculation sources and methods, as follows:

PTF: In the case of a state that would elect to use the 2020 premiums as the basis for determining the 2021 BHP payment, it would be appropriate to apply a factor that would account for the change in health care costs between the year of the premium data and the BHP program year. This factor would approximate the change in health care costs per enrollee, which would include, but not be limited to, changes in the price of health care services and changes in the utilization of health care services. This would provide an estimate of the adjusted monthly premium for the applicable second lowest cost silver plan that would be more accurate and reflective of health care costs in the BHP program year.

For the PTF we propose to use the annual growth rate in private health insurance expenditures per enrollee from the National Health Expenditure (NHE) projections, developed by the Office of the Actuary in CMS (*https://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/NationalHealthExpendData/NationalHealthAccountsProjected.html*). Based on these projections, for BHP program year 2021, we propose that the PTF would be 4.8 percent.

We note that the increase in premiums for QHPs from 1 year to the next may differ from the PTF developed for the BHP funding methodology for several reasons. In particular, we note that the second lowest cost silver plan may be different from one year to the next. This may lead to the PTF being greater than or less than the actual change in the premium of the second lowest cost silver plan.

F. State Option To Include Retrospective State-Specific Health Risk Adjustment in Certified Methodology

To determine whether the potential difference in health status between BHP enrollees and consumers in an Exchange would affect the PTC and risk adjustment payments that would have otherwise been made had BHP enrollees been enrolled in coverage through an Exchange, we propose to continue to provide states implementing the BHP the option to propose and to implement, as part of the certified methodology, a retrospective adjustment to the federal BHP payments to reflect the actual value that would be assigned to the population health factor (or risk adjustment) based on data accumulated during that program year for each rate cell.

We acknowledge that there is uncertainty with respect to this factor due to the lack of available data to analyze potential health differences between the BHP and QHP populations, which is why, absent a state election, we propose to use a value for the PHF (see section II.D.3. of this proposed notice) to determine a prospective payment rate which assumes no difference in the health status of BHP enrollees and QHP enrollees. There is considerable uncertainty regarding whether the BHP enrollees will pose a greater risk or a lesser risk compared to the QHP enrollees, how to best measure such risk, the potential effect such risk would have had on PTC, and risk adjustment that would have otherwise been made had BHP enrollees been enrolled in coverage through an Exchange. To the extent, however, that a state would develop an approved protocol to collect data and effectively measure the relative risk and the effect on federal payments of PTCs and CSRs, we propose to continue to permit a retrospective adjustment that would measure the actual difference in risk between the two populations to be incorporated into the certified BHP payment methodology and used to adjust payments in the previous year.

For a state electing the option to implement a retrospective population health status adjustment as part of the BHP payment methodology applicable to the state, we propose requiring the state to submit a proposed protocol to CMS, which would be subject to approval by us and would be required to be certified by the Chief Actuary of CMS, in consultation with the OTA. We propose to apply the same protocol for the population health status adjustment as what is set forth in guidance in *Considerations for Health Risk Adjustment in the Basic Health Program in Program Year 2015* (*http://www.medicaid.gov/Basic-Health-Program/Downloads/Risk-Adjustment-and-BHP-White-Paper.pdf*). We propose requiring a state to submit its proposed protocol for the 2021 program year by August 1, 2020. We propose that this submission would also need to include descriptions of how the state would collect the necessary data to determine the adjustment, including any contracting contingences that may be in place with participating standard health plan issuers. We would provide technical assistance to states as they develop their protocols, as requested. To implement the population health status adjustment, we propose that we must approve the state's protocol by

[18] For example, the estimated 2019 IRF value was 98.37 percent for states that expanded Medicaid eligibility and 97.70 for those that had not. Similarly, the estimated 2020 IRF values were 98.91 for Medicaid expansion states and 98.09 for non-Medicaid expansion states. See 84 FR 59529 at 59544.

December 31, 2020 for the 2021 program year. Finally, we propose that the state be required to complete the population health status adjustment at the end of the program year based on the approved protocol. After the end of the program year, and once data is made available, we propose to review the state's findings, consistent with the approved protocol, and make any necessary adjustments to the state's federal BHP payment amounts. If we determine that the federal BHP payments were less than they would have been using the final adjustment factor, we would apply the difference to the state's next quarterly BHP trust fund deposit. If we determine that the federal BHP payments were more than they would have been using the final reconciled factor, we would subtract the difference from the next quarterly BHP payment to the state.

III. Collection of Information Requirements

The proposed methodology for program year 2021 is similar to the methodology finalized for program year 2020 in the November 2019 final payment notice. While we are proposing changes, the proposed changes would not revise or impose any additional reporting, recordkeeping, or third-party disclosure requirements or burden on QHPs or on states operating State-based Exchanges. Although the methodology's information collection requirements and burden had at one time been approved by OMB under control number 0938–1218 (CMS–10510), the approval was discontinued on August 31, 2017, since we adjusted our estimated number of respondents below the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) threshold of ten or more respondents. Since we continue to estimate fewer than ten respondents, the proposed 2021 methodology is not subject to the requirements of the PRA.

We are seeking comment on whether or not to solicit information from QHP issuers on the amount of the adjustment to premiums to account for the discontinuance of CSR payments. We believe that soliciting such information would likely impose some additional reporting requirements on QHP issuers, and we welcome comments on the amount of burden this would create.

IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Regulatory Impact Analysis

A. Statement of Need

Section 1331 of the Affordable Care Act (42 U.S.C. 18051) requires the Secretary to establish a BHP, and section 1331(d)(1) specifically provides that if the Secretary finds that a state meets the requirements of the program established under section 1331(a) of the Affordable Care Act, the Secretary shall transfer to the state federal BHP payments described in section 1331(d)(3). This proposed methodology provides for the funding methodology to determine the federal BHP payment amounts required to implement these provisions for program year 2021.

B. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999), the Congressional Review Act (5 U.S.C. 804(2) and Executive Order 13771 on Reducing Regulation and Controlling Regulatory Costs (January 30, 2017).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). As noted in the BHP final rule, the BHP provides states the flexibility to establish an alternative coverage program for low-income individuals who would otherwise be eligible to purchase coverage on an Exchange. Because we make no changes in methodology that would have a consequential effect on state participation incentives, or on the size of either the BHP program or offsetting PTC and CSR expenditures, the effects of the changes made in this payment notice would not approach the $100 million threshold, and hence it is neither an economically significant rule under E.O. 12866 nor a major rule under the Congressional Review Act. Moreover, the proposed regulation is not economically significant within the meaning of section 3(f)(1) of the Executive Order.

C. Anticipated Effects

The provisions of this proposed notice are designed to determine the amount of funds that will be transferred to states offering coverage through a BHP rather than to individuals eligible for federal financial assistance for coverage purchased on the Exchange. We are uncertain what the total federal BHP payment amounts to states will be as these amounts will vary from state to state due to the state-specific factors and conditions. For example, total federal BHP payment amounts may be greater in more populous states simply by virtue of the fact that they have a larger BHP-eligible population and total payment amounts are based on actual enrollment. Alternatively, total federal BHP payment amounts may be lower in states with a younger BHP-eligible population as the RP used to calculate the federal BHP payment will be lower relative to older BHP enrollees. While state composition will cause total federal BHP payment amounts to vary from state to state, we believe that the methodology, like the methodology used in 2020, accounts for these variations to ensure accurate BHP payment transfers are made to each state.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) requires agencies to prepare a final regulatory flexibility analysis to describe the impact of the final rule on small

entities, unless the head of the agency can certify that the rule will not have a significant economic impact on a substantial number of small entities. The RFA generally defines a ''small entity'' as (1) a proprietary firm meeting the size standards of the Small Business Administration (SBA); (2) a not-for-profit organization that is not dominant in its field; or (3) a small government jurisdiction with a population of less than 50,000. Individuals and states are not included in the definition of a small entity. Few of the entities that meet the definition of a small entity as that term is used in the RFA would be impacted directly by this methodology.

Because this methodology is focused solely on federal BHP payment rates to states, it does not contain provisions that would have a direct impact on hospitals, physicians, and other health care providers that are designated as small entities under the RFA. Accordingly, we have determined that the methodology, like the previous methodology and the final rule that established the BHP program, will not have a significant economic impact on a substantial number of small entities.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a methodology may have a significant economic impact on the operations of a substantial number of small rural hospitals. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. For the preceding reasons, we have determined that the methodology will not have a significant impact on a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act (UMRA) of 2005 requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation, by state, local, or tribal governments, in the aggregate, or by the private sector. In 2019, that threshold is approximately $154 million. States have the option, but are not required, to establish a BHP. Further, the methodology would establish federal payment rates without requiring states to provide the Secretary with any data not already required by other provisions of the Affordable Care Act or its implementing regulations. Thus, neither the current nor the proposed payment methodologies mandate expenditures by state governments, local governments, or tribal governments.

Executive Order 13132 establishes certain requirements that an agency must meet when it issues a final rule that imposes substantial direct effects on states, preempts state law, or otherwise has federalism implications. The BHP is entirely optional for states, and if implemented in a state, provides access to a pool of funding that would not otherwise be available to the state. Accordingly, the requirements of Executive Order 13132 do not apply to this proposed notice.

D. Alternative Approaches

We considered several alternatives in developing the proposed BHP payment methodology for 2021, and we discuss some of these alternatives below.

We considered alternatives as to how to calculate the PAF in the proposed methodology for 2021. The proposed value for the PAF is 1.188, which is the same as was used for 2018, 2019, and 2020. We believe it would be difficult to get the updated information from QHP issuers comparable to what was used to develop the 2018 factor, because QHP issuers may not distinctly consider the impact of the discontinuance of CSR payments on the QHP premiums any longer. We do not have reason to believe that the value of the PAF would change significantly between program years 2018 and 2021. We are continuing to consider whether or not there are other methodologies or data sources we may be able to use to develop the PAF. We are also considering whether or not to update the value of the PAF for 2021 after the end of the 2021 BHP program year.

We also considered alternatives as how to calculate the MTSF in the proposed methodology for 2021. The proposed value for the MTSF is 97.04 percent, which is the same as was finalized for 2020. We believe that we would use the latest data available each year; for example, we anticipate data from 2019 being available next year in developing the subsequent BHP payment methodology. We are considering whether or not there are other methodologies or data sources we may be able to use to develop the MTSF. We are also considering whether or not to update the value of the MTSF for 2021 after the end of the 2021 BHP program year.

We considered alternatives as how to calculate the IRF in the proposed methodology for 2021. We are proposing to calculate the value of this factor based on modeling by OTA, as we have done for prior years. For the 2021 BHP payment methodology, we are considering calculating the IRF from the latest available year of Exchange data. We do not anticipate this would lead to a significant change in the value of the IRF. In addition, we also considered whether to set the IRF as the average of the expected values for states that have expanded Medicaid eligibility and for states that have not, or to set the IRF as the value for only states that have expanded Medicaid eligibility, because only states that have expanded eligibility have operated a BHP to date.

We also considered whether or not to continue to provide states the option to develop a protocol for a retrospective adjustment to the population health factor (PHF) as we did in previous payment methodologies. We believe that continuing to provide this option is appropriate and likely to improve the accuracy of the final payments.

We also considered whether or not to require the use of the program year premiums to develop the federal BHP payment rates, rather than allow the choice between the program year premiums and the prior year premiums trended forward. We believe that the payment rates can still be developed accurately using either the prior year QHP premiums or the current program year premiums and that it is appropriate to continue to provide the states the option.

Many of the factors proposed in this proposed notice are specified in statute; therefore, for these factors we are limited in the alternative approaches we could consider. One area in which we previously had and still have a choice is in selecting the data sources used to determine the factors included in the proposed methodology. Except for state-specific RPs and enrollment data, we propose using national rather than state-specific data. This is due to the lack of currently available state-specific data needed to develop the majority of the factors included in the proposed methodology. We believe the national data will produce sufficiently accurate determinations of payment rates. In addition, we believe that this approach will be less burdensome on states. In many cases, using state-specific data would necessitate additional requirements on the states to collect, validate, and report data to CMS. By using national data, we are able to collect data from other sources and limit the burden placed on the states. For RPs and enrollment data, we propose using state-specific data rather than national data as we believe state-specific data will produce more accurate determinations than national averages.

We request public comment on these alternative approaches.

E. Regulatory Reform Analysis Under E.O. 13771

Executive Order 13771, titled Reducing Regulation and Controlling Regulatory Costs, was issued on January 30, 2017 and requires that the costs associated with significant new regulations ''shall, to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.'' This proposed rule, if finalized as proposed, is expected to be neither an E.O. 13771 regulatory action nor an E.O. 13771 deregulatory action.

F. Conclusion

We believe that this proposed BHP payment methodology is effectively the same methodology as finalized for 2020. BHP payment rates may change as the values of the factors change, most notably the QHP premiums for 2020 or 2021. We do not anticipate this proposed methodology to have any significant effect on BHP enrollment in 2021.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

Dated: November 4, 2019.

Seema Verma,

Administrator, Centers for Medicare & Medicaid Services.

Dated: November 4, 2019.

Alex M. Azar,

Secretary, Department of Health and Human Services.

[FR Doc. 2020–02472 Filed 2–6–20; 4:15 pm]

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DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 2

[DS65100000, DWSN00000.000000, DP.65106, 20XD4523WS]

RIN 1090–AB13

Privacy Act Regulations; Exemption for the Physical Security Access Files System

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of a proposed rulemaking.

SUMMARY: The Department of the Interior is amending its regulations to exempt certain records in the INTERIOR/DOI–46, Physical Security Access Files, system of records from one or more provisions of the Privacy Act because of criminal, civil, and administrative law enforcement requirements.

DATES: Submit comments on or before April 10, 2020.

ADDRESSES: You may submit comments, identified by docket number [DOI–2018–0005] or [Regulatory Information Number (RIN) 1090–AB13], by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for sending comments.
- *Email: DOI_Privacy@ios.doi.gov*. Include docket number [DOI–2018–0005] or [RIN 1090–AB13] in the subject line of the message.
- *U.S. Mail or Hand-Delivery:* Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW, Room 7112, Washington, DC 20240.

Instructions: All submissions received must include the agency name and docket number [DOI–2018–0005] or [RIN 1090–AB13]. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW, Room 7112, Washington, DC 20240, *DOI_Privacy@ios.doi.gov* or (202) 208–1605.

SUPPLEMENTARY INFORMATION:

Background

The Privacy Act of 1974, as amended, 5 U.S.C. 552a, governs the means by which the U.S. Government collects, maintains, uses and disseminates personally identifiable information. The Privacy Act applies to information about individuals that is maintained in a ''system of records.'' A system of records is a group of any records under the control of an agency from which information about an individual is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. See 5 U.S.C. 552a(a)(4) and (5).

An individual may request access to records containing information about him or herself, 5 U.S.C. 552a(b), (c) and (d). However, the Privacy Act authorizes Federal agencies to exempt systems of records from access by individuals under certain circumstances, such as where the access or disclosure of such information would impede national security or law enforcement efforts. Exemptions from Privacy Act provisions must be established by regulation, 5 U.S.C. 552a(j) and (k).

The Department of the Interior (DOI), Office of Law Enforcement and Security, maintains the Physical Security Access Files system of records. This system helps DOI manage physical security operations and visitor access to DOI-controlled facilities and implement Homeland Security Presidential Directive 12 (HSPD–12), which requires Federal agencies to use a common identification credential for both logical and physical access to federally-controlled facilities and information systems. DOI employees, contractors, consultants, volunteers, Federal emergency response officials, Federal employees on detail or temporarily assigned to work in DOI facilities, visitors, and other individuals require access to agency facilities, systems or networks. DOI uses integrated identity management systems to issue credentials to verify individuals' identities, manage access controls, and ensure the security of DOI controlled facilities. This Department-wide system of records notice covers physical security program records and activities, including all DOI controlled areas where paper-based physical security logs and registers have been established, in addition to or in place of smart-card access control systems. Incident and non-incident data collected in relation to criminal and civil activity during the course of managing this system may be referred to internal and external organizations as appropriate in support of law enforcement, homeland security, and physical or personnel security, information security, and related activities. DOI last published the ''HSPD–12: Physical Security Files—Interior, DOI–46'' system notice in the **Federal Register** at 72 FR 11043 (March 12, 2007).

In this notice of proposed rulemaking, DOI is proposing to revise the Privacy Act regulations at 43 CFR 2.254 to reorder existing paragraphs to add new paragraphs for additional exempt systems pursuant to 5 U.S.C. 552a(k) as follows:

- Redesignate paragraphs (b)(1)–(17) as paragraphs (c)(1)–(17) and add a new paragraph (c)(19) to exempt the INTERIOR/DOI–46, Physical Security Access Files system as described in this document;
- Add a new paragraph (b) to be reserved for future exempt systems;
- Redesignate paragraphs (c)(1)–(4) as paragraphs (e)(1)–(4) and add paragraph (e)(5) to exempt the INTERIOR/DOI–46, Physical Security Access Files system as described in this document; and

• Add a new paragraph (d) for records maintained in connection with providing protective services that are exempt under 5 U.S.C. 552a(k)(3) and add a new paragraph (d)(1) to exempt the INTERIOR/DOI–46, Physical Security Access Files system as described in this document.

DOI is proposing to exempt portions of this system from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2), (k)(3), and (k)(5) due to criminal, civil, and administrative law enforcement requirements. Under 5 U.S.C. 552a(k)(2), (k)(3), and (k)(5), the head of a Federal agency may promulgate rules to exempt a system of records from certain provisions of 5 U.S.C. 552a if the system of records is investigatory material compiled for law enforcement purposes or investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information. Additionally, agencies may promulgate rules to exempt records from provisions of the Privacy Act to protect investigations or records that may contain information obtained from another agency or are maintained in connection to providing protective services to the President of the United States or other individuals pursuant to 18 U.S.C. 3056. The DOI Office of Law Enforcement and Security manages physical security operations and coordinates security with other Federal agencies to protect visiting dignitaries and ensure the safety of individuals protected pursuant to 18 U.S.C. 3056. Application of exemption (k)(3) may be necessary to preclude an individual subject's access to and amendment of personnel investigations or information connected to these activities that meet the criteria of 5 U.S.C. 552a(k)(3).

Because this system of records contains material that support activities related to investigations, criminal law enforcement, and homeland security purposes under the provisions of 5 U.S.C. 552a(k)(2), (k)(3), and (k)(5), the Department of the Interior proposes to exempt portions of the Physical Security Access Files system from one or more of the following provisions: 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G) through (e)(4)(I), and (f). Where a release would not interfere with or adversely affect investigations, law enforcement or homeland security activities, including but not limited to revealing sensitive information or compromising confidential sources, the exemption may be waived on a case-by-case basis. Exemptions from these particular subsections are justified for the following reasons:

1. 5 U.S.C. 552a(c)(3). This section requires an agency to make the accounting of each disclosure of records available to the individual named in the record upon request. Release of accounting of disclosures would alert the subjects of an investigation to the existence of the investigation and the fact that they are subjects of the investigation. The release of such information to the subjects of an investigation would provide them with significant information concerning the nature of the investigation, and could seriously impede or compromise the investigation, endanger the physical safety of confidential sources, witnesses and their families, and lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony.

2. 5 U.S.C. 552a(d); (e)(4)(G) and (e)(4)(H); and (f). These sections require an agency to provide notice and disclosure to individuals that a system contains records pertaining to the individual, as well as providing rights of access and amendment. Granting access to records in the Physical Security Access Files system may inform the subject of an investigation of an actual or potential criminal violation of the existence of that investigation, the nature and scope of the information and evidence obtained, of the identity of confidential sources, witnesses, and law enforcement personnel, the identity of confidential sources, witnesses, lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony; disclose investigative techniques and procedures; and could provide information to enable the subject to avoid detection or apprehension. It may be necessary to preclude an individual subject's access to and amendment of personnel investigations or information connected to providing protective services to the President of the United States or other individuals pursuant to 18 U.S.C. 3056.

3. 5 U.S.C. 552a(e)(1). This section requires the agency to maintain information about an individual only to the extent that such information is relevant or necessary. The application of this provision could impair investigations and law enforcement, because it is not always possible to determine the relevance or necessity of specific information in the early stages of an investigation. Relevance and necessity are often questions of judgment and timing, and it is only after the information is evaluated that the relevance and necessity of such information can be established. In addition, during the course of the investigation, the investigator may obtain information which is incidental to the main purpose of the investigation but which may relate to matters under the investigative jurisdiction of another agency. Such information cannot readily be segregated. Furthermore, during the course of the investigation, an investigator may obtain information concerning the violation of laws outside the scope of the investigator's jurisdiction. In the interest of effective law enforcement, DOI investigators should retain this information, since it can aid in establishing patterns of criminal activity and can provide valuable leads for other law enforcement agencies.

4. 5 U.S.C. 552a(e)(4)(I). This section requires an agency to provide public notice of the categories of sources of records in the system. The application of this section could disclose investigative techniques and procedures and cause sources to refrain from giving such information because of fear of reprisal, or fear of breach of promise(s) of anonymity and confidentiality. This could compromise DOI's ability to conduct investigations and to identify, detect and apprehend violators.

Procedural Requirements

1. Regulatory Planning and Review (Executive Orders 12866 and 13563)

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. DOI developed this rule in a manner consistent with these requirements.

2. Regulatory Flexibility Act

DOI certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). This rule does not impose a requirement for small businesses to report or keep records on any of the requirements contained in this rule. The exemptions to the Privacy Act apply to individuals, and individuals are not covered entities under the Regulatory Flexibility Act.

3. Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Does not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises.

4. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments in the aggregate, or on the private sector, of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. This rule makes only minor changes to 43 CFR part 2. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

5. Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. The rule is not a governmental action capable of interference with constitutionally protected property rights. This rule makes only minor changes to 43 CFR part 2. A takings implication assessment is not required.

6. Federalism (E.O. 13132)

In accordance with Executive Order 13132, this rule does not have any federalism implications to warrant the preparation of a Federalism Assessment. The rule is not associated with, nor will it 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. A Federalism Assessment is not required.

7. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Does not unduly burden the judicial system.

(b) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(c) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

8. Consultation With Indian Tribes (E.O. 13175)

In accordance with Executive Order 13175, DOI has evaluated this rule and determined that it would have no substantial effects on federally recognized Indian Tribes.

9. Paperwork Reduction Act

This rule does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required.

10. National Environmental Policy Act (NEPA) of 1969

This rule does not constitute a major Federal Action significantly affecting the quality for the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the rule is covered by a categorical exclusion. We have determined the rule is categorically excluded under 43 CFR 46.210(i) because it is administrative, legal, and technical in nature. We also have determined the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

11. Data Quality Act

In developing this rule, there was no need to conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554).

12. Effects on Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. A Statement of Energy Effects is not required.

13. Clarity of This Regulation

We are required by Executive Order 12866 and 12988, the Plain Writing Act of 2010 (H.R. 946), and the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means each rule we publish must:

—Be logically organized;
—Use the active voice to address readers directly;
—Use clear language rather than jargon;
—Be divided into short sections and sentences; and
—Use lists and tables wherever possible.

List of Subjects in 43 CFR Part 2

Administrative practice and procedure, Confidential information, Courts, Freedom of Information Act, Privacy Act.

For the reasons stated in the preamble, the Department of the Interior proposes to amend 43 CFR part 2 as follows:

PART 2—FREEDOM OF INFORMATION ACT; RECORDS AND TESTIMONY

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

Authority: 5 U.S.C. 301, 552, 552a, 553; 31 U.S.C. 3717; 43 U.S.C. 1460, 1461.

■ 2. Revise § 2.254 to read as follows:

§ 2.254 Exemptions.

(a) *Criminal law enforcement records exempt under 5 U.S.C. 552a(j)(2).* Pursuant to 5 U.S.C. 552a(j)(2) the following systems of records are exempted from all of the provisions of 5 U.S.C. 552a and the regulations in this subpart except paragraphs (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), (11) and (12), and (i) of 5 U.S.C. 552a and the portions of the regulations in this subpart implementing these paragraphs:

(1) INTERIOR/FWS–20, Investigative Case File System.

(2) INTERIOR/BIA–18, Law Enforcement Services System.

(3) INTERIOR/NPS–19, Law Enforcement Statistical Reporting System.

(4) INTERIOR/OIG–02, Investigative Records.

(5) INTERIOR/DOI–10, Incident Management, Analysis and Reporting System.

(6) INTERIOR/DOI–50, Insider Threat Program.

(7) [RESERVED]

(b) [RESERVED]

(1) [RESERVED]

(2) [RESERVED]

(c) *Law enforcement records exempt under 5 U.S.C. 552a(k)(2).* Pursuant to 5 U.S.C. 552a(k)(2), the following systems of records are exempted from paragraphs (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) of 5 U.S.C. 552a and the provisions of the regulations in this subpart implementing these paragraphs:

(1) Investigative Records, Interior/Office of Inspector General—2.

(2) Permits System, Interior/FWS–21.

(3) Criminal Case Investigation System, Interior/BLM–18.

(4) Civil Trespass Case Investigations, Interior/BLM–19.

(5) Employee Conduct Investigations, Interior/BLM–20.

(6)–(7) [RESERVED]

(8) Employee Financial Irregularities, Interior/NPS–17.

(9) Trespass Cases, Interior/Reclamation–37.

(10) Litigation, Appeal and Case Files System, Interior/Office of the Solicitor-1 to the extent that it consists of investigatory material compiled for law enforcement purposes.

(11) Endangered Species Licenses System, Interior/FWS–19.

(12) Investigative Case File, Interior/FWS–20.

(13) Timber Cutting and Trespass Claims Files, Interior/BIA–24.

(14) Debarment and Suspension Program, Interior/DOI–11.

(15) Incident Management, Analysis and Reporting System, Interior/DOI–10.

(16) Insider Threat Program, Interior/DOI–50.

(17) Indian Arts and Crafts Board, Interior/DOI–24.

(18) [RESERVED]

(19) Physical Security Files, Interior/DOI–46.

(20) [RESERVED]

(21) [RESERVED]

(d) *Records maintained in connection with providing protective services exempt under 5 U.S.C. 552a(k)(3).* Pursuant to 5 U.S.C. 552a(k)(3), the following systems of records have been exempted from paragraphs (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of 5 U.S.C. 552a and the provisions of the regulations in this subpart implementing these paragraphs:

(1) Physical Security Files, Interior/DOI–46.

(2) [RESERVED]

(e) *Investigatory records exempt under 5 U.S.C. 552a(k)(5).* Pursuant to 5 U.S.C. 552a(k)(5), the following systems of records have been exempted from paragraphs (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of 5 U.S.C. 552a and the provisions of the regulations in this subpart implementing these paragraphs:

(1) [RESERVED]

(2) National Research Council Grants Program, Interior/GS–9

(3) Committee Management Files, Interior/Office of the Secretary—68.

(4) Debarment and Suspension Program, Interior/DOI–11.

(5) Physical Security Files, Interior/DOI–46.

(6) [RESERVED]

(7) [RESERVED]

(8) [RESERVED]

Teri Barnett,

Departmental Privacy Officer, Department of the Interior.

[FR Doc. 2020–00356 Filed 2–7–20; 8:45 am]

BILLING CODE 4334–63–P

LEGAL SERVICES CORPORATION

45 CFR Parts 1610 and 1630

Use of Non-LSC Funds, Transfers of LSC Funds, Program Integrity; Cost Standards and Procedures

AGENCY: Legal Services Corporation.

ACTION: Further notice of proposed rulemaking.

SUMMARY: This further notice of proposed rulemaking provides public notice for comment about one substantive change to the Legal Services Corporation's (LSC or Corporation) regulation regarding cost standards at 45 CFR part 1630 that would permit LSC to question and disallow costs in addition to other, already available remedial measures when a recipient uses non-LSC funds in violation of the LSC restrictions that apply to non-LSC funds. This notice is in addition to the notice of proposed rulemaking for 45 CFR part 1610 and 1630 published on August 12, 2019.

DATES: Comments must be received by March 26, 2020.

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

- *Federal Rulemaking Portal:* Follow the instructions for submitting comments.
- *Email: lscrulemaking@lsc.gov.* Include ''Part 1630 Rulemaking'' in the subject line of the message.
- *Fax:* (202) 337–6519.
- *Mail:* Mark Freedman, Senior Associate General Counsel, Legal Services Corporation, 3333 K Street NW, Washington, DC 20007, ATTN: Part 1630 Rulemaking.
- *Hand Delivery/Courier:* Mark Freedman, Senior Associate General Counsel, Legal Services Corporation, 3333 K Street NW, Washington, DC 20007, ATTN: Part 1630 Rulemaking.

Instructions: LSC prefers electronic submissions via email with attachments in Acrobat PDF format. LSC will not consider written comments sent to any other address or received after the end of the comment period.

FOR FURTHER INFORMATION CONTACT: Mark Freedman, Senior Associate General Counsel, Legal Services Corporation, 3333 K Street NW, Washington, DC 20007; (202) 295–1623 (phone), (202) 337–6519 (fax), or *mfreedman@lsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

On August 12, 2019, the Legal Services Corporation (LSC or Corporation) published a Notice of Proposed Rulemaking (NPRM or Proposed Rule) at 84 FR 39787 proposing changes to 45 CFR part 1610—Use of Non-LSC Funds and to a related provision of 45 CFR part 1630—Cost Standards and Procedures. LSC stated that the Proposed Rule did not contain any substantive changes to either rule. Rather, LSC proposed updates to part 1610 to improve clarity and updates to § 1630.16 to better reference the substantive terms of part 1610. LSC received two comments during the 60-day comment period and one late comment. Generally, the comments supported the proposed rule. LSC will respond to the comments in the Final Rule. These notices and the comments are published on LSC's website at <*www.lsc.gov/rulemaking*>.

Some of the comments stated that the proposed rule would make one substantive change in § 1630.16. LSC agrees. LSC is publishing this Further Notice of Proposed Rulemaking to provide clear notice of that change and an opportunity for public comment. The proposed language for § 1630.16 has not changed from the NPRM.

Additionally, on January 10, 2020, the National Association of IOLTA Programs wrote to LSC noting the same substantive change in § 1630.16 and requesting that LSC repost the proposed substantive changes for comments.

II. General Background

A. LSC Restrictions on Non-LSC Funds

The Legal Services Corporation Act (LSC Act or Act), 42 U.S.C. 2996–2996l, and, since 1996, LSC's annual appropriation, impose restrictions and requirements on the use of LSC and non-LSC funds by recipients of grants from LSC for the delivery of civil legal aid. See, *e.g.,* Public Law 116–93 (2019) (appropriating funds to LSC subject to restrictions set out in prior appropriations). LSC implemented the application of those restrictions and requirements to recipients' use of non-

LSC funds through part 1610 of title 45 of the Code of Federal Regulations.

The current rule describes two categories of restrictions on the use of non-LSC funds: (1) Restrictions established in the LSC Act (LSC Act Restrictions) and (2) restrictions established in LSC's annual appropriation (Appropriations Restrictions). The rule then discusses how those restrictions apply to three different categories of non-LSC funds used by recipients: (a) Private funds (such as individual donations), (b) public funds (such as government grants), and (c) tribal funds (such as grants from Native American tribes).

All uses of private funds by recipients are subject to both the LSC Act Restrictions and the Appropriations Restrictions. Additionally, all uses of public funds by recipients are subject to the Appropriations Restrictions.

By contrast, the LSC Act Restrictions do not apply to the use of public funds so long as the recipient uses those funds consistent with ''the purposes for which they are provided'' by the other funding source (authorized use). 42 U.S.C. 2996i(c). If, instead, the recipient uses public funds contrary to the purposes for which they were provided (unauthorized use), then those uses of public funds are subject to the LSC Act Restrictions. For example, the State of Michigan provides public funds to many LSC recipients for ''indigent civil legal assistance.'' MCL § 600.151a. The LSC Act does not apply its restrictions to those public funds so long as they are used for purposes authorized by the State of Michigan and consistent with the terms of the grant awarding them. Michigan law prohibits using those funds ''to provide legal services in relation to any criminal case or proceeding . . . .'' MCL § 600.1485(10). Thus, any use of those Michigan public funds by an LSC recipient for a criminal case would violate the purposes for which they were provided and therefore subject those unauthorized uses of the funds to the LSC Act restrictions.

Lastly, both the LSC Act Restrictions and the Appropriations Restrictions do not normally apply to authorized uses of tribal funds. 42 U.S.C. 2996i(c) and Public Law 104–134, 504(d)(2)(A) (1996) (as incorporated by reference in LSC's current appropriation).

B. Disallowed Costs for Restricted Uses of Non-LSC Funds

When a recipient violates an LSC restriction, LSC has a range of available remedial options to both correct the violation and prevent future recurrences of that violation. Generally, LSC works closely with the recipient on identifying the problem, including misunderstandings or recordkeeping and documentation defects, and developing workable long-term solutions. LSC may also prevent the recipient from charging to the LSC grant any expenses associated with the violation through questioned and disallowed costs. 45 CFR part 1630 (rules and procedures for questioning and disallowing costs). Ordinarily, that combination of solutions and disallowed costs is sufficient. Nonetheless, in cases involving persistent or intentional violations, or a failure to take remedial actions, LSC may also suspend funding, impose sanctions, or terminate a grant. 45 CFR 1618.5 (referencing suspensions in part 1623 and sanctions or terminations in part 1606).

The LSC cost standards rule appears at 45 CFR part 1630 and sets rules for when ''[e]xpenditures are allowable under an LSC grant . . . .'' 45 CFR 1630.5(a). If a recipient engages in an LSC-restricted activity with LSC funds, then LSC can question and disallow those costs as not ''in compliance with the Act, applicable appropriations law, LSC rules, regulations, guidelines, and instructions, the Accounting Guide for LSC Recipients, the terms and conditions of the grant or contract, and other applicable law . . . .'' *Id. at* § 1630.5(a)(4). LSC must provide the recipient with a written notice of the questioned costs, identifying both ''the amount of the cost and the factual and legal basis for disallowing it.'' *Id.* at § 1630.11(b). The recipient has an opportunity to respond with evidence and arguments ''to show that the cost was allowable, or [with] equitable, practical, or other reasons'' why LSC should allow the cost. *Id.* at § 1630.11(d). If LSC proceeds to disallow a cost over $2,500, the recipient can appeal the decision to the LSC President who may adopt, modify, or reverse the decision. *Id.* at § 1630.12.

Part 1630 generally focuses on the costs charged to LSC funds provided in an LSC grant, including standards for allowability of such costs and a process for LSC to question impermissible costs incurred by a grantee. By contrast, § 1630.16(c) provides a mechanism to respond to the use of non-LSC funds in violation of the LSC restrictions by authorizing LSC to ''recover from a recipient's LSC funds an amount not to exceed the amount improperly charged to non-LSC funds.'' Part 1630 has contained a version of this provision since 1986, when LSC first adopted the rule. 51 FR 29076 (§ 1630.12 in the first rule), 62 FR 68219 (§ 1630.11 in the revised rule with updates), 82 FR 37327 (§ 1630.16 in the revised rule without changes).

As discussed above, part 1610 provides the rules for determining when the LSC restrictions prohibit a recipient from engaging in restricted activities using certain categories of non-LSC funds. Generally, when part 1610 and § 1630.16(c) are read together, they provide the authority for LSC to invoke § 1630.16(c) any time a recipient uses non-LSC funds in violation of the LSC restrictions. Regardless of disallowing costs, LSC has authority to address any violation of the restrictions or part 1610 with non-LSC funds through all other remedial options, including suspensions, sanctions, or terminations pursuant to parts 1606, 1618, and 1623.

Section 1630.16 creates a conflict with part 1610 by providing an incomplete summary of the statutory restrictions on non-LSC funds. Section 1630.16(a) summarizes the application of the LSC Act Restrictions to public and tribal funds, but it *omits the LSC Act Restrictions on unauthorized uses of public funds.* The history of part 1630 provides no explanation for this omission. By contrast, the § 1630.16(b) summary of the Appropriations Restrictions does not omit any categories of non-LSC funds and includes public, private, and tribal funds. The Proposed Rule would eliminate this unexplained gap.

The National Legal Aid and Defender Association stated in its comment on the Proposed Rule that the current omission in § 1630.16(a) means that the authority to question and disallow costs in § 1630.16(c) does not apply when a recipient uses non-LSC public funds for an activity prohibited by an LSC Act restriction and contrary to the authorized purposes set by the public funder providing those funds. Thus, in that situation, the recipient will have violated the LSC Act and § 1610 with non-LSC public funds, but LSC cannot question or disallow an equivalent amount of LSC funds under § 1630.16(c). By contrast, § 1630.16(c) provides LSC with that authority for all other uses of public funds, or of other non-LSC funds, in violation of the restrictions on non-LSC funds set out in the LSC Act, Appropriations Restrictions, and part 1610.

C. Proposed Revisions to § 1630.16

The revision to § 1630.16 in the Proposed Rule eliminates this problem by referring directly to part 1610 to define the scope of the restriction on the use of non-LSC funds. This approach is consistent with the relationship between part 1630 and the other LSC restrictions. Part 1630 provides the rules

and procedures for questioning and disallowing costs charged to LSC funds based on violations of substantive restrictions appearing in the LSC statutes, regulations, and other requirements. Furthermore, the proposed approach ensures that LSC has one standard, set out in Part 1610, for determining whether a recipient has used non-LSC funds in violation of the restrictions.

In this rulemaking, the commenters asked LSC to retain the omission so that § 1630.16 would not permit LSC to disallow costs for the unauthorized use of public, non-LSC funds in violation of the LSC Act Restrictions. They provided no rationale, however, as to why such an exception should exist for public funds but not for private or tribal funds. They also did not address why such an exception should exist when public funds are used in violation of the LSC Act Restrictions but not when public funds are used in violation of the Appropriations Restrictions.

III. Elimination of the Conflict Between Parts 1610 and 1630

LSC proposes to harmonize parts 1610 and 1630 with new text in § 1630.16(a) that will replace the existing § 1630.16(a) and (b) and that will reference the substantive rules on non-LSC funds set out in part 1610. Doing so will eliminate the conflict between the rules. It will also incorporate into § 1630.16 the more detailed information about the application of these restrictions to non-LSC funds set out in the proposed part 1610. These revisions capture the statutory requirements more accurately than the current text of either § 1630.16 or part 1610.

The Proposed Rule would provide at § 1630.16(a) that:

No cost may be charged to non-LSC funds in violation of §§ 1610.3 or 1610.4 of this chapter.

The referenced sections of part 1610 are as set out in the Proposed Rule at 84 FR 39787. That proposed text would replace the existing text at § 1630.16(a) and (b) that provides (emphasis added):

(a) No costs attributable to a purpose prohibited by the LSC Act, as defined by 45 CFR 1610.2(a), may be charged to private funds, except for tribal funds used for the specific purposes for which they were provided.

(b) No cost attributable to an activity prohibited by or inconsistent with Public Law 103–134, title V, sec. 504, as defined by 45 CFR 1610.2(b), may be charged to non-LSC funds, except for tribal funds used for the specific purposes for which they were provided.

Part 1600 defines ''non-LSC funds'' as ''any funds that are not Corporation funds or LSC funds,'' which includes private funds, public funds, and tribal funds. Part 1610 defines ''private funds,'' ''public funds,'' and ''tribal funds.''

IV. Request for Comments

LSC requests public comments on this proposal. Comments that propose keeping the gap between part 1610 and § 1630.16 must:

1. Identify a valid purpose for the gap consistent with the statutory restrictions;

2. Explain why, for the LSC Act Restrictions, § 1630.16 should not apply to unauthorized uses of public funds that violate the LSC Act while continuing to apply to unauthorized uses of tribal funds that violate the LSC Act;

3. Explain why § 1630.16 should not apply to unauthorized uses of public funds that violate the LSC Act while continuing to apply to any uses of public funds that violate the restrictions in the LSC appropriation.

Comments that otherwise oppose the proposed cross reference to part 1610 in § 1630.16(a) must provide a justification for any distinction between the rules for the use on non-LSC funds in part 1610 and in § 1630.16, including justifying the distinction consistent with the statutory restrictions and justifying any distinctions in § 1630.16 among the different types of restrictions on non-LSC funds set out in part 1610.

List of Subjects in 45 CFR Part 1630

Accounting, Government contracts, Grant programs—law, Hearing and appeal procedures, Legal services, Questioned costs.

For the reasons set forth in the preamble, the Legal Services Corporation proposes to amend 45 CFR chapter XVI as follows:

PART 1630—COST STANDARDS AND PROCEDURES

■ 1. The authority citation for part 1630 continues to read as follows:

Authority: 42 U.S.C. 2996g(e).

■ 2. Revise § 1630.16 to read as follows:

§ 1630.16 Applicability to non-LSC funds.

(a) No cost may be charged to non-LSC funds in violation of §§ 1610.3 or 1610.4 of this chapter.

(b) LSC may recover from a recipient's LSC funds an amount not to exceed the amount improperly charged to non-LSC funds. The review and appeal procedures of §§ 1630.11 and 1630.12 govern any decision by LSC to recover funds under this paragraph.

Dated: February 4, 2020.

Mark Freedman,

Senior Associate General Counsel.

[FR Doc. 2020–02511 Filed 2–7–20; 8:45 am]

BILLING CODE 7050–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 200121–0026]

RIN 0648–BJ38

Fisheries of the Northeastern United States; Implementing Permitting and Reporting for Private Recreational Tilefish Vessels; Correction

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

ACTION: Proposed rule; correction.

SUMMARY: This action corrects errors in the comment identifier and the comments link specified in the **ADDRESSES** section of the proposed rule to implement permitting and reporting for private recreational tilefish vessel published in the **Federal Register** on January 29, 2020.

DATES: February 7, 2020.

ADDRESSES: You may submit comments, identified by NOAA–NMFS–2020–0005, by either of the following methods:

• *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2020-0005,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Michael Pentony, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: ''Comments on Permitting and Reporting for Private Recreational Tilefish Anglers.''

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are part of the public record and will generally be posted to *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*), confidential business information, or otherwise sensitive information submitted

voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

Copies of Amendment 6, and of the Environmental Assessment (EA), are available from the Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901.

The EA and Regulatory Impact Review are also accessible via the internet at: *http://www.mafmc.org/actions/blueline-tilefish.*

FOR FURTHER INFORMATION CONTACT: Laura Hansen, Fishery Management Specialist, 978–281–9225.

SUPPLEMENTARY INFORMATION: On January 29, 2020, we published a rule proposing to implement permitting and reporting for private recreational tilefish vessels (85 FR 5186). The proposed rule included errors in the comment identifier and the link to the comment portal. The corrections have been made in the **ADDRESSES** section of this document.

Dated: February 4, 2020.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2020–02538 Filed 2–7–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 200204–0045]

RIN 0648–BJ41

Pacific Island Fisheries; 2019–2021 Annual Catch Limits and Accountability Measures

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement main Hawaiian Islands (MHI) annual catch limits (ACLs) and accountability measures (AMs) for deepwater shrimp, precious corals, and gray jobfish (uku) in 2019–2021, and for Kona crab in 2019. The proposed ACLs and AMs support the long-term sustainability of Pacific Island fisheries.

DATES: NMFS must receive comments by March 2, 2020.

ADDRESSES: You may submit comments on the proposed rule, identified by NOAA–NMFS–2019–0124, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *http://www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2019-1024,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Send written comments to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

Instructions: NMFS may not consider comments sent by any other method, to any other address or individual, or received after the end of the comment period. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

NMFS prepared environmental analyses that describe potential impacts on the human environment. These analyses are available at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Brett Schumacher, NMFS PIRO Sustainable Fisheries, 808–725–5185.

SUPPLEMENTARY INFORMATION: NMFS and the Western Pacific Fishery Management Council (Council) manage fisheries in the U.S. Exclusive Economic Zone (EEZ, or Federal waters) around the U.S. Pacific Islands under archipelagic fishery ecosystem plans (FEPs) for American Samoa, Hawaii, the Pacific Remote Islands, and the Mariana Archipelago (Guam and the CNMI). A fifth FEP covers pelagic fisheries. The Council developed the FEPs, and NMFS implemented them under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), with regulations at Title 50 Code of Federal Regulations, Part 665 (50 CFR 665).

Each FEP contains a process for the Council and NMFS to specify ACLs and AMs; that process is codified at 50 CFR 665.4. NMFS must specify an ACL and AM(s) for each stock and stock complex of management unit species (MUS) in an FEP, as recommended by the Council and considering the best available scientific, commercial, and other information about the fishery. If a fishery exceeds an ACL, the regulations require the Council to take action, which may include reducing the ACL for the subsequent fishing year by the amount of the overage, or other appropriate action.

NMFS proposes to implement ACLs and AMs for MHI deepwater shrimp, precious corals, and uku for 2019–2021, and for Kona crab for 2019 (see Table 1). The proposed rule is consistent with recommendations made by the Council at its October 2017 and October 2018 meetings. The Council recommended that NMFS implement ACLs and AMs for 2019, 2020, and 2021 for all stocks, except for MHI Kona crab, which they recommended that NMFS implement an ACL and AM only for 2019 because a new stock assessment is available to support ACL recommendations for this stock for 2020 and beyond. The fishing year for each fishery begins on January 1 and ends on December 31, except for precious coral fisheries, which begin July 1 and end on June 30 of the next year.

TABLE 1—PROPOSED ACLS FOR STOCKS IN THIS PROPOSED RULE

Stock	ACL (lb)	Year(s)
Deepwater shrimp	250,773	2019–2021
Kona crab	3,500	2019
Uku	127,205	2019–2021
Auau Channel—Black coral	5,512	2019–2021
Makapuu Bed—Pink and red coral	2,205	2019–2021
Makapuu Bed—Bamboo coral	551	2019–2021
180 Fathom Bank—Pink and red coral	489	2019–2021
180 Fathom Bank—Bamboo coral	123	2019–2021

TABLE 1—PROPOSED ACLS FOR STOCKS IN THIS PROPOSED RULE—Continued

Stock	ACL (lb)	Year(s)
Brooks Bank—Pink and red coral	979	2019–2021
Brooks Bank—Bamboo coral	245	2019–2021
Kaena Point Bed—Pink and red coral	148	2019–2021
Kaena Point Bed—Bamboo coral	37	2019–2021
Keahole Bed—Pink and red coral	148	2019–2021
Keahole Bed—Bamboo coral	37	2019–2021
Hawaii Exploratory Area—precious corals	2,205	2019–2021

As an AM for each stock, NMFS and the Council would evaluate the catch after each fishing year to determine if the average catch of the three most recent years exceeded its ACL. If it did, the Council would recommend a reduction of the ACL of that fishery in the subsequent year equal to the amount of the overage. In the event that NMFS needs to reduce an ACL because a fishery exceeded its ACL, we would implement that AM through a separate rulemaking.

In addition to this post-season AM, the proposed rule would implement a new in-season AM for the uku fishery where, if NMFS projects that catch will reach the ACL, NMFS would close the commercial and non-commercial uku fisheries in Federal waters of the MHI for the remainder of the fishing year. This in-season AM would be implemented only for fishing years 2019 and 2020. The Council initially recommended this AM for uku, along with an ACL of 127,205 lb and the post-season AM, at the October 2017 meeting. This recommendation covered three fishing years: 2018, 2019, and 2020. At the October 2018 meeting, the Council updated the recommendations for uku for fishing years 2019 through 2021, but only recommended the ACL of 127,205 lb and the post-season AM. Because the October 2018 Council meeting did not address the in-season AM, this management measure will not be applied for fishing year 2021.

There is also an existing in-season AM for the precious coral fishery that would close individual coral beds if the ACL for that bed is projected to be reached. The proposed rule makes housekeeping changes to the text pertaining to this AM that are described below.

For all stocks except uku, the proposed ACLs and AMs are identical to those most recently specified, in 2017. The Council did not recommend, and NMFS did not implement, ACLs and AMs for any of the these fisheries in 2018, while the Council and NMFS developed the amendment to its fishery ecosystem plans to reclassify certain MUS as ECS, which do not require ACLs and AMs. The proposed action is the first time that ACLs and AMs would be implemented for uku as a single-species stock.

Overall, NMFS does not expect the proposed rule to result in a significant change in fishing operations to any fishery, or other change that would result in any fishery having significant environmental impacts. These fisheries have not caught their specified ACLs in any year since they were first implemented in 2012, and catches of uku have been less than the proposed ACL every year except one in 2017.

In addition to codifying the ACLs, this proposed rule would make housekeeping changes to the regulations. First, the proposed rule would correct a cross-reference in 50 CFR 665.4(c) that pertains to ACL requirements. The current regulation references a subsection under National Standard 1 that was changed on October 18, 2016 (81 FR 71858). The proposed rule would update the CFR to refer to the correct subsection on exceptions to ACL requirements (§ 600.310(h)(1)), rather than the subsection on flexibility for endangered species and aquaculture operations (§ 600.310(h)(2)).

The proposed rule would make three housekeeping changes related to management of Hawaii precious corals. The proposed rule would remove subsection (b) in § 665.269, which refers to nonselective harvest of precious coral in conditional beds because nonselective harvest of precious coral is not permitted in any precious coral permit area (see § 665.264). The proposed rule would also remove references in §§ 665.267 and 665.268 to a two-year fishing period for Makapuu Bed and Auau Channel Bed because NMFS now manages these beds on the same one-year fishing year as all other coral beds. The proposed rule would also replace the term ''quota'' with ''ACL'' in §§ 665.263, 665.268, and 665.269, to make the language governing catch limits consistent throughout the rule.

In this proposed rule, NMFS is not proposing ACLs for MUS that are currently subject to Federal fishing moratoria or prohibitions. These MUS include all species of gold coral (83 FR 27716, June 14, 2018), the three Hawaii seamount groundfish (pelagic armorhead, alfonsin, and raftfish) (84 FR 2767, February 8, 2019), and deepwater precious corals at the Westpac Bed Refugia (75 FR 2198, January 14, 2010). Prohibitions on fishing for these MUS serve as the functional equivalent of an ACL of zero.

Additionally, NMFS is not proposing ACLs for bottomfish, crustacean, precious coral, or coral reef ecosystem MUS identified in the Pacific Remote Islands Area (PRIA) FEP. This is because fishing is prohibited in the EEZ around the PRIA within 12 nm of emergent land, unless authorized by the U.S. Fish and Wildlife Service (USFWS) (78 FR 32996, June 3, 2013). In addition, there is no suitable habitat for these stocks beyond the 12-nm no-fishing zone, except at Kingman Reef, where fishing for these resources does not occur. Therefore, the current prohibitions on fishing serve as the functional equivalent of an ACL of zero. However, NMFS will continue to monitor authorized fishing within the Pacific Remote Islands Monument in consultation with USFWS, and may develop additional fishing requirements, including monument-specific catch limits for species that may require them.

NMFS is also not proposing ACLs for pelagic MUS at this time, because NMFS previously determined that pelagic species are subject to international fishery agreements or have a life cycle of approximately one year and, therefore, are statutorily excepted from the ACL requirements.

NMFS previously codified 2018–2021 ACLs and AMs for Hawaii Deep 7 bottomfish (84 FR 29394, June 24, 2019).

NMFS will consider public comments on this proposed rule and will announce the final rule in the **Federal Register**. NMFS must receive any comments by the date provided in the

DATES heading, not postmarked or otherwise transmitted by that date. Regardless of the final rule, all other management measures will continue to apply in the fisheries.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator for Fisheries has determined that this proposed rule is consistent with the Hawaii FEP, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

Certification of Finding of No Significant Impact on Substantial Number of Small Entities

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed action would specify ACLs and AMs for MHI precious corals, deepwater shrimp, and uku fisheries for 2019, 2020, and 2021, and the MHI Kona crab fishery for 2019.

Catch of species or species groups in state, and Federal would all count toward the ACLs under this action. This would include catch by anyone who is required to report catch to state or Federal agencies. As a result this action would apply to hundreds of small entities across Hawaii, although only the vessels participating in the MHI uku and precious coral fisheries are likely to be affected because these are the only fisheries with in-season AMs.

For Regulatory Flexibility Act (RFA) purposes only, NMFS has established a small business size standard, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide. Based on available information, NMFS has determined that all affected entities are small entities under the SBA definition of a small entity, *i.e.,* they are engaged in the business of fish harvesting, are independently owned or operated, are not dominant in their field of operation, and have gross receipts not in excess of $11 million. Therefore, there would be no disproportionate economic impacts between large and small entities. Furthermore, there would be no disproportionate economic impacts among the universe of vessels based on gear, home port, or vessel length.

Even though this proposed action would apply to a substantial number of vessels, this action should not result in significant adverse economic impacts to individual vessels. Furthermore, the proposed action will not disproportionately affect vessels by gear types, areas fished, or home ports, nor would it substantially affect effort among participants of these fisheries. Except for the MHI uku fishery, the proposed ACLs are the same as those implemented in recent years and recent catch has not been constrained by ACLs. The precious coral fishery is subject to an existing rule that implements an in-season closure for individual coral beds if NFMS projects that the ACL for that bed will be reached before the end of the fishing year. For the uku fishery, the proposed rule would implement a new measure that would close the fishery in Federal waters if NMFS projects that the ACL will be reached. NMFS and the Council are not considering in-season closures for the Kona crab or deepwater shrimp fisheries because fishery management agencies are not able to track catch in these fisheries relative to the ACLs during the fishing year. Therefore, there is no potential for effects on fishermen from a closure of the Kona crab or deepwater shrimp coral fisheries. A post-season review of the catch data would be required to determine whether any fishery exceeded its ACL by comparing the ACL to the most recent three-year average catch for which data is available. If an ACL is exceeded, the Council and NMFS would take action to mitigate the overage by reducing the ACL for that fishery in the subsequent year. If an ACL is exceeded more than once in a four-year period, the Council and NMFS would take action to correct the operational issue that caused the ACL overages. NMFS and the Council would evaluate the environmental, social, and economic impacts of future actions, such as changes to future ACLs or AMs, after the required data are available.

The MHI uku fishery would be subject to a single-species ACL for the first time, as it has historically been subject to an ACL as part of a group of management unit species (MUS) managed as the non-Deep 7 bottomfish. The other species within the non-Deep 7 MUS were reclassified as ecosystem component species and are no longer subject to an ACL. As this fishery would also be subject to an in-season AM for fishing years 2019 and 2020 that would close the fishery in Federal waters in the event that the catch reaches the ACL, this fishery could potentially be directly affected. Under the proposed alternative, the uku fishery may be constrained by the ACL set at 127,205 lb if catch levels are similar to those in 2017, when fishermen reported catch of 131,841 lb of uku. However that was the only year in which catch would have exceeded an ACL of 127,205 lb out of the last seven years since ACLs were first specified, so NMFS expects that in most years the fishery would not reach the proposed ACL. If the fishery did close, it would likely be near the end of the fishing year, which could result in the fishery earning slightly lower revenue compared with the No Action Alternative. Though catch in 2017 was higher than the proposed ACL in 2017, over the last ten years there has been no three-year period where uku catch reached the proposed ACL. The recent three-year averages are as follows: 105,980 lb average catch for the three years spanning 2014–2016, 117,657 lb for 2015–2017, and 108,544 lb for 2016–2018. Based on recent fishing performance, and with the in-season accountability measure, the fishery is not likely to be subject to a post-season ACL overage adjustment. Between 2012 and 2017, an average of 297 fishermen reported catch of MHI uku using deep sea handline, inshore handline, and/or trolling with bait. NMFS estimates that up to 300 uku fishermen could potentially be directly affected by this action in any given year.

The precious coral fishery is also subject to an in-season closure under existing regulations. However, since 2013 there has been only one participant in the fishery annually that could be directly affected by this action and catches have not exceed the ACLs. Based on recent fishing performance, and with the in-season accountability measure, the fishery is not likely to be subject to a post-season ACL overage adjustment.

For most of the fisheries subject to this proposed action, fishermen would be able to fish throughout the entire year. The ACLs, as proposed, would not change the gear type, areas fished, effort, or participation of the fisheries during the fishing years under consideration. The proposed action does not duplicate, overlap, or conflict with other Federal rules and is not expected to have significant impact on small entities (as discussed above), organizations, or government jurisdictions. The proposed action also will not place a substantial number of small entities, or any segment of small entities, at a significant competitive disadvantage to large entities.

For the reasons above, NMFS does not expect the proposed action to have a significant economic impact on a substantial number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13771

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

List of Subjects in 50 CFR Part 665

Annual catch limits, Accountability measures, Bottomfish, Deepwater shrimp, Precious corals, Kona crab, Uku, Fisheries, Fishing, Hawaii, Pacific Islands.

Dated: February 4, 2020.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 665 as follows:

PART 665—FISHERIES IN THE WESTERN PACIFIC

■ 1. The authority citation for 50 CFR part 665 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 665.4, revise paragraph (c) to read as follows:

§ 665.4 Annual catch limits.

* * * * *

(c) *Exceptions.* The Regional Administrator is not required to specify an annual catch limit for an ECS, or for an MUS that is statutorily excepted from the requirement pursuant to 50 CFR 600.310(h)(1).

* * * * *

■ 3. In § 665.204, revise paragraphs (h) and (i) to read as follows:

§ 665.204 Prohibitions.

* * * * *

(h) Fish for or possess any bottomfish MUS as defined in § 665.201, in the MHI management subarea after a closure of its respective fishery, in violation of § 665.211.

(i) Sell or offer for sale any bottomfish MUS as defined in § 665.201, after a closure of its respective fishery, in violation of § 665.211.

* * * * *

■ 4. Revise § 665.211 to read as follows:

§ 665.211 Annual Catch Limits (ACL).

(a) In accordance with § 665.4, the ACLs for MHI bottomfish fisheries for each fishing year are as follows:

Fishery	2018–19 ACL (lb)	2019–20 ACL (lb)	2020–21 ACL (lb)
Deep 7 bottomfish	492,000	492,000	492,000
	2019 ACL (lb)	2020 ACL (lb)	2021 ACL (lb)
Uku	127,205	127,205	127,205

(b) When a bottomfish ACL is projected to be reached based on analyses of available information, the Regional Administrator shall publish a notice to that effect in the **Federal Register** and shall use other means to notify permit holders. The notice will include an advisement that the fishery will be closed beginning at a specified date, which is not earlier than seven days after the date of filing the closure notice for public inspection at the Office of the Federal Register, until the end of the fishing year in which the ACL is reached.

(c) On and after the date specified in § 665.211(b), no person may fish for or possess any bottomfish MUS from a closed fishery in the MHI management subarea, except as otherwise allowed in this section.

(d) On and after the date specified in § 665.211(b), no person may sell or offer for sale any bottomfish MUS from a closed fishery, except as otherwise authorized by law.

(e) Fishing for, and the resultant possession or sale of, any bottomfish MUS by vessels legally registered to Mau Zone, Ho'omalu Zone, or PRIA bottomfish fishing permits and conducted in compliance with all other laws and regulations, is exempted from this section.

■ 5. Add § 665.253 to read as follows:

§ 665.253 Annual Catch Limits (ACL).

In accordance with § 665.4, the ACLs for MHI crusteaceans for each fishing year are as follows:

Fishery	2019 ACL (lb)	2020 ACL (lb)	2021 ACL (lb)
Kona crab	3,500	NA	NA
Deepwater shrimp	250,733	250,733	250,733

■ 6. In § 665.267, revise paragraph (b)(3) to read as follows:

§ 665.263 Prohibitions.

* * * * *

(b) * * *

(3) In a bed for which the ACL specified in § 665.269 has been attained.

* * * * *

■ 7. Revise § 665.267 to read as follows:

§ 665.267 Seasons.

The fishing year for precious coral begins on July 1 and ends on June 30 the following year.

■ 8. In § 665.268 revise paragraph (a) to read as follows:

§ 665.268 Closures.

(a) If the Regional Administrator determines that the ACL for any coral bed will be reached prior to the end of the fishing year, NMFS shall publish a notice to that effect in the **Federal Register** and shall use other means to notify permit holders. Any such notice must indicate the fishery shall be closed, the reason for the closure, the specific bed being closed, and the effective date of the closure.

* * * * *

■ 9. Revise § 665.269 to read as follows:

§ 665.269 Annual Catch Limits (ACL).

(a) *General.* The ACLs limiting the amount of precious coral that may be taken in any precious coral permit area during the fishing year are listed paragraph (c) of this section. Only live coral is counted toward the ACL. The accounting period for each fishing year for all precious coral ACLs begins July 1 and ends June 30 of the following year.

(b) *Reserves and reserve release.* The ACL for exploratory area X–P–H will be held in reserve for harvest by vessels of the United States in the following manner:

(1) At the start of the fishing year, the reserve for the Hawaii exploratory areas will equal the ACL minus the estimated domestic annual harvest for that year.

(2) As soon as practicable after December 31 each year, the Regional Administrator will determine the amount harvested by vessels of the United States between July 1 and December 31 of the year that just ended on December 31.

(3) NMFS will release to TALFF an amount of Hawaii precious coral for each exploratory area equal to the ACL minus two times the amount harvested by vessels of the United States in that July 1-December 31 period.

(4) NMFS will publish in the **Federal Register** a notification of the Regional Administrator's determination and a summary of the information on which it is based as soon as practicable after the determination is made.

(c) In accordance with § 665.4, the ACLs for MHI precious coral permit areas for each fishing year are as follows:

TABLE 1 TO PARAGRAPH (c)

Type of coral bed	Area and coral group	2019 ACL (lb)	2020 ACL (lb)	2021 ACL (lb)
Established bed	Auau Channel—Black coral	5,512	5,512	5,512
	Makapuu Bed—Pink and red coral	2,205	2,205	2,205
	Makapuu Bed—Bamboo coral	551	551	551
Conditional Beds	180 Fathom Bank—Pink and red coral	489	489	489
	180 Fathom Bank—Bamboo coral	123	123	123
	Brooks Bank—Pink and red coral	979	979	979
	Brooks Bank—Bamboo coral	245	245	245
	Kaena Point Bed—Pink and red coral	148	148	148
	Kaena Point Bed—Bamboo coral	37	37	37
	Keahole Bed—Pink and red coral	148	148	148
	Keahole Bed—Bamboo coral	37	37	37
Exploratory Area	Hawaii—precious coral	2,205	2,205	2,205

Note 1 to § 665.269: No fishing for coral is authorized in refugia.

Note 2 to § 665.269: A moratorium on gold coral harvesting is in effect through June 30, 2023.

[FR Doc. 2020–02536 Filed 2–7–20; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 85, No. 27
Monday, February 10, 2020

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–FGIS–19–0077]

Solicitation of Nominations for Members of the USDA Grain Inspection Advisory Committee

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice to solicit nominees.

SUMMARY: The Department of Agriculture's (USDA) Agricultural Marketing Service (AMS) is seeking nominations for individuals to serve on the USDA Grain Inspection Advisory Committee (Advisory Committee). The Advisory Committee meets no less than once annually to advise AMS on the programs and services it delivers under the U.S. Grain Standards Act (USGSA). Recommendations by the Advisory Committee help AMS better meet the needs of its customers who operate in a dynamic and changing marketplace.

DATES: AMS will consider nominations received by March 26, 2020.

ADDRESSES: Submit nominations for the Advisory Committee by completing form AD–755 and send to:

- Kendra Kline U.S. Department of Agriculture, 1400 Independence Ave. SW, Rm. 2043–S, Mail Stop 3614, Washington, DC 20250–3611;
- *Email: Kendra.C.Kline@usda.gov;* or
- *FAX:* 202–690–2333.

Form AD–755 may be obtained via USDA's website: *https://www.ams.usda.gov/about-ams/facas-advisory-councils/giac.*

FOR FURTHER INFORMATION CONTACT: Kendra Kline, telephone (202) 690–2410 or email *Kendra.C.Kline@usda.gov.*

SUPPLEMENTARY INFORMATION: As required by section 21 of the USGSA (7 U.S.C. 87j), as amended, the Secretary of Agriculture (Secretary) established the Advisory Committee on September 29, 1981, to provide advice to the AMS Administrator on implementation of the USGSA. As specified in the USGSA, no member may serve successive terms.

The Advisory Committee consists of 15 members, appointed by the Secretary, who represent the interests of grain producers, processors, handlers, merchandisers, consumers, exporters, and scientists with expertise in research related to the policies in section 2 of the USGSA (7 U.S.C. 74). While members of the Advisory Committee serve without compensation, USDA reimburses them for travel expenses, including per diem in lieu of subsistence, for travel away from their homes or regular places of business in performance of Advisory Committee service (see 5 U.S.C. 5703).

A list of current Advisory Committee members and other relevant information are available on the USDA website at: *https://www.ams.usda.gov/about-ams/facas-advisory-councils/giac.*

This notice solicits nominations for individuals to serve on the Advisory Committee. Nominations are open to all individuals without regard to race, color, religion, gender, national origin, age, mental or physical disability, marital status, or sexual orientation. To ensure that recommendations of the Advisory Committee take into account the needs of the diverse groups served by the USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

The final selection of Advisory Committee members and alternates is made by the Secretary.

Dated: February 4, 2020.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2020–02621 Filed 2–7–20; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Document No. AMS–ST–20–0007]

Plant Variety Protection Board; Open Teleconference Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), the Agricultural Marketing Service (AMS) is announcing a meeting of the Plant Variety Protection Board (Board). The meeting is being held to discuss a variety of topics including, but not limited to, regulation updates, subcommittee activities, and program activities. The meeting is open to the public. This notice sets forth the schedule and location for the meeting.

DATES: Thursday, April 30, 2020, 1 p.m to 3 p.m.

ADDRESSES: The meeting will be held at the United States Department of Agriculture (USDA), Room 3543, South Building, 1400 Independence Avenue SW, Washington, DC, 20250.

FOR FURTHER INFORMATION CONTACT: Jeffery Haynes, Acting Commissioner, Plant Variety Protection Office, USDA, AMS, Science and Technology Programs, 1400 Independence Avenue SW, Washington, DC 20250. Telephone: (202) 720–1066; Fax: (202) 260–8976, or Email: *Jeffery.Haynes@usda.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of section 10(a) of the FACA (5 U.S.C., Appendix 2), this notice informs the public that the Plant Variety Protection Office (PVPO) is sponsoring a meeting of the Board on April 30, 2020. The Plant Variety Protection Act (PVPA) (7 U.S.C. 2321 *et seq.*) provides legal protection in the form of intellectual property rights to developers of new varieties of plants, which are reproduced sexually by seed or are tuber-propagated. A certificate of Plant Variety Protection is awarded to an owner of a crop variety after an examination shows that it is new, distinct from other varieties, genetically uniform and stable through successive generations. The term of protection is 20 years for most crops and 25 years for trees, shrubs, and vines. The PVPA also provides for a statutory Board (7 U.S.C. 2327). The Board is composed of 14 individuals who are experts in various areas of development and represent the seed industry sector, academia and government. The duties of the Board are to: (1) Advise the Secretary concerning the adoption of rules and regulations to facilitate the proper administration of the FACA; (2) provide advisory counsel to the Secretary on appeals concerning decisions on applications by the PVP Office and on requests for emergency public-interest compulsory licenses; and (3) advise the Secretary on any other matters under the Regulations and Rules

of Practice and on all questions under Section 44 of the FACA, ''Public Interest in Wide Usage'' (7 U.S.C. 2404).

Meeting Agenda: The purpose of the meeting will be to discuss the PVPO 2020 program activities, the electronic application system, and the working group update. The Board plans to discuss program activities that encourage the development of new plant varieties and address appeals to the Secretary. The meeting will be open to the public. Those wishing to participate are encouraged to pre-register by April 1, 2020, by contacting Jeffery Haynes, acting commissioner, at Telephone: (202) 720–1066; Fax: (202) 260–8976, or Email: *Jeffery.Haynes@usda.gov* .

Meeting Accommodation: The meeting at USDA will provide reasonable accommodation to individuals with disabilities where appropriate. If you need reasonable accommodation to participate in this public meeting, please notify Jeffery Haynes at: Telephone: (202) 720–1066; Fax: (202) 260–8976, or Email: *Jeffery.Haynes@usda.gov*.

Determinations for reasonable accommodation will be made on a case-by-case basis. Minutes of the meeting will be available for public review 30 days following the meeting on the internet at *http://www.ams.usda.gov/PVPO.*

Dated: February 4, 2020.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2020–02620 Filed 2–7–20; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

[Doc No. AMS–FGIS–19–0097]

Opportunity for Designation in the Cedar Rapids, Iowa, Area; Request for Comments on the Official Agency Servicing This Area

AGENCY: Agricultural Marketing Service.

ACTION: Notice.

SUMMARY: The designation of the official agency listed below will end on June 30, 2020. We are asking persons or governmental agencies interested in providing official services in the area presently served by this agency to submit an application for designation. In addition, we are asking for comments on the quality of services provided by the following designated agency: Mid-Iowa Grain Inspection, Inc. (Mid-Iowa).

DATES: Applications and comments must be received by March 11, 2020.

ADDRESSES: Submit applications and comments concerning this notice using the following methods:

- To apply for Designation: Use FGISonline (*https://fgisonline.ams.usda.gov*) and then click on the Delegations/Designations and Export Registrations (DDR) link. You will need to obtain an FGISonline customer number and USDA eAuthentication username and password prior to applying.
- To submit Comments: Go to *Regulations.gov* (*http://www.regulations.gov*). Instructions for submitting and reading comments are detailed on the site. Interested persons are invited to submit written comments concerning this notice. All comments must be submitted through the Federal e-rulemaking portal at *http://www.regulations.gov* and should reference the document number and the date and page number of this issue of the **Federal Register**. All comments submitted in response to this notice 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 comments will be made public on the internet at the address provided above.

READ APPLICATIONS AND COMMENTS: All comments will be available for public inspection online at *http://www.regulations.gov.* If you would like to view the applications, please contact us at *FGISQACD@usda.gov* (7 CFR 1.27(c)).

FOR FURTHER INFORMATION CONTACT: Jacob Thein, 816–866–2223 or *FGISQACD@usda.gov.*

SUPPLEMENTARY INFORMATION: Section 7(f) of the United States Grain Standards Act (USGSA) authorizes the Secretary to designate a qualified applicant to provide official services in a specified area, after determining that the applicant is better able than any other applicant to provide such official services (7 U.S.C. 79 (f)). Under section 7(g) of the USGSA (7 U.S.C. 79(g)), designations of official agencies are effective for no longer than five years, unless terminated by the Secretary, and may be renewed according to the criteria and procedures prescribed in section 7(f) of the USGSA.

Area Open for Designation

Pursuant to Section 7(f)(2) of the USGSA, the following geographic area, in the States of Iowa, Illinois, and Minnesota, is assigned to Mid-Iowa:

In Iowa

Bounded on the north by the northern Winneshiek and Allamakee County lines; bounded on the east by the eastern Allamakee County line; the eastern and southern Clayton County lines; the eastern Buchanan County line; the northern Jones and Jackson County lines; the eastern Jackson and Clinton County lines; southern Clinton County line; the eastern Cedar County line south to State Route 130; bounded on the south by State Route 130 west to State Route 38; State Route 38 south to Interstate 80; Interstate 80 west to U.S. Route 63; and bounded on the west by U.S. Route 63 north to State Route 8; State Route 8 east to State Route 21; State Route 21 north to D38; D38 east to V49; V49 north to Bremer County; the southern Bremer County line; the western Fayette and Winneshiek County lines.

In Illinois

Northern Area: Carroll and Whiteside Counties.

Central Area: Bounded on the north by State Route 18 east to U.S. Route 51; U.S. Route 51 south to State Route 17; State Route 17 east to Livingston County; and the Livingston County line east to State Route 47; bounded on the east by State Route 47 south to State Route 116; State Route 116 west to Pontiac, which intersects with a straight line running north and south through Arrowsmith to the southern McLean County line; the southern McLean County line east to the eastern DeWitt County line; the eastern DeWitt County line; the eastern Macon County line south to Interstate 72; Interstate 72 northeast to the eastern Piatt County line; the eastern Piatt, Moultrie, and Shelby County lines; bounded on the south by the southern Shelby County line; and a straight line running along the southern Montgomery County line west to State Route 16 to a point approximately one mile northeast of Irving; and bounded on the west by a straight line from this point northeast to Stonington on State Route 48; a straight line from Stonington northwest to Elkhart on Interstate 55; a straight line from Elkhart northeast to the west side of Beason on State Route 10; State Route 10 west to the Logan County line; the western Logan County line; the southern Tazewell County line; the western Tazewell County line; the western Peoria County line north to Interstate 74; Interstate 74 southeast to State Route 116; State Route 116 north to State Route 26; and State Route 26 north to State Route 18.

In Minnesota

Fillmore, Houston, Olmstead, Wabasha, and Winona Counties.

The following grain elevators are not part of this geographic area assignment and are assigned to: Champaign-Danville Grain Inspection Departments, Inc.: East Lincoln Farmers Grain Co., Lincoln, Logan County, Illinois; Okaw Cooperative, Cadwell, Moultrie County, Illinois; ADM (3 elevators), Farmer City, DeWitt County, Illinois; and Topflight Grain Company, Monticello, Piatt County, Illinois.

Opportunity for Designation

Interested persons or governmental agencies may apply for designation to provide official services in the geographic area specified above under the provisions of section 7(f) of the USGSA and 7 CFR 800.196. Designation in the specified geographic area in Iowa, Illinois, and Minnesota is for the period beginning July 1, 2020, to June 30, 2025. To apply for designation, please apply at FGISonline (*https://fgisonline.ams.usda.gov*); or, to request more information, contact Jacob Thein at the address listed above.

Request for Comments

In this designation process, we are requesting comments on the quality of services provided by the Mid-Iowa official agency. We are, also, interested in receiving comments citing reasons and pertinent data supporting or objecting to the designation of an applicant. Such comments should be submitted through the Federal e-rulemaking portal at *http://www.regulations.gov.*

We consider applications, comments, and other available information when determining which applicants will be designated.

Authority: 7 U.S.C. 71–87k.

Dated: February 4, 2020.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2020–02625 Filed 2–7–20; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 5, 2020.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by March 11, 2020 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725—17th Street NW, Washington, DC 20502. Commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Research Service

Title: Evaluation of User Satisfaction with NAL internet Sites.

OMB Control Number: 0518–0040.

Summary of Collection: There is a need to measure user satisfaction with the National Agricultural Library (NAL) internet sites in order for NAL to comply with Executive Order 12862, which directs federal agencies that provide significant services directly to the public to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. NAL internet sites are a vast collection of web pages created and maintained by component organizations of NAL and are visited by 8.6 million people per month on average.

Need and Use of the Information: The purpose of the research is to ensure that intended audiences find the information provided on the internet sites easy to access, clear, informative, and useful. The research will provide a means by which to classify visitors to the NAL internet sites, to better understand how to serve them. The information generated from this research will enable NAL to evaluate the success of this new modality in response to fulfilling its legislative mandate to disseminate vital agricultural information and truly become the national digital library of agriculture. If the information is not collected, NAL will be limited in its ability to provide accurate, timely information to its user community.

Description of Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms; State, Local or Tribal Government.

Number of Respondents: 1,400.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 187.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–02543 Filed 2–7–20; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

February 5, 2020.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection received by March 11, 2020 will be considered. Written comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Building, 725 17th Street NW, Washington, DC 20502. Commenters are encouraged to submit

their comments to OMB via email to: *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: 7 CFR 340; Introduction of Organisms and Products Altered or Produced Through Genetic Engineering.

OMB Control Number: 0579–0085.

Summary of Collection: Under the Plant Protection Act (PPA, 7 U.S.C. 7703 *et seq.*) the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, or movement of interstate commerce of any plant, plant product, biological control organism, noxious weed, article, or means of conveyance. If the Secretary determines that the prohibition or restriction is necessary to prevent the introduction or the dissemination of a plant pest into the United States. The Animal and Plant Health Inspection Service (APHIS) is charged with preventing the introduction of plant pest into the United States or their dissemination within the United States. The statutory requirements for the information collection activity are found in the PPA. The regulations in 7 CFR part 340 implement the provisions of the PPA by providing the information necessary to establish conditions for proposed introductions of certain genetically engineered organisms and products which present a risk of plant pest introduction. APHIS will collect information using several APHIS forms.

Need and Use of the Information: APHIS will collect the information through a notification procedure or a permit requirement to ensure that certain genetically engineered organisms, when imported, moved interstate, or released into the environment, will not present a risk of plant pest introduction. The information collected through the petition process is used to determine whether a genetically engineered organism will pose a risk to agriculture or the environment if grown in the absence of regulations by APHIS. The information is also provided to State departments of agriculture for review and made available to the public and private sectors on the internet to ensure that all sectors are kept informed concerning any potential risks posed using genetic engineering technology.

Description of Respondents: Business or other for profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 483.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 12,983.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2020–02559 Filed 2–7–20; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Economic Research Service

Notice of Intent To Request Revision of the Current Population Survey Food Security Supplement—A Currently Approved Information Collection

AGENCY: Economic Research Service, USDA.

ACTION: Notice of change and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) implementing regulations, this notice announces a change that the Economic Research Service (ERS) intends to make to the currently approved annual information collection named the Current Population Survey Food Security Supplement (OMB Control No. 0536–0043). ERS intends to add a split panel test to the aforementioned information collection. Details of the split panel test are discussed in the **SUPPLEMENTARY INFORMATION** section below.

DATES: Comments on this notice must be received by March 11, 2020 to be assured of consideration.

ADDRESSES: Address all comments concerning this notice to Alisha Coleman-Jensen, Food Assistance Branch, Food Economics Division, Economic Research Service, Room 5–229B, 1400 Independence Ave. SW, Mail Stop 1800, Washington, DC 20050–1800. Submit electronic comments to *Alisha.Coleman-Jensen@usda.gov*.

FOR FURTHER INFORMATION CONTACT: Alisha Coleman-Jensen at the address in the preamble. Tel. 202–694–5456.

SUPPLEMENTARY INFORMATION: ERS is responsible for conducting studies and evaluations of the Nation's food and nutrition assistance programs that are administered by the Food and Nutrition Service (FNS), U.S. Department of Agriculture. Data collected by its Current Population Survey Food Security Supplement (CPS–FSS) annually are used to monitor the prevalence of food security and the prevalence and severity of food insecurity among the Nation's households. The prevalence of these conditions as well as year-to-year trends in their prevalence is estimated at the national level and for population subgroups. These data are also used to monitor the amounts that households spend for food and their use of community food pantries and emergency kitchens. These statistics along with research based on the data are used to identify the causes and consequences of food insecurity, and to assess the need for, and performance of, domestic food assistance programs. ERS is in the process of revising the survey instrument to maintain its relevance and scientific quality.

The intent of this notice is to announce that ERS intends to add a test of current and revised survey questions (aka split panel test) to the aforementioned information collection in order to determine how well the revised survey questions perform. Results from this test will be used to improve the measurement of food security and determine the most appropriate survey items to collect food security data in regular future collections.

Once receiving the OMB clearance, the U.S. Census Bureau will supplement an upcoming CPS with revised test questions regarding household food shopping, use of food and nutrition assistance programs, food sufficiency, and difficulties in meeting household food needs. Revisions to the supplemental survey instrument was developed in conjunction with food security experts nationwide as well as survey method experts within the Census Bureau. The Census Bureau completed a cognitive interview study of the revised survey questions in 2019, and the recommendations from that study formed the test instrument to be used in the upcoming testing. This supplemental information will be collected by both personal visit and telephone interviews in conjunction with the regular monthly CPS interviewing. Interviews will be conducted using Computer Assisted Personal Interview (CAPI) and Computer Assisted Telephone Interview (CATI) methods.

Public reporting burden for this split panel test is estimated to average 7.3 minutes (after rounding) for each household that responds to the labor force portion of the CPS. The estimate is based on the average proportion of respondents that were asked each question in recent survey years and typical reading and response times for the questions. The estimate assumes an 80 percent response rate to the supplement. Based on these estimates, ERS intends to request a one-time only additional 39,000 respondents and 4,729 hours of response burden for conducting the aforementioned split panel test during its testing year. Copies of this information collection can be obtained from Alisha Coleman-Jensen at the address in the preamble.

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 will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to the address in the preamble. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: January 28, 2020.

Marca Weinberg,

Acting Administrator, Economic Research Service.

[FR Doc. 2020–02547 Filed 2–7–20; 8:45 am]

BILLING CODE 3410–18–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Louisiana Advisory Committee To Discuss the Selection of a Civil Rights Topic in Louisiana for the Committee's Next Project

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Louisiana Advisory Committee (Committee) will hold a meeting on Friday, February 21, 2020 at 12:00 p.m. (Central) for discussions on civil rights topics in Louisiana.

DATES: The meeting will be held on Friday, February 21, 2020 at 12:00 p.m. (Central).

Public Call Information: Dial: 800–367–2403, Conference ID: 1809366.

FOR FURTHER INFORMATION CONTACT: David Barreras, DFO, at *dbarreras@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 800–367–2403, conference ID: 1809366. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Midwestern Regional Office, U.S. Commission on Civil Rights, 230 S Dearborn St., Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324 or emailed to David Barreras at *dbarreras@usccr.gov.* Persons who desire additional information may contact the Midwestern Regional Office at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Midwestern Regional Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Louisiana Advisory Committee link (*http://www.facadatabase.gov/committee/committee.aspx?cid=251&aid=17*). Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Midwestern Regional Office at the above email or street address.

Agenda

Welcome and Roll Call
Discussion of civil rights topics in Louisiana
Next Steps
Public Comment
Adjournment

Dated: February 5, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–02560 Filed 2–7–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

President's Advisory Council on Doing Business in Africa

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting of the President's Advisory Council on Doing Business in Africa (PAC–DBIA or Council).

SUMMARY: The President's Advisory Council on Doing Business in Africa will hold the second meeting of the 2019–2021 term to deliberate and consider adopting an analysis report of members' keys to success approaching African markets, competing for business opportunities, and operating their businesses on the ground. The PAC–DBIA may also deliberate on recommendations on priorities and next steps for the current Council term. The final agenda for the meeting will be posted at least one week in advance of the meeting on the Council's website at *http://trade.gov/pac-dbia.*

DATES: February 26, 2020, 11 a.m.–12:30 p.m.

ADDRESSES: The President's Advisory Council on Doing Business in Africa meeting will be broadcast via live webcast on the internet at *http://whitehouse.gov/live.*

FOR FURTHER INFORMATION CONTACT: Giancarlo Cavallo or Ashley Bubna, Designated Federal Officers, President's Advisory Council on Doing Business in Africa, Department of Commerce, 1401 Constitution Ave. NW, Room 22004, Washington, DC 20230, telephone: 202–

482–2091, email: *dbia@trade.gov, Giancarlo.Cavallo@trade.gov, Ashley.Bubna@trade.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Council was established on November 4, 2014, to advise the President, through the Secretary of Commerce, on strengthening commercial engagement between the United States and Africa. The Council's charter was renewed for a third, two-year term in September 2019. The Council was established in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

Public Submissions: The public is invited to submit written statements to the Council. Statements must be received by 5:00 p.m. February 19, 2020 by either of the following methods:

a. *Electronic Submissions:* Submit statements electronically to Giancarlo Cavallo and Ashley Bubna, Designated Federal Officers, President's Advisory Council on Doing Business in Africa, via email: *dbia@trade.gov.*

b. *Paper Submissions:* Send paper statements to Giancarlo Cavallo and Ashley Bubna, Designated Federal Officers, President's Advisory Council on Doing Business in Africa, Department of Commerce, 1401 Constitution Ave. NW, Room 22004, Washington, DC 20230.

Statements will be provided to the members in advance of the meeting for consideration and also will be posted on the Council website (*http://trade.gov/pac-dbia*). Any business proprietary information should be clearly designated as such. All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure.

Meeting minutes: Copies of the Council's meeting minutes will be available within ninety (90) days of the meeting on the Council's website at *http://trade.gov/pac-dbia.*

Frederique Stewart,

Director, Office of Africa.

[FR Doc. 2020–02546 Filed 2–7–20; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–6–2020]

Foreign-Trade Zone 61—San Juan, Puerto Rico; Application for Subzone; Puerto Rico Storage & Distribution, Inc.; Aguadilla, Puerto Rico

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Department of Economic Development and Commerce, grantee of FTZ 61, requesting subzone status for the facilities of Puerto Rico Storage & Distribution, Inc., located in Aguadilla, Puerto Rico. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on February 4, 2020.

The proposed subzone (3.87 acres) is located at Highway 110, Km 28.7, Bo. Aguacate, Km. 5.6, Aguadilla, Puerto Rico. No authorization for production activity has been requested at this time.

In accordance with the FTZ Board's regulations, Camille Evans of the FTZ Staff is designated examiner to review the application and make recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: *ftz@trade.gov*. The closing period for their receipt is March 23, 2020. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to April 6, 2020.

A copy of the application will be available for public inspection in the ''Reading Room'' section of the FTZ Board's website, which is accessible via *www.trade.gov/ftz*.

For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: February 4, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–02566 Filed 2–7–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–65–2019]

Foreign-Trade Zone (FTZ) 26—Atlanta, Georgia; Authorization of Production Activity; Ricoh Electronics, Inc. (Thermal Paper and Film); Lawrenceville and Buford, Georgia

On October 7, 2019, Ricoh Electronics, Inc. submitted a notification of proposed production activity to the FTZ Board for its facilities within FTZ 26, in Lawrenceville and Buford, Georgia.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (84 FR 56161, October 21, 2019). On February 4, 2020, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: February 4, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–02565 Filed 2–7–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–979]

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that producers and/or exporters subject to this administrative review made sales of subject merchandise at less than normal value in the United States. Interested parties are invited to comment on these preliminary results of review.

DATES: Applicable February 10, 2020.

FOR FURTHER INFORMATION CONTACT: Jeff Pedersen, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, Department of Commerce, 1401

Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2769.

SUPPLEMENTARY INFORMATION:

Background

This administrative review is being conducted in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). On March 14, 2019, in response to review requests from multiple interested parties, Commerce initiated an administrative review of the antidumping duty order on crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells), from the People's Republic of China (China).[1] The period of review (POR) is December 1, 2017 through November 30, 2018. On May 6, 2019, Commerce selected two exporters to individually examine as mandatory respondents, Trina [2] and Risen.[3] During the course of this review, the mandatory respondents filed responses to Commerce's questionnaire and supplemental questionnaires, the petitioner (SolarWorld Americas Inc.) commented on those responses, and multiple other companies for which Commerce initiated the review filed either no-shipment claims or applications or certifications for separate rates status. For details regarding the events that occurred subsequent to the initiation of the review, *see* the Issues and Decision Memorandum.[4]

Scope of the Order

The merchandise covered by the order is crystalline silicon photovoltaic cells, and modules, laminates, and panels, consisting of crystalline silicon photovoltaic cells, whether or not partially or fully assembled into other products, including, but not limited to, modules, laminates, panels and building integrated materials.[5] Merchandise covered by this order is classifiable under subheadings 8501.61.0000, 8507.20.80, 8541.40.6015, 8541.40.6020, 8541.40.6025, 8541.40.6030, 8541.40.6035, 8541.40.6045, and 8501.31.8000 of the Harmonized Tariff Schedule of the United States (HTSUS).[6] Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Preliminary Determination of No Shipments

We preliminarily determine that there is no evidence calling into question the no-shipment claims of the following companies: BYD (Shangluo) Industrial Co., Ltd., LERRI Solar Technology Co., Ltd., Ningbo ETDZ Holdings, Ltd., Sumec Hardware & Tools Co., Ltd., and Sunpreme Solar Technology (Jiaxing) Co., Ltd. For additional information regarding this preliminary determination, *see* the Preliminary Decision Memorandum.

Preliminary Affiliation and Single Entity Determination

We preliminarily determine that Risen Energy Co., Ltd. (Risen Energy), Risen Energy (Changzhou) Co., Ltd. (Changzhou), Risen (Wuhai) New Energy Co., Ltd. (Wuhai), Zhejiang Twinsel Electronic Technology Co., Ltd. (Twinsel), Risen (Luoyang) New Energy Co., Ltd. (Luoyang), Jiujiang Shengchao Xinye Technology Co., Ltd. (Jiujiang), Jiujiang Shengzhao Xinye Trade Co., Ltd. Ruichang Branch (Jiujiang Ruichang Branch), and Risen Energy (HongKong) Co., Ltd. (Hong Kong Risen) (collectively, Risen) are affiliated pursuant to section 771(33)(E) and (F) of the Tariff Act of 1930, as amended (the Act), and that all of these companies should be treated as a single entity pursuant to 19 CFR 351.401(f)(1)–(2). For additional information, *see* the Preliminary Decision Memorandum and Risen Collapsing Memo.[7]

We also preliminarily determine that Trina Solar Co., Ltd. (formerly, Changzhou Trina Solar Energy Co., Ltd.) (TCZ), Trina Solar (Changzhou) Science and Technology Co., Ltd. (TST), Changzhou Trina Hezhong Photoelectric Co., Ltd. (THZ), Yancheng Trina Guoneng Photovoltaic Technology Co., Ltd (formerly, Yancheng Trina Solar Energy Technology Co., Ltd.) (TYC), Changzhou Trina Solar Yabang Energy Co., Ltd. (TYB), Turpan Trina Solar Energy Co., Ltd. (TLF), Hubei Trina Solar Energy Co., Ltd. (THB), and Trina Solar (Hefei) Science and Technology Co., Ltd. (THFT) (collectively Trina) are affiliated pursuant to sections 771(33)(E) of the Act and all of these companies should be treated as a single entity pursuant to 19 CFR 351.401(f)(1)–(2). For additional information, *see* the Preliminary Decision Memorandum and Trina Collapsing Memorandum.[8]

Use of Partial Facts Available (FA) and Partial Adverse Facts Available (AFA)

Certain unaffiliated tollers of inputs used to produce subject merchandise, as well as certain unaffiliated suppliers of solar cells and solar modules, failed to provide factors of production (FOP) data for use in calculating the weighted-average dumping margins of Risen and Trina. We preliminarily determine that it is appropriate to apply AFA, pursuant to section 776(a) and (b) of the Act, with respect to the unreported FOPs for purchased solar cells and solar modules. These unreported FOPs for solar cells and solar modules represent a material amount of necessary FOP information. However, in accordance with section 776(a)(1) of the Act, Commerce is applying facts available with respect to the unreported FOPs for the inputs used by the unaffiliated tollers. For details regarding these determinations, *see* the Preliminary Decision Memorandum and

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 9297 (March 14, 2019).

[2] Trina refers to the following companies which Commerce is treating as a single entity: Trina Solar Co., Ltd. (formerly, Changzhou Trina Solar Energy Co., Ltd.), Trina Solar (Changzhou) Science and Technology Co., Ltd., Yancheng Trina Guoneng Photovoltaic Technology Co., Ltd (formerly, Yancheng Trina Solar Energy Technology Co., Ltd.), Changzhou Trina Solar Yabang Energy Co., Ltd., Turpan Trina Solar Energy Co., Ltd., Hubei Trina Solar Energy Co., Ltd., Trina Solar (Hefei) Science and Technology Co., Ltd., and Changzhou Trina Hezhong Photoelectric Co., Ltd. (collectively, Trina).

[3] Risen refers to the following companies which Commerce is treating as a single entity: Risen Energy Co., Ltd., Risen (Wuhai) New Energy Co., Ltd., Zhejiang Twinsel Electronic Technology Co., Ltd., Risen (Luoyang) New Energy Co., Ltd., Jiujiang Shengchao Xinye Technology Co., Ltd., Jiujiang Shengzhao Xinye Trade Co., Ltd. Ruichang Branch, and Risen Energy (HongKong) Co., Ltd. (collectively, Risen).

[4] Memorandum ''Decision Memorandum for the Preliminary Results of the 2017–2018 Antidumping Duty Administrative Review of Crystalline Silicon Photovoltaic Cells, Whether or not Assembled into Modules, from the People's Republic of China,'' issued concurrently with and hereby adopted by this notice (Preliminary Decision Memorandum).

[5] For a complete description of the scope of the order, *see* Preliminary Decision Memorandum.

[6] As detailed in the Memorandum, ''Request from Customs and Border Protection to Update the ACE AD/CVD Case Reference File,'' dated August 2, 2018, the HTS numbers concerning solar cells and solar modules have been updated and we have updated the scope accordingly.

[7] Our affiliation and collapsing analysis is based on information that has been designated business proprietary information. For additional detail, *see* Memorandum, ''Affiliation and Single Entity Status of Risen Energy Co. Ltd., Risen (Wuhai) New Energy Co., Ltd., Zhejiang Twinsel Electronic Technology Co., Ltd., Risen (Luoyang) New Energy Co., Ltd., Jiujiang Shengchao Xinye Technology Co., Ltd., Jiujiang Shengzhao Xinye Trade Co., Ltd. Ruichang Branch, Risen Energy (HongKong) Co., Ltd. and Risen Energy (Changzhou) Co., Ltd. (Changzhou),'' issued concurrently with this memorandum.

[8] Our affiliation and collapsing analysis is based on information that has been designated business proprietary information. For additional detail, *see* Memorandum, ''Affiliation and Single Entity Status of Trina Solar Co., Ltd. (formerly, Changzhou Trina Solar Energy Co., Ltd.), Trina Solar (Changzhou) Science and Technology Co., Ltd., Yancheng Trina Guoneng Photovoltaic Technology Co., Ltd (formerly, Yancheng Trina Solar Energy Technology Co., Ltd.), Changzhou Trina Solar Yabang Energy Co., Ltd., Turpan Trina Solar Energy Co., Ltd., Hubei Trina Solar Energy Co., Ltd., Trina Solar (Hefei) Science and Technology Co., Ltd., and Changzhou Trina Hezhong Photoelectric Co., Ltd.,'' issued concurrently with this memorandum.

Risen and Trina's Unreported FOP Memoranda.[9]

Separate Rates

Commerce preliminarily determines that the information placed on the record by Risen and Trina, as well as by the other companies listed in the rate table in the ''Preliminary Results of Review'' section below, demonstrates that these companies are entitled to separate rate status. Commerce calculated rates for the mandatory respondents, Risen and Trina, that are not zero, *de minimis,* or based entirely on facts available and calculated a rate for the companies to which it granted separate rates status, but which it did not individually examine, as described in the Separate Rate Calculation Memorandum [10] and the Preliminary Decision Memorandum.

Commerce preliminarily determines that the following companies have not demonstrated their entitlement to separate rates status because they did not file a separate rate application or certification with Commerce:

1. De-Tech Trading Limited HK
2. Dongguan Sunworth Solar Energy Co., Ltd.
3. Eoplly New Energy Technology Co., Ltd.
4. ERA Solar Co., Ltd.
5. ET Solar Energy Limited
6. Hangzhou Sunny Energy Science and Technology Co., Ltd.
7. Hengdian Group DMEGC Magnetics Co., Ltd.
8. Jiangsu High Hope Int'l Group
9. Jiawei Solarchina (Shenzhen) Co., Ltd.
10. LightWay Green New Energy Co., Ltd.
11. Ningbo Qixin Solar Electrical Appliance Co., Ltd.
12. Systemes Versilis, Inc.
13. tenKsolar (Shanghai) Co., Ltd.
14. Toenergy Technology Hangzhou Co., Ltd.
15. Wuxi Suntech Power Co., Ltd/Luoyang Suntech Power Co., Ltd.
16. Zhejiang ERA Solar Technology Co., Ltd.

Commerce is preliminarily treating these companies as part of the China-wide entity. Because no party requested a review of the China-wide entity, the entity is not under review and the entity's rate (*i.e.,* 238.95 percent) is not subject to change.[11] For additional information regarding Commerce's separate rates determinations, *see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this administrative review in accordance with section 751(a)(1)(B) of the Act. Commerce calculated export and constructed export prices in accordance with section 772 of the Act. Because Commerce has determined that China is a non-market economy country,[12] within the meaning of section 771(18) of the Act, Commerce calculated NV in accordance with section 773(c) of the Act.

For a full description of the methodology underlying the preliminary results of this review, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is made available to the public 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 is available 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 found at *https://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of Review

Commerce preliminarily determines that the following weighted-average dumping margins exist for the POR:

Exporter	Weighted-average dumping margin (percent)
Trina Solar Co., Ltd./Trina Solar (Changzhou) Science and Technology Co., Ltd./Yancheng Trina Guoneng Photovoltaic Technology Co., Ltd./Changzhou Trina Solar Yabang Energy Co., Ltd./Turpan Trina Solar Energy Co., Ltd./Hubei Trina Solar Energy Co., Ltd./Trina Solar (Hefei) Science and Technology Co., Ltd./Changzhou Trina Hezhong Photoelectric Co., Ltd	46.64
Risen Energy Co. Ltd./Risen (Wuhai) New Energy Co., Ltd./Zhejiang Twinsel Electronic Technology Co., Ltd./Risen (Luoyang) New Energy Co., Ltd./Jiujiang Shengchao Xinye Technology Co., Ltd./Jiujiang Shengzhao Xinye Trade Co., Ltd./Ruichang Branch, Risen Energy (HongKong) Co., Ltd	75.23
Anji DaSol Solar Energy Science & Technology Co., Ltd	60.94
Canadian Solar International Limited/Canadian Solar Manufacturing (Changshu), Inc./Canadian Solar Manufacturing (Luoyang) Inc./CSI Cells Co., Ltd./CSI–GCL Solar Manufacturing (YanCheng) Co., Ltd./CSI Solar Power (China) Inc. (Canadian Solar)	60.94
JA Solar Technology Yangzhou Co., Ltd	60.94
Jiawei Solarchina Co., Ltd	60.94
JingAo Solar Co., Ltd	60.94
Jinko Solar Co., Ltd. (Jinko)	60.94
Jinko Solar Import and Export Co., Ltd. (Jinko I&E)	60.94
Jinko Solar International Limited (Jinko Int'l)	60.94
Shanghai BYD Co., Ltd	60.94
Shanghai JA Solar Technology Co., Ltd	60.94
Shenzhen Portable Electronic Technology Co., Ltd	60.94
Shenzhen Sungold Solar Co., Ltd	60.94

[9] *See* Memorandum, ''Unreported Factors of Production: Risen Energy Co. Ltd.'' and ''Unreported Factors of Production: Trina Solar Co., Ltd..'' issued concurrently with and hereby adopted by this notice.

[10] *See* Memorandum, ''2017–2018 Administrative Review of the Antidumping Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or not Assembled into Modules, from the People's Republic of China: Calculation of the Dumping Margin for Respondents Not Selected for Individual Examination,'' dated concurrently with this notice.

[11] The China-wide entity rate was last changed in the first administrative review of this proceeding and has been the applicable rate for the entity in each subsequent review, including the one most recently completed. *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2012–2013,* 80 FR 40998, 41002 (July 14, 2015) (*AR1 Final*); *see also Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2016–2017,* 84 FR 36886, (July 30, 2019).

[12] *See Antidumping Duty Investigation of Certain Aluminum Foil from the People's Republic of China: Affirmative Preliminary Determination of Sales at Less-Than-Fair Value and Postponement of Final Determination,* 82 FR 50858, 50861 (November 2, 2017) (citing Memorandum, ''China's Status as a Non-Market Economy,'' dated October 26, 2017 (China NME Status Memo)), unchanged in *Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value,* 83 FR 9282 (March 5, 2018).

Exporter	Weighted-average dumping margin (percent)
Wuxi Tianran Photovoltaic Co., Ltd	60.94
Yingli Energy (China) Company Limited/Baoding Tianwei Yingli New Energy Resources Co., Ltd./Tianjin Yingli New Energy Resources Co., Ltd./Hengshui Yingli New Energy Resources Co., Ltd./Lixian Yingli New Energy Resources Co., Ltd./Baoding Jiasheng Photovoltaic Technology Co., Ltd./Beijing Tianneng Yingli New Energy Resources Co., Ltd./Hainan Yingli New Energy Resources Co., Ltd./Shenzhen Yingli New Energy Resources Co., Ltd	60.94
Zhejiang Jinko Solar Co., Ltd	60.94
Zhejiang Sunflower Light Energy Science & Technology Limited Liability Company	60.94

Disclosure and Public Comment

Commerce intends to disclose to parties the calculations performed for these preliminary results of review within five days of the date of publication of this notice in the **Federal Register** in accordance with 19 CFR 351.224(b). Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review.[13] Rebuttal briefs may be filed no later than five days after case briefs are due and may respond only to arguments raised in the case briefs.[14] A table of contents, list of authorities used, and an executive summary of issues should accompany any briefs submitted to Commerce. The summary should be limited to five pages total, including footnotes.[15]

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, within 30 days after the date of publication of this notice.[16] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed at the hearing. Oral arguments at the hearing will be limited to issues raised in the 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 date and time to be determined.[17] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date of the hearing.

All submissions, with limited exceptions, must be filed electronically using ACCESS.[18] An electronically filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5 p.m. Eastern Time (ET) on the due date. Documents excepted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with the APO/Dockets Unit in Room 18022 and stamped with the date and time of receipt by 5 p.m. ET on the due date.[19]

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any briefs, within 120 days of publication of these preliminary results of review, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon issuance of the final results of this review, Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review.[20] Commerce intends to issue assessment instructions to CBP 15 days after the publication date of the final results of this review. For each individually examined respondent in this review whose weighted-average dumping margin in the final results of review is not zero or *de minimis* (*i.e.,* less than 0.5 percent), Commerce intends to calculate importer-specific assessment rates, in accordance with 19 CFR 351.212(b)(1).[21] Where the respondent reported reliable entered values, Commerce intends to calculate importer-specific *ad valorem* assessment rates by aggregating the amount of dumping calculated for all U.S. sales to the importer and dividing this amount by the total entered value of the sales to the importer.[22] Where the respondent did not report entered values, Commerce will calculate importer-specific assessment rates by dividing the amount of dumping for reviewed sales to the importer by the total sales quantity associated with those transactions. Commerce will calculate an estimated *ad valorem* importer-specific assessment rate to determine whether the per-unit rate is *de minimis.* However, Commerce will direct CBP to assess importer-specific assessment rates where the entered value was not reported based on the resulting per-unit rates.[23] Where an importer-specific *ad valorem* assessment rate is not zero or *de minimis,* Commerce will instruct CBP to collect the appropriate duties at the time of liquidation. Where either the respondent's weighted average dumping margin is zero or *de minimis,* or an importer-specific *ad valorem* assessment rate is zero or *de minimis,* Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[24]

Pursuant to Commerce's refinement to its practice, for sales that were not reported in the U.S. sales database submitted by an exporter individually examined during this review, Commerce will instruct CBP to liquidate such merchandise at the rate for the China-wide entity.[25] Additionally, where Commerce determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's CBP case number will be liquidated at the rate for the China-wide entity.

In accordance with section 751(a)(2)(C) of the Act, 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 antidumping duties, where applicable.

[13] *See* 19 CFR 351.309(c)(ii).

[14] *See* 19 CFR 351.309(d).

[15] *See* 19 CFR 351.309(c)(2), (d)(2).

[16] *See* 19 CFR 351.310(c).

[17] *See* 19 CFR 351.310(d).

[18] *See generally* 19 CFR 351.303.

[19] *See* 19 CFR 351.303 (for general filing requirements); *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[20] *See* 19 CFR 351.212(b)(1).

[21] *See Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012) (*Final Modification*).

[22] *See* 19 CFR 351.212(b)(1).

[23] *Id.*

[24] *See Final Modification,* 77 FR at 8103.

[25] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011), for a full discussion of this practice.

Cash Deposit Requirements

Commerce will instruct CBP to require a cash deposit for antidumping duties equal to the weighted-average amount by which the NV exceeds U.S. price. The following cash deposit requirements will be effective for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice, as provided by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be equal to the weighted-average dumping margin established in the final results of this review (except, if the rate is *de minimis* (*i.e.,* less than 0.5 percent), then the cash deposit rate will be zero for that exporter); (2) for previously investigated or reviewed Chinese and non-Chinese exporters not listed above that have separate rates, the cash deposit rate will continue to be the exporter-specific rate published for the most recently completed segment of this proceeding; (3) for all Chinese exporters of subject merchandise which have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity (*i.e.,* 238.95 percent);[26] and (4) for all non-Chinese exporters of subject merchandise that have not received their own rate, the cash deposit rate will be the rate applicable to China exporter that supplied that non-Chinese exporter. These 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 and/or countervailing 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 and/or countervailing duties has occurred, and the subsequent assessment of double antidumping duties and/or an increase in the amount of antidumping duties by the amount of the countervailing 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 351.213 and 351.221(b)(4).

[26] *See AR1 Final,* 80 FR at 41002.

Dated: January 31, 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. Preliminary Determination of No Shipments
V. Selection of Respondents
VI. Single Entity Treatment
VII. Discussion of the Methodology
VIII. Recommendation

[FR Doc. 2020–02563 Filed 2–7–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–858]

Certain Carbon and Alloy Steel Cut-To-Length Plate From Taiwan: Notice of Court Decision Not in Harmony With Final Determination of Antidumping Duty Investigation; and Amended Final Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On January 9, 2020, the United States Court of International Trade (the Court) sustained the final results of redetermination pertaining to the antidumping duty (AD) investigation of certain carbon and alloy steel cut-to-length plate (CTL plate) from Taiwan. The Department of Commerce (Commerce) is notifying the public that the final judgment in this case is not in harmony with the *Amended Final Determination* in the investigation of CTL plate from Taiwan, and that Commerce is amending the *Amended Final Determination* with respect to the application of partial adverse facts available (AFA) in making our difference-in-merchandise adjustment.

DATES: Applicable January 19, 2020.

FOR FURTHER INFORMATION CONTACT: Paul Walker, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0413.

SUPPLEMENTARY INFORMATION:

Background

On April 4, 2017, Commerce published the *Final Determination* of the AD investigation of CTL plate from Taiwan, in which Commerce applied partial AFA to China Steel Corporation (China Steel) because: (a) It failed to provide requested information by the established deadlines or in the form and manner requested by Commerce; (b) it provided information in its questionnaire responses that we could not verify as accurate because our verification revealed errors and failures in China Steel's cost reporting; and (c) its conduct significantly impeded the investigation.[1] Moreover, we found that China Steel failed to cooperate by not acting to the best of its ability to comply with Commerce's request for information by not providing timely and accurate cost data for certain control numbers (CONNUMs), and as such, that the application of partial AFA was warranted.[2] The *Final Determination* and *Amended Final Determination* were appealed to the Court by China Steel, and on August 6, 2019, the Court held that Commerce could not apply an adverse inference when calculating costs specifically related to the physical differences of China Steel's products, and remanded the *Amended Final Determination* for a redetermination consistent with the Court's opinion.[3] In accordance with the Court's *Remand Order,* Commerce recalculated a rate for China Steel.[4] On January 9, 2020, the Court sustained Commerce's *Remand Redetermination.*[5] Therefore, the effective date of this notice is January 19, 2020.

[1] *See Certain Carbon and Alloy Steel Cut-To-Length Plate from Taiwan: Final Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances,* 82 FR 16372 (April 4, 2017) (*Final Determination*), and accompanying Issues and Decision Memorandum (IDM) at Comment 1; *see also Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria, Belgium, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, and Taiwan: Amended Final Affirmative Antidumping Determinations for France, the Federal Republic of Germany, the Republic of Korea and Taiwan, and Antidumping Duty Orders,* 82 FR 24096 (May 25, 2017) (*Amended Final Determination*), and accompanying Memorandum, ''Amended Final Determination of the Less-Than-Fair-Value Investigation of Carbon and Alloy Steel Cut-to-Length Plate from Taiwan: Allegation of Ministerial Error for China Steel Corporation.''

[2] *Id.*

[3] *See China Steel Corp.* v. *United States,* Consol. Court No. 17–00152 (August 6, 2019) (*Remand Order*).

[4] *See* Final Results of Redetermination Pursuant to *China Steel Corp.* v. *United States,* Consol. Court No. 17–00152, Slip. Op. 19–106 (CIT August 6, 2019), dated December 3, 2019 (*Remand Redetermination*).

[5] *See China Steel Corp.* v. *United States,* Court No. 17–152, Slip Op. 20–5 (CIT January 9, 2020).

Timken Notice

In its decision in *Timken,*[6] as clarified by *Diamond Sawblades,*[7] the United States Court of Appeals for the Federal Circuit (CAFC) held that, pursuant to section 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of a court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The Court's January 9, 2020 judgment sustaining Commerce's *Remand Redetermination* constitutes a final decision of the Court that is not in harmony with Commerce's *Amended Final Determination.* This notice is published in fulfillment of the publication requirements of *Timken* and section 516A of the Act. Commerce will continue the suspension of liquidation of the subject merchandise pending the expiration of the period of appeal, or if appealed, pending a final and conclusive court decision.

Amended Final Determination

Because there is now a final court decision, Commerce is amending the *Amended Final Determination.* China Steel's rate, as determined in the *Remand Redetermination,* is 6.73 percent.

Cash Deposit Requirements

We have revised China Steel's cash deposit rate to 6.73 percent, and we will issue instructions to U.S. Customs and Border Protection within five days of the publication of this notice.

Notifications to Interested Parties

This notice is issued and published in accordance with sections 516A(e), 751(a)(1), and 777(i)(1) of the Act.

Dated: January 28, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–02562 Filed 2–7–20; 8:45 am]

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[6] *See Timken Co.* v. *United States,* 893 F. 2d 337, 341 (Fed. Cir. 1990) (*Timken*).

[7] *See Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F. 3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; NOAA Space-Based Data Collection System (DCS) Agreements

AGENCY: National Oceanic and Atmospheric Administration (NOAA), 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 comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: To ensure consideration, written or on-line comments must be submitted on or before April 10, 2020.

ADDRESSES: Direct all written comments to Adrienne Thomas, PRA Officer, NOAA, 151 Patton Avenue, Room 159, Asheville, NC 28801 (or via the internet at *PRAcomments@doc.gov*). All comments received are part of the public record. 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.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instruments and instructions should be directed to Scott Rogerson, Office of Satellite and Product Operations, (301) 817–4543 or *Scott.Rogerson@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of an existing information collection.

The National Oceanic and Atmospheric Administration (NOAA) operates two space-based data collection systems (DCS) per 15 CFR part 911: The Geostationary Operational Environmental Satellite (GOES) DCS and the Polar-Orbiting Operational Environmental Satellite (POES) DCS, also known as the Argos system. Both the GOES DCS and the Argos DCS are operated to support environmental applications, *e.g.,* meteorology, oceanography, hydrology, ecology, and remote sensing of Earth resources. In addition, the Argos DCS currently supports applications related to protection of the environment, *e.g.,* hazardous material tracking, fishing vessel tracking for treaty enforcement, and animal tracking. Presently, the majority of users of these systems are government agencies and researchers and much of the data collected by both the GOES DCS and the Argos DCS are provided to the World Meteorological Organization via the Global Telecommunication System for inclusion in the World Weather Watch Program.

Current loading on both of the systems does not use the entire capacity of that system, so NOAA is able to make its excess capacity available to other users who meet certain criteria. Applications are made in response to the requirements in 15 CFR 911 (under the authority of 15 U.S.C. 313, Duties of the Secretary of Commerce and others), using system use agreement (SUA) forms. The application information received is used to determine if the applicant meets the criteria for use of the system. The system use agreements contain the following information: (1) The period of time the agreement is valid and procedures for its termination, (2) the authorized use(s) of the DCS, and its priorities for use, (3) the extent of the availability of commercial services which met the user's requirements and the reasons for choosing the government system, (4) any applicable government interest in the data, (5) required equipment standards, (6) standards of operation, (7) conformance with applicable International Telecommunication Union (ITU) and Federal Communications Commission (FCC) agreements and regulations, (8) reporting time and frequencies, (9) data formats, (10) data delivery systems and schedules and (11) user-borne costs.

Accepted applicants use the NOAA DCS to collect environmental data and in limited cases, non-environmental data via the Argos DCS, to support other governmental and non-governmental research or operational requirements, such as for law enforcement purposes. The applicants must submit information to ensure that they meet these criteria. NOAA does not approve agreements where there is a commercial service available to fulfill the user requirements (per 15 CFR part 911).

II. Method of Collection

Method of submittal is electronically (via internet).

III. Data

OMB Control Number: 0648–0157.
Form Number: None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Not-for-profit institutions; Federal government; state, local, or tribal government; business or other for-profit organizations.

Estimated Number of Respondents: 225.

Estimated Time per Response: Thirty minutes per response.

Estimated Total Annual Burden Hours: 113.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

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. 2020–02569 Filed 2–7–20; 8:45 am]

BILLING CODE 3510–HR–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2020–0012]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Consumer Financial Protection (Bureau) is requesting to renew the Office of Management and Budget (OMB) approval for an existing information collection titled, ''Application Forms for Financial Empowerment Training Programs.''

DATES: Written comments are encouraged and must be received on or before March 11, 2020 to be assured of consideration.

ADDRESSES: Comments in response to this notice are to be directed towards OMB and to the attention of the OMB Desk Officer for the Bureau. You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: OIRA_submission@omb.eop.gov.*
- *Fax:* (202) 395–5806.
- *Mail:* Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.reginfo.gov* (this link becomes active on the day following publication of this notice). Select ''Information Collection Review,'' under ''Currently under Review,'' use the dropdown menu ''Select Agency'' and select ''Consumer Financial Protection Bureau'' (recent submissions to OMB will be at the top of the list). The same documentation is also available at *http://www.regulations.gov.* Requests for additional information should be directed to Darrin King, PRA Officer, at (202) 435–9575, or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Application Forms for Financial Empowerment Training Programs.

OMB Control Number: 3170–0068.

Type of Review: Revision of a currently approved collection.

Affected Public: Government social service entities, and not-for-profit institutions.

Estimated Number of Annual Respondents: 275.

Estimated Total Annual Burden Hours: 825.

Abstract: The Bureau's Office of Community Affairs (OCA) is responsible for developing strategies to improve the financial capability of low-income and economically vulnerable consumers, such as consumers who are unbanked or underbanked, those with thin or no credit file, and households with limited savings. To address the needs of these consumers, OCA has developed two initiatives that target intermediary organizations and provide tools, training, technical assistance, and other services to help them reach low-income and economically vulnerable consumers to provide them the financial empowerment tools and information that they need, when they need it, and where they are. These initiatives: (1) Your Money, Your Goals, and (2) Tax Time Savings both require the Bureau to engage organizations to participate in our financial empowerment initiatives. The proposed information collection request consists of application forms that will be used by community-based organizations, local, State, or Federal government entities, and national non-profit organizations to indicate their desire and ability to participate in OCA's various initiatives. Empowerment will use the information provided in these applications to select the best qualified organizations for participation.

Request for Comments: The Bureau issued a 60-day **Federal Register** notice on November 15, 2019, (84 FR 62514), Docket Number: CFPB–2019–0056. Comments were solicited and continue to be invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be reviewed by OMB as part of its review of this request. All comments will become a matter of public record.

Dated: February 5, 2020.

Darrin King,

Paperwork Reduction Act Officer, Bureau of Consumer Financial Protection.

[FR Doc. 2020–02545 Filed 2–7–20; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Prepare a Supplement to the Gulf of Alaska Navy Training Activities Environmental Impact Statement/Overseas Environmental Impact Statement

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969 and regulations implemented by the Council on Environmental Quality, the Department of the Navy (DON) announces its intent to prepare a supplement to the 2011 Gulf of Alaska (GOA) Navy Training Activities Environmental Impact Statement (EIS)/Overseas Environmental Impact Statement (OEIS) and 2016 Gulf of Alaska Navy Training Activities Supplemental EIS/OEIS. New information includes a new acoustic effects model, updated marine mammal density data, and evolving and emergent best available science. Proposed activities are consistent with those analyzed in the 2016 GOA Navy Training Activities Supplemental EIS/OEIS and 2017 Record of Decision.

DATES: The public 30-day scoping period begins on February 10, 2020 and extends to March 11, 2020. Comments must be postmarked no later than March 11, 2020 for consideration in the Draft Supplemental EIS/OEIS.

ADDRESSES: The DON invites all interested parties to submit scoping comments on the GOA Supplemental EIS/OEIS by mail to the address below and through the project website at *http://www.GOAEIS.com.*

FOR FURTHER INFORMATION CONTACT: Naval Facilities Engineering Command, Northwest, Attn: Ms. Kimberly Kler, 1101 Tautog Circle, Suite 203, Silverdale, Washington 98315, 360–315–5103.

SUPPLEMENTARY INFORMATION: This Supplemental EIS/OEIS is a supplement to the 2011 GOA EIS/OEIS and 2016 GOA Supplemental EIS/OEIS, and supports renewal of current regulatory permits and authorizations for training requirements to achieve and maintain Fleet readiness as required by Title 10 of the U.S. Code. The DON's Proposed Action is unchanged since the 2016 GOA Supplemental EIS/OEIS and 2017 Record of Decision, and includes conducting one large-scale carrier strike group exercise per year, as well as the inclusion of anti-submarine warfare activities with the use of active sonar. The Proposed Action does not alter the Navy's original purpose and need as discussed in the 2016 GOA Supplemental EIS/OEIS. The DON needs to continue conducting at-sea joint exercises in the GOA to support the training of combat-capable naval forces.

The Study Area for the Supplemental EIS/OEIS is the same as the 2011 GOA EIS/OEIS and 2016 GOA Supplemental EIS/OEIS. As part of this process, the DON will seek the issuance of regulatory permits and authorizations under the Marine Mammal Protection Act and Endangered Species Act to support continued at-sea training and testing requirements within the Study Area. The renewed permits would begin in 2022 and extend for a period of 7 years; thereby ensuring critical Department of Defense requirements into the future are met.

Pursuant to 40 CFR 1501.6, the DON will invite the National Marine Fisheries Service to be a cooperating agency in preparation of this Supplemental EIS/OEIS.

The analysis in the Supplemental EIS/OEIS will address the following resources: Marine mammals, fishes, threatened and endangered species, and Alaska Native Traditional Resources.

The DON will use the scoping process to identify public concerns and local issues to address in the Supplemental EIS/OEIS. Federal agencies, Alaska Native Tribes, state agencies, local agencies, the public, and interested persons are encouraged to provide comments to the DON to identify specific issues or topics of environmental concern the commenter believes the DON should consider. Written comments must be postmarked no later than March 11, 2020 for review and consideration in the development of the Draft Supplemental EIS/OEIS and mailed to: Naval Facilities Engineering Command, Northwest, Attention: GOA Supplemental EIS/OEIS Project Manager, 1101 Tautog Circle, Suite 203, Silverdale, Washington 98315–1101. Comments can also be submitted online via the project website at *http://www.GOAEIS.com.* Also at this website, those interested in receiving electronic project updates can subscribe to receive notifications via email for key milestones throughout the environmental planning process.

Dated: February 4, 2020.

D.J. Antenucci,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2020–02537 Filed 2–7–20; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2019–ICCD–0135]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Study of State Policies To Prohibit Aiding and Abetting Sexual Misconduct in Schools

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before March 11, 2020.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2019–ICCD–0135. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208B, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Andrew Abrams, 202–245–7500.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize

the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Study of State Policies to Prohibit Aiding and Abetting Sexual Misconduct in Schools.

OMB Control Number: 1810–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 56.

Total Estimated Number of Annual Burden Hours: 56.

Abstract: Under Section 8546 of the Every Student Succeeds Act (ESSA), every state must have laws, regulations, or policies that prohibit the state education agency, a district, a school, or any school employee, contractor, or agent, from assisting an individual in obtaining new employment if they know, or have probable cause to believe, that the individual has engaged in sexual misconduct with a student or minor in violation of the law. The U.S. Department of Education is conducting a study that will examine states' development and implementation of laws and policies to prohibit aiding and abetting sexual misconduct in schools. The study will also describe the challenges states have encountered implementing the requirements of Section 8546 and how they have addressed these challenges. The study is not intended to determine the extent to which each state is complying with Section 8546. Rather, the Department seeks to understand how states are addressing implementing the provisions in Section 8546 in order to inform the Department's technical assistance efforts to states on this section of the law.

Dated: February 5, 2020.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2020–02572 Filed 2–7–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0024]

Agency Information Collection Activities; Comment Request; Grant Application Form for Project Objectives and Performance Measures Information

AGENCY: Office of the Secretary (OS), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before April 10, 2020.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2020–SCC–0024. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208B, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Alfreida Pettiford, 202–245–6110.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Grant Application Form for Project Objectives and Performance Measures Information.

OMB Control Number: 1894–0017.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 5,976.

Total Estimated Number of Annual Burden Hours: 29,880.

Abstract: The U.S. Department of Education Grant Application Form for Project Objectives and Performance Measures Information serves as a precursor to the U.S. Department of Education Grant Performance Report Form (ED 524 B) in which project objectives, measures, and targets will be entered by applicants at the time that grant applications are entered in *Grants.gov*.

The Grant Application Form for Project Objectives and Performance Measures Information form and instructions are used by many ED discretionary grant programs to enable grantees to meet ED deadline dates for submission of performance reports to the Department.

Dated: February 5, 2020.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2020–02571 Filed 2–7–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2019–ICCD–0145]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; National Assessment of Educational Progress (NAEP) 2021

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before March 11, 2020.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2019–ICCD–0145. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov*. Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208B, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kashka Kubzdela, 202–245–7377 or email *NCES.Information.Collections@ed.gov*.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: National Assessment of Educational Progress (NAEP) 2021.

OMB Control Number: 1850–0928.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or Households.

Total Estimated Number of Annual Responses: 628,121.

Total Estimated Number of Annual Burden Hours: 371,982.

Abstract: The National Assessment of Educational Progress (NAEP), conducted by the National Center for Education Statistics (NCES), is a federally authorized survey of student achievement at grades 4, 8, and 12 in various subject areas, such as mathematics, reading, writing, science, U.S. history, civics, geography, economics, technology and engineering literacy (TEL), and the arts. The National Assessment of Educational Progress Authorization Act (Pub. L. 107–279 Title III, section 303) requires the assessment to collect data on specified student groups and characteristics, including information organized by race/ethnicity, gender, socio-economic status, disability, and limited English proficiency. It requires fair and accurate presentation of achievement data and permits the collection of background, noncognitive, or descriptive information that is related to academic achievement and aids in fair reporting of results. The intent of the law is to provide representative sample data on student achievement for the nation, the states, and subpopulations of students and to monitor progress over time. The nature of NAEP is that burden alternates from a relatively low burden in national-level administration years to a substantial burden increase in state-level administration years when the sample has to allow for estimates for individual states and some of the large urban districts (as part of the Trial Urban District Assessment, or TUDA, program). This request is to conduct NAEP 2021, including operational assessments and pilot tests: Operational national/state/TUDA Digitally Based Assessments (DBA) in mathematics and reading at grades 4 and 8, and Puerto Rico in mathematics at grades 4 and 8; and operational national DBA in U.S. history and civics at grade 8. In 2021, NAEP will begin to transition to a design in which students will take additional set(s) of cognitive items from another subject area. This design will allow more information to be collected from each individual student, thereby reducing the number of overall students (and, thus, schools) that are required. The NAEP results will be reported to the public through the Nation's Report Card as well as other online NAEP tools.

Dated: February 5, 2020.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer.

[FR Doc. 2020–02573 Filed 2–7–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2019–ICCD–0114]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Foreign Gifts and Contracts Disclosures

AGENCY: Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before March 11, 2020.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2019–ICCD–0114. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov*. Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted*. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208B, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Hilary Malawer, 202–401–6148.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Foreign Gifts and Contracts Disclosures.

OMB Control Number: 1801–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 400.

Total Estimated Number of Annual Burden Hours: 8,000.

Abstract: Section 117 of the Higher Education Act of 1965 (HEA), as amended, provides that institutions of higher education must file a disclosure report with the Secretary of Education under the following circumstances: Whenever any institution is owned or controlled by a foreign source or receives a gift from or enters into a contract with a foreign source, the value of which is $250,000 or more, considered alone or in combination with all other gifts from or contracts with that foreign source within a calendar year, the institution shall file a disclosure report with the Secretary on January 31 or July 31, whichever is sooner. (see *https://www.govinfo.gov/content/pkg/USCODE-2017-title20/pdf/USCODE-2017-title20-chap28-subchapI-partB-sec1011e.pdf*).

This collection of information is necessary to ensure that the Secretary receives sufficient information about gifts or contracts involving a foreign source, or about ownership or control of the institution by a foreign source, to be able to enforce 20 U.S.C. 1011f.

Dated: February 5, 2020.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2020–02574 Filed 2–7–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Meeting

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces an open meeting of the Secretary of Energy Advisory Board (SEAB). The SEAB was reestablished pursuant to the Federal Advisory Committee Act. This notice is provided in accordance with the Act.

DATES: Tuesday, March 12, 2020; 2 p.m.–5 p.m.

ADDRESSES: The Rush Conference Center, Rice University, James A. Baker III Hall, 6100 Main Street, Houston, Texas 77005.

FOR FURTHER INFORMATION CONTACT: Kurt Heckman, Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585; email: *seab@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

Background: The Board was established to provide advice and recommendations to the Secretary on the Administration's energy policies; the Department's basic and applied research and development activities; economic and national security policy; and other activities as directed by the Secretary.

Purpose of the Meeting: This meeting is the third meeting of existing and new members under Secretary Perry and Secretary Brouillette.

Tentative Agenda: The meeting will start at 2 p.m. on March 12th. The tentative meeting agenda includes: introduction of SEAB's members, briefings from the Innovation and Artificial Intelligence subcommittees, and an opportunity for comments from the public. The meeting will conclude at 5 p.m.

Public Participation: The meeting is open to the public. Individuals who would like to attend must RSVP to Kurt Heckman no later than 5 p.m. on Thursday, March 5, 2020, by email at: *seab@hq.doe.gov*.

Individuals and representatives of organizations who would like to offer comments and suggestions may do so during the meeting. Approximately 15 minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but will not exceed five minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Those wishing to speak should register to do so via email, *seab@hq.doe.gov,* no later than 5 p.m. on Thursday, March 5, 2020.

Those not able to attend the meeting or who have insufficient time to address the committee are invited to send a written statement to Kurt Heckman, U.S. Department of Energy, 1000 Independence Avenue SW, Washington DC 20585, or email to: *seab@hq.doe.gov*.

Minutes: The minutes of the meeting will be available on the SEAB website or by contacting Mr. Heckman. He may be reached at the above postal address or email address, or by visiting SEAB's website at *www.energy.gov/seab*.

Signed in Washington, DC, on February 4, 2020.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2020–02555 Filed 2–7–20; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. UL20–1–000]

Northern States Power Company—Wisconsin: Notice of Pending Jurisdictional Inquiry and Soliciting Comments, Protests, and Motions To Intervene

On December 30, 2019, and supplemented on January 22, 2020, Northern States Power Company—Wisconsin filed a preliminary application document (PAD) and notice of intent to file a license application for the Saxon Falls and Superior Falls Hydroelectric Projects (FERC Project Nos. 2610 and 2587, respectively). Commission staff's review of the PAD found information stating that the Gile Flowage was created to augment river flows in the Montreal River during the summer and winter low-flow periods at the downstream Saxon Falls and Superior Falls Projects, and that both projects depend on flow augmentation from Gile Flowage during these periods. The Gile Flowage is in Iron County, Wisconsin. As a result, the Commission is beginning a review of the Gile Flowage to determine whether it is subject to the Commission's mandatory licensing jurisdiction under section 23 of the Federal Power Act (FPA).

Pursuant to section 23(b)(1) of the FPA, 16 U.S.C. 817(1) (2018), a non-federal hydroelectric project must be licensed (unless it has a still-valid pre-1920 federal permit) if it: (1) Is located on a navigable water of the United States, (2) occupies lands or reservations of the United States, (3) uses the surplus water or water power from a government dam; or (4) is located on a stream over which Congress has Commerce Clause jurisdiction, is constructed or modified on or after August 26, 1935, and affects the interests of interstate or foreign commerce.

Section 4(e) of the FPA authorizes the Commission to issue licenses for hydroelectric project works, including reservoirs. Section 23(b)(1) of the FPA requires (with exceptions not relevant here) a Commission license for the operation of non-federal hydroelectric project works, including reservoirs, that are used to generate electric power on any navigable waters of the United States. Storage reservoirs that are not directly connected to other project works must be licensed if they are necessary or appropriate in the maintenance and operation of a complete unit of hydropower improvement or development. The Commission makes this finding by examining the facts in each case, considering the reservoir's effect on downstream generation and its storage capacity, location, and purpose, to determine if there are significant generation benefits to a downstream project or projects. The Commission has found, and the D.C. Circuit has affirmed, that a contribution to downstream electric generation of at least 2 percent amounts to a significant generation benefit.[1]

The Commission is soliciting comments, motions to intervene, and protests in these proceedings. Comments, motions to intervene, and protests must be filed by thirty (30) days from notice or March 2, 2020. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules and Practice and Procedure, 18 CFR 385.210, 211, and 214. In determining the appropriate action to take, the Commission will consider all protests or 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.

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 UL20–1–000.

[1] *See Domtar Maine Corp., Inc.* v. *FERC,* 347 F.3d 304, 309 (D.C. Cir. 2003); *Chippewa and Flambeau Improvement Co.* v. *FERC,* 325 F.3d 353 (D.C. Cir. 2003).

For further information, please contact Jennifer Polardino at (202) 502–6437 or *Jennifer.Polardino@ferc.gov*.

Dated: January 31, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–02582 Filed 2–7–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL20–20–000; QF14–782–001]

GRE 314 East Lyme LLC; Notice of Petition for Declaratory Order

Take notice that on February 3, 2020, pursuant to Rule 207(a)(2) of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.207(a)(2) (2019), GRE 314 East Lyme LLC (Petitioner), filed a petition for declaratory order seeking requirements applicable to qualifying small power production facilities set forth in section 292.203(a)(3) for the period June 6, 2014 to September 18, 2014, as more fully explained in the petition.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Petitioner.

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 p.m. Eastern time on March 4, 2020.

Dated: February 4, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–02558 Filed 2–7–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–27–000]

North Baja Pipeline, LLC; Notice of Intent To Prepare an Environmental Assessment for the Proposed North Baja Xpress 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 North Baja Xpress Project involving construction and operation of facilities by North Baja Pipeline, LLC (North Baja) in La Paz County, Arizona and Imperial County, California. 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. 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 5:00pm Eastern Time on March 2, 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.

If you sent comments on this project to the Commission before the opening of this docket on December 16, 2019, you will need to file those comments in Docket No. CP20–27–000 to ensure they are considered as part of this proceeding.

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.

North Baja 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 (CP20–27–000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426.

Please note this is not your only public input opportunity; please refer to the review process flow chart in appendix 1.[1]

Summary of the Proposed Project

The North Baja Xpress Project would consist of the following facility modifications in La Paz County, Arizona:

- The installation of one new 31,900 ISO horsepower Solar Turbine Titan 250 compressor unit and the restaging of two existing 7,700 ISO horsepower Solar Taurus 60 turbine compressor units to provide second-stage compression in series flow at the existing Ehrenberg Compressor Station; and

[1] The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the 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.

• the installation of additional flow measurement facilities and piping modifications at the existing El Paso Meter Station.

The North Baja Xpress Project would additionally consist of the following facility modifications in Imperial County, California:

• The installation of additional flow measurement facilities and piping modifications at the existing Ogilby Meter Station.

The project would create 495,000,000 cubic feet per day of incremental firm delivery to the United States/Mexico border. The general location of the project facilities is shown in appendix 2.[2]

Land Requirements for Construction

Construction of the project would disturb 31.84 acres. Following construction, 8.42 acres would be converted to new permanent use at the Ehrenberg Compressor Station, and 0.1 acre would be converted to new permanent use at the El Paso Meter Station.

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 eLibrary[3] 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 106 of the National Historic Preservation Act, the Commission is using this notice to initiate consultation with the applicable State Historic Preservation Offices, 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 3).

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.,* CP20–27). 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 31, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–02579 Filed 2–7–20; 8:45 am]

BILLING CODE 6717–01–P

[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.

[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.

[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.

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: ER10–2756–008; ER10–2718–034; ER10–2719–034; ER17–424–005.

Applicants: Griffith Energy LLC, Footprint Power Salem Harbor Development, L.P., East Coast Power Linden Holding, L.L.C., Cogen Technologies Linden Venture, L.P.

Description: Supplement to October 30, 2019 Notice of Non-Material Change in Status of Griffith Energy LLC, et al.
Filed Date: 1/29/20.
Accession Number: 20200129–5173.
Comments Due: 5 p.m. ET 2/19/20.

Docket Numbers: ER11–47–009; ER11–41–009; ER11–46–012; ER12–1540–007; ER12–1541–007; ER12–1542–007; ER12–1544–007; ER12–2343–007; ER13–1896–013; ER14–594–011; ER16–323–005; ER17–1930–001; ER17–1931–001; ER17–1932–001.
Applicants: Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Wheeling Power Company, Public Service Company of Oklahoma, AEP Texas Inc., Southwestern Electric Power Company, Ohio Power Company, AEP Energy Partners, Inc., AEP Retail Energy Partners LLC, AEP Energy, Inc., AEP Generation Resources Inc., Ohio Valley Electric Corporation.
Description: Second Supplement (Market Power Screens) to June 26, 2016 Updated Market Power Analysis in the Southwest Power Pool balancing area authority of the AEP MBR affiliates.
Filed Date: 1/22/20.
Accession Number: 20200122–5140.
Comments Due: 5 p.m. ET 2/12/20.

Docket Numbers: ER11–3050–004.
Applicants: FirstEnergy Corp.
Description: Notice of change in status of FirstEnergy Companies.
Filed Date: 1/30/20.
Accession Number: 20200130–5238.
Comments Due: 5 p.m. ET 2/20/20.

Docket Numbers: ER20–335–001.
Applicants: McKenzie Electric Cooperative, Inc.
Description: Tariff Amendment: Request to Hold Proceedings in Abeyance to be effective 12/31/9998.
Filed Date: 1/31/20.
Accession Number: 20200131–5084.
Comments Due: 5 p.m. ET 2/21/20.

Docket Numbers: ER20–917–000.
Applicants: Southwestern Electric Power Company.
Description: § 205(d) Rate Filing: SWEPCO–NTEC Murvaul Delivery Point Agreement to be effective 1/24/2020.
Filed Date: 1/30/20.
Accession Number: 20200130–5138.
Comments Due: 5 p.m. ET 2/20/20.

Docket Numbers: ER20–918–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: Attachment V Revisions to Include Request for Information to Analyze ESRs to be effective 4/1/2020.
Filed Date: 1/31/20.
Accession Number: 20200131–5042.
Comments Due: 5 p.m. ET 2/21/20.

Docket Numbers: ER20–919–000.
Applicants: Duke Energy Carolinas, LLC.
Description: § 205(d) Rate Filing: DEF Revisions to Joint OATT Schedules 1, 2, 3, 3A, 5 and 6 to be effective 4/1/2020.
Filed Date: 1/31/20.
Accession Number: 20200131–5049.
Comments Due: 5 p.m. ET 2/21/20.

Docket Numbers: ER20–920–000.
Applicants: Midcontinent Independent System Operator, Inc., Entergy Mississippi, Inc.
Description: § 205(d) Rate Filing: 2020–01–31_Cancellation of SA 869 Entergy-GenOn LGIA to be effective 2/1/2020.
Filed Date: 1/31/20.
Accession Number: 20200131–5051.
Comments Due: 5 p.m. ET 2/21/20.

Docket Numbers: ER20–921–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: 3620 Kansas Municipal Energy Agency NITSA NOA to be effective 1/1/2020.
Filed Date: 1/31/20.
Accession Number: 20200131–5062.
Comments Due: 5 p.m. ET 2/21/20.

Docket Numbers: ER20–922–000.
Applicants: New York Independent System Operator, Inc.
Description: Request for Waiver of New York Independent System Operator, Inc.
Filed Date: 1/30/20.
Accession Number: 20200130–5232.
Comments Due: 5 p.m. ET 2/20/20.

Docket Numbers: ER20–923–000.
Applicants: New England Power Pool Participants Committee.
Description: § 205(d) Rate Filing: Feb 2020 Membership Filing to be effective 2/1/2020.
Filed Date: 1/31/20.
Accession Number: 20200131–5086.
Comments Due: 5 p.m. ET 2/21/20.

Docket Numbers: ER20–924–000.
Applicants: PacifiCorp.
Description: § 205(d) Rate Filing: OATT Queue Reform to be effective 4/1/2020.
Filed Date: 1/31/20.
Accession Number: 20200131–5112.
Comments Due: 5 p.m. ET 2/21/20.

Docket Numbers: ER20–925–000.
Applicants: Alabama Power Company.
Description: § 205(d) Rate Filing: SEPA Network Agreement Amendment Filing (Revision No. 7) to be effective 1/1/2020.
Filed Date: 1/31/20.
Accession Number: 20200131–5176.
Comments Due: 5 p.m. ET 2/21/20.

Docket Numbers: ER20–926–000.
Applicants: Middletown Cogeneration Company LLC.
Description: § 205(d) Rate Filing: Notice of Succession to be effective 1/1/2020.
Filed Date: 1/31/20.
Accession Number: 20200131–5177.
Comments Due: 5 p.m. ET 2/21/20.

Docket Numbers: ER20–927–000.
Applicants: Ameren Illinois Company.
Description: § 205(d) Rate Filing: Reimbursement Agreement, RS 152, Prairie Power Griggsville to be effective 4/1/2020.
Filed Date: 1/31/20.
Accession Number: 20200131–5178.
Comments Due: 5 p.m. ET 2/21/20.

Docket Numbers: ER20–928–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: East Texas Cooperatives Stated Rate Revisions to be effective 4/1/2020.
Filed Date: 1/31/20.
Accession Number: 20200131–5183.
Comments Due: 5 p.m. ET 2/21/20.

Docket Numbers: ER20–929–000.
Applicants: Haverhill Cogeneration Company LLC.
Description: § 205(d) Rate Filing: Notice of Succession to be effective 1/1/2020.
Filed Date: 1/31/20.
Accession Number: 20200131–5185.
Comments Due: 5 p.m. ET 2/21/20.

Docket Numbers: ER20–930–000.
Applicants: South Carolina Generating Company, Inc.
Description: Baseline eTariff Filing: GENCO Unit Power Sales Agreement to be effective 1/31/2020.
Filed Date: 1/31/20.
Accession Number: 20200131–5190.

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 31, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–02577 Filed 2–7–20; 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: RP20–460–001.
Applicants: Cameron Interstate Pipeline, LLC.
Description: Tariff Amendment: Amendment to Rate Schedule PAL, Tariff Updates, and Housekeeping Revisions to be effective 3/1/2020.
Filed Date: 1/30/20.
Accession Number: 20200130–5143.
Comments Due: 5 p.m. ET 2/11/20.

Docket Numbers: RP20–462–000.
Applicants: NEXUS Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate—DTE Gas 860003 Release to Eco-Energy to be effective 2/1/2020.
Filed Date: 1/30/20.
Accession Number: 20200130–5002.
Comments Due: 5 p.m. ET 2/11/20.

Docket Numbers: RP20–463–000.
Applicants: Ruby Pipeline, L.L.C.
Description: § 4(d) Rate Filing: Fuel Lost and Unaccounted for and Electric Power Charge Update to be effective 3/1/2020.
Filed Date: 1/30/20.
Accession Number: 20200130–5038.
Comments Due: 5 p.m. ET 2/11/20.

Docket Numbers: RP20–464–000.
Applicants: Wyoming Interstate Company, L.L.C.
Description: § 4(d) Rate Filing: Fuel and Lost and Unaccounted for Update to be effective 3/1/2020.
Filed Date: 1/30/20.
Accession Number: 20200130–5039.
Comments Due: 5 p.m. ET 2/11/20.

Docket Numbers: RP20–465–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Cherokee AGL—Replacement Shippers—Feb 2020 to be effective 2/1/2020.
Filed Date: 1/30/20.
Accession Number: 20200130–5041.
Comments Due: 5 p.m. ET 2/11/20.

Docket Numbers: RP20–466–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (SRP 2020) to be effective 3/1/2020.
Filed Date: 1/30/20.
Accession Number: 20200130–5116.
Comments Due: 5 p.m. ET 2/11/20.

Docket Numbers: RP20–467–000.
Applicants: Dominion Energy Cove Point LNG, LP.
Description: § 4(d) Rate Filing: DECP—2020 Section 4 General Rate Case to be effective 3/1/2020.
Filed Date: 1/30/20.
Accession Number: 20200130–5117.
Comments Due: 5 p.m. ET 2/11/20.

Docket Numbers: RP20–468–000.
Applicants: Tallgrass Interstate Gas Transmission, LLC.
Description: § 4(d) Rate Filing: TIGT 2020–01–30 Non-Conforming Agreement to be effective 2/1/2020.
Filed Date: 1/30/20.
Accession Number: 20200130–5119.
Comments Due: 5 p.m. ET 2/11/20.

Docket Numbers: RP20–469–000.
Applicants: TransColorado Gas Transmission Company LLC.
Description: § 4(d) Rate Filing: Transfer Nomination and Housekeeping Update Filing to be effective 3/1/2020.
Filed Date: 1/30/20.
Accession Number: 20200130–5129.
Comments Due: 5 p.m. ET 2/11/20.

Docket Numbers: RP20–470–000.
Applicants: Southern Star Central Gas Pipeline, Inc.
Description: § 4(d) Rate Filing: Annual Modernization Capital Cost Recovery Mechanism to be effective 3/1/2020.
Filed Date: 1/30/20.
Accession Number: 20200130–5136.
Comments Due: 5 p.m. ET 2/11/20.

Docket Numbers: RP20–471–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rate—PSEG to PSEG Energy eff 2–1–2020 to be effective 2/1/2020.
Filed Date: 1/30/20.
Accession Number: 20200130–5139.
Comments Due: 5 p.m. ET 2/11/20.

Docket Numbers: RP20–472–000.
Applicants: Cameron Interstate Pipeline, LLC.
Description: § 4(d) Rate Filing: Cameron Interstate Pipeline, LLC Annual Adjustment of Fuel Retainage Percentage to be effective 3/1/2020.
Filed Date: 1/30/20.
Accession Number: 20200130–5142.
Comments Due: 5 p.m. ET 2/11/20.

Docket Numbers: RP20–473–000.
Applicants: NEXUS Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Columbia Gas 860005 Releases eff 2–1–2020 to be effective 2/1/2020.
Filed Date: 1/31/20.
Accession Number: 20200131–5000.
Comments Due: 5 p.m. ET 2/12/20.

Docket Numbers: RP20–474–000.
Applicants: Kinder Morgan Louisiana Pipeline LLC.
Description: Compliance filing Penalty Revenue Crediting Report.
Filed Date: 1/31/20.
Accession Number: 20200131–5032.
Comments Due: 5 p.m. ET 2/12/20.

Docket Numbers: RP20–475–000.
Applicants: Gulf South Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmts (Aethon to Scona eff 2–1–2020) to be effective 2/1/2020.
Filed Date: 1/31/20.
Accession Number: 20200131–5046.
Comments Due: 5 p.m. ET 2/12/20.

Docket Numbers: RP20–476–000.
Applicants: Gulf South Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmts (Osaka 46429 to Texla 52222, ConocoPhillips 52224) to be effective 2/1/2020.
Filed Date: 1/31/20.
Accession Number: 20200131–5047.
Comments Due: 5 p.m. ET 2/12/20.

Docket Numbers: RP20–477–000.
Applicants: Columbia Gas Transmission, LLC.
Description: § 4(d) Rate Filing: TCO Antero Negotiated Rate Amendments to be effective 2/1/2020.
Filed Date: 1/31/20.
Accession Number: 20200131–5068.
Comments Due: 5 p.m. ET 2/12/20.

Docket Numbers: RP20–478–000.
Applicants: Northern Natural Gas Company.
Description: § 4(d) Rate Filing: 20200131 Annual PRA to be effective 4/1/2020.
Filed Date: 1/31/20.
Accession Number: 20200131–5204.
Comments Due: 5 p.m. ET 2/12/20.

Docket Numbers: RP20–479–000.
Applicants: Rockies Express Pipeline LLC.
Description: § 4(d) Rate Filing: REX 2020–01–31 Negotiated Rate Agreements to be effective 2/1/2020.
Filed Date: 1/31/20.
Accession Number: 20200131–5087.
Comments Due: 5 p.m. ET 2/12/20.

Docket Numbers: RP20–480–000.
Applicants: Northern Natural Gas Company.
Description: § 4(d) Rate Filing: 20200131 Negotiated Rate to be effective 2/1/2020.
Filed Date: 1/31/20.
Accession Number: 20200131–5118.
Comments Due: 5 p.m. ET 2/12/20.

Docket Numbers: RP20–482–000.
Applicants: Rover Pipeline LLC.
Description: § 4(d) Rate Filing: Summary of Negotiated Rate Capacity Release Agreements on 2–3–20 to be effective 2/1/2020.
Filed Date: 2/3/20.

Accession Number: 20200203–5004.
Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: RP20–483–000.
Applicants: Transwestern Pipeline Company, LLC.
Description: Compliance filing Alert Day Penalty Report on 2–3–2020.
Filed Date: 2/3/20.
Accession Number: 20200203–5028.
Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: RP20–484–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Negotiated Rate Agreements—CPA 4/1/2020 to be effective 4/1/2020.
Filed Date: 2/3/20.
Accession Number: 20200203–5030.
Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: RP20–485–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: Rate Schedules LSS and SS–2 Tracker Filing eff February 1, 2020 to be effective 2/1/2020.
Filed Date: 2/3/20.
Accession Number: 20200203–5032.
Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: RP20–486–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Negotiated Capacity Release Agreements—2/1/2020 to be effective 2/1/2020.
Filed Date: 2/3/20.
Accession Number: 20200203–5033.
Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: RP20–487–000.
Applicants: Gulf South Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmts (Atlanta 8438 releases eff 2–1–2020) to be effective 2/1/2020.
Filed Date: 2/3/20.
Accession Number: 20200203–5104.
Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: RP20–488–000.
Applicants: Gulf South Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Cap Rel Neg Rate Agmt (Constellation 52187 to Exelon 52221) to be effective 2/1/2020.
Filed Date: 2/3/20.
Accession Number: 20200203–5105.
Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: RP20–489–000.
Applicants: Gulf South Pipeline Company, LLC.
Description: § 4(d) Rate Filing: Amendment to Neg Rate Agmt (Koch 51776) to be effective 2/1/2020.
Filed Date: 2/3/20.
Accession Number: 20200203–5106.
Comments Due: 5 p.m. ET 2/18/20.

Docket Numbers: RP20–490–000.
Applicants: LA Storage, LLC.
Description: § 4(d) Rate Filing: Filing of Negotiated Rate, Conforming IW Agreements to be effective 2/3/2020.
Filed Date: 2/3/20.
Accession Number: 20200203–5162.
Comments Due: 5 p.m. ET 2/18/20.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: February 4, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–02557 Filed 2–7–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC20–35–000.
Applicants: FPL Energy Sooner Wind, LLC, Sooner Wind, LLC, FPL Energy Oklahoma Wind, LLC, Oklahoma Wind, LLC, FPL Energy Burleigh County Wind, LLC, Wilton Wind Energy I, LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act, et al. of FPL Energy Sooner Wind, LLC, et al.
Filed Date: 2/3/20.
Accession Number: 20200203–5172.
Comments Due: 5 p.m. ET 2/24/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–1041–012; ER15–2205–012.
Applicants: Prairie Breeze Wind Energy II LLC, Prairie Breeze Wind Energy III LLC.
Description: Notice of Non-Material Change in Status of the PBX Sellers.
Filed Date: 2/3/20.
Accession Number: 20200203–5257.
Comments Due: 5 p.m. ET 2/24/20.

Docket Numbers: ER20–940–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2020–02–03_Compliance filing to SPP–JOA requiring revisions to Affected Systems to be effective 4/4/2020.
Filed Date: 2/3/20.
Accession Number: 20200203–5169.
Comments Due: 5 p.m. ET 2/24/20.

Docket Numbers: ER20–941–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: SPP–MISO JOA Revisions to Enhance and Clarify Affected Systems Coordination to be effective 4/4/2020.
Filed Date: 2/3/20.
Accession Number: 20200203–5171.
Comments Due: 5 p.m. ET 2/24/20.

Docket Numbers: ER20–942–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing: 2020–02–03_Compliance filing to PJM–JOA requiring revisions to Affected Systems to be effective 4/6/2020.
Filed Date: 2/3/20.
Accession Number: 20200203–5173.
Comments Due: 5 p.m. ET 2/24/20.

Docket Numbers: ER20–943–000.
Applicants: Southwest Power Pool, Inc.
Description: Compliance filing: Compliance Filing in Response to Order on Complaint in EL18–26 (Part 1) to be effective 4/4/2020.
Filed Date: 2/3/20.
Accession Number: 20200203–5179.
Comments Due: 5 p.m. ET 2/24/20.

Docket Numbers: ER20–944–000.
Applicants: PJM Interconnection, L.L.C.
Description: Compliance filing: Compliance filing per the Commission's 9/19/2019 order in Docket No. EL18–26 to be effective 4/6/2020.
Filed Date: 2/3/20.
Accession Number: 20200203–5180.
Comments Due: 5 p.m. ET 2/24/20.

Docket Numbers: ER20–945–000.
Applicants: Southwest Power Pool, Inc.
Description: Compliance filing: Compliance Filing in Response to Order on Complaint in EL18–26 (Part 2) to be effective 4/4/2020.
Filed Date: 2/3/20.
Accession Number: 20200203–5181.
Comments Due: 5 p.m. ET 2/24/20.

Docket Numbers: ER20–946–000.
Applicants: NorthWestern Corporation.
Description: § 205(d) Rate Filing: SA 243 16th Rev—NITSA with CHS Inc. to be effective 3/1/2020.

Filed Date: 2/4/20.
Accession Number: 20200204–5000.
Comments Due: 5 p.m. ET 2/25/20.

Docket Numbers: ER20–947–000.
Applicants: NorthWestern Corporation.
Description: § 205(d) Rate Filing: SA 767 8th Rev—NITSA with Basin Electric Power Cooperative to be effective 2/5/2020.
Filed Date: 2/4/20.
Accession Number: 20200204–5001.
Comments Due: 5 p.m. ET 2/25/20.

Docket Numbers: ER20–948–000.
Applicants: Southwestern Public Service Company.
Description: § 205(d) Rate Filing: SPS Wholesale Fuel Factor Modification to be effective 12/1/2019.
Filed Date: 2/4/20.
Accession Number: 20200204–5030.
Comments Due: 5 p.m. ET 2/25/20.

Docket Numbers: ER20–949–000.
Applicants: NorthWestern Corporation.
Description: 2019 Post-Retirement Benefits Other than Pensions of Northwestern Corporation.
Filed Date: 2/3/20.
Accession Number: 20200203–5246.
Comments Due: 5 p.m. ET 2/24/20.

Docket Numbers: ER20–950–000.
Applicants: Public Service Company of Colorado.
Description: § 205(d) Rate Filing: Joint Dispatch Agreement Update to be effective 4/5/2020.
Filed Date: 2/4/20.
Accession Number: 20200204–5060.
Comments Due: 5 p.m. ET 2/25/20.

Docket Numbers: ER20–951–000.
Applicants: Mid-Atlantic Interstate Transmission, LL,PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: MAIT submits 8 ECSAs, Service Agreement Nos. 5329, 5330, 5334, 5388, 5512, et al to be effective 4/4/2020.
Filed Date: 2/4/20.
Accession Number: 20200204–5079.
Comments Due: 5 p.m. ET 2/25/20.

Docket Numbers: ER20–952–000.
Applicants: NorthWestern Corporation.
Description: § 205(d) Rate Filing: SA 305 15th Rev—NITSA with Stillwater Mining Company to be effective 3/1/2020.
Filed Date: 2/4/20.
Accession Number: 20200204–5083.
Comments Due: 5 p.m. ET 2/25/20.

Docket Numbers: ER20–953–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original ISA, SA No. 5561; Queue No. AC1–043 to be effective 1/14/2020.
Filed Date: 2/4/20.
Accession Number: 20200204–5084.
Comments Due: 5 p.m. ET 2/25/20.

Docket Numbers: ER20–954–000.
Applicants: Ohio Power Company, AEP Ohio Transmission Company, Inc., PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: AEP submits ILDSA, SA No. 1336 and 2 Facilities Agreements to be effective 4/4/2020.
Filed Date: 2/4/20.
Accession Number: 20200204–5088.
Comments Due: 5 p.m. ET 2/25/20.

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: February 4, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–02556 Filed 2–7–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP20–481–000]

BP Energy Company v. Natural Gas Pipeline Company of America LLC; Notice of Complaint

Take notice that on January 31, 2020, pursuant to Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 (2019), BP Energy Company, (Complainants) filed a formal complaint against Natural Gas Pipeline Company of America LLC, (Respondent) requesting the Commission to direct the Respondent to follow its presently effective FERC Gas Tariff (Tariff), Section 4 of the Natural Gas Act (NGA), and the Commission's regulations thereunder, all as more fully explained in the complaint.

The Complainant certifies that copies of the complaint were served on Respondent's corporate representatives designated on the Commission's Corporate Officials List.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the website that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on February 20, 2020.

Dated: February 4, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–02554 Filed 2–7–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3063–021]

Blackstone Hydro Associates; 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.:* 3063–021.

c. *Date filed:* July 31, 2019.

d. *Applicant:* Blackstone Hydro Associates (BHA).

e. *Name of Project:* Central Falls Hydroelectric Project.

f. *Location:* On the Blackstone River, in the City of Central Falls, Providence County, Rhode Island. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Robert Leahy, 130 Prospect Street, Cambridge, MA 02139; Phone at (617) 491–2320, or email at *rleahy@theshorelinecorp.com*.

i. *FERC Contact:* John Baummer, 202–502–6837, or *john.baummer@ferc.gov*.

j. *Deadline for filing scoping comments:* March 1, 2020.

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–3063–021.

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 existing Central Falls Project consists of: (1) A 190-foot-long, 24-foot-high, curved granite-masonry dam (Valley Falls Dam); (2) an approximately 64.5-acre impoundment with a normal maximum elevation of 49.5 feet National Geodetic Vertical Datum of 1929 (NGVD 1929); (3) a granite block and wood-framed gatehouse that is adjacent to the dam and that contains ten gates that are 9 feet wide by 6 feet tall; (4) a 290-foot-long, granite block-lined headrace; (5) an intake structure with two 8-foot-high hydraulic gates and 24-foot-wide, 11.5-foot-high, inclined trashracks having 3-inch clear bar spacing; (6) two 30-foot-long, 7-foot-diameter penstocks; (7) an approximately 53-foot-long, 32-foot-wide concrete powerhouse containing two Allis-Chalmers tube turbines with a total installed capacity of 700 kilowatts (kW); (8) an approximately 1,200-foot-long, 36-foot-wide tailrace; (9) two 480-volt generator lead lines; and (10) appurtenant facilities.

BHA operates the project as a run-of-river facility, such that outflow from the project approximates inflow. The project bypasses approximately 0.3 mile of the Blackstone River. A 108-cubic feet per second (cfs) minimum flow is released over the dam into the bypassed reach. BHA discharges a continuous minimum flow of 238 cfs, or inflow, whichever is less, as measured at the confluence of the tailrace and the river channel. The average annual generation of the project is approximately 1,230 megawatt-hours (MWh).

BHA proposes to: (1) Continue operating the project in a run-of-river mode; (2) retrofit the two existing turbines with variable pitch blade runners to allow for the project to be operated at different flows; (3) install a new bypassed flow pipe to provide a minimum flow of 210 cfs to the bypassed reach, approximately 215 feet downstream of the dam; (4) install a new 160-kW ''fish friendly'' turbine-generator unit in the proposed bypassed flow pipe to increase the project's capacity and provide downstream fish passage; (5) install a new trashrack with 1-inch clear bar spacing in the headrace to prevent fish impingement and entrainment; (6) install a new downstream fish passage facility in the headrace, immediately upstream of the new trashrack; (7) maintain a 13-cfs aesthetic flow over the Valley Falls Dam; (8) provide a flow of up to 3 cfs to the adjacent historic canal; (9) install an upstream eel passage facility at the project dam; and (10) install 20 long-eared bat boxes and implement a Northern Long Eared Bat Management and Protection Plan to protect bats. BHA estimates the project enhancements will result in an average annual generation of approximately 3,200 MWh.

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 address the document. For assistance, contact FERC Online Support. A copy is also available for inspection and reproduction at 1485 High Street Central Falls, RI 02863.

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.

Commission staff intend to prepare a single Environmental Assessment (EA) for the Central Falls Hydroelectric 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.

At this time, we do not anticipate holding on-site public or agency scoping meetings. Instead, we are soliciting your comments and suggestions on the preliminary list of issues and alternatives to be addressed in the EA, as described in scoping document 1 (SD1), issued January 31, 2020.

Copies of the SD1 outlining the subject areas to be addressed in the EA were distributed to the parties on the Commission's mailing list and the applicant's distribution 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 31, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–02580 Filed 2–7–20; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 10–90, CC Docket No. 01–92; FCC 19–131; FRS 16472]

Connect America Fund; Developing a Unified Intercarrier Compensation Regime; Correction

AGENCY: Federal Communications Commission.

ACTION: Notice; correction.

SUMMARY: The Federal Communications Commission published a document in the **Federal Register** of January 30, 2020, clarifying its interpretation of the VoIP Symmetry Rule. The document contained incorrect dates.

FOR FURTHER INFORMATION CONTACT: Irina Asoskov, 202–418–2196.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of January 30, 2020, in FR Doc. 2020–01658, on page 5431, in the third column, correct the ''Dates'' caption to read:

DATES: The declaratory ruling was effective on December 17, 2019.

Dated: January 30, 2020.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–02584 Filed 2–7–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1211, 3060–1058, OMB 3060–0798, 3060–0800; FRS 16470]

Information Collections Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before March 11, 2020. If you anticipate that you will be submitting comments but find it difficult to do so with the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, OMB, via email *Nicholas_A._Fraser@OMB.eop.gov*; and to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov*. Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–1211.

Title: Sections 96.17; 96.21; 96.23; 96.25; 96.33; 96.35; 96.39; 96.41; 96.43; 96.45; 96.51; 96.57; 96.59; 96.61; 96.63; 96.67, Commercial Operations in the 3550–3700 MHz Band.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities, not for profit institutions, and state, local, or tribal government.

Number of Respondents: 110,782 respondents; 226,099 responses.

Estimated Time per Response: 0.25 to 1.5 hours.

Frequency of Response: Ten-year reporting requirement, One-time and on occasion reporting requirements; other reporting requirements—as-needed basis for equipment safety certification that is no longer in use, and consistently (likely daily) responses automated via the device.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection is contained in 47 U.S.C. 151, 152, 154(i), 154(j), 155(c), 302a, 303, 304, 307(e), and 316 of the Communications Act of 1934.

Total Annual Burden: 64,561 hours.

Total Annual Cost: $13,213,975.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information.

Needs and Uses: On October 24, 2018, the Commission released a Report and Order, FCC 18–149, in GN Docket No. 17–158, adopting limited changes to the rules governing Priority Access Licenses (PALs) in the 3550–3700 MHz (3.5 GHz) band, including larger license areas, longer license terms, renewability, and performance requirements. The Commission anticipated that the targeted changes made in its 2018 Report and Order will spur additional investment and broader deployment in the band, promote robust and efficient spectrum use, and help ensure the rapid deployment of advanced wireless technologies—including 5G—in the United States.

The rule changes and information requirements contained in the Commission's previous 3.5 GHz band orders—the 2015 Report and Order, FCC 15–47, and 2016 Order on Reconsideration and Second Report and Order, FCC 16–55, both in GN Docket No. 12–354—are also approved under this Office of Management and Budget (OMB) control number (3060–1211) and have not changed since OMB last approved them.

The Commission seeks approval from OMB for the information collection requirements contained in the 2018 Report and Order, FCC 18–149, stemming from the changes made to section 96.25(b) of it rules. The Commission revised section 96.25(b) to adopt performance requirements for

Priority Access Licensees. Specifically, under the revised rule, Priority Access Licensees must provide substantial service in their license area by the end of the initial license term, *i.e.,* at the end of 10 years. ''Substantial service'' is defined as service which is sound, favorable, and substantially above the level of mediocre service which might minimally warrant renewal. Failure by any licensee to meet this requirement will result in forfeiture of the license without further Commission action, and the licensee will be ineligible to regain it. Licensees shall demonstrate compliance with the performance requirement by filing a construction notification with the Commission in accordance with section 1.946(d) of the Commission's rules. The licensee must certify whether it has met the performance requirement, and file supporting documentation, including description and demonstration of the bona fide service provided, electronic maps accurately depicting the boundaries of the license area and where in the license area the licensee provides service that meets the performance requirement, supporting technical documentation, any population-related assumptions or data used in determining the population covered by a service to the extent any were relied upon, and any other information the Wireless Telecommunications Bureau may prescribe by public notice. A licensee's showing of substantial service may not rely on service coverage outside of the PAL Protection Areas of registered Citizens Broadband Radio Service Devices (CBSDs) or on deployments that are not reflected in Spectrum Access System (SAS) records of CBSD registrations.

The Commission adopted two safe harbors for meeting the ''substantial service'' requirement: (1) A Priority Access Licensee providing a mobile service or point-to-multipoint service may demonstrate substantial service by showing that it provides signal coverage and offers service, either to customers or for internal use, over at least 50 percent of the population in the license area; and (2) A Priority Access Licensee providing a fixed point-to-point service may demonstrate substantial service by showing that it has constructed and operates at least four links, either to customers or for internal use, in license areas with 134,000 population or less and in license areas with greater population, a minimum number of links equal to the population of the license area divided by 33,500 and rounded up to the nearest whole number. To satisfy this provision, such links must operate using registered Category B CBSDs.

OMB Control Number: 3060–1058.

Title: FCC Application or Notification for Spectrum Leasing Arrangement or Private Commons Arrangement: Wireless Telecommunications Bureau Public Safety and Homeland Security Bureau.

Form Number: FCC Form 608.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities, not for profit institutions, individuals or households, and state, local, or tribal government.

Number of Respondents: 1,091 respondents; 1,091 responses.

Estimated Time per Response: 0.5 to 1 hour.

Frequency of Response: Recordkeeping requirement, third party disclosure requirement, on occasion reporting requirement and periodic reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection is contained in 47 U.S.C. 154, 155, 158, 161, 301, 303(r), 308, 309, 310 and 332 of the Communications Act of 1934.

Total Annual Burden: 1,096 hours.

Total Annual Cost: $1,411,450.

Privacy Impact Assessment: Yes.

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information.

Needs and Uses: FCC Form 608 is a multipurpose form. It is used to provide notification or request approval for any spectrum leasing arrangement (''Leases'') entered into between an existing licensee (''Licensee'') in certain wireless services and a spectrum lessee (''Lessee''). This form also is required to notify or request approval for any spectrum subleasing arrangement (''Sublease''). The data collected on the form is used by the FCC to determine whether the public interest would be served by the Lease or Sublease. The form is also used to provide notification for any Private Commons Arrangement entered into between a Licensee, Lessee, or Sublessee and a class of third-party users (as defined in Section 1.9080 of the Commission's Rules). Respondents are required to submit FCC Form 608 electronically, except in certain services specifically designated by the Commission.

Records may include information about individuals or households, *e.g.,* personally identifiable information or PII, and the use(s) and disclosure of this information will be governed by the requirements of a system of records notice or 'SORN', FCC/WTB–1, ''Wireless Services Licensing Records.'' Updating the SORN to include FCC Form 608 is currently underway. There are no additional impacts under the Privacy Act.

On April 28, 2016, the Commission adopted its Second Report and Order, FCC 16–55, in GN Docket No. 12–354, adopting additional rules for the Citizens Broadband Radio Service in the 3.5 GHz band. As part of the Second Report and Order, the Commission adopted a light-touch leasing regime for Priority Access Licensees by amending its existing Part 1 rules to include a streamlined spectrum manager leasing process, based on the current spectrum manager leasing rules, tailored for the PAL leasing context. The Commission expects there will be a demand for Priority Access rights for a wide variety of use cases, and that a robust, flexible, and lightly regulated secondary market through these band-specific spectrum manager leasing rules will incentivize efficient spectrum use, promote innovation, and encourage the rapid deployment of broadband networks in the 3.5 GHz Band. Specifically, in the Second Report and Order, the Commission adopted section 1.9046, which provides special provisions for spectrum manager leases in the Citizens Broadband Radio Service. This rule allows a Priority Access Licensee to engage in spectrum manager leasing for any portion of its spectrum or geographic area, outside of the PAL Protection Area, for any bandwidth or duration period of time with any entity that has provided a certification to the Commission in accordance with section 1.9046 or pursuant to the general notification procedures of section 1.9020(e) of the Commission's rules. The lessee seeking to engage in spectrum manager leasing pursuant to section 1.9046 must certify with the Commission that it meets the same eligibility and qualification requirements applicable to the licensee before entering into a spectrum manager leasing arrangement with a Priority Access Licensee. The certification will be made via FCC Form 608.

Prior to lessee operation, the licensee seeking to engage in spectrum manager leasing pursuant to section 1.9046 must submit notification of the leasing arrangement to the Spectrum Access System (SAS) Administrator with the following information: (1) Lessee contact information including name, address, telephone number, fax number, email address; (2) Lessee FCC Registration Number (FRN); (3) name of Real Party in Interest and related FCC Registration Number (FRN); (4) the specific spectrum leased (in terms of

amount of bandwidth and geographic area involved) including the call sign(s) affected by the lease; and (5) duration of the lease.

A spectrum leasing arrangement may be extended beyond the initial term set forth in the spectrum leasing notification for an additional period not to exceed the term of the Priority Access License, provided that the licensee notifies the SAS Administrator of the extension in advance of operation under the extended term and does so pursuant to the notification procedures in section 1.9046.

If a spectrum leasing arrangement is terminated earlier than the termination date set forth in the notification, either by the licensee or by the parties' mutual agreement, the licensee must file a notification with the SAS Administrator no later than ten (10) days after the early termination, indicating the date of the termination.

If the parties fail to put the spectrum leasing arrangement into effect, they must so notify the Spectrum Access System Administrator as promptly as practicable.

Under the Part 96 rules, three types of respondents may be completing FCC Form 608. First, entities seeking to engage in light touch leasing will pre-certify with the FCC that they meet the non-lease-specific eligibility and qualification criteria by completing non-lease-specific data fields pulled from FCC Form 608. Second, the Priority Access Licensees would use the form in three ways. For light touch leasing, Priority Access Licensees would notify the SAS Administrator of leasing arrangements with pre-certified lessees by completing lease-specific data fields pulled from FCC Form 608. Part 96 also permits Priority Access Licensees to enter into lease agreements using the general spectrum manager leasing agreement rules under part 1 of the rules, which would require a FCC Form 608. Priority Access Licensees may also enter into de facto transfer leasing arrangements for a portion of their licensed spectrum pursuant to part 1 of the Commission's rules and would use FCC Form 608 to do so. Third, on a daily basis, the SAS Administrator will provide the Commission with an electronic report of the leasing notifications completed by the Priority Access Licensees. The SAS Administrators will be providing the report through an Application Programming Interface (API). The Commission has reused the code from the general spectrum manager leasing FCC Form 608 in the Commission's Universal Licensing System (ULS) to program the SAS light touch leasing API.

OMB Control Number: 3060–0798.

Title: FCC Application for Radio Service Authorization; Wireless Telecommunications Bureau; Public Safety and Homeland Security Bureau.

Form Number: FCC Form 601.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities, not for profit institutions, individuals and households, and state, local, or tribal government.

Number of Respondents: 255,452 respondents; 255,452 responses.

Estimated Time per Response: 0.5 to 1.25 hours.

Frequency of Response: Recordkeeping requirement, third party disclosure requirement, on occasion reporting requirement and periodic reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection is contained in 47 U.S.C. 151, 152, 154, 154(i), 155(c), 157, 201, 202, 208, 214, 301, 302a, 303, 307, 308, 309, 310, 311, 314, 316, 319, 324, 331, 332, 333, 336, 534, 535 and 554.

Total Annual Burden: 223,921 hours.

Total Annual Cost: $71,906,000.

Privacy Impact Assessment: Yes.

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information.

Needs and Uses: FCC Form 601 is a consolidated, multi-part application form that is used for market-based and site-based licensing for wireless telecommunications services, including public safety licenses, which are filed through the Commission's Universal Licensing System (ULS). FCC Form 601 is composed of a main form that contains administrative information and a series of schedules used for filing technical and other information. This form is used to apply for a new license, to amend or withdraw a pending application, to modify or renew an existing license, cancel a license, request a duplicate license, submit required notifications, request an extension of time to satisfy construction requirements, or request an administrative update to an existing license (such as mailing address change), request a Special Temporary Authority or Developmental License. Respondents are required to submit FCC Form 601 electronically, except in certain services specifically designated by the Commission.

The data collected on FCC Form 601 includes the FCC Registration Number (FRN), which serves as a ''common link'' for all filings an entity has with the FCC. The Debt Collection Improvement Act of 1996 requires entities filing with the Commission to use an FRN. Records may include information about individuals or households, *e.g.,* personally identifiable information or PII, and the use(s) and disclosure of this information are governed by the requirements of a system of records notice or 'SORN', FCC/WTB–1, ''Wireless Services Licensing Records.'' There are no additional impacts under the Privacy Act.

On October 24, 2018, the Commission released a Report and Order, FCC 18–149, in GN Docket No. 17–158, adopting limited changes to the rules governing Priority Access Licenses (PALs) in the 3550–3700 MHz (3.5 GHz) band, including larger license areas, longer license terms, renewability, and performance requirements. The Commission anticipated that the targeted changes made in its 2018 Report and Order will spur additional investment and broader deployment in the band, promote robust and efficient spectrum use, and help ensure the rapid deployment of advanced wireless technologies—including 5G—in the United States. Among these changes, the Commission revised section 96.32(a) of its rules to require that an applicant must file an application for an initial PAL, and that the application must: (1) Demonstrate the applicant's qualifications to hold an authorization; (2) state how a grant would serve the public interest, convenience, and necessity; (3) contain all information required by FCC rules and application forms; (4) propose operation of a facility or facilities in compliance with all rules governing the Citizens Broadband Radio Service; and (5) be amended as necessary to remain substantially accurate and complete in all significant respects, in accordance with the provisions of section 1.65 of the Commission's rules.

The Commission therefore seeks approval for a revision to its currently approved information collection on FCC Form 601.

OMB Control Number: 3060–0800.

Title: FCC Application For Assignment of Authorization and Transfers of Control: Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau.

Form Number: FCC Form 603.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities, not for profit institutions, individuals and households, and state, local, or tribal government.

Number of Respondents: 2,547 respondents; 2,547 responses.

Estimated Time per Response: 0.5 to 1.75 hours.

Frequency of Response: Recordkeeping requirement, on occasion reporting requirement, and periodic reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection is contained in 47 U.S.C. 154, 155, 158, 161, 301, 303(r), 308, 309, 310, and 332.

Total Annual Burden: 2,872 hours.

Total Annual Cost: $381,975.

Privacy Impact Assessment: Yes.

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information.

Needs and Uses: FCC Form 603 is a multi-purpose form that is used by radio services in Wireless Services within the Universal Licensing System (ULS). FCC 603 is composed of a main form that contains the administrative information and a series of schedules. These schedules are required when applying for Auctioned Services, Partitioning and Disaggregation, Undefined Geographical Area Partitioning, and Notification of Consummation or Request for Extension of Time for Consummation. Applicants/licensees in the Public Mobile Services, Personal Communications Services, Private Land Mobile Radio Services, Broadband Radio Service, Educational Broadband Service, Maritime Services (excluding Ship), and Aviation Services (excluding Aircraft) use FCC Form 603 to apply for an assignment or transfer, to establish their parties' basic eligibility and qualifications, to classify the filing, and/or to determine the nature of the proposed service. This form is also used to notify the FCC of consummated assignments and transfers of wireless licenses to which the Commission has previously consented or for which notification but not prior consent is required. Respondents are required to submit FCC Form 603 electronically, except in certain services specifically designated by the Commission. The data collected on FCC Form 603 include the FCC Registration Number (FRN), which serves as a ''common link'' for all filings an entity has with the FCC. The Debt Collection Improvement Act of 1996 required that those filing with the Commission to use an FRN, effective December 3, 2001. Records may include information about individuals or households, *e.g.,* personally identifiable information or PII, and the use(s) and disclosure of this information are governed by the requirements of a system of records notice or 'SORN', FCC/WTB–1, ''Wireless Services Licensing Records.'' There are no additional impacts under the Privacy Act.

On October 24, 2018, the Commission released a Report and Order, FCC 18–149, in GN Docket No. 17–158, adopting limited changes to the rules governing Priority Access Licenses (PALs) in the 3550–3700 MHz (3.5 GHz) band, including larger license areas, longer license terms, renewability, and performance requirements. The Commission anticipated that the targeted changes made in its 2018 Report and Order will spur additional investment and broader deployment in the band, promote robust and efficient spectrum use, and help ensure the rapid deployment of advanced wireless technologies—including 5G—in the United States. The Commission seeks approval for revisions to its currently approved collection of information under OMB Control Number 3060–0800 to permit the collection of the additional information in connection with partial assignments of authorizations for geographic partitioning, spectrum disaggregation, or a combination of both, pursuant to the rules and information collection requirements adopted by the Commission 2018 Report and Order. Specifically, in the 2018 Report and Order, the Commission revised section 96.32(b) of its rules to allow Priority Access Licensees to partition their licenses or disaggregate their spectrum, and partially assign or transfer their licenses, pursuant to § 1.950 of the Commission's rules. Because of the additional Priority Access Licensees, additional respondents may be filing FCC Form 603 for assignments or transfers of control of licenses.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–02585 Filed 2–7–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0967; FRS 16471]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments should be submitted on or before April 10, 2020. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0967.

Title: Section 79.2, Accessibility of Programming Providing Emergency Information, and Emergency Information; Section 79.105, Video Description and Emergency Information Accessibility Requirements for All Apparatus; Section 79.106, Video Description and Emergency Information Accessibility Requirements for Recording Devices.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; and State, local, or tribal governments.

Number of Respondents and Responses: 61 respondents; 161 responses.

Estimated Time per Response: 0.5 to 5 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Obligation to Respond: Voluntary. The statutory authority for the collection is contained in the Twenty-First Century Communications and Video Accessibility Act of 2010, Public Law 111–260, 124 Stat. 2751, and sections 4(i), 4(j), 303, 330(b), 713, and 716 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303, 330(b), 613, and 617.

Total Annual Burden: 175 hours.

Annual Cost Burden: $15,300.

Nature and Extent of Confidentiality: Confidentiality is an issue to the extent that individuals and households provide personally identifiable information, which is covered under the FCC's updated system of records notice (SORN), FCC/CGB–1, ''Informal Complaints, Inquiries, and Requests for Dispute Assistance,'' which became effective on September 24, 2014. The Commission believes that it provides sufficient safeguards to protect the privacy of individuals who file complaints alleging violations of the Commission's televised emergency information rules, 47 CFR 79.2, and complaints alleging violations of the apparatus emergency information and video description requirements, 47 CFR 79.105–79.106.

Privacy Act Impact Assessment: The Privacy Impact Assessment (PIA) for Informal Complaints, Inquiries, and Requests for Dispute Assistance was completed on June 28, 2007. It may be reviewed at *http://www.fcc.gov/omd/privacyact/Privacy-Impact-Assessment.html.* The Commission is in the process of updating the PIA to incorporate various revisions to it as a result of revisions to the SORN.

Needs and Uses: In 2000, the Commission adopted rules to require video programming distributors (VPDs) to make emergency information provided in the audio portion of the programming accessible to viewers who have hearing disabilities. *Second Report and Order,* MM Docket No. 95–176, FCC 00–136. Later that year, to ensure that televised emergency information is accessible to viewers who are blind or visually impaired, the Commission modified its rules to require VPDs to make emergency information audible when provided in the video portion of a regularly scheduled newscast or a newscast that interrupts regular programming, and to provide an aural tone when emergency information is provided visually during regular programming (*e.g.,* through screen crawls or scrolls). *Report and Order,* MM Docket No. 99–339, FCC 00–258.

In 2013, the Commission adopted rules related to accessible emergency information and apparatus requirements for emergency information and video description. *Report and Order and Further Notice of Proposed Rulemaking,* MB Docket Nos. 12–107 and 11–43, FCC 13–45. Specifically, the Commission's rules require that VPDs and video programming providers (VPPs) (including program owners) make emergency information accessible to individuals who are blind or visually impaired by using a secondary audio stream to convey televised emergency information aurally, when such information is conveyed visually during programming other than newscasts. The Commission's rules also require certain apparatus that receive, play back, or record video programming to make available video description services and accessible emergency information.

Finally, in 2015, the Commission adopted rules to require the following: (1) Apparatus manufacturers must provide a mechanism that is simple and easy to use for activating the secondary audio stream to access audible emergency information; and (2) starting no later than July 10, 2017, multichannel video programming distributors (MVPDs) must pass through the secondary audio stream containing audible emergency information when it is provided on linear programming accessed on second screen devices (*e.g.,* tablets, smartphones, laptops and similar devices) over their networks as part of their MVPD services. *Second Report and Order and Second Further Notice of Proposed Rulemaking,* MB Docket No. 12–107, FCC 15–56.

These rules are codified at 47 CFR 79.2, 79.105, and 79.106.

Information Collection Requirements

(a) Complaints alleging violations of the emergency information rules.

Section 79.2(c) of the Commission's rules provides that a complaint alleging a violation of § 79.2 of its rules, may be transmitted to the Consumer and Governmental Affairs Bureau by any reasonable means, such as the Commission's online informal complaint filing system, letter, facsimile transmission, telephone (voice/TRS/TTY), internet email, audio-cassette recording, Braille, or some other method that would best accommodate the complainant's disability. After the Commission receives the complaint, the Commission notifies the VPD or VPP of the complaint, and the VPD or VPP has 30 days to reply.

(b) Complaints alleging violations of the apparatus emergency information and video description requirements.

Complaints alleging violations of the rules containing apparatus emergency information and video description requirements, 47 CFR 79.105–79.106, may be transmitted to the Consumer and Governmental Affairs Bureau by any reasonable means, such as the Commission's online informal complaint filing system, letter in writing or Braille, facsimile transmission, telephone (voice/TRS/TTY), email, or some other method that would best accommodate the complainant's disability. Given that the population intended to benefit from the rules adopted will be blind or visually impaired, if a complainant calls the Commission for assistance in preparing a complaint, Commission staff will document the complaint in writing for the consumer. The Commission will forward such complaints, as appropriate, to the named manufacturer or provider for its response, as well as to any other entity that Commission staff determines may be involved, and may request additional information from any relevant parties when, in the estimation of Commission staff, such information is needed to investigate the complaint or adjudicate potential violations of Commission rules.

(c) Requests for Commission determination of technical feasibility of emergency information and video description apparatus requirements.

The requirements pertaining to apparatus designed to receive or play back video programming apply only to the extent they are ''technically feasible.'' Parties may raise technical infeasibility as a defense when faced with a complaint alleging a violation of the apparatus requirements or they may file a request for a ruling under section 1.41 of the Commission's rules as to technical infeasibility before manufacturing or importing the product.

(d) Requests for Commission determination of achievability of emergency information and video description apparatus requirements.

The requirements pertaining to certain apparatus designed to receive, play back, or record video programming apply only to the extent they are achievable. Manufacturers of apparatus that use a picture screen of less than 13 inches in size and of recording devices may petition the Commission, pursuant to 47 CFR 1.41, for a full or partial exemption from the video description and emergency information requirements before manufacturing or

importing the apparatus. Alternatively, manufacturers may assert that a particular apparatus is fully or partially exempt as a response to a complaint, which the Commission may dismiss upon a finding that the requirements of this section are not achievable. A petition for exemption or a response to a complaint must be supported with sufficient evidence to demonstrate that compliance with the requirements is not achievable (meaning with reasonable effort or expense), and the Commission will consider four specific factors when making such a determination.

(e) Petitions for purpose-based waivers of emergency information and video description apparatus requirements.

The Commission may waive emergency information and video description apparatus requirements for any apparatus or class of apparatus that is (a) primarily designed for activities other than receiving or playing back video programming transmitted simultaneously with sound, or (b) designed for multiple purposes, capable of receiving or playing video programming transmitted simultaneously with sound but whose essential utility is derived from other purposes. The Commission will address any requests for a purpose-based waiver on a case-by-case basis, and waivers will be available prospectively for manufacturers seeking certainty prior to the sale of a device.

(f) Submission and review of consumer eligibility information pertaining to DIRECTV, LLC's (DIRECTV's) waiver for provision of aural emergency information during The Weather Channel's programming.

The Commission granted DIRECTV a waiver with respect to the set-top box models on which it is not able to implement audio functionality for emergency information, but conditioned such relief by requiring DIRECTV to provide, upon request and at no additional cost to customers who are blind or visually impaired, a set-top box model that is capable of providing aural emergency information. DIRECTV may require customers who are blind or visually impaired to submit reasonable documentation of disability to DIRECTV as a condition to providing the box at no additional cost.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–02589 Filed 2–7–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than February 24, 2020.

A. Federal Reserve Bank of Atlanta (Kathryn Haney, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org:*

1. *The William T. Taylor Revocable Trust, Merritt Island, Florida; The Ruby Scott Watson Revocable Trust, Merritt Island, Florida; William T. Taylor, Merritt Island, Florida, individually, and as trustee of William T. Taylor Revocable Trust and The Ruby Scott Watson Revocable Trust; and Erna Taylor, Melbourne, Florida;* as members of a group acting in concert to retain voting shares of CBOS Bankshares, Inc., and thereby indirectly retain voting shares of Community Bank of the South, both of Merritt Island, Florida.

B. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Emily Crouse and Sam Crouse, both of Basin, Wyoming; Ian Crouse and Dylan Crouse, both of Billings, Montana; Jordan Crouse and Stacee Crouse, both of Firestone, Colorado; and Thayer Crouse, Sandy, Utah;* as members of the Crouse Family Group acting in concert to retain voting shares of Financial Security Corporation, and indirectly retain shares Security State Bank, both in Basin, Wyoming.

Board of Governors of the Federal Reserve System, February 4, 2020.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2020–02522 Filed 2–7–20; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than February 28, 2020.

A. Federal Reserve Bank of Kansas City (Dennis Denney, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *Security Bancshares Inc., Scott City, Kansas;* through its subsidiary Stoney Brook Homes II, LLC, also of Scott City, Kansas, to engage in community development activities pursuant to section 4(c)(8) of the BHC Act.

Board of Governors of the Federal Reserve System, February 4, 2020.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2020–02513 Filed 2–7–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–20–20GX; Docket No. CDC–2020–0009]

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 a proposed information collection project titled Validated Follow-up Interview of Clinicians on Outpatient Antibiotic Stewardship Interventions. This collection aims to perform an interview of outpatient clinicians regarding the acceptability and perceived clinician-level barriers associated with our year-long implementation of interventions designed around the Core Elements of Outpatient Antibiotic Stewardship.

DATES: CDC must receive written comments on or before April 10, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2020–0009 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

Validated Follow-up Interview of Clinicians on Outpatient Antibiotic Stewardship Interventions—New—Division of Healthcare Quality Promotion (DHQP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Code of Federal Regulations under subsections C and D of § 247d–5 authorizes education of medical and health services personnel in antimicrobial resistance and appropriate use of antibiotics and the funding of eligible entities to increase capacity to detect, monitor, and combat antimicrobial resistance. Through the Centers for Disease Control and Prevention's SHEPheRD funding mechanism, the University of Utah has been awarded a contract to perform such work as stated above within a research framework in the urgent care setting, with interventions based on the Core Elements of Outpatient Antibiotic Stewardship. Intermountain Healthcare is the subcontractor for this work, and operates the clinics participating in the intervention arm of this research study. The proposed request for data collection will allow Intermountain Healthcare to explore knowledge, attitudes, and practices among clinicians to identify barriers and facilitators after the implementation of the antibiotic stewardship program in the urgent care setting of participating clinics. CDC requests approval for 207 estimated annualized burden hours. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
Urgent Care Clinician	Interview Guide	40	15	4	40
Urgent Care Clinician	Survey	250	8	5	167
Total					207

Jeffrey M. Zirger,
Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–02540 Filed 2–7–20; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–20–0728]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled *the National Notifiable Diseases Surveillance System (NNDSS)* to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on November 4, 2019 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies 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;

(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; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov*. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

National Notifiable Diseases Surveillance System (OMB Control No. 0920–0728, Exp. 4/30/2022)—Revision—Center for Surveillance, Epidemiology and Laboratory Services (CSELS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Public Health Services Act (42 U.S.C. 241) authorizes CDC to disseminate nationally notifiable condition information. The National Notifiable Diseases Surveillance System (NNDSS) is based on data collected at the state, territorial and local levels as a result of legislation and regulations in those jurisdictions that require health care providers, medical laboratories, and other entities to submit health-related data on reportable conditions to public health departments. These reportable conditions, which include infectious and non-infectious diseases, vary by jurisdiction depending upon each jurisdiction's health priorities and needs. Each year, the Council of State and Territorial Disease Epidemiologists (CSTE), supported by CDC, determines which reportable conditions should be designated nationally notifiable or under standardized surveillance.

CDC requests a three-year approval for a Revision for the NNDSS (OMB Control No. 0920–0728, Expiration Date 04/30/2022). This Revision includes requests for approval to: (1) Receive case notification data for Blastomycosis which is now under standardized surveillance; (2) receive case notification data for 2019-Novel Coronavirus (2019-nCoV) which was declared a public health emergency of international concern by the World Health Organization (WHO) on 01/30/2020 and declared a public health emergency by the U.S. Department of Health and Human Services (HHS) on 01/31/2020; and (3) receive disease-specific data elements for Carbon Monoxide (CO) Poisoning, Congenital Syphilis, and Sexually Transmitted Disease (not congenital).

The NNDSS currently facilitates the submission and aggregation of case notification data voluntarily submitted to CDC from 60 jurisdictions: Public health departments in every U.S. state, New York City, Washington DC, five U.S. territories (American Samoa, the Commonwealth of Northern Mariana Islands, Guam, Puerto Rico, and the U.S. Virgin Islands), and three freely associated states (Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau). This information is shared across jurisdictional boundaries and both surveillance and prevention and control activities are coordinated at regional and national levels.

Approximately 90% of case notifications are encrypted and submitted to NNDSS electronically from already existing databases by automated electronic messages. When automated transmission is not possible, case notifications are faxed, emailed, uploaded to a secure network, or entered into a secure website. All case notifications that are faxed, emailed, and uploaded are done so in the form of an aggregate weekly or annual report, not individual cases. These different mechanisms used to send case notifications to CDC vary by the jurisdiction and the disease or condition. Private personally identifiable information (PII) is collected from automated electronic messages and information can be retrieved by PII. In addition, some combinations of submitted data elements could potentially be used to identify individuals. Private information is not to be disclosed unless otherwise compelled by law. All data are treated in a secure manner consistent with the technical, administrative, and operational controls required by the Federal Information Security Management Act of 2002 (FISMA) and the 2010 National Institute of Standards and Technology (NIST) Recommended Security Controls for Federal Information Systems and Organizations. Weekly tables of nationally notifiable diseases are available through CDC WONDER and *data.cdc.gov.* Annual summaries of finalized nationally notifiable disease data are published on CDC WONDER and *data.cdc.gov,* and disease-specific data are published by individual CDC programs.

The burden estimates include the number of hours that the public health department uses to process and send case notification data from their jurisdiction to CDC. Specifically, the burden estimates include separate burden hours incurred for automated and non-automated transmissions, separate weekly burden hours incurred for modernizing surveillance systems as part of NNDSS Modernization Initiative (NMI) implementation, separate burden

hours incurred for annual data reconciliation and submission, and separate one-time burden hours incurred for the addition of new diseases and data elements. The estimated annual burden is 18,354 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
States	Weekly (Automated)	50	52	20/60
States	Weekly (Non- automated)	10	52	2
States	Weekly (NMI Implementation)	50	52	4
States	Annual	50	1	75
States	One-time Addition of Diseases and Data Elements	50	1	2
Territories	Weekly (Automated)	5	52	20/60
Territories	Weekly, Quarterly (Non-automated)	5	56	20/60
Territories	Weekly (NMI Implementation)	5	52	4
Territories	Annual	5	1	5
Territories	One-time Addition of Diseases and Data Elements	5	1	2
Freely Associated States	Weekly (Automated)	3	52	20/60
Freely Associated States	Weekly, Quarterly (Non-automated)	3	56	20/60
Freely Associated States	Annual	3	1	5
Freely Associated States	One-time Addition of Diseases and Data Elements	3	1	2
Cities	Weekly (Automated)	2	52	20/60
Cities	Weekly (Non-automated)	2	52	2
Cities	Weekly (NMI Implementation)	2	52	4
Cities	Annual	2	1	75
Cities	One-time Addition of Diseases and Data Elements	2	1	2

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–02539 Filed 2–7–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–20–1175; Docket No. CDC–2020–0006]

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 a proposed information collection project titled the Environmental Public Health Tracking Network, an information system which collects data from other CDC programs such as the National Center for Health Statistics, other federal agencies such as the Environmental Protection Agency, publicly accessible systems such as the Census Bureau, and funded and unfunded state and local health departments (SLHD).

DATES: CDC must receive written comments on or before April 10, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2020–0006 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, 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

Environmental Public Health Tracking Network (OMB Control No. 0920–1175, Exp. 04/30/2020)—Revision—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In September 2000, the Pew Environmental Health Commission issued a report entitled ''America's Environmental Health Gap: Why the Country Needs a Nationwide Health Tracking Network.'' In this report, the Commission documented that the existing environmental health systems were inadequate and fragmented, and recommended a ''Nationwide Health Tracking Network for disease and exposures.'' In response to the report, Congress appropriated funds in the fiscal year 2002's budget for the CDC to establish the National Environmental Public Health Tracking Network (Tracking Network).

Continuously since 2008, and at the national level, the program collects data from (1) other CDC programs such as the National Center for Health Statistics, (2) other federal agencies such as the Environmental Protection Agency, (3) publicly accessible systems such as the Census Bureau, and (4) funded and unfunded state and local health departments (SLHD). These data are integrated into and disseminated from the Tracking Network and used for analyses which can inform national programs, interventions, or policies; guide further development and activities within the Tracking Program; or advance the practice and science of environmental public health tracking. The Tracking Program also collects information from funded SLHD to monitor their progress related to their funding and for program evaluation. This information collection request (ICR) is focused on data and information gathered by the Tracking Program from SLHD. The CDC requests a three-year approval to revise the ''Environmental Public Health Tracking Network (Tracking Network)'' (OMB Control No. 0920–1175; Expiration Date 04/30/2020). Specifically, CDC seeks to make the following changes:

1. For Tracking Data, minor changes are requested for the following instruments:

a. (Attachment 4F) Radon testing—removed 33 elements and added 4 elements.

2. For Program Data, minor changes are requested for the following instruments:

a. (Attachment 5A) EPHT Work Plan—added ten keyword questions.

b. (Attachment 5B) Public Health Action Report—added 4 questions.

c. (Attachment 5C) Performance Measurement Strategy Report (previously Attachment 5D)—removed 2 questions/elements and reduce reporting to once a year.

d. Attachment 5D—Communication Plan Template and Guide (previously Attachment 5C)—streamlined template for more efficient reporting.

e. Attachment 5E—Partnership Plan Template and Guide—(previously Attachment 5C)—partnership plan was separated from communication plan for clarity.

f. Attachment 5F—website Analytics Template (previously Attachment 5E)—created an excel reporting template with one cell for each question.

The three-year approval will allow CDC to continue collecting health, exposure, and hazard data for environmental health surveillance as well as program monitoring information from funded SLHD through the current five-year cooperative agreement—''Enhancing Innovation and Capabilities of the Environmental Public Health Tracking Network'' (CDC–RFA–EH17–1720).

The Tracking Network provides the United States with accurate and timely standardized data from existing health, exposure, and hazard surveillance systems and supports ongoing efforts within the public health and environmental sectors. The goal of the Tracking Network is to improve health tracking, exposure and hazard monitoring, and response capacity. When such data are available, the Tracking Program obtains data from national or public sources in order to reduce the burden on SLHD. When data are not available nationally or publicly, the Tracking Program relies on funded SLHD to obtain and submit these data to the Tracking Network. Data from unfunded SLHD are accepted but not requested or solicited.

Data submitted annually by SLHD to the Tracking Program include: (1) Birth defects prevalence, (2) childhood lead blood levels, if a SLHD does not already report such data to CDC, (3) community drinking water monitoring, (4) emergency department visits, (5) hospitalizations, and (6) radon testing. The Tracking Program receives childhood lead blood levels data from CDC's Childhood Lead Poisoning Prevention Program (under the Healthy Homes and Lead Poisoning Surveillance System [HHLPSS—OMB Control No. 0920–0931, expiration date 5/31/2018]). A metadata record, a file describing the original source and collection procedures for the data being submitted, is also submitted with each dataset (1 per dataset for a total of 6 metadata records per year) using the Tracking Program's metadata creation tool.

Standardized extraction, formatting, and submission processes are developed in collaboration between CDC and SLHD for each dataset. Additions or modifications to these standardized datasets will also be developed collaboratively in order to improve the accuracy, completeness, efficiency, or utility of data submitted to CDC. Such changes will occur at most once a year. Examples of changes to data processes may include: (1) Addition of new variables or outcomes, (2) updates to case definitions, (3) modifications to temporal or spatial aggregation, and (4) changes in formatting for submission. As required, the Tracking Network will submit future additions and modifications as nonsubstantive change requests or revision ICRs.

Over the past three years, these data have been

- Used to calculate standardized measures for environmental health surveillance
- Integrated into the Tracking Network and disseminated to the public via the Tracking Network's National Public Portal at *http://ephtracking.cdc.gov/showHome.action.*
- Queried 577,058 times via the Tracking Network's National Public Portal
- Conduct analyses such as
  - A review of air and water quality differences between rural and urban counties
  - The development of standardized sub-county geographies for disseminating health data.
  - An analysis of the short-term associations between air pollution and respiratory emergency department visits across all age groups.

The Tracking Program also collects program monitoring information from funded SLHD. In addition to standard reporting required by CDC's Procurement and Grants Office, the Tracking Program also collects information from funded SLHD for the purposes of program evaluation and

monitoring. This information includes an Environmental Public Health Tracking Workplan Template, a Performance Measure Report, a Communication Plan, a Partnership Plan, and a website Analytics Template. Each of these forms are collected annually as documents emailed to the Tracking Program. A public health action (PHA) report is submitted at least once and up to four times a year via email to the Tracking Program as funded SLHD have PHA to report.

Over the past three years, these data were used to identify funded SLHD in need of additional technical assistance, identify common challenges and successes, improve communication between funded SLHD and CDC, and to monitor funded SLHD compliance with funding requirements.

There are no costs for the respondents other than their time. The total estimated time burden is 21,860 hours. This estimate includes the time it takes to extract the data from the original data source(s), standardize and format the data to match the corresponding Tracking Network data form, and submit the data to the Tracking Network. In some cases, the data at the source are centralized and easily extracted. In other cases, like for radon data, the data are not. In those cases, the number of hours for extracting and standardizing the data is much greater. Four respondents have been added to the 26 SLHDs the program currently funds to account for the data voluntarily received from unfunded SLHDs and to allow for potential program growth over the next three years.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Avg. burden per response (in hrs.)	Total burden (in hrs.)
State and local health departments ..	Birth defects prevalence	22	1	80	1760
	Childhood lead blood levels	18	1	80	1440
	Community drinking water monitoring.	30	1	100	3000
	Emergency department visits	30	1	80	2400
	Hospitalizations	30	1	80	2400
	Radon testing	18	1	100	1800
	Metadata records	30	6	20	3600
	EPHT Work Plan	30	1	40	1200
	Public Health Action Report	30	4	20	2400
	Performance Measure Report	30	1	20	600
	Communications plan	30	1	20	600
	Partnership plan	30	1	20	600
	Website analytics	30	2	1	60
Total					21,860

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–02542 Filed 2–7–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–20–0260; Docket No. CDC–2020–0008]

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 a proposed information collection project titled Health Hazard Evaluations/Technical Assistance and Emerging Problems. This proposed collection, in accordance with mandates under the Occupational Safety and Health Act of 1970 and the Federal Mine Safety and Health Act of 1977, allows the National Institute for Occupational Safety and Health (NIOSH) to respond to requests for HHEs to identify chemical, biological or physical hazards in workplaces throughout the United States.

DATES: CDC must receive written comments on or before April 10, 2020.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2020–0008 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, 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

Health Hazard Evaluations/Technical Assistance and Emerging Problems (OMB Control No. 0920–0260, Exp. 10/31/2020)—Revision—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

In accordance with its mandates under the Occupational Safety and Health Act of 1970 and the Federal Mine Safety and Health Act of 1977, NIOSH responds to requests for Health Hazard Evaluation (HHE) to identify chemical, biological or physical hazards in workplaces throughout the United States. Each year, NIOSH receives approximately 250 such requests. Most HHE requests come from workplaces in the following industrial sectors: Services, manufacturing, health and social services, transportation, and construction.

A printed HHE request form is available in English and in Spanish. The form is also available on the internet and differs from the printed version only in format and in the fact that it can be submitted directly from the website. The request form takes an estimated 12 minutes to complete. The form provides the mechanism for employees, employers, and other authorized representatives to supply the information required by the regulations governing the NIOSH HHE program (42 CFR 85.3–1). NIOSH reviews the HHE request to determine if an on-site evaluation is needed. The primary purpose of an on-site evaluation is to help employers and employees identify and eliminate occupational health hazards. For 25% of the requests received, NIOSH determines an on-site evaluation is needed.

In about 70% of on-site evaluations, employees are interviewed in an informal manner to help further define concerns. Interviews may take approximately 15 minutes per respondent. The interview questions are specific to each workplace and its suspected diseases and hazards. However, interviews are based on standard medical practices.

In approximately 30% of on-site evaluations questionnaires are distributed to the employees (averaging about 100 employees per site). Questionnaires may require approximately 30 minutes to complete. The survey questions are specific to each workplace and its suspected diseases and hazards, however, items in the questionnaires are derived from standardized or widely used medical and epidemiologic data collection instruments.

About 70% of the on-site evaluations involve employee exposure monitoring in the workplace. Employees participating in on-site evaluations by wearing a sampler or monitoring device to measure personal workplace exposures are offered the opportunity to get notification of their exposure results. To indicate their preference and, if interested, provide contact information, employees complete a contact information post card. Completing the contact card may take five minutes or less. The number of employees monitored for workplace exposures per on-site evaluation is estimated to be 25 per site.

NIOSH distributes interim and final reports of health hazard evaluations, excluding personal identifiers, to: Requesters, employers, employee representatives; the Department of Labor (Occupational Safety and Health Administration or Mine Safety and Health Administration, as appropriate); state health departments; and, as needed, other state and federal agencies.

NIOSH administers a follow-back program to assess the effectiveness of its HHE program in reducing workplace hazards. This program entails the mailing of follow-back questionnaires to employer and employee representatives at all the workplaces where NIOSH conducted an on-site evaluation. In a small number of instances, a follow-back on-site evaluation may be completed. The first follow-back questionnaire is sent shortly after the first visit for an on-site evaluation and takes about 10 minutes to complete. A second follow-back questionnaire is sent after the final report is completed and requires about 20 minutes to complete. At 12 months, a third follow-back questionnaire is sent which takes about 15 minutes to complete.

For requests where NIOSH does not conduct an on-site evaluation, the requestor receives the first follow-back questionnaire after our response letter is sent and a second one 12 months after our response. The first questionnaire takes about 10 minutes to complete and the second questionnaire takes about 15 minutes to complete.

Because of the number of investigations conducted each year; the need to respond quickly to requests for assistance; the diverse and unpredictable nature of these investigations; and its follow-back program to assess evaluation effectiveness, NIOSH requests a consolidated clearance for data collections performed within the domain of its HHE program. The total estimated burden hours is 1715. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
Employees and Representatives	Health Hazard Evaluation Request Form.	175	1	12/60	35

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
Employers *	Health Hazard Evaluation Request Form.	75	1	12/60	15
Employees	Health Hazard Evaluation specific interview example.	1,470	1	15/60	368
Employees	Health Hazard Evaluation specific questionnaire example.	2,100	1	30/60	1,050
Employees	Contact information post card	1,225	1	5/60	102
Employees and Representatives; Employers—Year 1 (on-site evaluation).	First follow-back questionnaire	140	1	10/60	23
	Second follow-back questionnaire	140	1	20/60	47
Employees and Representatives; Employers—Year 2 (on-site evaluation).	Third follow-back questionnaire	140	1	15/60	35
Employees and Representatives; Employers—Year 1 (without on-site evaluation).	First follow-back questionnaire	94	1	10/60	16
Employees and Representatives; Employers—Year 2 (without on-site evaluation).	Second follow-back questionnaire	94	1	15/60	24
Total					1,715

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2020–02541 Filed 2–7–20; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2017–N–1095]

Agency Information Collection Activities; Proposed Collection; Comment Request; Electronic Submission Process for Voluntary Allegations to the Center for Devices and Radiological Health

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information voluntarily submitted to the Center for Devices and Radiological Health (CDRH) on actual or potential health risk concerns about a medical device or radiological product or its use.

DATES: Submit either electronic or written comments on the collection of information by April 10, 2020.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 10, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 10, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2017–N–1095 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Electronic Submission Process for Voluntary Allegations to the Center for Devices and Radiological Health.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be

placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

• Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Electronic Submission Process for Voluntary Allegations to the Center for Devices and Radiological Health

OMB Control Number 0910–0769—Extension

This information collection request collects information voluntarily submitted to CDRH on actual or potential health risk concerns about a medical device or radiological product or its use. Because, prior to the establishment of the electronic submission process for voluntary allegations to CDRH, there had been no established guidelines or instructions on how to submit an allegation to CDRH, allegations often contained minimal information and were received via phone calls, emails, or conversationally. CDRH has established a consistent format and process for the submission of device allegations that enhances our timeliness in receiving, assessing, and evaluating voluntary allegations. The information provided in the allegations received by CDRH may be used to clarify the recurrence or emergence of significant device-related risks to the general public and the need to initiate educational outreach or regulatory action to minimize or mitigate identified risks.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Electronic submission of voluntary allegations to CDRH.	1,600	1	1,600	0.25 (15 minutes)	400

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Our estimated burden for the information collection reflects an overall increase of 225 hours and a corresponding increase of 900 responses/records. We attribute this adjustment to an increase in the number of submissions we received over the last few years.

Dated: February 4, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–02530 Filed 2–7–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–5841]

Agency Information Collection Activities; Proposed Collection; Comment Request; Generic Clearance for Qualitative Data To Support Social and Behavioral Research for Food, Dietary Supplements, Cosmetics, and Animal Food and Feed

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment in response to the notice. This notice solicits comments on the creation of a new collection of information entitled ''Generic Clearance for Qualitative Data to Support Social and Behavioral Research for Food, Dietary Supplements, Cosmetics, and Animal Food and Feed.''

DATES: Submit either electronic or written comments on the collection of information by April 10, 2020.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 10, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 10, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2019–N–5841 for ''Agency Information Collection Activities; Proposed Collection; Comment Request; Generic Clearance for Qualitative Data to Support Social and Behavioral Research for Food, Dietary Supplements, Cosmetics, and Animal Food and Feed.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3521), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal

Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Generic Clearance for Qualitative Data To Support Social and Behavioral Research for Food, Dietary Supplements, Cosmetics, and Animal Food and Feed

OMB Control Number 0910–New

This notice announces the FDA information collection request from the OMB for a generic clearance that will allow FDA to use qualitative social/behavioral science data collection techniques (*i.e.,* individual in-depth interviews (IDIs), small group discussions, focus groups, and observations) to better understand stakeholders' perceptions, attitudes, motivations, and behaviors regarding various issues associated with food and cosmetic products, dietary supplements, and animal food and feed. Understanding consumers', manufacturers', and producers' perceptions, attitudes, motivations, and behaviors plays an important role in improving FDA's communications impacting these various stakeholders and in assisting in the development of quantitative study proposals, complementing other important research efforts in the Agency.

FDA will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- the collections are low burden for participants (based on considerations of total burden hours, total number of participants, or burden hours per participant) and are low cost for both the participants and the Federal Government;
- the collections are noncontroversial;
- personally identifiable information (PII) is collected only to the extent necessary [1] and is not retained;
- information gathered will not be used for the purpose of substantially informing influential policy decisions; [2] and
- information gathered will yield qualitative information; the collections will not be designed or expected to yield statistical data or used as though the results are generalizable to the population of study.

If these conditions are not met, FDA will submit an information collection request to OMB for approval through the normal PRA process.

To obtain approval for a collection that meets the conditions of this generic clearance, an abbreviated supporting statement will be submitted to OMB along with supporting documentation (*e.g.,* a copy of the interview or moderator guide, screening questionnaire).

FDA will submit individual qualitative collections under this generic clearance to the OMB. Individual qualitative collections will also undergo review by FDA's Institutional Review Board, senior leadership in the Center for Food Safety and Applied Nutrition, and PRA specialists.

Description of Participants: Participants in this collection of information may include a wide range of consumers and other FDA stakeholders such as producers and manufacturers who are regulated under FDA-regulated food and cosmetic products, dietary supplements, and animal food and feed.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN, BY ANTICIPATED DATA COLLECTION METHODS

Type of interview	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Individual In-Depth Interview Screening	4,800	1	4,800	.08 (5 minutes)	384
Individual In-Depth Interviews	400	1	400	1	400
Focus Group/Small Group Participant Screening	7,200	1	7,200	.08 (5 minutes)	576
Focus Group/Small Group Discussion	2,400	1	2,400	1.5	3,600
Observation Screening	720	1	720	.08 (5 minutes)	58
Observations	144	1	144	2	288
Total	15,664				5,306

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The total estimated annual burden is 5,306 hours and 15,664 responses. Current estimates are based on both historical numbers of participants from past projects as well as estimates for projects to be conducted in the next 3 years. The number of participants to be included in each new collection will vary, depending on the nature of the compliance efforts and the target audience.

Dated: January 31, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–02527 Filed 2–7–20; 8:45 am]

BILLING CODE 4164–01–P

[1] For example, collections that collect PII to provide remuneration for participants of focus groups and cognitive laboratory studies will be submitted under this request. All Privacy Act requirements will be met.

[2] As defined in OMB and Agency Information Quality Guidelines, ''influential'' means that ''an agency can reasonably determine that dissemination of the information will have or does have a clear and substantial impact on important public policies or important private sector decisions.''

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0796]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Testing Communications on Medical Devices and Radiation-Emitting Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by March 11, 2020.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, Fax: 202–395–7285, or emailed to *oira_submission@omb.eop.gov.* All comments should be identified with the OMB control number 0910–0678. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Testing Communications on Medical Devices and Radiation-Emitting Products

OMB Control Number 0910–0678—Extension

FDA is authorized by section 1003(d)(2)(D) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393(d)(2)(D)) to conduct educational and public information programs relating to the safety of regulated medical devices and radiation-emitting products. FDA must conduct needed research to ensure that such programs have the highest likelihood of being effective. Improving communications about medical devices and radiation emitting products will involve many research methods, including individual indepth interviews, mall-intercept interviews, focus groups, self-administered surveys, gatekeeper reviews, and omnibus telephone surveys.

The information collected will serve three major purposes. First, as formative research it will provide critical knowledge needed about target audiences to develop messages and campaigns about medical device and radiation-emitting product use. Knowledge of consumer and healthcare professional decision-making processes will provide the better understanding of target audiences that FDA needs to design effective communication strategies, messages, and labels. These communications will aim to improve public understanding of the risks and benefits of using medical devices and radiation-emitting products by providing users with a better context in which to place risk information more completely.

Second, as initial testing, it will allow FDA to assess the potential effectiveness of messages and materials in reaching and successfully communicating with their intended audiences. Testing messages with a sample of the target audience will allow FDA to refine messages while still in the developmental stage. Respondents will be asked to give their reaction to the messages in either individual or group settings.

Third, as evaluative research, it will allow FDA to ascertain the effectiveness of the messages and the distribution method of these messages in achieving the objectives of the message campaign. Evaluation of campaigns is a vital link in continuous improvement of communications at FDA.

Annually, FDA projects conducting about 30 studies using a variety of research methods and lasting an average of 0.17 hours each (varying from 0.08 to 1.5 hours). FDA estimates the burden of this collection of information based on prior experience with the various types of data collection methods described earlier. FDA is requesting this burden so as not to restrict the Agency's ability to gather information on public sentiment for its proposals in its regulatory and communications programs.

In the **Federal Register** of November 15, 2019 (84 FR 62541), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Individual Indepth Interviews	360	1	360	0.75 (45 minutes)	270
General Public Focus Group Interviews	144	1	144	1.5	216
Intercept Interviews: Central Location	200	1	200	0.25 (15 minutes)	50
Intercept Interviews: Telephone	4,000	1	4,000	0.08 (5 minutes)	320
Self-Administered Surveys	2,400	1	2,400	0.25 (15 minutes)	600
Gatekeeper Reviews	400	1	400	0.5 (30 minutes)	200
Omnibus Surveys	1,200	1	1,200	0.17 (10 minutes)	204
Total (General Public)	8,704		8,702		1,860
Physician Focus Group Interviews	144	1	144	1.5	216
Total (Physician)	144				216
Total (Overall)	8,848				2,076

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate.

Dated: February 4, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–02531 Filed 2–7–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Aging and Dementia Assessment via Driving Skills.

Date: February 24, 2020.

Time: 10:30 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Maurizio Grimaldi, MD, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Gateway Building, Suite 2W200, Bethesda, MD 20892, (301) 496–9374, *grimaldim2@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: February 4, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–02518 Filed 2–7–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Eukaryotic Parasites and Vectors.

Date: March 9–10, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Dr., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Fouad A. El-Zaatari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7808, Bethesda, MD 20892, (301) 435–1149, *elzaataf@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Disease Prevention and Management, Risk Reduction and Health Behavior Change.

Date: March 9–10, 2020.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Menger Hotel, 204 Alamo Plaza, San Antonio, TX 78205.

Contact Person: Michael J. McQuestion, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, Bethesda, MD 20892, (301) 480–1276, *mike.mcquestion@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Health Services Organization and Delivery.

Date: March 9, 2020.

Time: 12:00 p.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 (Telephone Conference Call).

Contact Person: Lauren Fordyce, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3214, Bethesda, MD 20892, (301) 827–8269, *fordycelm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: February 4, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–02517 Filed 2–7–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Genes, Genomes and Genetics.

Date: March 4, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Handlery Union Square Hotel, 351 Geary Street, San Francisco, CA 94102.

Contact Person: Alexander Gubin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4196, MSC 7812, Bethesda, MD 20892, (301) 435–2902, *gubina@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Biochemistry and Biophysics of Biological Macromolecules Fellowship Applications.

Date: March 5–6, 2020.

Time: 11:00 a.m. to 5:30 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: David R. Jollie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4166, MSC 7806, Bethesda, MD 20892, (301) 408–9072, *jollieda@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Novel Genomic Technology Development.

Date: March 6, 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: Methode Bacanamwo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2200, Bethesda, MD 20892, (301) 827–7088, *methode.bacanamwo@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: February 4, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–02516 Filed 2–7–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; 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 Environmental Health Sciences Special Emphasis Panel: Mentored Quantitative Research Development Award.

Date: February 27, 2020.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, National Institutes of Health, Keystone Building, 530 Davis Drive, Research Triangle Park, NC 27709 (Virtual Meeting).

Contact Person: Laura A. Thomas, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, Research Triangle Park, NC 27709, (919) 541–2824, *laura.thomas@nih.gov.*

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel: NIH Pathway to Independence Award.

Date: March 3, 2020.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, National Institutes of Health, Keystone Building, 530 Davis Drive, Research Triangle Park, NC 27709 (Virtual Meeting).

Contact Person: Laura A. Thomas, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, Research Triangle Park, NC 27709, (919) 541–2824, *laura.thomas@nih.gov.*

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel: UH4 HAZMAT Training at DOE Nuclear Weapons Complex.

Date: March 10, 2020.

Time: 8:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Place Durham Southpoint, 7840 NC–751, Durham, NC 27713.

Contact Person: Janice B. Allen, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Science, P.O. Box 12233, MD EC–30/Room 3170 B, Research Triangle Park, NC 27709, (919) 541–7556, *allen9@niehs.nih.gov.*

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel: U45 Hazardous Materials Worker Health and Safety Training.

Date: March 10–11, 2020.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Place Durham Southpoint, 7840 NC–751 Highway, Durham, NC 27713.

Contact Person: Janice B. Allen, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Science, P.O. Box 12233, MD EC–30/Room 3170 B, Research Triangle Park, NC 27709, (919) 541–7556, *allen9@niehs.nih.gov.*

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel: R13 Support for Conferences and Scientific Meetings.

Date: March 12, 2020.

Time: 11:30 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institute of Environmental Health Sciences, National Institutes of Health, Keystone Building, 530 Davis Drive, Research Triangle Park, NC 27709 (Virtual Meeting).

Contact Person: Varsha Shukla, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Science, 530 Davis Drive, Keystone Building, Room 3094, Durham, NC 27713, (984) 287–3288, *Varsha.shukla@nih.gov.*

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel: VICTER Award Grant Applications.

Date: March 25–26, 2020.

Time: 8:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Fairfield Inn & Suites Durham Southpoint, 7807 Leonardo Drive, Durham, NC 27713.

Contact Person: Janice B. Allen, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Science, P.O. Box 12233, MD EC–30/Room 3170 B, Research Triangle Park, NC 27709, (919) 541–7556, *allen9@niehs.nih.gov.*

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel: Pregnancy as a Critical Time in Women's Health Review Meeting.

Date: March 31–April 1, 2020.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Fairfax Marriott at Fair Oaks, 11787 Lee Jackson Memorial Hwy., Fairfax, VA 22033.

Contact Person: Linda K. Bass, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, (984) 287–3236, *bass@niehs.nih.gov.*

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel: Pregnancy and Women's Environmental Health Review Meeting.

Date: April 1, 2020.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Fairfax Marriott at Fair Oaks, 11787 Lee Jackson Memorial Hwy., Fairfax, VA 22033.

Contact Person: Varsha Shukla, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Science, 530 Davis Drive, Keystone Building, Room 3094, Durham, NC 27713, (984) 287–3288, *Varsha.shukla@nih.gov.*

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel: Environmental Influences on Pregnancy Review Meeting.

Date: April 2, 2020.

Time: 8:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Fairfax Marriott at Fair Oaks, 11787 Lee Jackson Memorial Hwy., Fairfax, VA 22033.

Contact Person: Leroy Worth, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/Room 3171, Research Triangle Park, NC 27709, (919) 541–0670, *worth@niehs.nih.gov.*

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel: SBIR Organotypic and Chemical Toxicity Screening Grant Applications.

Date: April 7, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Durham Southpoint, 7007 Fayetteville Road, Durham, NC 27713.

Contact Person: Leroy Worth, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/Room 3171, Research Triangle Park, NC 27709, (919) 541–0670, *worth@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: February 4, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–02520 Filed 2–7–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Small Business: Digestive Sciences.

Date: March 5, 2020.

Time: 7:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Ganesan Ramesh, Ph.D., Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, 301–827–5467, *ganesan.ramesh@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel PAR Panel: CounterACT—Countermeasures Against Chemical Threats (CounterACT) Research Centers of Excellence.

Date: March 6, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Monaco in Baltimore, 2 N Charles Street, Baltimore, MD 21201.

Contact Person: Geoffrey G. Schofield, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4040–A, MSC 7850, Bethesda, MD 20892, 301–435–1235, *geoffreys@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel PAR Panel: High Throughput Screening.

Date: March 6, 2020.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: David Filpula, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6181, MSC 7892, Bethesda, MD 20892, 301–435–2902, *filpuladr@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel PAR Panel: Genomics and Animal/Biological Resource Facilities.

Date: March 6, 2020.

Time: 11:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Luis Dettin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2208, Bethesda, MD 20892, 301–451–1327, *dettinle@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Risk Prevention and Social Development.

Date: March 6, 2020.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Weijia Ni, Ph.D., Chief/Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3100, MSC 7808, Bethesda, MD 20892, 301–594–3292, *niw@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: February 4, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–02515 Filed 2–7–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Human Leukocyte Antigen (HLA) and Killer-cell Immunoglobulin-like Receptor (KIR) Region Genomics in Immune-Mediated Diseases (U01, U19 Clinical Trials Not Allowed).

Date: March 4, 2020.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5601 Fishers Lane, Room 3G51, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Thomas F. Conway, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G51, MSC 9823, Bethesda, MD 20892–9823, 240–507–9685, *thomas.conway@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: February 4, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–02519 Filed 2–7–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4472–DR; Docket ID FEMA–2019–0001]

New York; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of New York (FEMA–4472–DR), dated December 19, 2019, and related determinations.

DATES: The declaration was issued December 19, 2019.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 19, 2019, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of New York resulting from severe storms, straight-line winds, and flooding during the period of October 31 to November 1, 2019, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of New York.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Robert Little III, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of New York have been designated as adversely affected by this major disaster:

Chautauqua, Chenango, Cortland, Erie, Essex, Fulton, Hamilton, Herkimer, Jefferson, Lewis, Madison, Montgomery, Oneida, Oswego, Otsego, Saratoga, Tioga, and Warren Counties for Public Assistance.

All areas within the State of New York are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Pete Gaynor,

Acting Administrator, Federal Emergency Management Agency.

[FR Doc. 2020–02509 Filed 2–7–20; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2019–0057]

Understanding Public Perception and Acceptance of First Responders Use of Unmanned Aircraft Systems

AGENCY: Science and Technology Directorate (S&T), Department of Homeland Security (DHS).

ACTION: 60-Day Notice of Information Collection; Request for comment.

SUMMARY: S&T will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The survey, called ''Understanding Public Perception and Acceptance of First Responders Use of Unmanned Aircraft Systems (UAS)'', requests information about the use of unmanned aircraft systems (UAS) by firefighting, law enforcement, and emergency medical missions.

DATES: Comments are encouraged and accepted until April 10, 2020.

ADDRESSES: You may submit comments, identified by docket number DHS–2019–0057, at:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Please follow the instructions for submitting comments.
- *Mail and hand delivery or commercial delivery:* Science and Technology Directorate, ATTN: Chief Information Office—Michele Zelando-Bailey, 245 Murray Drive, Mail Stop 0202, Washington, DC 20528.

Instructions: All submissions received must include the agency name and docket number DHS–2019–0057. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: DHS/S&T/OCIO Program Manager: Kathleen Deloughery, *Kathleen.Deloughery@hq.dhs.gov* or 202–254–5894 (Not a toll free number).

SUPPLEMENTARY INFORMATION: The primary purpose of this survey is to understand the public perception of and identify concerns with current and potential uses of UAS technology by first responders. The survey will ask respondents to report their demographic characteristics, their knowledge of unmanned aircraft systems (UAS), their knowledge of the use of UAS by first responders, their overall trust in the use of new technologies by the government and first responders, their general attitudes about such use, and their opinions about the use of UAS by first responders for specific applications like search-and-rescue. The survey will also ask respondents to evaluate the effectiveness of different test messages that we have created to deliver information to the public about first responder UAS applications.

S&T collects this information pursuant to 6 U.S.C. 182(6) and 193(b)(4). DHS, in accordance with the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* provides the general public with an opportunity to comment on proposed, revised, and continuing

collections of information. DHS is soliciting comments on the proposed Information Collection Request (ICR) that is described below. DHS is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Understanding Public Perception and Acceptance of First Responders Use of Unmanned Aircraft Systems.

Prior OMB Control Number: N/A.

Type of Review: New information collection.

Affected Public: Individuals and Households.

Frequency of Collection: One per Request.

Estimated Time per Respondent: 20 minutes or under.

Number of Respondents: 2,000.

Total Burden Hours: 660.

Dated: January 28, 2020.

Gregg Piermarini,

Director, Chief Information Office, Science and Technology Directorate.

[FR Doc. 2020–02528 Filed 2–7–20; 8:45 am]

BILLING CODE 9110–9F–P

DEPARTMENT OF HOMELAND SECURITY

Agency Information Collection Activities: Generic Clearance for the Collection of Certain Information on Immigration and Foreign Travel Forms

AGENCY: Department of Homeland Security (DHS).

ACTION: 30-Day notice and request for comments; new collection, 1601–NEW.

SUMMARY: The Department of Homeland Security (DHS) invites the general public and other Federal agencies to comment upon this proposed new collection of information. In accordance with the Paperwork Reduction Act of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding proposed modifications to certain DHS immigration and foreign travel forms. This collection of information is necessary to comply with Section 5 of the Executive Order (E.O.) 13780, ''*Protecting the Nation from Foreign Terrorist Entry into the United States*'' to establish screening and vetting standards and procedures to enable DHS to assess an alien's eligibility to travel to or be admitted to the United States or to receive an immigration-related benefit from DHS. This data collection also is used to validate an applicant's identity information and to determine whether such travel or grant of a benefit poses a law enforcement or national security risk to the United States. DHS previously published this information collection request (ICR) in the **Federal Register** on Wednesday, September 4, 2019 for a 60-day public comment period. Two (2) comments were received by DHS. The purpose of this notice is to allow additional 30-days for public comments.

DATES: Comments are encouraged and will be accepted until March 11, 2020. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer, Department of Homeland Security and sent via electronic mail to *dhsdeskofficer@omb.eop.gov.*

SUPPLEMENTARY INFORMATION:

Background

Executive Order (E.O.) 13780, ''Protecting the Nation from Foreign Terrorist Entry into the United States'' requires the implementation of uniform vetting standards and the proper collection of all information necessary for a rigorous evaluation of all grounds of inadmissibility or bases for the denial of immigration-related benefits. *See* 82 FR 13209 (Mar. 9, 2017). The E.O. requires the Department of Homeland Security (DHS) to collect standard data on immigration and foreign traveler forms and/or information collection systems. This data will be collected from certain populations on applications for entrance into the United States or immigration-related benefits and is necessary for identity verification, vetting and national security screening and inspection conducted by DHS.

This collection of information is necessary to comply with Section 5 of the E.O. to establish screening and vetting standards and procedures to enable DHS to assess an alien's eligibility to travel to or be admitted to the United States or to receive an immigration-related benefit from DHS. This data collection also is used to validate an applicant's identity information and to determine whether such travel or grant of a benefit poses a law enforcement or national security risk to the United States.

DHS will collect biographic information on immigration and foreign traveler information collection instruments and systems. DHS will update its forms and systems to collect information from individuals who seek admissibility or other benefits when that information is not already collected.

New Information To Be Collected

U.S. Government departments and agencies involved in screening and vetting, to include DHS, identified 15 data elements that would constitute a new baseline threshold of data to be collected for identity verification and national security vetting. For DHS, these data elements will be added to certain immigration benefit request or traveler forms where the information was not already collected. The 15 core data elements are as follows:

The following six (6) data elements are biographic identifiers used to confirm both a subject's identity as it relates to the submitted application and to DHS historic records. These biographic identifiers are also used internally by U.S. Customs and Border Protection (CBP) and U.S. Citizenship and Immigration Services (USCIS) and screening partners to confirm or disprove an association between an applicant and information of interest and the strength of that association in the context of the underlying information.

1. Name
2. Sex/Gender
3. Date of Birth
4. City/Region and Country of Birth
5. Country/Countries of Citizenship
6. Country of Residence

The following data element is a unique numeric identifier issued to a single individual that DHS uses to confirm both a person's identity and for DHS records. It is also used internally by CBP, USCIS, and screening partners to find, confirm, or disprove an association between an applicant, the strength of that association, or to provide other information about the person that may be important in the adjudication. Applicants will be asked to provide current passport/travel/national identity document information, country of issuance; issue date and expiration date, as applicable. Other DHS forms request more information on

passports or travel documents to include expired documents and passports containing a U.S. visa. The questions related to passport information requested depend on benefit eligibility and national security needs. If additional information is needed for this data element, DHS will revise the applicable OMB approved information collection under the form's control number and not add the additional questions using this generic approval.

7. Passport/Travel Document or National ID
   1. Country of issuance
   2. Issue date
   3. Expiration date

The following eight (8) data elements are used to provide official correspondence from CBP or USCIS to an applicant. They are also used as secondary data elements to confirm a subject's identity as it relates to the submitted application and to DHS historic records. They are also used internally by CBP, USCIS, and screening partners to confirm or disprove an association between an applicant and information of interest and the strength of that association in the context of the underlying information.

8. Telephone Number(s)
9. Email address(es)
10. U.S. Address: Residence or Destination city
11. U.S. Address: Residence or Destination state
12. Foreign Address city
13. Foreign Address state
14. U.S. Point of Contact Name, if applicant is located outside of the United States
15. U.S. Point of Contact Telephone Number, if applicant is located outside of the United States

Programs Affected, OMB Control Numbers and Legal Authorities for the Collections

DHS plans to collect the data elements for three programs/forms administered by U.S. Customs and Border Protection (CBP). The three CBP programs/forms, and the applicable statutory and regulatory authorities to collect the additional information are as follows:

• OMB No. 1651–0111—Electronic System for Travel Authorization (ESTA): Collection of data through this form is authorized by Section 711 of The Secure Travel and Counterterrorism Partnership Act of 2007 (part of the Implementing Recommendations of the 9/11 Commission Act of 2007, also known as the ''9/11 Act,'' Pub. L. 110–53). The authorities for the maintenance of this system are found in: Title IV of the Homeland Security Act of 2002, 6 U.S.C. 201 *et seq.,* the Immigration and Nationality Act, as amended, including 8 U.S.C. 1187(a)(11) and (h)(3); 8 CFR part 217; the Travel Promotion Act of 2009, Public Law 111–145, 22 U.S.C. 2131.

• OMB No. 1651–0111—Form I–94W Nonimmigrant Visa Waiver Arrival/Departure Record: Collection of data through this form is authorized by 8 U.S.C. 1103, 1187 and 8 CFR 235.1, 264, and 1235.1.

• OMB No. 1651–0139—Electronic Visa Update System (EVUS): Collection of data through this form is authorized by INA section 104(a) (8 U.S.C. 1104(a)). The authorities for the maintenance of this system are found in: Title IV of the Homeland Security Act of 2002, 6. U.S.C. 201 *et seq.,* the Immigration and National Act, as amended, including sections 103 (8 U.S.C. 1103), 214 (8 U.S.C. 1184), 215 (8 U.S.C. 1185), and 221 (8 U.S.C. 1201); 8 CFR part 2; the Travel Promotion Act of 2009, Public Law 111–145, 22 U.S.C. 2131; and 8 CFR parts 212, 214, 215, and 273.

DHS plans to collect the new data elements for nine programs administered by U.S. Citizenship and Immigration Services (USCIS). The nine USCIS programs, and the applicable statutory and regulatory authorities to collect the additional information area as follows:

USCIS has the following statutory and regulatory authorities to collect additional biographic data information on the following forms:

• OMB No. 1615–0052—Form N–400, Application for Naturalization: Collection of data through this form is authorized by INA section 337 [8 U.S.C. 1448]; 8 U.S.C. 1421; 8 CFR 316.4 and 8 CFR 316.10.

• OMB No. 1615–0013—Form I–131, Application for Travel Document: Collection of data through this form is authorized by INA sections 103, 208, 212, 223 and 244; 8 CFR 103.2(a) and (e); 8 CFR 208.6; 8 CFR 244.16; Section 303 of Public Law 107–173.

• OMB No. 1615–0017—Form I–192, Application for Advance Permission to Enter as a Nonimmigrant: Collection of data through this form is authorized by INA 212 [8 U.S.C. 1182].

• OMB No. 1615–0023—Form I–485, Application to Register Permanent Residence or Adjust status: Collection of data through this form is authorized by INA section 245, 8 U.S.C. 1255, Public Law 106–429, and section 902 of Public Law 105–277.

• OMB No. 1615–0067—Form I–589, Application for Asylum and for Withholding of Removal: Collection of data through this form is authorized by INA sections 101(a)(42), 208(a) and (b), and 241(b)(3) and 8 CFR 208.6 and 1208.6.

• OMB No. 1615–0068—Form I–590, Registration for Classification as Refugee: This information collection is authorized by INA section 207 (8 U.S.C. 1157) for a person who seeks refugee classification and resettlement in the United States. A refugee is defined in 8 U.S.C. 1101(a)(42) and Section 101(a)(42) of the Act.

• OMB No. 1615–0037—Form I–730, Refugee/Asylee Relative Petition: This information collection is authorized by section 207(c)(2), and 208(c) of the INA (8 U.S.C. 1157 and 1158) for an asylee or refugee to request accompanying or following-to-join benefits for his or her spouse and unmarried minor child(ren).

• OMB No. 1615–0038—Form I–751, Petition to Remove Conditions on Residence: Collection of data through this form is authorized by INA section 216, 8 U.S.C. 1186(a); 8 CFR part 216.

• OMB No. 1615–0045—Form I–829, Petition by Entrepreneur to Remove Conditions on Permanent Resident Status: Collection of data through this form is authorized by INA section 203(b)(5), 8 U.S.C. 1153, and INA section 216(a), 8 U.S.C. 1186(b)].

Applicant information is collected to maintain a record of persons applying for specific immigration and other travel benefits, and to determine whether these applicants are eligible to receive the benefits for which they are applying. The information provided through DHS forms is also analyzed—along with other information that the Secretary of Homeland Security determines is necessary, including information about other persons included on the DHS forms—against various security and law enforcement databases to identify those applicants who may pose a security risk to the United States. To obtain approval for a collection that meets the conditions of this generic clearance, a standardized form will be submitted to OMB along with supporting documentation (*e.g.,* a copy of the updated application form). OMB will grant approval only if the agency demonstrates the collection of information complies with the specific circumstances laid out in this supporting statement.

Confidentiality

No assurance of confidentiality is provided. All data submitted under this collection will be handled in accordance with applicable U.S. laws and DHS policies regarding personally identifiable information.

• Public Law 107–347, ''E-Government Act of 2002,'' as amended, Section 208 [44 U.S.C. 3501 note]

• Title 5, United States Code (U.S.C.), Section 552a, ''Records maintained on individuals'' [The Privacy Act of 1974, as amended].

• Title 6, U.S.C., Section 142, ''Privacy officer.''

• Title 44, U.S.C., Chapter 35, Subchapter II, ''Information Security'' [The Federal Information Security Modernization Act of 2014 (FISMA)].

• DHS Directive 047–01, ''Privacy Policy and Compliance'' (July 25, 2011).

• DHS Instruction 047–01–001, ''Privacy Policy and Compliance'' (July 25, 2011).

• Privacy Policy Guidance Memorandum 2008–01/Privacy Policy Directive 140–06, ''The Fair Information Practice Principles: Framework for Privacy Policy at the Department of Homeland Security.'' (December 29, 2008).

• Privacy Policy Guidance Memorandum 2017–01, DHS Privacy Policy Regarding Collection, Use, Retention, and Dissemination of Personally Identifiable Information. (April 25, 2017).

• Refugees and asylees are protected by the confidentiality provisions of 8 CFR 208.6; 8 U.S.C. 1103. Aliens in TPS status have the confidentiality protections described in 8 CFR 244.16; 8 U.S.C. 1254a(c)(6). There are no confidentiality assurances for other aliens applying for the benefit.

• The system of record notices associated with this information collection are:

○ DHS/USCIS/ICE/CBP–001 Alien File, Index, and National File Tracking System of Records, September 18, 2017, 82 FR 43556 (all USCIS forms).

○ DHS/USCIS–007 Benefits Information System, October 19, 2016, 81 FR 72069 (Forms N–400, I–131, I–192, I–485, I–590, I–730, I–751, I–829).

○ DHS/USCIS–010 Asylum Information and Pre-Screening System of Records November 30, 2015, 80 FR 74781 (Form I–589).

○ DHS/CBP–006 Automated Targeting System, May 22, 2012, 77 FR 30297 (Form I–192).

○ DHS/USCIS–017—Refugee Case Processing and Security Screening Information System of Records October 19, 2016, 81 FR 72075 (Forms I–730).

○ DHS/CBP Electronic Visa Update System (EVUS) System of Records, September 1, 2016, 81 FR 60371 (EVUS Form); Final Rule for Privacy Exemptions, November 25, 2016, 81 FR 85105.

○ DHS/CBP–009—Electronic System for Travel Authorization (ESTA), September 2, 2016, 81 FR 60713 (ESTA Form); Final Rule for Privacy Act Exemptions, August 31, 2009 74 FR 45069.

○ DHS/CBP–016—Nonimmigrant Information System March 13, 2015, 80 FR 13398 (Form I–94W).

○ DHS/USCIS–015—Electronic Immigration System-2 Account and Case Management System of Records April 5, 2013 78 FR 20673 (Form I–131).

This is a new generic clearance. This request will be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs for review and approval as required by the Paperwork Reduction Act. This new collection is to meet the intent of E.O. 13780 (Section 5) to establish screening and vetting standards to assess an alien's eligibility to travel to, be admitted to, or receive an immigration-related benefit from DHS. This information will be used to validate an applicant's identity and determine whether entry to the U.S. or an immigration benefit for an individual poses a law enforcement or national security risk to the United States.

DHS is particularly interested in comments which:

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.

Analysis

Agency: Department of Homeland Security DHS

Title: Generic Clearance for the Collection of Certain Information on Immigration and Foreign Travel Forms

OMB Number: 1601–NEW.

Frequency: On Occasion.

Affected Public: Individuals.

Number of Respondents: 30,069,230.

Estimated Time per Respondent: .401.

Total Burden Hours: 12,058,798.

Dated: January 29, 2020.

Melissa Bruce,

Executive Director, Business Management Office.

[FR Doc. 2020–02613 Filed 2–7–20; 8:45 am]

BILLING CODE 9112–FL–P

DEPARTMENT OF HOMELAND SECURITY

Agency Information Collection Activities: Generic Clearance for the Collection of Social Media Information on Immigration and Foreign Travel Forms

AGENCY: Department of Homeland Security (DHS).

ACTION: 30-Day notice and request for comments; new collection, 1601–NEW.

SUMMARY: The Department of Homeland Security (DHS) invites the general public and other Federal agencies to comment upon this proposed new collection of information. In accordance with the Paperwork Reduction Act of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding proposed modifications to certain DHS immigration and foreign travel forms. This collection of information is necessary to comply with Section 5 of the Executive Order (E.O.) 13780, ''*Protecting the Nation from Foreign Terrorist Entry into the United States*'' to establish screening and vetting standards and procedures to enable DHS to assess an alien's eligibility to travel to or be admitted to the United States or to receive an immigration-related benefit from DHS. This data collection also is used to validate an applicant's identity information and to determine whether such travel or grant of a benefit poses a law enforcement or national security risk to the United States. DHS previously published this information collection request (ICR) in the **Federal Register** on Wednesday, September 4, 2019 for a 60-day public comment period. One-hundred and seven (107) comments were received by DHS. The purpose of this notice is to allow additional 30-days for public comments.

DATES: Comments are encouraged and will be accepted until March 11, 2020. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer, Department of Homeland Security and sent via

electronic mail to *dhsdeskofficer@omb.eop.gov.*

SUPPLEMENTARY INFORMATION:

Background

Executive Order (E.O.) 13780, ''Protecting the Nation from Foreign Terrorist Entry into the United States'' requires the implementation of uniform vetting standards and the proper collection of all information necessary for a rigorous evaluation of all grounds of inadmissibility or bases for the denial of immigration-related benefits. *See* 82 FR 13209 (Mar. 9, 2017). The E.O. requires the Department of Homeland Security (DHS) to collect standard data on immigration and foreign traveler forms and/or information collection systems. This data will be collected from certain populations on applications for entrance into the United States or immigration-related benefits and is necessary for identity verification, vetting and national security screening and inspection conducted by DHS.

This collection of information is necessary to comply with Section 5 of the E.O. to establish screening and vetting standards and procedures to enable DHS to assess an alien's eligibility to travel to or be admitted to the United States or to receive an immigration-related benefit from DHS. This data collection also is used to validate an applicant's identity information and to determine whether such travel or grant of a benefit poses a law enforcement or national security risk to the United States.

DHS will collect biographic information on immigration and foreign traveler information collection instruments and systems. DHS will update its forms and systems to collect information from individuals who seek admissibility or other benefits when that information is not already collected.

New Information To Be Collected

U.S. Government departments and agencies involved in screening and vetting, to include DHS, identified the collection of social media user identifications (also known as usernames, identifiers, or ''handles'') and associated publicly available social media platforms used by the applicant during the past five years, as important for identity verification, immigration and national security vetting. For DHS, these data elements will be added to certain immigration benefit request or traveler forms where the information was not already collected.

For the purposes of this information collection, DHS defines publicly available social media information as any electronic social media information that has been published or broadcast for public consumption, is available on request to the public, is accessible online to the public, is available to the public by subscription or purchase, or is otherwise lawfully accessible to the public without establishing a direct relationship (*e.g.,* ''friend'', ''follow'', ''connect'').[1] Social media takes many different forms, including but not limited to web-based communities and hosted services, social networking sites, video and photo sharing sites, blogs, virtual worlds, social bookmarking and other emerging technologies.

This collection of information is necessary to enable DHS to assess an alien's eligibility to travel to or be admitted to the United States or to receive an immigration-related benefit from DHS. DHS currently uses publicly available social media information to support its vetting and adjudication programs, and to supplement other information and tools that DHS trained personnel regularly use in the performance of their duties. This process includes a labor-intensive step to validate that the identified social media is correctly associated with the applicant. The collection of applicants' social media identifiers and associated platforms will assist DHS by reducing the time needed to validate the attribution of the publicly-available posted information to the applicant and prevent mis-associations. It will provide trained DHS adjudication personnel with more timely visibility of the publicly available information on the platforms provided by the applicant.

Social media may help distinguish individuals of concern from applicants whose information substantiates their eligibility for travel or an immigration benefit. Social media can provide positive, confirmatory information to verify identity and support a beneficiary's or traveler's application, petition, or claims. It can also be used to identify potential deception, fraud, or previously unidentified national security or law enforcement concerns, such as when criminals and terrorists have provided otherwise unavailable information via social media, that identified their true intentions, including support for terrorist organizations.

DHS will collect social media user identifications (also known as usernames, identifiers, or ''handles'') and associated social media platforms used by the applicant during the past five years on certain immigration and foreign traveler collection instruments and systems identified in this supporting statement, designated from investigative and/or intelligence based criteria.[2] DHS is seeking this information, covering the previous five year period, to assist with identity verification, and consistency with other U.S. Government data collections for immigrant and non-immigrant visas. DHS will not collect social media passwords. DHS personnel will review information on social media platforms in a manner consistent with the privacy settings the applicant has chosen to adopt for those platforms. Only that information which the account holder has allowed to be shared publicly will be viewable by DHS.

DHS is committed to upholding the highest standards of conduct throughout the Department. Existing DHS policy prohibits the consideration of race or ethnicity in our investigation, screening, and enforcement activities in all but the most exceptional instances. This policy is reaffirmed in manuals, policies, directives, and guidelines. CBP is committed to the fair, impartial and respectful treatment of all members of the trade and traveling public, and has memorialized its commitment to nondiscrimination in existing policies, including the February 2014 CBP Policy on Nondiscrimination in Law Enforcement Activities and all other Administered Programs. This policy prohibits the consideration of race or ethnicity in law enforcement, investigation, and screening activities, in all but the most exceptional circumstances.

CBP's Standards of Conduct further highlights CBP's prohibition on bias-motivated conduct and explicitly requires that ''Employees will not act or fail to act on an official matter in a manner which improperly takes into consideration an individual's race, color, age, sexual orientation, religion, sex, national origin, or disability . . .''

The USCIS Policy Manual, Chapter 1, provides guidance principles for achieving its customer service policy

[1] Publicly available social media does not require a user to purchase or otherwise pay for a subscription of use and does not require an invitation from a user to join or the establishment of a relationship (*e.g.,* ''friend,'' ''follow,'' ''connect'') to otherwise access information. Publicly available social media may require a user to create an account in order to access services and related content.

[2] For the purposes of this supporting statement and the associated DHS forms, ''user identifications'' are defined as usernames, handles, screen names, or other identifiers associated with an individual's online presence and social media profile. Passwords are not considered user identifications and will not be collected.

goals.[3] The policy provides that USCIS will:

- Approach each case objectively and adjudicate each case in a thorough and fair manner.
- Carefully administer every aspect of its immigration mission so that its customers can hold in high regard the privileges and advantages of U.S. immigration.
- Demonstrate respect for its customers.
- Be responsive to customers' inquiries and provide information and services that demonstrate courtesy and cultural awareness.
- Through its service, be an example of how to treat customers with respect, courtesy, and dignity.
- Administer the immigration laws, regulations, and policies in a consistent manner.

Consistent with the requirements of the Privacy Act, DHS does not maintain records ''describing how any [citizen of the United States or alien lawfully admitted for permanent residence] exercises rights guaranteed by the First Amendment, unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity.'' 5 U.S.C. 552a(e)(7)

Although such collection of social media user identifications is 'mandatory' to complete the DHS forms, it is not required to obtain or retain a benefit.[4] However, for CBP's ESTA, and EVUS forms, the applicant will be unable to submit the online application if they do not provide a response to the mandatory social media field. Nonetheless, the applicant may proceed if they answer none or other. 8 CFR 103.2(a)(1) provides that forms must be completed in accordance with form instructions. CBP will continue to adjudicate a form where social media information is not answered, but failure to provide the requested data may either delay or make it impossible for CBP to determine an individual's eligibility for the requested benefit.

For USCIS, the proposed information collection for social media information is not ''mandatory'' in the sense that an application will be denied or rejected based solely on the lack of a response. USCIS will continue to adjudicate a form where social media information is not answered, but failure to provide the requested data may either delay or make it impossible for USCIS to determine an individual's eligibility for the requested benefit.

Applicants for CBP and USCIS benefits must certify on the respective forms that the information submitted is true and correct to the best of the applicant's knowledge and belief.

The following social media questions will appear on electronic forms:

Please enter information associated with your online presence over the past five years:

- Provider/Platform (dropdown bar will provide multiple choices, including ''Other'', and ''None'' for those who do not use the platforms listed):
- Social Media Identifier(s) over the past five years (free text field for applicant to enter information):

The forms will allow the applicant to provide as many platforms and identifiers as necessary.

Paper Forms

Please enter information associated with your online presence over the past five years:

Provider/Platform: (A list will be provided including ''Other'', and ''None'' for those who do not use the platforms listed)_____

Social Media Identifier(s): _____

A sufficient amount of space on the paper form will be provided to allow the applicant appropriate room to provide all necessary platforms/identifiers.

The request for social media platforms, providers, and websites will focus on those fora that the individual uses to collaborate, share information and interact with others.[5]

The initial list of social media platforms featured on DHS forms will be as follows:

ASK FM
DOUBAN
FACEBOOK
FLICKR
INSTAGRAM
LINKEDIN
MYSPACE
PINTEREST
QZONE (QQ)
REDDIT
SINA WEIBO
TENCENT WEIBO
TUMBLER
TWITTER
TWOO
VINE
VKONTAKTE (VK)
YOUKU
YOUTUBE

The platforms selected represent those which are among the most popular on a global basis. The platforms listed may be updated by the Department by adding or removing platforms in order to evolve the U.S. Government's uniform vetting with emerging communication technologies and common usage; therefore, the list will change over time. These changes will be made on a periodic basis under this generic clearance. Platform changes will be submitted to OMB for approval prior to inclusion. OMB will review to make sure that such suggested new platforms meet the description of public-facing social media handles contained above.

Programs Affected, OMB Control Numbers and Legal Authorities for the Collections

DHS plans to collect the data elements for three programs/forms administered by U.S. Customs and Border Protection (CBP). The three CBP programs/forms, and the applicable statutory and regulatory authorities to collect the additional information are as follows:

- OMB No. 1651–0111 Electronic System for Travel Authorization (ESTA):

Collection of data through this form is authorized by Section 711 of The Secure Travel and Counterterrorism Partnership Act of 2007 (part of the Implementing Recommendations of the 9/11 Commission Act of 2007, also known as the ''9/11 Act,'' Pub. L. 110–53). The authorities for the maintenance of this system are found in: Title IV of the Homeland Security Act of 2002, 6 U.S.C. 201 *et seq.,* the Immigration and Nationality Act, as amended, including 8 U.S.C. 1187(a)(11) and (h)(3); 8 CFR part 217; the Travel Promotion Act of 2009, Public Law 111–145, 22 U.S.C. 2131.

- OMB No. 1651–0111—Form I–94W Nonimmigrant Visa Waiver Arrival/Departure Record: Collection of data through this form is authorized by 8 U.S.C. 1103, 1187 and 8 CFR 235.1, 264, and 1235.1.
- OMB No. 1651–0139—Electronic Visa Update System (EVUS): Collection of data through this form is authorized by INA section 104(a) (8 U.S.C. 1104(a)). The authorities for the maintenance of this system are found in: Title IV of the Homeland Security Act of 2002, 6. U.S.C. 201 *et seq.,* the Immigration and

[3] *https://www.uscis.gov/policymanual/HTML/PolicyManual-Volume1-PartA-Chapter1.html.*

[4] Pursuant to 5 CFR 1320.8(b)(3)(iv), agencies are required to ''inform [ ] and provide reasonable notice to the potential persons to whom the collection of information is addressed of—Whether responses to the collection of information are voluntary, required to obtain or retain a benefit [ ], or mandatory [ ]'' pursuant to the authorities cited herein.

[5] Non-social media websites, such as those for applicants to carry out financial transactions, medical appointment and records, homeowner's associations, travel, and tourism are not germane to this information collection.

National Act, as amended, including sections 103 (8 U.S.C. 1103), 214 (8 U.S.C. 1184), 215 (8 U.S.C. 1185), and 221 (8 U.S.C. 1201); 8 CFR part 2; the Travel Promotion Act of 2009, Public Law 111–145, 22 U.S.C. 2131; and 8 CFR parts 212, 214, 215, and 273.

CBP has the following statutory and regulatory authorities, as an agency of the U.S. Government, to collect social media information from applicants for travel benefits:

• CBP is responsible for preventing the entry of terrorists and instruments of terrorism into the United States, securing the borders, and enforcing the immigration laws.[6] To exercise its authority with respect to both inbound and outbound border crossings of U.S. citizens and aliens alike, CBP gathers information about individuals who may seek entry into the United States. CBP's general law enforcement authorities empower it to gather information, including information found via social media, which is relevant to its enforcement missions.[7] For example, under the Immigration and Nationality Act (INA)(Pub. L. 89–236), CBP Officers, Border Patrol Agents, and other immigration officers have authority to, among other things, ''take and consider evidence concerning the privilege of any person to enter, reenter, pass through, or reside in the United States; or concerning any matter which is material or relevant to the enforcement of the [INA] and the administration of the immigration and naturalization functions of the Department.'' [8]

• Under this broad authority to take and consider ''evidence,'' CBP may use information obtained from social media where relevant to its immigration enforcement mission under Title 8 of the U.S. Code. Further, should the facts and circumstances of a particular investigation so require, CBP may also use social media in connection with its extensive customs enforcement authorities under title 19 of the U.S. Code.[9]

DHS plans to collect the new data elements for nine programs administered by U.S. Citizenship and Immigration Services (USCIS). The nine USCIS programs, and the applicable statutory and regulatory authorities to collect the additional information area as follows:

USCIS has the following statutory and regulatory authorities to collect additional biographic data information on the following forms:

• OMB No. 1615–0052—Form N–400, Application for Naturalization: Collection of data through this form is authorized by INA section 337 [8 U.S.C. 1448]; 8 U.S.C. 1421; 8 CFR 316.4 and 8 CFR 316.10.

• OMB No. 1615–0013—Form I–131, Application for Travel Document: Collection of data through this form is authorized by INA sections 103, 208, 212, 223 and 244; 8 CFR 103.2(a) and (e); 8 CFR 208.6; 8 CFR 244.16; Section 303 of Public Law 107–173.

• OMB No. 1615–0017—Form I–192, Application for Advance Permission to Enter as a Nonimmigrant: Collection of data through this form is authorized by INA 212 [8 U.S.C. 1182].

• OMB No. 1615–0023—Form I–485, Application to Register Permanent Residence or Adjust status: Collection of data through this form is authorized by INA section 245, 8 U.S.C. 1255, Public Law 106–429, and section 902 of Public Law 105–277.

• OMB No. 1615–0067—Form I–589, Application for Asylum and for Withholding of Removal: Collection of data through this form is authorized by INA sections 101(a)(42), 208(a) and (b), and 241(b)(3) and 8 CFR 208.6 and 1208.6.

• OMB No. 1615–0068—Form I–590, Registration for Classification as Refugee: This information collection is authorized by INA section 207 (8 U.S.C. 1157) for a person who seeks refugee classification and resettlement in the United States. A refugee is defined in 8 U.S.C. 1101(a)(42) and Section 101(a)(42) of the Act.

• OMB No. 1615–0037—Form I–730, Refugee/Asylee Relative Petition: This information collection is authorized by section 207(c)(2), and 208(c) of the INA (8 U.S.C. 1157 and 1158) for an asylee or refugee to request accompanying or following-to-join benefits for his or her spouse and unmarried minor child(ren).

• OMB No. 1615—0038—Form I–751, Petition to Remove Conditions on Residence: Collection of data through this form is authorized by INA section 216, 8 U.S.C. 1186(a); 8 CFR part 216.

• OMB No. 1615–0045—Form I–829, Petition by Entrepreneur to Remove Conditions on Permanent Resident Status: Collection of data through this form is authorized by INA section 203(b)(5), 8 U.S.C. 1153, and INA section 216(a), 8 U.S.C. 1186(b)].

USCIS, as a component of DHS, has the following statutory and regulatory authorities, to collect social media information from applicants for immigration benefits:

• 8 CFR 204.5(m)(12) and 214.2(r)(16) provide that, in the context of adjudicating an immigrant or nonimmigrant religious worker petition, USCIS may verify the supporting evidence submitted by the petitioner ''through any means determined appropriate by USCIS,'' including by ''review of any other records that the USCIS considers pertinent to the integrity of the organization'' with which the religious worker is affiliated.

• 8 CFR 103.2(a)(1) requires that every benefit request be executed and filed in accordance with the form instructions and clarifies that ''such instructions are incorporated into the regulations requiring its submission.'' [10]

DHS has additional statutory and regulatory authorities to secure the homeland and prevent terrorism, in addition to those cited above for CBP and USCIS. These include:

• The Homeland Security Act 2002, Public Law 107–296;

• The Intelligence Reform and Terrorism Prevention Act (IRTPA) of 2004, Public Law 108–458;

• Implementing Recommendations of the 9/11 Commission Act of 2007 (''The 9/11 Act''), Public Law 110–53; and

• The Immigration and Nationality Act, as amended.

Applicant information is collected to maintain a record of persons applying for specific immigration and other travel benefits, and to determine whether these applicants are eligible to receive the benefits for which they are applying. The information provided through DHS forms is also analyzed—along with other information that the Secretary of

[6] *See* Homeland Security Act 402, 6 U.S.C. 202, and 6 U.S.C. 211.

[7] *See, e.g.,* 8 U.S.C. 1357(b).

[8] 8 CFR 287.5(a)(2); *see also id.* § 287.2 (''Whenever a special agent in charge, port director, or chief patrol agent has reason to believe that there has been a violation punishable under any criminal provision of the immigration and nationality laws administered or enforced by the Department, he or she shall immediately initiate an investigation to determine all the pertinent facts and circumstances and shall take such further action as he or she deems necessary.''). CBP Officers have the responsibility to elicit sufficient information to determine whether an applicant is legally admissible or inadmissible. If an applicant refuses to answer sufficiently for the Officer to find the individual admissible, the individual will be inadmissible.

[9] *See, e.g.,* 19 U.S.C. 1436, 1592, & 1595. As noted above with respect to the INA, CBP has authority to enforce these and other customs statutes; therefore, it may utilize social media when conducting authorized operations or investigations related to its customs enforcement mission.

[10] USCIS will modify the Applicant's Certification section on the applicable USCIS forms and petitions to include the following text: ''I also authorize USCIS to use publicly available social media information for verification purposes and to determine my eligibility for the immigration benefit that I seek. I further understand that USCIS is not requiring me to provide passwords; to log into a private account; or to take any action that would disclose non-publicly available social media information.''

Homeland Security determines is necessary, including information about other persons included on the DHS forms—against various security and law enforcement databases to identify those applicants who may pose a security risk to the United States. To obtain approval for a collection that meets the conditions of this generic clearance, a standardized form will be submitted to OMB along with supporting documentation (*e.g.,* a copy of the updated application form). OMB will grant approval only if the agency demonstrates the collection of information complies with the specific circumstances laid out in this supporting statement.

Confidentiality

No assurance of confidentiality is provided. All data submitted under this collection will be handled in accordance with applicable U.S. laws and DHS policies regarding personally identifiable information.

- Public Law 107–347, ''E-Government Act of 2002,'' as amended, Section 208 [44 U.S.C. 3501 note].
- Title 5, United States Code (U.S.C.), Section 552a, ''Records maintained on individuals'' [The Privacy Act of 1974, as amended].
- Title 6, U.S.C., Section 142, ''Privacy officer.''
- Title 44, U.S.C., Chapter 35, Subchapter II, ''Information Security'' [The Federal Information Security Modernization Act of 2014 (FISMA)].
- DHS Directive 047–01, ''Privacy Policy and Compliance'' (July 25, 2011).
- DHS Instruction 047–01–001, ''Privacy Policy and Compliance'' (July 25, 2011).
- Privacy Policy Guidance Memorandum 2008–01/Privacy Policy Directive 140–06, ''The Fair Information Practice Principles: Framework for Privacy Policy at the Department of Homeland Security.'' (December 29, 2008).
- Privacy Policy Guidance Memorandum 2017–01, DHS Privacy Policy Regarding Collection, Use, Retention, and Dissemination of Personally Identifiable Information. (April 25, 2017).
- Refugees and asylees are protected by the confidentiality provisions of 8 CFR 208.6; 8 U.S.C. 1103.
- Aliens in TPS status have the confidentiality protections described in 8 CFR 244.16; 8 U.S.C. 1254a(c)(6). There are no confidentiality assurances for other aliens applying for the benefit.
- The system of record notices associated with this information collection are:

○ DHS/USCIS/ICE/CBP–001 Alien File, Index, and National File Tracking System of Records, September 18, 2017, 82 FR 43556 (all USCIS forms).

○ DHS/USCIS–007 Benefits Information System, October 19, 2016, 81 FR 72069 (Forms N–400, I–131, I–192, I–485, I–590, I–730, I–751, I–829).

○ DHS/USCIS–010 Asylum Information and Pre-Screening System of Records, November 30, 2015, 80 FR 74781 (Form I–589, Form I–730).

○ DHS/CBP–006 Automated Targeting System, May 22, 2012, 77 FR 30297 (Form I–192).

○ DHS/USCIS/ICE/CBP–001 Alien File, Index, and National File Tracking System of Records, November 21, 2013, 78 FR 69864; DHS/USCIS–010 Asylum Information and Pre-Screening System of Records, November 30, 2015, 80 FR 74781.

○ DHS/CBP–022 Electronic Visa Update System (EVUS) System of Records, September 1, 2016, 81 FR 60371 (EVUS Form); Final Rule for Privacy Exemptions, November 25, 2016, 81 FR 85105.

○ DHS/CBP–009—Electronic System for Travel Authorization (ESTA), September 2, 2016, 81 FR 60713 (ESTA Form); Final Rule for Privacy Act Exemptions, August 31, 2009 74 FR 45069.

○ DHS/CBP–016—Nonimmigrant Information System, March 13, 2015, 80 FR 13398 (Form I–94W).

Applicable USCIS Privacy Impact Assessments (PIA)

○ *Refugee Case Processing PIA: https://www.dhs.gov/publication/dhsuscispia-068-refugee-case-processing-and-security-vetting* (July 21, 2017).

○ *FDNS–DS: https://www.hsdl.org/?view&did=793268,* May 18, 2016.

○ *FDNS Directorate: https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-fdns-november2016_0.pdf* (December 16, 2014).

○ *Asylum Division: https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-asylum-july2017_0.pdf* (July 21, 2017).

Applicable CBP Privacy Impact Assessments (PIA)

○ *DHS/CBP/PIA–007 Electronic System for Travel Authorization (ESTA) https://www.dhs.gov/publication/electronic-system-travel-authorization.*

○ *DHS/CBP/PIA–033 Electronic Visa Update System (EVUS) https://www.dhs.gov/publication/dhscbppia-033-electronic-visa-update-system-evus.*

○ *DHS//CBP/PIA–006 Automated Targeting System (ATS) https://www.dhs.gov/publication/automated-targeting-system-ats-update.*

○ *DHS/CBP/PIA–016 I–94 website Application https://www.dhs.gov/publication/us-customs-and-border-protection-form-i-94-automation.*

This is a new generic clearance. This request will be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs for review and approval as required by the Paperwork Reduction Act. This new collection is necessary to meet the intent of E.O. 13780 (Section 5) to establish screening and vetting standards to assess an alien's eligibility to travel to, be admitted to, or receive an immigration-related benefit from DHS. This information will be used to validate an applicant's identity and determine whether entry to the U.S. or an immigration benefit for an individual poses a law enforcement or national security risk to the United States.

DHS is particularly interested in comments which:

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.

Analysis

Agency: Department of Homeland Security DHS.

Title: Generic Clearance for the Collection of Social Media Information on Immigration and Foreign Travel Forms.

OMB Number: 1601–NEW.
Frequency: On Occasion.
Affected Public: Individuals.
Number of Respondents: 33,380,888.
Estimated Time per Respondent: .083.
Total Burden Hours: 12,374,078.

Dated: January 29, 2020.

Melissa Bruce,

Executive Director, Business Management Office.

[FR Doc. 2020–02614 Filed 2–7–20; 8:45 am]

BILLING CODE 9112–FL–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2019–0023]

Assessing the Risk-Mitigation Value of TWIC® at Maritime Facilities

AGENCY: Science and Technology Directorate, Department of Homeland Security.

ACTION: 30-Day notice of information collection; new request for comment.

SUMMARY: By law, the Secretary of Homeland Security is required to commission an assessment of how effective the transportation security card program is at enhancing security and reducing security risks for regulated maritime facilities and vessels. Through the transportation security card program, the Department issues the Transportation Worker Identification Credential (TWIC®). Legislation passed August 2, 2018 restricts the U.S. Coast Guard (USCG) from implementing any rule requiring the use of biometric readers for TWIC® until after submission to Congress of the results of this effectiveness assessment.

The Homeland Security Operational Analysis Center (HSOAC), a federally funded research and development center operated by the RAND Corporation, will collect information from those involved in maritime security on behalf of the DHS S&T Office of Innovation and Collaboration (OIC) Federally Funded Research and Development Center (FFRDC) Program Management Office. HSOAC will visit regulated maritime facilities and terminals and conduct interviews using a semi-structured interview method to collect information. HSOAC will analyze this information and use it to produce a public report with its research findings.

DATES: Comments are encouraged and accepted until March 11, 2020.

ADDRESSES: Interested persons are invited to submit written comments on this proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer, via electronic mail to *dhsdeskofficer@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: DHS/S&T/OIC/FFRDC Program Manager: Scott Randels, or 202–254–6053 (Not a toll free number).

SUPPLEMENTARY INFORMATION: The Secretary of Homeland Security, pursuant to Public Law 114–278, is required to commission an assessment of how effective the transportation security card program is at enhancing security and reducing security risks for regulated maritime facilities and vessels. Through the transportation security card program, the Department issues the Transportation Worker Identification Credential (TWIC®). In addition, Public Law 115–230 restricts the USCG from implementing any rule requiring the use of biometric readers for TWIC® until submitting the results of this assessment to Congress.

DHS, in accordance with the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. DHS is soliciting comments on the proposed information collection request (ICR) that is described below. DHS is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology? Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Assessing the Risk-Mitigation Value of TWIC® at Maritime Facilities.

Type of Review: New.

Respondents/Affected Public: Port security subject matter experts such as Port Authority Security Managers, Facility Security Managers, Industry Security Managers, and local law enforcement; Labor, Other Industry Operation and Technology Managers.

Frequency of Collection: Once, Annually.

Average Burden per Response: 60 minutes.

Total Estimated Number of Annual Responses: 400.

Total Estimated Number of Annual Burden Hours: 400.

Dated: January 28, 2020.

Gregg Piermarini,

Director, Chief Information Office, Office of Enterprise Services Science and Technology Directorate.

[FR Doc. 2020–02529 Filed 2–7–20; 8:45 am]

BILLING CODE 9110–9F–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[AAK6006201 210A2100DD AOR3030.999900]

Draft Environmental Impact Statement for Osage County Oil and Gas, Osage County, Oklahoma

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of availability; extension of comment deadline.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) has again extended the deadline for comments on the Osage County Oil and Gas Draft Environmental Impact Statement (DEIS) and announces the final deadline for comments on the DEIS.

DATES: The final, extended deadline for comments on the DEIS is February 21, 2020.

ADDRESSES: Comments on the DEIS may be submitted by any of the following methods:

- *Email: osagecountyoilandgaseis@bia.gov.*
- *Fax:* (918) 287–5700.
- *Mail or hand delivery:* Osage County Oil and Gas EIS, BIA Osage Agency, Attn: Superintendent, P.O. Box 1539, Pawhuska, OK 74056.

The DEIS may be examined at the BIA Osage Agency, 813 Grandview Avenue, Pawhuska, Oklahoma. The DEIS is also available for review online on the project website: *https://www.bia.gov/regional-offices/eastern-oklahoma/osage-agency/osage-oil-and-gas-eis.*

FOR FURTHER INFORMATION CONTACT: Mr. Mosby Halterman, Supervisory Environmental Specialist, telephone: 918–781–4660; email: *mosby.halterman@bia.gov;* address: BIA Eastern Oklahoma Regional Office, PO Box 8002, Muskogee, OK 74402.

SUPPLEMENTARY INFORMATION: On November 22, 2019, BIA published a notice of availability of the DEIS and requested comments by January 6, 2020 (*i.e.,* 45 days following the date the EPA published its ''Notice of Availability'' in the **Federal Register**). *See* 84 FR 64556. On December 27, 2019, BIA published a notice extending the deadline for comments on the DEIS to January 22, 2020. *See* 84 FR 71450. The BIA has since received numerous requests for an additional extension and, in response to those requests, now extends the deadline to the date listed in the **DATES** section of this notice. The date listed in the **DATES** section of this notice is the final deadline for comments on the

DEIS; no additional extensions will be granted.

Dated: January 23, 2020.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

[FR Doc. 2020–02619 Filed 2–7–20; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[189A2100DD/AAKC001030/ A0A501010.999900 253G]

Final Environmental Impact Statement for the Proposed Campo Wind Energy Project, San Diego, California

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA) of 1969, as amended, this notice advises the public that the Bureau of Indian Affairs (BIA) as lead agency has prepared a Final Environmental Impact Statement (FEIS) in connection with the approval of a lease between the Campo Band of Diegueno Mission Indians (Tribe) and Terra-Gen Development Company, LLC (Terra-Gen), to construct and operate a wind energy generation project on the Campo Indian Reservation (Reservation). This Notice of Availability (NOA) also announces that the FEIS is now publicly available for 30 days.

DATES: The waiting period on the FEIS ends on March 11, 2020. The FEIS is available online at: *www.CampoWind.com.*

ADDRESSES: Commenters may mail or hand-deliver written comments to the Bureau of Indian Affairs, Pacific Regional Office, 2800 Cottage Way, Sacramento, California 95825. See the **SUPPLEMENTARY INFORMATION** section of this notice for further directions on submitting comments. The FEIS is available for review online at *www.CampoWind.com* and at:

- County of San Diego Public Library—Campo, 31356 Highway 94, Campo, CA 91906.
- County of San Diego Public Library—Pine Valley, 28804 Old Highway 80, Pine Valley, CA 91962.
- BIA Pacific Regional Office, 2800 Cottage Way, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Dan (Harold) Hall, Regional Archeologist BIA Pacific Region Branch, by telephone at (916) 978–6041 or by email at *harold.hall@bia.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Process
II. Background on the Project
III. Alternatives
IV. Environmental Impact Analysis
V. Public Comment Procedures
VI. Authority

I. Background on the Process

Public review of the DEIS is part of the administrative process for the evaluation of the authorization of the Tribe's lease of trust land in eastern San Diego County, California. Terra-Gen proposes to construct and operate a wind energy generation facility in the lease area. A Notice of Intent to prepare an EIS was published in the **Federal Register** on November 11, 2018 (83 FR 58784) and posted on the *www.CampoWind.com* website. A public notice announcing the proposed action and the scoping meeting was published in the San Diego Business Journal on November 26, 2018 and the San Diego Union-Tribune on November 21, 2018. The BIA held a public scoping meeting for the proposed project on December 6, 2018 at the Campo Indian Reservation Tribal Hall, 36190 Church Road, Campo, California. A Notice of Availability (NOA) that the Draft EIS had been prepared was published in the **Federal Register** on May 24, 2019. The 45-day public review period on the Draft EIS began on May 24, 2019 and ended on July 8, 2019. A public meeting was noticed and held on June 19, 2019 at 6 p.m. at the Campo Indian Reservation Tribal Hall, 36190 Church Road, Campo, California.

II. Background on the Project

The proposed action consists of BIA approval of a lease between the Tribe and Terra-Gen, to construct and operate a renewable energy generation project for 25 years on the Reservation, with the possibility of a 13-year extension for a total of 38 years. The lease would allow Terra-Gen to develop and operate a wind energy generation facility in the lease area. The project consists of the following components: (A) Up to 60 wind turbines of approximately 4.2 megawatts (MW) capacity and approximately 586 feet in total height; (B) access roads, including approximately 15 miles of new roads and approximately 15 miles of improved existing roads; (C) electrical collection and communication system; (D) project collector substation; (E) operations and maintenance facility; (F) meteorological towers; (G) water collection and septic system; (H) temporary concrete batch plant; (I) temporary staging areas; (J) on-reservation portion of the generation tie line (gen-tie line); and (K) boulder brush facilities (components on private lands including a portion of the gen-tie line, a high-voltage substation, a switchyard, and access roads).

III. Alternatives

The following alternatives are considered in the EIS:

(1) Alternative 1, 252 MW—would include 60 turbines producing approximately 4.2 MW each, for a total production of approximately 252 MW. Up to 76 possible turbine sites have been evaluated, of which only 60 could be constructed under the lease. Total turbine height of approximately 586 feet.

(2) Alternative 2, 202 MW—would include a reduction in the Project's footprint, number of turbines, and generating capacity of approximately 20%, with 48 turbines that would produce approximately 4.2 MW each, for a total production of approximately 202 MW.

(3) Alternative 3, No Action Alternative—would entail the BIA not approving the proposed lease agreement between the Tribe and Terra-Gen for the construction of a wind energy project on the Reservation.

A wide range of additional alternatives were considered by the BIA but not carried forward for detailed analysis in the EIS. The following alternatives were not analyzed in the EIS because they either did not meet the purpose and need of the project or were not considered technically feasible or economically feasible or cost-effective: Mixed renewable generation (wind and solar), minimal build-out, off-reservation location, reduced capacity turbines, distributed generation.

IV. Environmental Impact Analysis

The EIS analyzes the potential environmental impacts to 13 different resource categories, including:

- Land Resources
- Water Resources
- Air Quality
- Biological Resources
- GHG Emissions and Climate Change
- Cultural Resources
- Socioeconomic Conditions
- Resource Use Patterns
- Traffic and Transportation
- Noise
- Visual Resources
- Public Health and Safety
- Cumulative Scenario and Impacts.

V. Public Comment Procedures

BIA is noticing the 30-day waiting period for the Final EIS, in accordance with the Council on Environmental Quality's regulations for implementing

NEPA and the DOI's NEPA regulations. Comments should include the commenting party's name, return address, and the caption: ''FEIS Comments, Campo Wind Energy Project,'' on the first page of written comments. See the **DATES** section of this notice for the deadline and **ADDRESSES** section of this notice for where to send your comments.

Public comment availability: Comments, including names and addresses of respondents, will be available for public review at the BIA address shown in the **ADDRESSES** section, during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. Commenting parties should be aware, before including their address, phone number, email address, or other personal identifying information in a comment, that comments may be made publicly available at any time. While a commenting party may request in its comment that identifying information be withheld from public review, the BIA cannot guarantee that this will occur.

VI. Authority

This notice is published pursuant to Sec. 1506.10(a)(2) of the Council of Environmental Quality Regulations (40 CFR parts 1500 through 1508) and Sec. 46.305 of the Department of the Interior Regulations (43 CFR part 46), implementing the procedural requirements of the NEPA of 1969, as amended (42 U.S.C 4371, *et seq.*), and is in the exercise of authority delegated to the Assistant Secretary-Indian Affairs by 209 DM 8.

Dated: February 4, 2020.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

[FR Doc. 2020–02669 Filed 2–7–20; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[120D0102DR/DS5A300000/DR.5A311.IA000118]

National Tribal Broadband Grant; Solicitation of Proposals

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Office of Indian Energy and Economic Development (IEED), Office of the Assistant Secretary—Indian Affairs, is soliciting proposals from Indian Tribes for grant funding to hire consultants to perform feasibility studies for deployment or expansion of high-speed internet (broadband) transmitted, variously, through digital subscriber line (DSL), cable modem, fiber, wireless, satellite and broadband over power lines (BPL).

DATES: Applications will be accepted until 11:59 p.m. EST on Friday, May 8, 2020.

ADDRESSES: Applicants must submit a completed Application for Federal Assistance SF–424 and the Project Narrative Attachment form in a single email to *IEEDBroadbandGrants@bia.gov,* Attention: Ms. Jo Ann Metcalfe, Certified Grant Specialist, Bureau of Indian Affairs.

FOR FURTHER INFORMATION CONTACT: Mr. James R. West, National Tribal Broadband Grant (NTBG) Manager, Office of Indian Energy and Economic Development, Room 6049–B, 12220 Sunrise Valley Drive, Reston, Virginia 20191; telephone: (202) 595–4766; email: *jamesr.west@bia.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information
II. Number of Projects Funded
III. Background
IV. Eligibility for Funding
V. Who may Perform Broadband Feasibility Studies Funded by NTBG Grants
VI. Applicant Procurement Procedures
VII. Limitations
VIII. NTBG Application Guidance
IX. Review and Selection Process
X. Evaluation Criteria
XI. Transfer of Funds
XII. Reporting Requirements for Award Recipients
XIII. Questions and Requests for IEED Assistance
XIV. Separate Document(s)
XV. Authority

I. General Information

Award Ceiling: 50,000
Award Floor: 40,000
CFDA Number: 15.032
Cost Sharing or Matching Requirement: No
Number of Awards: 25–30
Category: Communications

II. Number of Projects Funded

IEED anticipates award of approximately twenty-five (25) to thirty (30) grants under this announcement ranging in value from approximately $40,000 to $50,000. The program can only fund projects one year at a time. IEED will use a competitive evaluation process based on criteria described in the Review and Selection Process section at section IX of this notice.

III. Background

The Office of the Assistant Secretary—Indian Affairs, through IEED, is soliciting proposals from Indian Tribes, as defined at 25 U.S.C. 5304(e), for grant funding to hire consultants to perform feasibility studies for deployment or expansion of high-speed internet (broadband) transmitted, variously, through DSL, cable modem, fiber, wireless, satellite and BPL.

NTBG grants may be used to fund an assessment of the current broadband services, if any, that are available to an applicant's community; an engineering assessment of new or expanded broadband services; an estimate of the cost of building or expanding a broadband network; a determination of the transmission medium(s) that will be employed; identification of potential funding and/or financing for the network; and consideration of financial and practical risks associated with developing a broadband network.

The purpose of the NTBG is to improve the quality of life, spur economic development and commercial activity, create opportunities for self-employment, enhance educational resources and remote learning opportunities, and meet emergency and law enforcement needs by bringing broadband services to Native American communities that lack them.

Feasibility studies funded through NTBG will assist Tribes to make informed decisions regarding deployment or expansion of broadband in their communities.

IEED administers this program through its Division of Economic Development (DED), which is located at 1849 C Street NW, MIB–4138, Washington, DC 20240.

The funding periods and amounts referenced in this solicitation are subject to the availability of funds at the time of award, as well as the Department of the Interior (DOI) and Indian Affairs priorities at the time of the award. Neither DOI nor Indian Affairs will be held responsible for proposal or application preparation costs. Publication of this solicitation does not obligate DOI or Indian Affairs to award any specific grant or to obligate all or any part of available funds. Future funding is subject to the availability of appropriations and cannot be guaranteed. DOI or Indian Affairs may cancel or withdraw this solicitation at any time.

IV. Eligibility for Funding

Only Indian Tribes, as defined at 25 U.S.C. 5304(e), are eligible for NTBG grants: '''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 (85

Stat.688) [43 U.S.C. 1601 *et seq.*], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians . . .''

V. Who May Perform Broadband Feasibility Studies Funded by NTBG Grants

The applicant determines who will conduct its broadband feasibility study. An applicant has several choices, including but not limited to:

- Universities and colleges;
- Private consulting firms; or
- Non-academic, non-profit entities.

VI. Applicant Procurement Procedures

The applicant is subject to the procurement standards under 2 CFR 200.318 through 200.326. In accordance with 2 CFR 200.318, an applicant must use its own documented procurement procedures which reflect tribal laws and regulations, provided that the procurements conform to applicable Federal law and standards identified in Part 2 of the Code of Federal Regulations.

VII. Limitations

NTBG grant funding must be expended in accordance with applicable statutory and regulatory requirements, including 2 CFR part 200. As part of the grant application review process, IEED may conduct a review of an applicant's prior IEED grant awards(s).

Applicants that are currently under BIA sanction Level 2 or higher resulting from non-compliance with the Single Audit Act are ineligible for a NTBG award. Applicants at Sanction Level 1 will be considered for funding.

An applicant may submit more than one grant application. For example, an applicant may submit an application to study the cost of expanding broadband access at its tribally operated schools and a separate application to assess whether broadband services may be installed in an isolated region of its community. However, applications should address one project and any submissions that contain multiple project proposals will not be considered. IEED will apply the same objective ranking criteria to each proposal.

The purpose of NTBG grants is to fund broadband feasibility studies only. NTBG awards may not be used for:

- Establishing or operating a Tribal office;
- Indirect costs or administrative costs as defined by the Federal Acquisition Regulation (FAR);
- Purchase of equipment that is used to develop the feasibility studies, such as computers, vehicles, field gear, etc. (however, leasing of this type of equipment for the purpose of developing feasibility studies is allowed);
- Creating Tribal jobs to complete the project. An NTBG grant is not intended to create temporary administrative jobs or supplement employment for Tribal members;
- Legal fees;
- Application fees associated with permitting;
- Training;
- Contract negotiation fees; and
- Any other activities not authorized by the grant award letter.

VIII. NTBG Application Guidance

All NTBG applicants must use the standard forms Application for Federal Assistance SF–424 and the Project Narrative Attachment Form. These forms can be found at *www.grants.gov.* A complete proposal must contain the five mandatory components as described below.

Step 1. Complete the Application for Federal Assistance SF–424

Instructions To Download the Application for Federal Assistance SF–424

1. Go to *www.grants.gov.*
2. Select the ''forms'' tab. This will open a page with a table titled ''SF–424 FAMILY FORMS.''
3. Under the column ''Agency Owner,'' third row down, is listed, *Grants.gov* -Application for Federal Assistance SF–424.
4. Click on the blue PDF letters to download the three-page document.

Application for Federal Assistance SF–424 (Mandatory Component 1)

Within the Application for Federal Assistance SF–424, please complete the following sections:

- Item 8a. Applicant Information—Legal Name (of School).
- Item 8b.
- Item 8c.
- Item 8d. Address.
- Item 8f. Name and contact information of person to be contacted on matters involving this application.
- Item 9. Select I: Indian/Native American Tribal Government (Federally Recognized).
- Item 11. CFDA Title box-Type in the numbers: 15.031.
- Item 12. Title box-Type in: IEED Broadband Grant.
- Item 15. Descriptive Title of Applicant's Project. Type in short description of proposal.
- Item 21. Read certification statement. Check ''agree'' box.
- Authorized Representative section: Complete all boxes except ''signature of authorized representative.'' Be sure to type in the tribal leader's information. Be sure to include the Tribal leader's preferred title (Governor, President, Chairman, etc.).

Save the Application for Federal Assistance SF–424 and name the file using the following format: *Tribal Name* Broadband Grant Application SF–424.

Example for naming the SF–424 Application for Federal Assistance file: Pueblo of Laguna Broadband Grant Application SF–424.

Step 2. Prepare the Project Narrative, Budget, Critical Information Documents, and Obtain a Tribal Resolution

Project Narrative (Mandatory Component 2)

The Project Narrative must not exceed 15 pages. At a minimum, it should include:

- A technical description of the project, including identifying any existing broadband feasibility information. The proposed new study should not duplicate previous work;
- A description of the project objectives and goals, including a description of the areas in which broadband will be deployed or expanded, short and long term benefits of broadband deployment or expansion, and how the feasibility study will meet the goals of the NTBG;
- Deliverable products that the consultant is expected to generate, including interim deliverables (such as status reports and technical data to be obtained) and final deliverables (the feasibility study); and
- Resumes of key consultants and personnel to be retained, if available, and the names of subcontractors, if applicable. This information may be included as an attachment to the application and will not be counted towards the 15-page limitation.

In addition, where applicable, the Project Narrative Attachment Form, referenced below, must contain a description of the consultant(s) the applicant wishes to retain, including the consultant's contact information, technical expertise, training, qualifications, and suitability to undertake the feasibility study. This may be included as an attachment to the Project Narrative and will not be counted toward the 15-page limitation.

Project Narratives are not judged based on their length. Please do not submit any attachments or documents beyond what is listed above, *e.g.,* Tribal history.

Budget Narrative (Mandatory Component 3)

The Budget Narrative should consist of a one-page, detailed budget estimate in Excel format with applicable attachments listed below. The budget must identify the amount of grant funding requested and a comprehensive breakdown of all projected and anticipated expenditures, including contracted personnel fees, consulting fees (hourly or fixed), travel costs, data collection and analysis costs, computer rentals, report generation, drafting, advertising costs for a proposed project and other relevant project expenses, and their subcomponents.

- Travel costs should be itemized by airfare, vehicle rental, lodging, and per diem, based on the current Federal government per diem schedule.
- Data collection and analysis costs should be itemized in sufficient detail for the IEED review committee to evaluate the charges.
- Other Expenses may include computer rental, report generation, drafting, and advertising costs for a proposed project.

Critical Information Page (Mandatory Component 4)

Applicants must include a critical information page that includes:

- Project Manager's contact information.
- DUNS number.
- An active ASAP number.
- Counties where the project is located.
- Congressional District number where the project is located.

Tribal Resolution Attachment (Mandatory Component 5)

Applicants must include as an attachment to their application a Tribal resolution issued in the fiscal year of the grant application, authorizing the submission of a FY 2020 NTBG grant application. It must be signed by authorized Tribal representative(s). The Tribal resolution must also include:

- A description of the feasibility study to be developed; and
- An explicit reference to the Project Narrative being submitted.

Step 3. Prepare the Project Narrative Attachment Form for Submission

Note: Mandatory components 2–5 must be submitted using the Project Narrative Attachment Form.

Instructions To Download the Project Narrative Attachment Form

- Go to *www.grants.gov.*
- Select the ''forms'' tab. This will open a page within the table titled ''SF–424 FAMILY FORMS.''
- Under the column ''Agency Owner'' three quarters down the table (52nd row), is listed, *Grants.gov*—Project Narrative Attachment Form.
- Click on the blue PDF letters to download the one page document.

When the applicant has successfully downloaded the Project Narrative Attachment Form, follow the next steps to upload documents:

- On the Project Narrative Attachment Form, click on the button titled ''Add Project Narrative File.''
- Select the Project Narrative that you want to upload and click ''open'' to upload the file.
- On the same Project Narrative Attachment Form, you will find a grey button titled ''Add Optional Project Narrative File.'' Use this button to upload the Budget Narrative, Critical Information Page, and the Tribal Resolution as attachments.

When the applicant has completed uploading the Project Narrative and the attachments (Budget, Tribal Resolution, and Critical Information Page) to the Project Narrative Attachment Form, the applicant will save and name the file using the following format: *Tribal Name* Broadband Grant Attachments.

Example for naming the Project Narrative Attachment Form file: Pueblo of Laguna Broadband Grant Attachments.

Step 4. Submitting the Completed NTBG Grant Proposal

Applicants must submit the Application for Federal Assistance SF–424 form and the Project Narrative Attachment Form in a single email to *IEEDBroadbandGrants@bia.gov,* Attention: Ms. Jo Ann Metcalfe, Certified Grant Specialist, Bureau of Indian Affairs.

Applications and mandatory attachments received and date stamped after the time listed in the **DATES** section of this notice will not be considered by the Awarding Official. IEED will accept applications at any time before the deadline and will send a notification of receipt to the return email address on the application package, along with a determination of whether the application is complete.

Incomplete Applications. Applications submitted without one or more of the four mandatory attachments described above will be returned to the applicant with an explanation. The applicant will then be allowed to correct any deficiencies and resubmit the proposal for consideration on or before the deadline. This option will not be available to an applicant once the deadline has passed.

IX. Review and Selection Process

Upon receiving a NTBG application, IEED will determine whether the application is complete and that the proposed project does not duplicate or overlap previous or currently funded IEED technical assistance projects. Any proposal that is received after the date and time in the **DATES** section of this notice will not be reviewed. If an application is not complete and the submission deadline has not passed, the applicant will be notified and given an opportunity to resubmit its application.

The IEED Review Committee (Committee), comprised of IEED staff, staff from other federal agencies, and subject matter experts, will evaluate the proposals against the ranking criteria. Proposals will be evaluated using the four criteria listed below, with a maximum achievable total of 100 points.

Final award selections will be approved by the Assistant Secretary—Indian Affairs and the Associate Deputy Secretary, U.S. Department of the Interior. Applicants not selected for award will be notified in writing.

X. Evaluation Criteria

Community Impact Potential: 55 points. This criterion focuses on how deployment or expansion of broadband services will improve the quality of life in the applicant's community, create educational and self-employment opportunities, and benefit the applicant's residents, businesses, commercial activities, schools, libraries, and law enforcement and emergency operations.

Need: 20 points. This criterion focuses on an applicant's lack of capacity to obtain a broadband feasibility study absent grant funding.

Project Location in an Opportunity Zone: 15 points. Points will be awarded for projects located in an Opportunity Zone. An Opportunity Zone is an economically-distressed community where new investments, under certain conditions, may be eligible for preferential tax treatment. *See* 26 U.S.C. 1400Z–1 and 1400Z–2. A map and list of Opportunity Zones can be found at: *https://www.cdfifund.gov/Pages/Opportunity-Zones.aspx.*

Authenticity: 10 points. The IEED review committee understands that applicants may intend that the consultant(s) they retain to prepare the broadband proposal will also conduct the feasibility study if the grant is awarded. This does not prejudice an applicant's chances of being selected as a grantee. However, the IEED review committee will view unfavorably

proposals that show little evidence of communication between the consultant(s) and the applicant or scant regard for the applicant community's unique circumstances. Facsimile applications prepared by the same consultant(s) and submitted by multiple applicants will receive particular scrutiny in this regard.

NTBG applications will be ranked using only these criteria (as described above):

- Community Impact Potential—55.
- Need—20.
- Project Location in an Opportunity Zone—15.
- Authenticity—10.
- Total—100.

XI. Transfer of Funds

IEED's obligation under this solicitation is contingent on receipt of congressionally appropriated funds. No liability on the part of the U.S. Government for any payment may arise until funds are made available to the awarding officer for this grant and until the recipient receives notice of such availability, to be confirmed in writing by the grant officer.

All payments under this agreement will be made by electronic funds transfer through the Automated Standard Application for Payment (ASAP). All award recipients are required to have a current and accurate DUNS number to receive funds. All payments will be deposited to the banking information designated by the applicant in the System for Award Management (SAM).

XII. Reporting Requirements for Award Recipients

The applicant must deliver all products and data required by the signed Grant Agreement for the proposed NTBG feasibility study project to IEED within 30 days of the end of each quarter and 90 days after completion of the project.

IEED requires that deliverable products be provided in both digital format and printed hard copies. Reports can be provided in either Microsoft Word or Adobe Acrobat PDF format. Spreadsheet data can be provided in Microsoft Excel, Microsoft Access, or Adobe PDF formats. All vector figures should be converted to PDF format. Raster images can be provided in PDF, JPEG, TIFF, or any of the Windows metafile formats. The contract between the grantee and the consultant conducting the NTBG funded feasibility study must include deliverable products and require that the products be prepared in the format described above.

The contract should include budget amounts for all printed and digital copies to be delivered in accordance with the grant agreement. In addition, the contract must specify that all products generated by a consultant belong to the grantee and cannot be released to the public without the grantee's written approval. Products include, but are not limited to, all reports and technical data obtained, maps, status reports, and the final report.

In addition, this funding opportunity and financial assistance award must adhere to the following provisions:

Conflicts of Interest

Applicability

- This section intends to ensure that non-Federal entities and their employees take appropriate steps to avoid conflicts of interest in their responsibilities under or with respect to Federal financial assistance agreements.
- In the procurement of supplies, equipment, construction, and services by recipients and by sub-recipients, the conflict of interest provisions in 2 CFR 200.318 apply.

Requirements

- Non-Federal entities must avoid prohibited conflicts of interest, including any significant financial interests that could cause a reasonable person to question the recipient's ability to provide impartial, technically sound, and objective performance under or with respect to a Federal financial assistance agreement.
- In addition to any other prohibitions that may apply with respect to conflicts of interest, no key official of an actual or proposed recipient or sub-recipient, who is substantially involved in the proposal or project, may have been a former Federal employee who, within the last one (1) year, participated personally and substantially in the evaluation, award, or administration of an award with respect to that recipient or sub-recipient or in development of the requirement leading to the funding announcement.
- No actual or prospective recipient or sub-recipient may solicit, obtain, or use non-public information regarding the evaluation, award, administration of an award to that recipient or sub-recipient or the development of a Federal financial assistance opportunity that may be of competitive interest to that recipient or sub-recipient.

Notification

- Non-Federal entities, including applicants for financial assistance awards, must disclose in writing any conflict of interest to the DOI awarding agency or pass-through entity in accordance with 2 CFR 200.112, Conflicts of Interest.
- Recipients must establish internal controls that include, at a minimum, procedures to identify, disclose, and mitigate or eliminate identified conflicts of interest. The recipient is responsible for notifying the Financial Assistance Officer in writing of any conflicts of interest that may arise during the life of the award, including those that have been reported by sub-recipients.
- Restrictions on Lobbying. Non-Federal entities are strictly prohibited from using funds under this gran or cooperative agreement for lobbying activities and must provide the required certifications and disclosures pursuant to 43 CFR part 18 and 31 U.S.C. 1352.
- Review Procedures. The Financial Assistance Officer will examine each conflict of interest disclosure on the basis of its particular facts and the nature of the proposed grant or cooperative agreement, and will determine whether a significant potential conflict exists and, if it does, develop an appropriate means for resolving it.
- Enforcement. Failure to resolve conflicts of interest in a manner that satisfies the Government may be cause for termination of the award. Failure to make the required disclosures may result in any of the remedies described in 2 CFR 200.338, Remedies for Noncompliance, including suspension or debarment (see also 2 CFR part 180).

Data Availability

- Applicability. The Department of the Interior is committed to basing its decisions on the best available science and providing the American people with enough information to thoughtfully and substantively evaluate the data, methodology, and analysis used by the Department to inform its decisions.
- Use of Data. The regulations at 2 CFR 200.315 apply to data produced under a Federal award, including the provision that the Federal Government has the right to obtain, reproduce, publish, or otherwise use the data produced under a Federal award as well as authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.
- Availability of Data. The recipient shall make the data produced under this award and any subaward(s) available to the Government for public release, consistent with applicable law, to allow meaningful third party evaluation and reproduction of the following:
  - The scientific data relied upon;

○ The analysis relied upon; and

○ The methodology, including models, used to gather and analyze data.

XIII. Questions and Requests for IEED Assistance

IEED staff may provide technical consultation, upon written request by an applicant. The request must clearly identify the type of assistance sought. Technical consultation does not include funding to prepare a grant proposal, grant writing assistance, or pre-determinations as to the likelihood that a proposal will be awarded. The applicant is solely responsible for preparing its grant proposal. Technical consultation may include clarifying application requirements, confirming whether an applicant previously submitted the same or similar proposal, and registration information for SAM or ASAP.

XIV. Separate Document(s)

- Application for Federal Assistance SF–424 Form
- Project Narrative Attachment Form (This form includes the Project Narrative, Budget, Tribal Resolution, and Critical Information page).

XV. Authority

This is a discretionary grant program authorized under the Snyder Act (25 U.S.C.13) and the Further Consolidated Appropriations Act 2020 (Pub. L. 116–94). The Snyder Act authorizes the BIA to expend such moneys as Congress may appropriate for the benefit, care, and assistance of Indians for the purposes listed in the Act. Broadband deployment or expansion facilitates two of the purposes listed in the Snyder Act: ''General support and civilization, including education'' and ''industrial assistance and advancement.'' The Further Consolidated Appropriations Act 2020 authorizes the BIA to ''carry out the operation of Indian programs by direct expenditure, contracts, cooperative agreements, compacts, and grants, either directly or in cooperation with States and other organizations.''

Dated: December 23, 2019.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

[FR Doc. 2020–02616 Filed 2–7–20; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLOR957000.L63100000.HD0000. 20XL1116AF.HAG 20–0048]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management (BLM), Oregon State Office, Portland, Oregon, 30 calendar days from the date of this publication.

DATES: Protests must be received by the BLM prior to the scheduled date of official filing, March 11, 2020.

ADDRESSES: A copy of the plats may be obtained from the Public Room at the Bureau of Land Management, Oregon State Office, 1220 SW 3rd Avenue, Portland, Oregon 97204, upon required payment. The plats may be viewed at this location at no cost.

FOR FURTHER INFORMATION CONTACT: Kyle Hensley, (503) 808–6124, Branch of Geographic Sciences, Bureau of Land Management, 1220 SW 3rd Avenue, Portland, Oregon 97204. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 1–800–877–8339 to contact the above individual during normal business hours. The service is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The plats of survey of the following described lands are scheduled to be officially filed in the Bureau of Land Management, Oregon State Office, Portland, Oregon:

Willamette Meridian, Oregon

T. 32 S., R. 1 E., accepted January 6, 2020
T. 34 S., R. 4 W., accepted January 6, 2020
T. 35 S., R. 1 E., accepted January 6, 2020
T. 41 S., R. 8 E., accepted January 14, 2020

Willamette Meridian, Washington

T. 34 N., R. 2 W., accepted December 17, 2019
T. 34 N., R. 1 W., accepted December 17, 2019
T. 30 N., R. 38 E., accepted December 17, 2019

A person or party who wishes to protest one or more plats of survey identified above must file a written notice of protest with the Chief Cadastral Surveyor for Oregon/Washington, Bureau of Land Management. The notice of protest must identify the plat(s) of survey that the person or party wishes to protest. The notice of protest must be filed before the scheduled date of official filing for the plat(s) of survey being protested. Any notice of protest filed after the scheduled date of official filing will be untimely and will not be considered. A notice of protest is considered filed on the date it is received by the Chief Cadastral Surveyor for Oregon/Washington during regular business hours; if received after regular business hours, a notice of protest will be considered filed the next business day. A written statement of reasons in support of a protest, if not filed with the notice of protest, must be filed with the Chief Cadastral Surveyor for Oregon/Washington within 30 calendar days after the notice of protest is filed. If a notice of protest against a plat of survey is received prior to the scheduled date of official filing, the official filing of the plat of survey identified in the notice of protest will be stayed pending consideration of the protest. A plat of survey will not be officially filed until the next business day following dismissal or resolution of all protests of the plat.

Before including your address, phone number, email address, or other personal identifying information in a notice of protest or statement of reasons, you should be aware that the documents you submit—including your personal identifying information—may be made publicly available in their entirety at any time. While you can ask us to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

F. David Radford,

Acting Chief Cadastral Surveyor of Oregon/Washington.

[FR Doc. 2020–02597 Filed 2–7–20; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–29717; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting comments on the significance of properties nominated before January 25, 2020, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by February 25, 2020.

ADDRESSES: Comments may be sent via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C St. NW, MS 7228, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before January 25, 2020. Pursuant to Section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

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.

Nominations submitted by State or Tribal Historic Preservation Officers:

INDIANA

Clark County

Lincoln Heights Historic District, (Historic Residential Suburbs in the United States, 1830–1960 MPS), Bounded by Lewis & Clark Pkwy., Hibiscus Dr., the south side of Lynnwood Dr., and Lincoln Dr., Clarksville, MP100005043

Jackson County

Walnut Street Historic District, Roughly bounded by North Chestnut, 7th and North Poplar Sts., but extending south on North Walnut St. to 3rd St., Seymour, SG100005044

LaGrange County

Wolcott, George and Margaret, House, 105 Wolcott St., Wolcottville, SG100005042

Marion County

Fame Laundry, 1352 North Illinois St., Indianapolis, SG100005040

Parke County

Guthrie, William B. & Laura, House, 7459 North US 41, Bloomingdale vicinity, SG100005041

Tippecanoe County

Farmers Institute (Boundary Increase), 4636 West 660 South, Lafayette vicinity, BC100005038

MICHIGAN

Washtenaw County

Highland Cemetery, 943 North River St., Ypsilanti, SG100005026

MISSISSIPPI

Hinds County

Smith Apartments, 1047 Smith Dr., Raymond vicinity, SG100005036

Jones County

Oak Park School Complex, 1205 Queensburg Ave., Laurel, SG100005034

Yalobusha County

Simmons House, 120 McLarty Cir., Water Valley, SG100005035

OHIO

Defiance County

Defiance Downtown Historic District, Roughly bounded by Fort, Clinton, Arabella, and Wayne Sts., Defiance, SG100005021

Franklin County

Kaiser Commercial Building, 223–225 East Main St., Columbus, SG100005022

OREGON

Jackson County

Britt Gardens Site 35JA789, Address Restricted, Jacksonville vicinity, SG100005020

Marion County

Supreme Court and Library Building, 1163 State St., Salem, SG100005014

Multnomah County

Wheeldon Annex, 929–935 SW Salmon St., Portland, SG100005015
Multnomah School, 7688 SW Capitol Hwy., Portland, SG100005016
Miller, Elmer and Linnie, House, (Eliot Neighborhood MPS), 89 NE Thompson St., Portland, MP100005017
Portland Zoo Railway Historic District, 4001 SW Canyon Rd., Portland, SG100005018
Keating, John A. and Hattie Mae, House, 2531 SW St. Helens Ct., Portland, SG100005019

VERMONT

Washington County

Center Road Culvert, (Stone Transportation Culverts in Vermont: 1750 to 1930 MPS), Center Rd., East Montpelier, MP100005024

Windsor County

Brigham Hill Historic District, 172, 185, 189 & 211 Brigham Hill Rd., Norwich, SG100005025

WISCONSIN

Kenosha County

Runkel, John P. and Mary, House, 33301 Geneva Rd., Wheatland, SG100005013

A request for removal has been made for the following resources:

GEORGIA

Greene County

King—Knowles—Gheesling House, (Greensboro MRA), North St., Greensboro, OT87001442

Gwinnett County

Adair, Isaac, House, 1235 Chandler Rd., Lawrenceville vicinity, OT00001390

Additional documentation has been received for the following resources:

INDIANA

Floyd County

New Albany Downtown Historic District (Additional Documentation), Roughly between West First St., and East Fifth St.; West Main St. to East Spring St., New Albany, AD99001074

Tippecanoe County

Farmers Institute (Additional Documentation), 4626 West 660 South, Lafayette vicinity, AD86000609

Authority: Section 60.13 of 36 CFR part 60.

Dated: January 27, 2020.

Julie H. Ernstein,

Supervisory Archeologist, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2020–02521 Filed 2–7–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–29677; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting comments on the significance of properties nominated before January 18, 2020, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted by February 25, 2020.

ADDRESSES: Comments may be sent via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C St. NW, MS 7228, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before January 18, 2020. Pursuant to Section 60.13 of 36 CFR part 60, written comments are being accepted concerning the

significance of the nominated properties under the National Register criteria for evaluation.

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.

Nominations submitted by State or Tribal Historic Preservation Officers:

IOWA

Tama County

King Tower Historic District, 1701 East 5th St./Business 30, Tama, SG100004998

MISSOURI

Cole County

Trinity Lutheran Church Historic District, (Rural Church Architecture of Missouri, c. 1819 to c. 1945 MPS), 13007–13013 Route C, Russellville, SG100005004

NEW YORK

Columbia County

Smith, Sanford W. and Maude, House, 4 Grove St., Chatham, SG100004999

SOUTH CAROLINA

Aiken County

Gaston Livery Stable, 1315 Richland Ave. East, Aiken, SG100005001

Charleston County

Engineering-Management Building, 2260 Noisette Blvd., North Charleston, SG100005002

TEXAS

Brown County

Weakley-Watson Building, 100–102 Fisk Ave., Brownwood, SG100005003

VIRGINIA

Caroline County

Old Jail of Caroline County, 119 North Main St., Bowling Green, SG100005008
Mount Gideon, 33295 Mt. Gideon Rd., Hanover vicinity, SG100005012

Cumberland County

Pine Grove Elementary School, (Rosenwald Schools in Virginia MPS), 267 Pinegrove Rd., Cumberland vicinity, MP100005010

Franklin Independent City

Franklin High School Gymnasium and Agricultural & Shop Building, 511 Charles St., Franklin, SG100005009

Petersburg Independent City

Christ and Grace Episcopal Church, 1545 South Sycamore St., Petersburg, SG100005011

Sussex County

Fleetwood, Purnell, House, 202 East Main St., Waverly, SG100005007

WISCONSIN

Washington County

West Bend Theater, 125 North Main St., West Bend, SG100005005

Nomination submitted by Federal Preservation Officer:

The State Historic Preservation Officer reviewed the following nomination and responded to the Federal Preservation Officer within 45 days of receipt of the nomination and supports listing the property in the National Register of Historic Places.

NEW YORK

Albany County

United States Post Office, Court House, and Custom House, 445 Broadway, Albany, SG100005000

Authority: Section 60.13 of 36 CFR part 60.

Dated: January 21, 2020.

Julie H. Ernstein,

Supervisory Archeologist, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2020–02514 Filed 2–7–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE–2019–0011; 201E1700D2 ET1SF0000.EAQ000 EEEE500000; OMB Control Number 1014–0011]

Agency Information Collection Activities; Platforms and Structures

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 April 10, 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–2019–0011 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 1014–0011 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: The regulations at 30 CFR part 250, subpart I, concern platforms and structures regulatory requirements of oil, gas, and sulfur operations in the Outer Continental Shelf (OCS) (including the associated forms), and are

the subject of this collection. This request also covers any related Notices to Lessees and Operators (NTLs) that BSEE issues to clarify, supplement, or provide additional guidance on some aspects of our regulations.

The BSEE uses the information submitted under Subpart I to determine the structural integrity of all OCS platforms and floating production facilities and to ensure that such integrity will be maintained throughout the useful life of these structures. We use the information to ascertain, on a case-by-case basis, that the fixed and floating platforms and structures are structurally sound and safe for their intended use to ensure safety of personnel and prevent pollution. More specifically, we use the information to:

- Review data concerning damage to a platform to assess the adequacy of proposed repairs.
- Review applications for platform construction (construction is divided into three phases–design, fabrication, and installation) to ensure the structural integrity of the platform.
- Review verification plans and third-party reports for unique platforms to ensure that all nonstandard situations are given proper consideration during the platform design, fabrication, and installation.
- Review platform design, fabrication, and installation records to ensure that the platform is constructed according to approved applications.
- Review inspection reports to ensure that platform integrity is maintained for the life of the platform.

Title of Collection: 30 CFR 250, Subpart I, *Platforms and Structures.*

OMB Control Number: 1014–0011.

Form Number: None.

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 in any given year, and some may submit multiple times.

Total Estimated Number of Annual Responses: 362.

Estimated Completion Time per Response: Varies from 5 hours to 280 hours, depending on the activity.

Total Estimated Number of Annual Burden Hours: 92,786.

Respondent's Obligation: Responses are mandatory, while others are required to obtain or retain benefits.

Frequency of Collection: Generally, on occasion and annually, varies by section.

Total Estimated Annual Nonhour Burden Cost: $988,210.

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. 2020–02594 Filed 2–7–20; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE–2019–0012; 201E1700D2 ET1SF0000.EAQ000 EEEE500000; OMB Control Number 1014–0012]

Agency Information Collection Activities; Open and Nondiscriminatory Access to Oil and Gas Pipelines Under the OCS Lands Act

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 April 10, 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–2020–0012 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 1014–0012 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: The regulations at 30 CFR part 291 concern the Open and Nondiscriminatory Access to Oil and Gas Pipelines Under the OCS Lands Act (including the associated forms) and are the subject of this collection. This request also covers any related Notices to Lessees and Operators (NTLs) that BSEE issues to clarify, supplement, or provide additional guidance on some aspects of our regulations.

The BSEE uses the submitted information to initiate a more detailed review into the specific circumstances associated with a complainant's allegation of denial of access or discriminatory access to pipelines on the OCS. The complaint information will be provided to the alleged

offending party. Alternative dispute resolution may be used either before or after a complaint has been filed to informally resolve the dispute. The BSEE may request additional information upon completion of the initial review.

Title of Collection: 30 CFR part 291, *Open and Nondiscriminatory Access to Oil and Gas Pipelines Under the OCS Lands Act.*

OMB Control Number: 1014–0012.

Form Number: None.

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: 1.

Total Estimated Number of Annual Responses: 2.

Estimated Completion Time per Response: Varies from 1 hour to 50 hours.

Total Estimated Number of Annual Burden Hours: 51.

Respondent's Obligation: Responses are voluntary but are required to obtain or retain benefits.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: $7,500.

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. 2020–02593 Filed 2–7–20; 8:45 am]

BILLING CODE 4310–VH–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Spa Pumps, Jet Pump Housing, Motors, Components Thereof, and Products Containing the Same DN 3432;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Luraco Health & Beauty, LLC on February 4, 2020. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain spa pumps, jet pump housing, motors, components thereof, and products containing the same. The complaint names as respondents: GTP International Corp. of Dallas TX; Vu Tran of Richardson, TX; Sam's Nail Supply, Inc. of Garland, TX; San Antonio Sam's Spa and Nail Supply, Inc. of Richardson, TX; Sam-Spa Holding Company, Inc. of Richardson, TX; and Sam's Spa Supply, Inc. of Garland, TX. The complainant requests that the Commission issue a limited exclusion order and cease desist orders.

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation 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 requested remedial orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the requested remedial 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 requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) Explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

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 § 210.4(f) of the Commission's Rules of Practice and Procedure (19 CFR 210.4(f)). Submissions should refer to the docket number (''Docket No. 3432'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic

Filing Procedures [1]). 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,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Dated: February 4, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–02535 Filed 2–7–20; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

Summary of Commission Practice Relating to Administrative Protective Orders

AGENCY: U.S. International Trade Commission.

ACTION: Summary of Commission practice relating to administrative protective orders.

SUMMARY: Since February 1991, the U.S. International Trade Commission (''Commission'') has published in the **Federal Register** reports on the status of its practice with respect to breaches of its administrative protective orders (''APOs'') under title VII of the Tariff Act of 1930, in response to a direction contained in the Conference Report to the Customs and Trade Act of 1990. Over time, the Commission has added to its report discussions of APO breaches in Commission proceedings other than under title VII, and violations of the Commission's rules, including the rule on bracketing business proprietary information (the ''24-hour rule''). This notice provides a summary of APO breach investigations completed during fiscal years 2018 and 2019. The Commission intends for this report to inform representatives of parties to Commission proceedings of the specific types of APO breaches before the Commission and the corresponding types of actions that the Commission has taken.

FOR FURTHER INFORMATION CONTACT: Caitlin Stephens, Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205–2076. We advise hearing-impaired individuals that they may obtain information on this matter by contacting the Commission's TDD terminal at (202) 205–1810. General information concerning the Commission is available by accessing its website (*https://www.usitc.gov*).

SUPPLEMENTARY INFORMATION: Statutory authorities for investigations conducted by the Commission provide for the release of business proprietary information (''BPI'') or confidential business information (''CBI'') to certain authorized representatives in accordance with requirements set forth in Commission regulations. Such statutory and regulatory authorities include: 19 U.S.C. 1677f; 19 CFR 207.7; 19 U.S.C. 1337(n); 19 CFR 210.5, 210.34; 19 U.S.C. 2252(i); 19 CFR 206.17; 19 U.S.C. 1516a(g)(7)(A); and 19 CFR 207.100–207.120. Over time, the Commission has added to its report discussions of APO breaches in Commission proceedings other than under title VII, and violations of the Commission's rules, including the rule on bracketing business proprietary information (the ''24-hour rule'') under 19 CFR 207.3(c). The discussion below describes APO breach investigations that the Commission completed during fiscal years 2018 and 2019, including descriptions of actions taken in response to any breaches. This summary addresses APO breach investigations related to proceedings under both title VII and section 337 of the Tariff Act of 1930.

Since 1991, the Commission has published annually a summary of its actions in response to violations of Commission APOs and rule violations. *See* 83 FR 42140 (Aug. 20, 2018), 83 FR 17843 (Apr. 24, 2018), 82 FR 29322 (June 28, 2017), 81 FR 17200 (Mar. 28, 2016), 80 FR 1664 (Jan. 13, 2015), 78 FR 79481 (Dec. 30, 2013), 77 FR 76518 (Dec. 28, 2012), 76 FR 78945 (Dec. 20, 2011), 75 FR 66127 (Oct. 27, 2010), 74 FR 54071 (Oct. 21, 2009), 73 FR 51843 (Sept. 5, 2008); 72 FR 50119 (Aug. 30, 2007); 71 FR 39355 (July 12, 2006); 70 FR 42382 (July 22, 2005); 69 FR 29972 (May 26, 2004); 68 FR 28256 (May 23, 2003); 67 FR 39425 (June 7, 2002); 66 FR 27685 (May 18, 2001); 65 FR 30434 (May 11, 2000); 64 FR 23355 (Apr. 30, 1999); 63 FR 25064 (May 6, 1998); 62 FR 13164 (Mar. 19, 1997); 61 FR 21203 (May 9, 1996); 60 FR 24880 (May 10, 1995); 59 FR 16834 (Apr. 8, 1994); 58 FR 21991 (Apr. 26, 1993); 57 FR 12335 (Apr. 26, 1992); and 56 FR 4846 (Feb. 6, 1991). This report does not provide an exhaustive list of conduct that will be deemed to be a breach of the Commission's APOs. The Commission considers APO breach investigations on a case-by-case basis.

As part of its effort to educate practitioners about the Commission's current APO practice, the Secretary to the Commission issued An Introduction to Administrative Protective Order Practice in Import Injury Investigations, 4th edition (Pub. No. 3755, March 2005). This document is available on the Commission's website at *https://www.usitc.gov.*

I. In General

A. Antidumping and Countervailing Duty Investigations

The current APO form for antidumping and countervailing duty investigations, which the Commission revised in March 2005, requires the applicant to swear that he or she will:

(1) Not divulge any of the BPI disclosed under this APO or otherwise obtained in this investigation and not otherwise available to him or her, to any person other than—

(i) Personnel of the Commission concerned with the investigation,

(ii) The person or agency from whom the BPI was obtained,

(iii) A person whose application for disclosure of BPI under this APO has been granted by the Secretary, and

(iv) Other persons, such as paralegals and clerical staff, who (a) are employed or supervised by and under the direction and control of the authorized applicant or another authorized applicant in the same firm whose application has been granted; (b) have a need thereof in connection with the investigation; (c) are not involved in competitive decision making for an interested party which is a party to the investigation; and (d) have signed the acknowledgment for clerical personnel in the form attached hereto (the authorized applicant shall also sign such acknowledgment and will be deemed responsible for such persons' compliance with this APO);

(2) Use such BPI solely for the purposes of the above-captioned Commission investigation or for judicial or binational panel review of such Commission investigation;

(3) Not consult with any person not described in paragraph (1) concerning BPI disclosed under this APO or otherwise obtained in this investigation without first having received the written consent of the Secretary and the party or the representative of the party from whom such BPI was obtained;

(4) Whenever materials *e.g.,* documents, computer disks, etc. containing such BPI are not being used, store such material in a locked file cabinet, vault, safe, or other suitable container (N.B.: Storage of BPI on so-called hard disk computer media is to be avoided, because mere erasure of data from such media may not irrecoverably destroy the BPI and may result in violation of paragraph C of this APO);

(5) Serve all materials containing BPI disclosed under this APO as directed by the Secretary and pursuant to section 207.7(f) of the Commission's rules;

(6) Transmit each document containing BPI disclosed under this APO:

(i) With a cover sheet identifying the document as containing BPI,

(ii) with all BPI enclosed in brackets and each page warning that the document contains BPI,

(iii) if the document is to be filed by a deadline, with each page marked ''Bracketing of BPI not final for one business day after date of filing,'' and

(iv) if by mail, within two envelopes, the inner one sealed and marked ''Business Proprietary Information—To be opened only by [name of recipient]'', and the outer one sealed and not marked as containing BPI;

(7) Comply with the provision of this APO and section 207.7 of the Commission's rules;

(8) Make true and accurate representations in the authorized applicant's application and promptly notify the Secretary of any changes that occur after the submission of the application and that affect the representations made in the application (*e.g.,* change in personnel assigned to the investigation);

(9) Report promptly and confirm in writing to the Secretary any possible breach of this APO; and

(10) Acknowledge that breach of this APO may subject the authorized applicant and other persons to such sanctions or other actions as the Commission deems appropriate, including the administrative sanctions and actions set out in this APO.

The APO form for antidumping and countervailing duty investigations also provides for the return or destruction of the BPI obtained under the APO on the order of the Secretary, at the conclusion of the investigation, or at the completion of Judicial Review. The BPI disclosed to an authorized applicant under an APO during the preliminary phase of the investigation generally may remain in the applicant's possession during the final phase of the investigation.

The APO further provides that breach of an APO may subject an applicant to:

(1) Disbarment from practice in any capacity before the Commission along with such person's partners, associates, employer, and employees, for up to seven years following publication of a determination that the order has been breached;

(2) Referral to the United States Attorney;

(3) In the case of an attorney, accountant, or other professional, referral to the ethics panel of the appropriate professional association;

(4) Such other administrative sanctions as the Commission determines to be appropriate, including public release of, or striking from the record any information or briefs submitted by, or on behalf of, such person or the party he represents; denial of further access to business proprietary information in the current or any future investigations before the Commission, and issuance of a public or private letter of reprimand; and

(5) Such other actions, including but not limited to, a warning letter, as the Commission determines to be appropriate.

APOs in safeguard investigations contain similar (though not identical) provisions.

B. Section 337 Investigations

The APOs in section 337 investigations differ from those in title VII investigations as there is no set form and provisions may differ depending on the investigation and the presiding administrative law judge. However, in practice, the provisions are often quite similar. Any person seeking access to CBI during a section 337 investigation (including outside counsel for parties to the investigation, secretarial and support personnel assisting such counsel, and technical experts and their staff who are employed for the purposes of the investigation) is required to read the APO, agree to its terms by letter filed with the Secretary of the Commission indicating that he or she agrees to be bound by the terms of the Order, agree not to reveal CBI to anyone other than another person permitted access by the Order, and agree to utilize the CBI solely for the purposes of that investigation.

In general, an APO in a section 337 investigation will define what kind of information is CBI and direct how CBI is to be designated and protected. The APO will state which persons will have access to the CBI and which of those persons must sign onto the APO. The APO will provide instructions on how CBI is to be maintained and protected by labeling documents and filing transcripts under seal. It will provide protections for the suppliers of CBI by notifying them of a Freedom of Information Act request for the CBI and providing a procedure for the supplier to seek to prevent the release of the information. There are provisions for disputing the designation of CBI and a procedure for resolving such disputes. Under the APO, suppliers of CBI are given the opportunity to object to the release of the CBI to a proposed expert. The APO requires a person who discloses CBI, other than in a manner authorized by the APO, to provide all pertinent facts to the supplier of the CBI and to the administrative law judge and to make every effort to prevent further disclosure. The APO requires all parties to the APO to either return to the suppliers or destroy the originals and all copies of the CBI obtained during the investigation.

The Commission's regulations provide for certain sanctions to be imposed if the APO is violated by a person subject to its restrictions. The names of the persons being investigated for violating an APO are kept confidential unless the sanction imposed is a public letter of reprimand. 19 CFR 210.34(c)(1). The possible sanctions are:

(1) An official reprimand by the Commission.

(2) Disqualification from or limitation of further participation in a pending investigation.

(3) Temporary or permanent disqualification from practicing in any capacity before the Commission pursuant to 19 CFR 201.15(a).

(4) Referral of the facts underlying the violation to the appropriate licensing authority in the jurisdiction in which the individual is licensed to practice.

(5) Making adverse inferences and rulings against a party involved in the violation of the APO or such other action that may be appropriate. 19 CFR 210.34(c)(3).

Commission employees are not signatories to the Commission's APOs and do not obtain access to BPI or CBI through APO procedures. Consequently, they are not subject to the requirements of the APO with respect to the handling of BPI and CBI. However, Commission employees are subject to strict statutory and regulatory constraints concerning BPI and CBI, and face potentially severe penalties for noncompliance. *See* 18 U.S.C. 1905; title 5, U.S. Code; and Commission personnel policies implementing the statutes. Although the Privacy Act (5 U.S.C. 552a) limits the Commission's authority to disclose any personnel action against agency employees, this should not lead the public to conclude that no such actions have been taken.

II. Investigations of Alleged APO Breaches

Upon finding evidence of an APO breach or receiving information that there is a reason to believe one has occurred, the Secretary to the Commission (''Secretary'') notifies relevant Commission offices that the Secretary has opened an APO breach file, and the Commission has commenced an APO breach investigation. Upon receiving notification from the Secretary, the Office of the General Counsel (''OGC'') prepares a letter of inquiry that the Commission sends to the possible breacher under the Secretary's signature to ascertain the facts and obtain the possible breacher's views on whether a breach has in fact occurred.[1] If, after reviewing the response and other relevant information, the Commission determines that a breach has occurred, the Commission often issues a second letter asking the breacher to address the questions of mitigating circumstances and possible sanctions or other actions. The Commission then determines what action to take in response to the breach. In some cases, the Commission determines that, although a breach has occurred, sanctions are not warranted, and therefore finds it unnecessary to issue a second letter concerning what sanctions might be appropriate. Instead, it issues a warning letter to the individual. A warning letter is not considered to be a sanction. However, a warning letter is considered in a subsequent APO breach investigation.

Sanctions for APO violations serve three basic interests: (a) Preserving the confidence of submitters of BPI/CBI that the Commission is a reliable protector of BPI/CBI; (b) disciplining breachers; and (c) deterring future violations. As the Conference Report to the Omnibus Trade and Competitiveness Act of 1988 observed, ''[T]he effective enforcement of limited disclosure under [APO] depends in part on the extent to which private parties have confidence that there are effective sanctions against violation.'' H.R. Conf. Rep. 100–576, at 623 (1988).

The Commission has worked to develop consistent jurisprudence, not only in determining whether a breach has occurred, but also in selecting an appropriate response. In determining the appropriate response, the Commission generally considers mitigating factors such as the unintentional nature of the breach, the lack of prior breaches committed by the breaching party, the corrective measures taken by the breaching party, and the promptness with which the breaching party reported the violation to the Commission. The Commission also considers aggravating circumstances, especially whether persons not under the APO actually viewed the BPI/CBI. The Commission considers whether there have been prior breaches by the same person or persons in other investigations and multiple breaches by the same person or persons in the same investigation.

The Commission's rules permit an economist or consultant to obtain access to BPI/CBI under the APO in a title VII or safeguard investigation if the economist or consultant is under the direction and control of an attorney under the APO, or if the economist or consultant appears regularly before the Commission and represents an interested party who is a party to the investigation. 19 CFR 207.7(a)(3)(B) and (C); 19 CFR 206.17(a)(3)(B) and (C). Economists and consultants who obtain access to BPI/CBI under the APO under the direction and control of an attorney nonetheless remain individually responsible for complying with the APO. In appropriate circumstances, for example, an economist under the direction and control of an attorney may be held responsible for a breach of the APO by failing to redact APO information from a document that is subsequently filed with the Commission and served as a public document. This is so even though the Commission may hold the attorney exercising direction or control over the economist or consultant responsible for the breach of the APO. In section 337 investigations, technical experts and their staff who are employed for the purposes of the investigation are required to sign onto the APO and agree to comply with its provisions.

The records of Commission investigations of alleged APO breaches in antidumping and countervailing duty cases, section 337 investigations, and safeguard investigations are not publicly available and are exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552. *See* 19 U.S.C. 1677f(g); 19 U.S.C. 1333(h); 19 CFR 210.34(c).

The two types of breaches most frequently investigated by the Commission involve (1) the APO's prohibition on the dissemination of BPI or CBI to unauthorized persons, and (2) the APO's requirement that the materials received under the APO be returned or destroyed, and that a certificate be filed with the Commission indicating what actions were taken after the termination of the investigation or any subsequent appeals of the Commission's determination. The dissemination of BPI/CBI usually occurs as the result of failure to delete BPI/CBI from public versions of documents filed with the Commission or transmission of proprietary versions of documents to unauthorized recipients. Other breaches have included the failure to bracket properly BPI/CBI in proprietary documents filed with the Commission, the failure to report immediately known or suspected violations of an APO, and the failure to adequately supervise non-lawyers in the handling of BPI/CBI.

Occasionally, the Commission conducts APO breach investigations that involve members of a law firm or consultants working with a firm who were granted access to APO materials by the firm although they were not APO signatories. In many of these cases, the firm and the person using the BPI/CBI mistakenly believed an APO application had been filed for that person. The Commission has determined in all of these cases that the person who was a non-signatory, and therefore did not agree to be bound by the APO, could not be found to have breached the APO.

[1] Procedures for investigations to determine whether a prohibited act, such as a breach, has occurred and for imposing sanctions for violation of the provisions of a protective order issued during a NAFTA panel or committee proceedings are set out in 19 CFR 207.100–207.120. The Commission's Office of Unfair Import Investigations conducts those investigations initially.

Action could be taken against these persons, however, under Commission rule 201.15 (19 CFR 201.15) for good cause shown. In all cases in which the Commission took action, it decided that the non-signatory was a person who appeared regularly before the Commission, who was aware of the requirements and limitations related to APO access, and who should have verified his or her APO status before obtaining access to and using the BPI/CBI. The Commission notes that section 201.15 may also be available to issue sanctions to attorneys or agents in different factual circumstances in which they did not technically breach the APO, but when their actions or inactions did not demonstrate diligent care of the APO materials even though they appeared regularly before the Commission and were aware of the importance the Commission placed on the care of APO materials.

Counsel participating in Commission investigations have reported to the Commission potential breaches involving the electronic transmission of public versions of documents. In these cases, the document transmitted appears to be a public document with BPI/CBI omitted from brackets. However, the confidential information is actually retrievable by manipulating codes in software. The Commission has found that the electronic transmission of a public document containing BPI/CBI in a recoverable form was a breach of the APO.

The Commission has cautioned counsel to be certain that each authorized applicant files with the Commission within 60 days, of the completion of an import injury investigation or at the conclusion of judicial or binational review of the Commission's determination, a certificate stating that, to his or her knowledge and belief, all copies of BPI/CBI have been returned or destroyed, and no copies of such materials have been made available to any person to whom disclosure was not specifically authorized. This requirement applies to each attorney, consultant, or expert in a firm who has access to BPI/CBI. One firm-wide certificate is insufficient.

Attorneys who are signatories to the APO representing clients in a section 337 investigation should inform the administrative law judge and the Secretary if there are any changes to the information that was provided in the application for access to the CBI. This is similar to the requirement to update an applicant's information in title VII investigations.

In addition, attorneys who are signatories to the APO representing clients in a section 337 investigation should send a notice to the Commission if they stop participating in the investigation or the subsequent appeal of the Commission's determination. The notice should inform the Commission about the disposition of CBI obtained under the APO that was in their possession or the Commission could be hold them responsible for any failure of their former firm to return or destroy the CBI in an appropriate manner.

III. Specific APO Breach Investigations

A. Fiscal Year 2018

Case 1. The Commission determined that an attorney representing a party in a section 337 investigation breached an APO when the attorney disclosed CBI to unauthorized persons. The attorney, an APO signatory, prepared and directed an employee to file a public version of a submission that contained unredacted CBI. The document was finalized and filed on the public record by an employee supervised by the attorney, but the attorney did not review the final version of the document before it was filed. After being placed on the public record, the CBI was viewed by at least one non-party to the investigation. Approximately six days later, counsel for another party notified the attorney that the public version of the filing on the Commission's Electronic Document Information System (EDIS) contained unredacted CBI. The attorney contacted the Commission that same day to have the filing removed from EDIS.

The attorney, who is responsible for the subordinate employee's compliance with the APO, breached the APO because CBI was made available to unauthorized persons. In determining the appropriate action in response to the breach, the Commission considered mitigating factors, including that (1) the breach was inadvertent and unintentional; (2) the attorney took immediate corrective measures by contacting the Secretary's office once notified of the possible breach; and (3) the attorney had not committed a breach in the previous two years. The Commission also considered the following aggravating factors: (1) Opposing counsel discovered the breach; and (2) unauthorized persons accessed the CBI. The Commission issued a private letter of reprimand to the attorney.

B. Fiscal Year 2019

Case 1. A law firm participating in a title VII investigation notified the Secretary that it had filed a public version of its brief that potentially contained BPI. The Secretary, in consultation with the Office of the General Counsel, determined that no breach had actually occurred. The law firm's public filing did not contain any information released to the law firm under the APO. A letter to the firm advised that, under the circumstances, the Commission has closed the investigation.

Case 2. The Commission determined that an attorney representing a party in a title VII investigation breached the APO when the attorney failed to properly redact BPI from a public filing. The day after filing the public document on EDIS, the attorney discovered that the BPI was still present in the electronic version of the public document, and the attorney immediately contacted the Secretary.

The attorney breached the APO because BPI was made available to unauthorized persons. In determining the appropriate action in response to the breach, the Commission considered mitigating factors, including that (1) the breach was unintentional; (2) the attorney had never previously breached an APO; (3) the attorney took immediate corrective measures upon discovery of the breach; (4) the attorney promptly reported the situation to the Secretary; (5) there was no evidence that any non-signatory to the APO viewed the BPI, and (6) significant time had passed since the breach occurred. The Commission did not find any aggravating factors to be present, and it sent a letter to the attorney advising that it would take no further action in the matter.

Case 3. Counsel representing respondents in a section 337 investigation notified the Secretary that another law firm may have breached the APO in the prior investigation when it filed a new complaint. The respondents' counsel alleged that the new complaint contained information that could not have been known but for access to the CBI from the prior investigation. Complainants' counsel was able to point to evidence that adequately supported its claim that it relied on publicly available information in drafting the complaint at issue. Accordingly, the Commission determined that no breach occurred.

By order of the Commission.

Issued: February 4, 2020.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2020–02534 Filed 2–7–20; 8:45 am]

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DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Learfield Communications, LLC; IMG College, LLC; and A–L Tier I LLC: Response to Public Comment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States hereby publishes below the Response to Public Comment on the Proposed Final Judgment in *United States* v. *Learfield Communications, LLC; IMG College, LLC; and A–L Tier I LLC,* Civil Action No. 1:19–cv–00389–EGS, which was filed in the United States District Court for the District of Columbia on February 3, 2020, together with a copy of the comment received by the United States. Copies of the comment and the United States' Response are available for inspection on the Antitrust Division's website at *http://www.justice.gov/atr* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may also be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Amy R. Fitzpatrick,
Counsel to the Senior Director for Investigations and Litigation.

United States District Court for the District of Columbia

United States of America, Plaintiff, v. *Learfield Communications, LLC, IMG College, LLC and A–L Tier I LLC,* Defendants.

CASE: 1:19–cv–00389–EGS

Response of Plaintiff United States to Public Comment on the Proposed Final Judgment

As required by the Antitrust Procedures and Penalties Act (the ''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), the United States hereby responds to the public comment received by the United States regarding the proposed Final Judgment in this case. After careful consideration, the United States continues to believe that the proposed remedy will address the harm alleged in the Complaint and is therefore in the public interest. The proposed Final Judgment will ensure that the Defendants and their employees and agents will not impede competition by agreeing not to compete, entering into joint ventures that reduce competition, or sharing competitively sensitive information with their competitors. The United States will move the Court for entry of the proposed Final Judgment after this response and the public comment have been published in the **Federal Register**, pursuant to 15 U.S.C. 16(d).

I. Procedural History

On October 5, 2017, Learfield Communications, LLC (''Learfield'') and IMG College, LLC (''IMG'') announced a proposed merger. After investigating whether the merger would violate Section 7 of the Clayton Act, 15 U.S.C. 18, by substantially lessening competition, the United States did not challenge the transaction. On December 27, 2018, the United States informed the parties of this decision, and the Defendants became free to close their proposed merger.

During the course of the merger investigation, however, the United States discovered evidence of a potential separate violation of the antitrust laws. This evidence indicated that the parties, during a prior period of conduct, had agreed or otherwise coordinated with one another, as well as between themselves and other competitors, in a manner that denied their college customers the benefits of competition in violation of Section 1 of the Sherman Act, 15 U.S.C. 1.

Following an investigation of that separate conduct, on February 14, 2019, the United States filed a civil antitrust complaint alleging that the Defendants agreed or otherwise coordinated to limit competition, resulting in an unlawful restraint of trade in the multimedia rights (''MMR'') management market under Section 1 of the Sherman Act. The Complaint seeks injunctive relief to enjoin the Defendants from engaging in similar conduct in the future. Simultaneously with the filing of the Complaint, the United States filed a proposed Final Judgment, a Stipulation signed by the parties that consents to entry of the proposed Final Judgment after compliance with the requirements of the Tunney Act, and a Competitive Impact Statement describing the events giving rise to the alleged violation and the proposed Final Judgment.

The proposed Final Judgment prohibits sharing of competitively sensitive information, agreeing not to bid or agreeing to jointly bid, and, absent approval from the United States, entering into or extending MMR joint ventures. It also requires the Defendants to implement antitrust compliance training programs.

The United States caused the Complaint, the proposed Final Judgment, and the Competitive Impact Statement to be published in the **Federal Register** on February 28, 2019, *see* 84 FR 6,824, and caused notice regarding the same, together with directions for the submission of written comments relating to the proposed Final Judgment, to be published in *The Washington Post* for seven days beginning on February 27, 2019 and ending on March 5, 2019. The 60-day period for public comment ended on May 6, 2019. During the public comment period, the United States received the comment described below in Section IV and attached as Exhibit A.

II. Standard of Judicial Review

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the Court's inquiry is necessarily a limited one as the government is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *United States* v. *U.S. Airways Grp., Inc.,* 38 F. Supp. 3d 69, 75 (D.D.C. 2014) (explaining that the ''court's inquiry is limited'' in Tunney Act settlements); *United States* v. *InBev N.V./S.A.,* No. 08–1965 (JR), 2009 U.S. Dist. LEXIS 84787, at *3 (D.D.C. Aug. 11, 2009) (noting that a court's review of a consent judgment is limited and only inquires ''into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether

the mechanism to enforce the final judgment are clear and manageable'').

As the U.S. Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations in the government's complaint, whether the proposed Final Judgment is sufficiently clear, whether its enforcement mechanisms are sufficient, and whether it may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the proposed Final Judgment, a court may ''not to make de novo determination of facts and issues.'' *United States* v. *W. Elec. Co.,* 993 F.2d 1572, 1577 (D.C. Cir. 1993) (quotation marks omitted); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 16 (D.D.C. 2000); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Instead, ''[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General.'' *W. Elec. Co.,* 993 F.2d at 1577 (quotation marks omitted). ''The court should bear in mind the *flexibility* of the public interest inquiry: The court's function is not to determine whether the resulting array of rights and liabilities is one that will *best* serve society, but only to confirm that the resulting settlement is within the *reaches* of the public interest.'' *Microsoft,* 56 F.3d at 1460 (quotation marks omitted). More demanding requirements would ''have enormous practical consequences for the government's ability to negotiate future settlements,'' contrary to congressional intent. *Id.* at 1456. ''The Tunney Act was not intended to create a disincentive to the use of the consent decree.'' *Id.*

The United States' predictions about the efficacy of the remedy are to be afforded deference by the Court. *See, e.g., Microsoft,* 56 F.3d at 1461 (recognizing courts should give ''due respect to the Justice Department's . . . view of the nature of its case''); *United States* v. *Iron Mountain, Inc.,* 217 F. Supp. 3d 146, 152–53 (D.D.C. 2016) (''In evaluating objections to settlement agreements under the Tunney Act, a court must be mindful that [t]he government need not prove that the settlements will perfectly remedy the alleged antitrust harms[;] it need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'') (internal citations omitted); *United States* v. *Republic Servs., Inc.,* 723 F. Supp. 2d 157, 160 (D.D.C. 2010) (noting ''the deferential review to which the government's proposed remedy is accorded''); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (''A district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its view of the nature of the case''). The ultimate question is whether ''the remedies [obtained by the Final Judgment are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.' '' *Microsoft,* 56 F.3d at 1461 (*quoting W. Elec. Co.,* 900 F.2d at 309).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459; *see also U.S. Airways,* 38 F. Supp. 3d at 75 (noting that the court must simply determine whether there is a factual foundation for the government's decisions such that its conclusions regarding the proposed settlements are reasonable); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 (''the 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged''). Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d at 1459–60.

In its 2004 amendments to the APPA, Congress made clear its intent to preserve the practical benefits of using consent judgments proposed by the United States in antitrust enforcement, Public Law 108–237 § 221, and added the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2); *see also U.S. Airways,* 38 F. Supp. 3d at 76 (indicating that a court is not required to hold an evidentiary hearing or to permit intervenors as part of its review under the Tunney Act). This language explicitly wrote into the statute what Congress intended when it first enacted the Tunney Act in 1974. As Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Sen. Tunney). ''A court can make its public interest determination based on the competitive impact statement and response to public comments alone.'' *U.S. Airways,* 38 F. Supp. 3d at 76 (citing *Enova Corp.,* 107 F. Supp. 2d at 17).

III. The Section 1 Investigation, the Harm Alleged in the Complaint, and the Proposed Final Judgment

The proposed Final Judgment is the culmination of a thorough, comprehensive investigation conducted by the Antitrust Division of the U.S. Department of Justice into the Defendants' conduct involving the Defendants' joint ventures with each other to service specific universities which sought to outsource the management of their MMR as well as the Defendants' similar joint ventures with other competitors.

The Complaint alleges that, under the guise of legitimate business arrangements, these joint ventures denied universities the benefits of competition between the competitors. The Complaint further alleges that the Defendants have used, or attempted to use, joint ventures as a way to co-opt smaller competitors and remove them from submitting competitive bids and that the Defendants' non-compete agreements have had similar effects. By using and enforcing non-compete agreements, for example, Defendant Learfield prevented Defendant IMG from competing on a school's MMR contract when it came up for renewal.

Based on the evidence gathered, the United States concluded that the Defendants' use of joint ventures and non-compete agreements were anticompetitive and violated Section 1 of the Sherman Act, 15 U.S.C. 1, because they had detrimental effects on competition among MMR providers. The Defendants' use of joint ventures and non-compete agreements harmed the competitive process by suppressing or eliminating competition, reduced the revenues received by universities for licensing their MMR, and caused the quality of MMR management to decrease. The United States seeks the proposed Final Judgment to restore and protect competition. The Defendants have agreed to abide by the provisions of the proposed Final Judgment during the pendency of the Tunney Act proceedings (Dkt. No. 2.1 at 2).

The proposed Final Judgement provides an effective and appropriate remedy for this competitive harm by enjoining the Defendants from: (1) Directly or indirectly communicating competitively sensitive information related to bidding for an MMR contract; and (2) agreeing with any MMR competitor not to bid, or to bid jointly, on an MMR contract. The Defendants, for example, may not discuss their negotiating strategies or proposed prices relating to any particular university's MMR business with any other MMR competitor. Invitations or suggestions to jointly bid are also prohibited.

The proposed Final Judgment also creates a mechanism for joint ventures involving the Defendants to continue or be created if the collaboration will not reduce the number of competitors bidding on a university's MMR business. Pursuant to the proposed Final Judgment, the Defendants may apply to the United States for authorization to continue a joint venture that is about to expire or create a new joint venture to service a university's MMR needs. The United States will undertake a case-by-case analysis of any such application to determine whether the joint venture is likely to eliminate or enhance competition.

Under some circumstances, joint ventures may be efficient and procompetitive. *See, e.g.,* U.S. Dept. of Justice & FTC, *Antitrust Guidelines for Collaborations Among Competitors,* at 6 (2000) (''A collaboration may allow its participants to better use existing assets, or may provide incentives for them to make output-enhancing investments that would not occur absent the collaboration.''). However, ''labeling an arrangement a 'joint venture' will not protect what is merely a device to raise price or restrict output; the nature of the conduct, not its designation, is determinative.'' *Id.* at 9 (internal citations omitted). The United States routinely investigates joint arrangements between competitors to determine whether they violate the antitrust laws. Pursuant to the proposed Final Judgment, the Defendants have consented to the United States making that determination in its sole discretion without requiring the United States to prove to a Court that a proposed new or continuing collaboration involving a Defendant violates Section 1 of the Sherman Act.

Finally, the proposed Final Judgment includes robust mechanisms that will allow the United States and the Court to monitor the effectiveness of the relief and to enforce compliance.

- The proposed Final Judgment requires each Defendant to designate an Antitrust Compliance Officer who will be responsible for implementing training and compliance programs and ensuring compliance with the Final Judgment. Among other duties, the Antitrust Compliance Officer will be required to distribute copies of the Final Judgment and ensure that training on the requirements of the Final Judgment and the antitrust laws is provided to the Defendants' management. Moreover, each Defendant, through its CEO, General Counsel, or Chief Legal Officer, must certify annual compliance with the Final Judgment.
- The proposed Final Judgment requires each Defendant to establish an antitrust whistleblower policy and to remedy and report violations of the Final Judgment.
- The proposed Final Judgment provides that the United States retains and reserves all rights to enforce the provisions of the proposed Final Judgment, including its rights to seek an order of contempt from the Court. The Defendants have agreed that in any civil contempt action, any motion to show cause, or any similar action brought by the United States regarding an alleged violation of the Final Judgment, the United States may establish the violation and the appropriateness of any remedy by a preponderance of the evidence and that the Defendants have waived any argument that a different standard of proof should apply. This provision aligns the standard for compliance obligations with the standard of proof that applies to the underlying offense that the compliance commitments address.
- The proposed Final Judgment provides additional clarification regarding the interpretation of the provisions of the proposed Final Judgment. The Defendants agree that they will abide by the proposed Final Judgment, and that they may be held in contempt of this Court for failing to comply with any provision of the proposed Final Judgment that is stated specifically and in reasonable detail, whether or not it is clear and unambiguous on its face, and as interpreted in light of its procompetitive purpose.
- Should the Court find in an enforcement proceeding that one or more Defendants violated the Final Judgment, the proposed Final Judgment permits the United States to apply to the Court for a one-time extension of the Final Judgment, together with such other relief as may be appropriate. In addition, in order to compensate American taxpayers for any costs associated with the investigation and enforcement of violations of the proposed Final Judgment, the proposed Final Judgment provides that in any successful effort by the United States to enforce the Final Judgment against one or more Defendants, whether litigated or resolved before litigation, the Defendants agree to reimburse the United States for any attorneys' fees, experts' fees, or costs incurred in connection with any enforcement effort, including the investigation of the potential violation.

IV. Summary of Public Comment and the United States' Response

The United States received a comment concerning the proposed Final Judgment from JMI Sports, LLC (''JMIS''). JMIS competes against the Defendants to offer MMR services to universities and at times has partnered with the Defendants or their predecessors. JMIS does not claim that the provisions of the proposed Final Judgment are insufficient to enjoin the unlawful restraints of trade alleged in the Complaint. JMIS, however, states that it believes uncertainty exists regarding the scope of the relief the United States secured from the Defendants in ways that affect its position as a competitor. JMIS, therefore, seeks clarification regarding the settlement's scope, particularly ''the process through which [the United States] will vet proposed extensions or expansions to existing joint ventures involving'' the Defendants. *See* Attachment A at 2. JMIS also requests that the United States fully disclose the settlement's terms, and that any settlement provisions that are not currently part of the proposed Final Judgment be incorporated into it before entry by the Court. It also asks for clarification of terms that are not part of the proposed Final Judgment.

A. The Proposed Final Judgment Appropriately Authorizes the United States To Make Case-by-Case Determinations of Proposed Joint Ventures

JMIS seeks additional guidance on how under the proposed Final Judgment the United States will conduct its analysis of joint ventures proposed by the Defendants. JMIS also asks whether it and other non-parties may seek permission under the proposed Final Judgment to form or continue joint ventures with the Defendants. It also mistakenly complains that the proposed Final Judgment prohibits communications between it and the Defendants that are necessary to form or continue joint ventures. *See* Attachment A at 4.

Additional guidance on how the United States will evaluate joint ventures pursuant to Paragraph IV.C. of the proposed Final Judgment is not necessary. As noted above, the United States routinely investigates joint arrangements between competitors to determine whether those arrangements violate the U.S. antitrust laws and has published guidance on this subject. *See* U.S. DOJ & FTC, *Antitrust Guidelines for Collaborations Among Competitors* (2000). If a proposed joint venture is not the type of agreement that would tend to raise price or to reduce output such that it would be condemned as *per se* illegal, the United States conducts a fact-specific inquiry to determine its legality. By its nature, such an analysis ''entails a flexible inquiry and varies in focus and detail depending on the nature of the agreement and the market circumstances.'' *See id.* at 10 (internal citations omitted). Because these analyses require a case-by-case approach, there is no additional guidance that the United States could provide to JMIS at this time. JMIS and others seeking to form joint ventures with the Defendants in order to pursue MMR contracts, however, should consider whether they need to form a joint venture in order to compete for an MMR contract or whether the joint venture would merely eliminate a competitor.

The proposed Final Judgment permits the Defendants to make an application to the United States for authorization to enter into, renew, or extend a joint venture. *See* Proposed Final Judgment at Paragraph IV.C. This provision will not hinder JMIS's ability to form joint ventures with the Defendants. Because joint ventures are voluntary business arrangements, the Defendants must first be willing to enter into, renew, or extend a joint venture with JMIS or other competitors. As a willing participant, it would be in a Defendant's interest to apply for the required permission from the United States, and it would be unnecessary for the proposed Final Judgment to provide a mechanism for non-parties such as JMIS or others to make the application instead.

Finally, contrary to JMIS's assertation, the proposed Final Judgment already provides an exception to the provisions in Section IV prohibiting the Defendants from directly or indirectly communicating with competitors concerning bids or bidding. To continue or form a joint venture that may enhance competition, the proposed Final Judgment at Paragraph V.D. permits the Defendants, after securing advice of counsel and in consultation with an Antitrust Compliance Officer, to communicate with a competitor concerning the formation of a joint venture. Therefore, the proposed Final Judgment already incorporates the exception to the prohibition on communications between competitors that JMIS seeks.

B. The Proposed Final Judgment Embodies All Relief Obtained To Resolve the Complaint's Obligations and No Amendments Are Warranted

The United States, as requested by JMIS, confirms that the proposed Final Judgment embodies the entirety of its settlement with the Defendants to resolve the allegations in the Complaint, and there are no settlement provisions that are not embodied in the proposed Final Judgment. The United States alleged the Defendants unlawfully restrained trade in violation of Section 1 of the Sherman Act, 15 U.S.C. 1, by agreeing or otherwise coordinating to limit competition between themselves and between themselves and smaller competitors. As discussed above in Section III, the proposed Final Judgment effectively enjoins the Defendants from unlawfully restraining trade by prohibiting agreements not to bid or to bid jointly, by barring the sharing of competitive sensitive information, and by prohibiting joint ventures with MMR competitors that reduce competition.

The United States separately investigated whether the merger of IMG and Learfield would violate Section 7 of the Clayton Act. After consideration of the facts, evidence, and chances of prevailing at trial, the United States did not challenge that merger. Near the conclusion of the investigation into that merger, but before the United States had made its enforcement decision, Defendant Learfield informed the United States that Learfield and IMG had unilaterally implemented several irrevocable changes to certain business practices affecting the contractual rights of their employees and customers that would be implemented upon closing of the merger. *See* Exhibit B.[1] These commitments were presented to the United States. The making of these commitments additionally increased the litigation risk for seeking to enjoin the transaction.

The United States understands that JMIS seeks, through its comment, to incorporate the commitments made in Defendant Learfield's letter into the proposed Final Judgment in this matter. Those commitments, however, do not relate to the allegations in the Complaint that the United States brought in this matter, which challenges the Defendants' agreements between themselves and with other smaller MMR competitors as unlawful restraints of trade in violation of Section 1. The commitments relate to an ease-of-entry defense that the Defendants could have made if the United States had brought a Section 7 challenge to their merger. Because the commitments made in Defendant Learfield's letter, including those relating to employees and early termination of certain customer contracts, are unrelated to the allegations in the Complaint and because the proposed Final Judgment already encompasses all of the relief necessary to remedy the Defendants' Section 1 violations, no amendments to the proposed Final Judgment are warranted or justified.

As noted above, the D.C. Circuit explained in *Microsoft,* 56 F.3d at 1459–60, that the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place.'' Because the United States did not bring a Section 7 case, the modifications proposed by JMIS fall outside the scope of this Tunney Act review. Expanding the public interest review to encompass relief related to an uncharged allegation, would amount to ''effectively redraft[ing] the complaint'' to inquire into matters the United States did not pursue. *Id.* The Tunney Act process does not empower the district court ''to review the actions or behavior of the Department of Justice; the court is only authorized to review the decree itself.'' *Id.* It is unnecessary to include the commitments made in Defendant Learfield's letter in the proposed Final Judgment, in part because the commitments are not related to addressing the Defendants' anticompetitive joint ventures and non-compete agreements or preventing future anticompetitive arrangements with their competitors. The commitments, therefore, are not required to remedy the Section 1 violation alleged in the Complaint and consideration of whether to amend the proposed Final Judgment to include them falls outside the scope of the Tunney Act public interest inquiry.

[1] Because Learfield and IMG notified their employees and customers of their new contractual rights resulting from the commitments, all industry participants directly impacted by the commitments were fully informed. JMIS and other MMR competitors were not notified, because they are not customers or employees of Learfield or IMG. Learfield's letter is now being made public. JMIS and other competitors, therefore, will not need to rely on information gathered from other industry participants to learn about the irrevocable changes undertaken by Learfield and IMG.

V. Conclusion

After careful consideration of the public comment, the United States continues to believe that the proposed Final Judgment, as drafted, provides an effective and appropriate remedy for the antitrust violations alleged in the Complaint, and is therefore in the public interest. The United States will move this Court to enter the proposed Final Judgment after the comment and this response are published as required by 15 U.S.C. 16(d).

Dated: February 3, 2020.

Respectfully submitted,

Owen M. Kendler,

U.S. Department of Justice, Antitrust Division, 450 Fifth Street NW, Suite 4000, Washington, DC 20530, Tel.: (202) 305–8376, Fax: (202) 514–7308, Email: Owen.Kendler@usdoj.gov.

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Exhibit A

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Legal Counsel.

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April 8, 2019

FEDERAL EXPRESS

Trial Attorney Adam Speegle
U.S. Department of Justice
Antitrust Division
Media, Entertainment, and Professional Services Section
450 Fifth Street NW, Suite 400
Washington, D.C. 20530

Re: Comments on Proposed Final Judgment in the Matter of *United States v. Learfield Communications, LLC, et al,* 19 CV 389 (D.D.C.) in Accordance with 15 U.S.C. § 16(b)-(c)

Dear Mr. Speegle:

On behalf of JMI Sports, LLC ("JMIS"), this letter comments on the proposed Final Judgment published by the U.S. Department of Justice – Antitrust Division ("DOJ") in accordance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) (the "Tunney Act") in the matter of *United States v. Learfield Communications, LLC, et al,* 19 CV 389 (D.D.C.). JMIS has competed and will continue to compete against "Learfield IMG College" (the post-merger entity which encompasses the previously separate companies of Learfield Communications, LLC and IMG College, LLC and A-L Tier, LLC, hereinafter "Learfield IMG") for multimedia rights ("MMR") contracts. Since the publication of DOJ's Tunney Act materials, JMIS has observed significant confusion and upheaval in the MMR marketplace. Schools do not appear to recognize what options are and are not available to them in selecting an MMR provider. MMR providers do not appear to know what market opportunities exist or what options are available to pursue those opportunities. And movement in the MMR labor force appears paralyzed by the lack of understanding of possible restrictive covenants. To provide clarity and for the good of all market participants—schools, MMR providers, and workers in the MMR field—JMIS requests that DOJ's proposed Final Judgment be amended to include any and all conditions of settlement between Learfield IMG and DOJ which were not included in DOJ's February 14, 2019 Tunney Act filings that may have a material effect on the market. In the event that no further conditions or terms were placed upon Learfield IMG, JMIS requests that DOJ amend its proposed Final Judgment to include an affirmative statement that the proposal includes *all* relevant terms.

I. Background and DOJ's Tunney Act Filing.

In connection with its Tunney Act filing dated February 14, 2019, DOJ published its proposed Final Judgment, ECF No. 2, and a Competitive Impact Statement, ECF No. 3. In summary, DOJ's proposed Final Judgment precludes Learfield IMG from: (1) communicating with any competitor concerning competitively sensitive information; (2) agreeing with any competitor to participate in a bid; (3) agreeing with any competitor not to bid on a MMR contract; and (4) proposing a collaborative bid with any competitor. *See* ECF No. 2 at pages 9-10. In addition, the proposed Final Judgment requires Learfield IMG to obtain written consent from DOJ prior to entering into, renewing, or extending any joint venture or conducting other business negotiations in conjunction with or on behalf of any competitor relating to multimedia rights. *Id.*

If this list is an accurate and complete recitation of all material terms and conditions of settlement, DOJ should say so. Otherwise, JMIS respectfully submits that the proposed Final Judgment is insufficient to accomplish the core goal of the Tunney Act, exposing consent decrees to "sunlight." *See United States v. Microsoft Corp.*, 231 F. Supp. 2d 144, 152 (D.D.C. 2002). DOJ's silence on critical issues has created widespread speculation and uncertainty in the marketplace that must be remedied.

II. DOJ should use the Tunney Act process to address all material terms of settlement or to clarify that there are no non-public settlement terms.

DOJ's Tunney Act disclosures do not contain the level of guidance necessary for competitors and customers to understand the post-merger marketplace. *See, generally*, ECF No. 2 at pages 9-18; ECF No. 3 at pages 3-7. As just some examples of omissions, the proposed Final Judgment and Competitive Impact Statement do not provide the market with meaningful guidance on: (1) the potential for early termination of existing Learfield IMG contracts; (2) the ability of Learfield IMG to impair its current and former employees' future employment opportunities; or (3) the process through which DOJ will vet proposed extensions or expansions to existing joint ventures involving Learfield IMG. Without sufficient transparency on these issues and other additional settlement terms and conditions placed upon Learfield IMG in connection with the merger (should such conditions exist), the marketplace—competitors and schools alike—is left to speculate and parse through rumors and unverified statements to determine whether and when contracts may be available for bid and what ground rules exist for competitors to pursue such opportunities.

A. DOJ should disclose all terms related to the early termination of Learfield IMG contracts.

Speculation exists in the marketplace that, as a condition of settlement with the government, Learfield IMG must provide non-"Power 5" conference schools[1] with which Learfield IMG has an existing contractual relationship with the opportunity to test the market and potentially void multimedia rights contracts before the contractual term date.

[1] The "Power 5" conferences are the ACC, Big 10, Big 12, Pac-12, and SEC conferences. "Non-Power 5" conferences include all other athletic conferences.

Speculation also abounds that Power 5 schools must be granted the same opportunity if the schools are at least 70 percent through a contract with Learfield IMG. Whether these rumors are truth or fiction have profound consequences for the market. DOJ should use the public comment process to clarify whether DOJ's settlement with Learfield IMG included any provisions which provide schools with the option of securing a new MMR provider before the expiration of a current contract or otherwise alters the timing of market opportunities.

B. DOJ should disclose all terms related to post-employment restrictions on Learfield IMG employees.

If DOJ addressed employment issues in settling with Learfield IMG, DOJ should further clarify how the Final Judgment affects the future rights of Learfield IMG's employees. Most, if not all, of the companies in the MMR market use a similar employment model. When a company obtains an MMR contract, it hires additional employees to staff the new contract. Frequently, the new employees have ties to the contracting university (*e.g.*, alumni or past work experience) that provide immediate value to the university because of their existing knowledge. As those employees work on an MMR contract, they become more knowledgeable about the university and its various assets. A university may decide to change MMR providers for a variety of reasons—different pricing, a different management team, a different management strategy—but may still value the knowledge and contributions of employees who have worked on the prior contract. Because the Final Judgment imposes restrictions on the ability of Learfield IMG and its employees/agents to communicate with competitors, it creates incentives for Learfield IMG to impose draconian restrictions on *any* communications between its agents/employees and competitors. Similarly, the Final Judgment is silent as to Learfield IMG's ability to impose post-employment restrictions (*i.e.*, non-compete agreements).

Given Learfield IMG's market share, if it retains the ability to impose post-employment restrictions on current employees, such restrictions have the ability to greatly affect the ability of innocent MMR providers to hire qualified employees and the rights of universities to receive services from valued individual contributors. To avoid penalizing schools through artificial and unnecessary limitations placed on the pool of available workers, DOJ must issue clear guidance on what conditions, if any, exist on Learfield IMG's ability to impose post-employment restrictions or otherwise impede its current employees' future participation in the labor market.[2]

[2] If DOJ's settlement with Learfield IMG did address employment issues, in addition to disclosing the existing terms, DOJ should amend its Final Judgment to include a "personal exception" clarifying that IMG Learfield employees may communicate in their personal capacities with other MMR providers about future employment opportunities. Because of the adverse impact that restrictive covenants have on customer schools, DOJ should also reconsider any term of settlement which permits Learfield IMG to impose unnecessary post-employment restrictions on its current employees.

C. DOJ should disclose all terms related to its process for vetting joint ventures.

The proposed Final Judgment requires DOJ's consent for the extension of any joint ventures involving Learfield IMG; however, the proposed Final Judgment and other Tunney Act disclosures provide no information on how the required approval process will work. DOJ provides no guidance or information on the expected length of the approval process, the criteria for approval/rejection, or whether other non-Learfield IMG joint venture participants may separately request that DOJ approve a continuation of a joint venture. And, because the proposed Final Judgment prohibits Learfield IMG from communicating with competitors about future business opportunities, non-Learfield IMG MMR joint venture partners arguably cannot even ask Learfield IMG to request an extension of a joint venture. DOJ should disclose any terms related to the contemplated process through which market participants who are joint venture partners with Learfield IMG may request an extension of an existing joint venture and should clarify the expected length of time and criteria for approval so that innocent market participants can adequately plan to preserve future business opportunities.[3]

* * *

JMIS appreciates DOJ's consideration of its concerns. JMIS notes that it has cooperated throughout DOJ's investigation of the proposed merger by providing requested information. DOJ's investigation and requests have imposed significant costs on a small business already facing disadvantages of scale in comparison to the much larger Learfield IMG entity. For these reasons, JMIS respectfully asks that DOJ carefully consider its requests. Thank you for your consideration in this matter and please do not hesitate to contact me with any questions or concerns.

Sincerely,

s/Michael Ferrara

Michael Ferrara

Cc: Patrick Hagan, Esq.
Jason Sims, Esq.
Lisa Tenorio-Kutzkey, Esq.

[3] Just as the marketplace is speculating about whether additional conditions exist, there are also questions about whether DOJ considered taking action to limit or terminate contracts in which IMG and Learfield entered into joint ventures with each other before their merger. *Compare* Competitive Impact Statement, ECF No. 3 at page 3 (stating that IMG Learfield's anti-competitive behavior included joint ventures between IMG and Learfield "at specific universities" "to limit competition between one another") *with* Proposed Final Judgment, ECF No. 2-1 at pages 4-5 (limiting remedies to limitations on future conduct relating to new business opportunities). As DOJ has apparently concluded that both universities and innocent market participants were harmed by this anti-competitive conduct, DOJ should explain any relevant conditions or remedies it imposed to unwind the past anti-competitive harm of this conduct in its settlement with Learfield IMG.

Exhibit B

John H. Raleigh
Chief Legal Officer

Learfield

December 27, 2018

By Electronic Delivery
Makan Delrahim, Esq.
Assistant Attorney General
United States Department of Justice
Antitrust Division
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

Re: ***Learfield Communications / IMG College***

SUBJECT TO FRE 408

Dear Makan:

We hereby firmly commit to implement the following changes immediately upon closing:

1. IMG College and Learfield will irrevocably waive all non-compete, non-solicitation, and non-interference provisions in current employee agreements for (i) all IMG College employees and (ii) property-level Learfield employees.

2. IMG College and Learfield will irrevocably waive all non-solicitation/non-interference provisions in current MMR agreements that prohibit schools from hiring IMG College or Learfield property-level employees.

3. IMG College and Learfield will irrevocably waive any exclusive negotiating periods ("rights of first negotiation") during which a school is prohibited from negotiating with third parties regarding its MMR included in current MMR agreements.

4. IMG College and Learfield will irrevocably waive, to the extent they exist, any rights to match subsequent offers received by schools ("rights of first refusal") contained in current MMR agreements.

5. IMG College and Learfield will irrevocably grant Group of Five schools the right to trigger a market assessment ("Market Check") of the financial terms of the then-remaining term of the school's current MMR agreement with IMG College or Learfield after 70% of the contract's duration has completed.

As discussed with the Division, IMG College and Learfield will implement the following irrevocable changes immediately upon closing through the following mechanisms:

Learfield Communications, LLC, 2400 Dallas Parkway, Plano, TX Tel. (469) 241-9191 Ext. 1862 Email: jraleigh@learfield.com

Mr. Makan Delrahim, Esq.
December 27, 2018
Page 2

1. IMG College and Learfield will send irrevocable waiver notices to current IMG College and property-level Learfield employees waiving all non-compete, non-solicitation, and non-interference provisions in their current employment agreements.

2. IMG College and Learfield will enter into an Agreement Regarding Waiver of Rights between IMG College, LLC, Learfield Communications, LLC, Atairos Group, Inc., and WME Entertainment Parent, LLC (the "Waiver Agreement") that irrevocably waives compliance with the restrictive covenants listed above. The Waiver Agreement ensures that schools are able to enforce these commitments by making schools third party beneficiaries to this agreement.

3. IMG College and Learfield will enter into an Agreement Regarding Unilateral Grant of "Market Check" between IMG College, LLC, Learfield Communications, LLC, Atairos Group, Inc., and WME Entertainment Parent, LLC (the "Market Check Agreement") that irrevocably bestows the right of a market assessment to Group of Five schools, as described on page 1 of this letter. The Market Check Agreement ensures that schools are able to enforce this right by making schools third party beneficiaries to this agreement.

4. IMG College and Learfield will send irrevocable waiver notices to schools to notify them of the waived provisions in their current MMR agreements.

5. IMG College and Learfield will send irrevocable notices to current Group of Five schools to notify them of their right to a Market Check.

Please don't hesitate to reach out if you have any comments or questions.

Sincerely,

John H. Raleigh

Learfield Communications, LLC, 2400 Dallas Parkway, Plano, TX Tel. (469) 241-9191 Ext. 1862 Email: jraleigh@learfield.com

[FR Doc. 2020–02586 Filed 2–7–20; 8:45 am]
BILLING CODE 4410–11–C

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on January 28, 2020, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), IMS Global Learning Consortium, Inc. (''IMS Global'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Convergence, Markham, CANADA; Curriki, Chicago, IL; EdGate Correlation Service, LLC, Gig Harbor, WA; Kentucky Department of Education, Frankfort, KY; State University of New York, Albany, NY; VidGrid, Saint Paul, MN; and Xtremelabs LLC, Redmond, WA; have been added as parties to this venture.

Also, Motivis Learning, Salem, NH; BNED LoudCloud, LLC, New York, NY; Colorado State University Online, Fort Collins, CO; New York City Department of Education, Brooklyn, NY; Trinity Education Group, Highland, MD; and Brigham Young University-Idaho, Rexburg, ID, have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project.

Membership in this group research project remains open and IMS Global intends to file additional written notifications disclosing all changes in membership.

On April 7, 2000, IMS Global filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on November 5, 2019. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on November 18, 2019 (84 FR 63678).

Suzanne Morris,

Chief, Premerger and Division Statistics Unit, Antitrust Division.

[FR Doc. 2020–02544 Filed 2–7–20; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting

TIME AND DATE: 2:00 p.m. Wednesday, February 19, 2020.

PLACE: U.S. Parole Commission, 90 K Street NE, 3rd Floor, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: Approval of April, May, June, July, August, September, October, November and December 2019 minutes; Reports from the Vice Chairman, Commissioners and Senior Staff.

CONTACT PERSON FOR MORE INFORMATION: Jacqueline Graham, Staff Assistant to the Chairman, U.S. Parole Commission, 90 K Street NE, 3rd Floor, Washington, DC 20530, (202) 346–7010.

Dated: February 5, 2020.

Patricia K. Cushwa,

Acting Chairperson, U.S. Parole Commission.

[FR Doc. 2020–02666 Filed 2–6–20; 11:15 am]

BILLING CODE 4410–31–P

DEPARTMENT OF LABOR

Office of the Secretary

Senior Executive Service; Appointment of Members to the Performance Review Board

Title 5 U.S.C. 4314(c)(4) provides that Notice of the Appointment of the individual to serve as a member of the Performance Review Board of the Senior Executive Service shall be published in the **Federal Register**.

The following individuals are hereby appointed to serve on the Department's Performance Review Board:

Permanent Membership

Chair—Deputy Secretary

Vice-Chair—Assistant Secretary for Administration and Management

Alternate Vice-Chair—Chief Human Capital Officer

Rotating Membership—

Appointments Expire on 09/30/21

BLS Nancy Ruiz De Gamboa, Associate Commissioner for Administration

EBSA Amy Turner, Deputy Assistant Secretary

ETA Nicholas Lalpuis, Regional Administrator, Dallas

ILAB Martha Newton, Deputy Undersecretary for International Affairs

MSHA Patricia Silvey, Deputy Assistant Secretary

OASAM Geoffrey Kenyon, Deputy Assistant Secretary for Budget

OLMS Stephen Willertz, Director, Office of Field Operations

OSHA Galen Blanton, Regional Administrator, Boston

OSHA Loren Sweatt, Principal Deputy Assistant Secretary

SOL Kate O'Scannlain, Solicitor of Labor

VETS Ivan Denton, Director, National Programs

WHD Patrice Torres, Associate Director, Administrative Operations

Rotating Membership—

Appointment Expires on 09/30/23

ETA Debra Carr, Deputy Administrator, Office of Job Corps

For Further Information Contact: Mr. Demeatric Gamble, Chief, Division of Executive Resources, Room N2453, U.S. Department of Labor, Frances Perkins Building, 200 Constitution Ave. NW, Washington, DC 20210, telephone: (202) 693–7694.

Signed at Washington, DC, on the 1st day of February 2020.

Bryan Slater,

Assistant Secretary for Administration and Management.

[FR Doc. 2020–02525 Filed 2–7–20; 8:45 am]

BILLING CODE 4510–04–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0053]

Nationally Recognized Testing Laboratories; Proposed Policy for Transitioning to Satellite Notification and Acceptance Program (SNAP) Termination

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA proposes a policy for transitioning to the termination of the Satellite Notification and Acceptance Program (SNAP).

DATES: Submit comments, information, and documents in response to this notice, on or before March 11, 2020. All submissions must bear a postmark or provide other evidence of the submission date.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at: *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2007–0053, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3653, 200 Constitution Avenue NW, Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Docket Office's normal business hours, 10:00 a.m. to 3:00 p.m., ET. Note that security procedures may result in significant delays in receiving comments and other written materials by regular mail.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the above address. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index under Docket number OSHA–2007–0053; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through

the website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

Instructions: All submissions must include the agency name and OSHA docket number (OSHA–2007–0053). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor by phone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, phone: (202) 693–2110 or email: *robinson.kevin@dol.gov.*

Copies of this ***Federal Register*** *notice:* Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This **Federal Register** notice, as well as other relevant information, is also available on OSHA's web page at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Nationally Recognized Testing Laboratories (NRTL) Program

Many of OSHA's safety standards require employers to use products tested and certified as safe (*e.g.,* 29 CFR 1910, subpart S). In general, testing laboratories, and not employers, perform the required testing and certification. To ensure that the testing and certification performed on products is appropriate, OSHA implemented the NRTL Program. This program establishes the criteria that a testing laboratory must meet to achieve, and retain, NRTL recognition.

OSHA recognition of a NRTL signifies that the organization meets the legal requirements specified in 29 CFR 1910.7, the regulatory provision containing the requirements an organization must meet to become a NRTL and retain NRTL status. Recognition is an acknowledgment by OSHA that the organization can perform independent safety testing and certification of the specific products covered within the organization's scope of recognition, and is not a delegation or grant of government authority. Recognition under the NRTL Program, therefore, enables employers to use products approved by NRTLs to meet OSHA standards that require product testing and certification.

Each NRTL is approved for a scope of recognition, which identifies: (a) The type of products the NRTL may approve; and (b) the NRTL's ''recognized sites.'' The requirements for NRTL recognition are outlined in the NRTL Program Regulation at 29 CFR 1910.7 and Appendix A to that regulation.

B. NRTL Program Directive

The NRTL Program Directive sets forth OSHA policies, procedures, and interpretations that supplement and clarify the NRTL Program regulation, 29 CFR 1910.7 and Appendix A (NRTL Program Policies, Procedures and Guidelines, CPL 01–00–004, available at *https://www.osha.gov/sites/default/files/enforcement/directives/CPL_01-00-004.pdf*). OSHA recently revised the NRTL Program Directive, on October 1, 2019.

The revised NRTL Program Directive contains a revised definition of ''recognized site.'' To be recognized, ''a site must be administratively and operationally controlled by the NRTL and must perform at least one of the following functions: Testing and inspection (and/or accepting test data or inspections), performing reviews, or making certification decisions with the NRTL management system'' (NRTL Program Directive, Annex C). In revising the definition, OSHA eliminated ownership requirements contained in the prior definition of recognized site (Id., Ch. 1.IX.D). Thus, to be a recognized site, the site no longer has to be owned by the NRTL.

Prior to issuing the revised NRTL Program Directive (CPL–01–004), OSHA permitted NRTLs use a number of different supplemental programs in order to use the services of other facilities to test and certify products used in the workplace (60 FR 12980, 74 FR 923). One of these supplemental programs was Supplemental Program 10, SNAP, that was implemented on May 11, 2009 (74 FR 923) and permitted NRTLs to perform certain functions to support testing and certification operations at ''SNAP sites.'' Under SNAP, a NRTL had to have administrative and operational control over the NRTL's SNAP sites. However, the majority of SNAP sites could not be ''recognized sites'' because of the ownership requirements that were then contained in the definition of recognized sites in the old NRTL Directive (*i.e.,* a majority of the sites could not be ''recognized sites'' because they were not owned by the NTRLs).

OSHA terminated all the supplemental programs, including SNAP, in the revised NRTL Program Directive (Ch. 1.IX.B, D). SNAP is no longer necessary because the revised definition of ''recognized site'' permits OSHA to recognize sites that are administratively and operationally controlled by the NRTL but not necessarily owned by the NRTL. As OSHA noted in the revised Directive, NRTLs will now be able to apply to OSHA to make existing SNAP sites recognized sites (Id.).

C. Revised NRTL Program Directive Implementation Memorandum

After issuing the revised NRTL Program Directive, OSHA issued a policy memorandum on the transition from the prior version to the current version of the NRTL Program Directive (available at *https://www.osha.gov/dts/otpca/nrtl/NRTLDirectiveTransitionMemo.html*). A portion of that policy memorandum pertains to existing NRTLs applying for expansion of recognition and provides:

- Existing NRTLs (each organization OSHA recognized as a NRTL on October 1, 2019) must comply with the requirements of the revised NRTL Program Directive no later than October 1, 2020. Existing NRTLs may comply with the requirements of the prior NRTL Directive (CPL–01–00–003) until September 30, 2020.
- OSHA will evaluate pending expansion applications for existing NRTLs under the prior NRTL Program Directive to the extent final decisions on those applications are published in the **Federal Register** prior to October 1, 2020. Assuming OSHA grants the expansion application, the NRTL will need to be in full compliance with the revised NRTL Program Directive, with respect to the NRTL's entire scope of recognition, no later than October 1, 2020. For example, if OSHA publishes a final decision on an expansion application in the **Federal Register** on September 30, 2020, then the NRTL will have to be in full compliance with the revised NRTL Program Directive, with respect to the NRTL's entire scope of recognition, no later than October 1, 2020.
- OSHA will evaluate pending expansion applications for existing NRTLs under the revised NRTL Program Directive to the extent final decisions on those applications are published in the **Federal Register** on or after October 1, 2020. Depending on the status of the application, OSHA may, in the discretion of the agency, waive certain

fees associated with the application to the extent accrual of those fees are due solely to OSHA's transition to the revised NRTL Program Directive. Assuming OSHA grants the expansion application, the NRTL will need to be in compliance with the revised NRTL Program Directive with respect to the NRTL's expanded scope immediately (*i.e.,* on the date the final decision on the expansion application is published in the **Federal Register**).

• Audits and assessments of existing NRTLs conducted on or after October 1, 2019, will be conducted under the revised NRTL Program Directive. However, until October 1, 2020, items that OSHA would normally note as nonconformances with the revised NRTL Program Directive requiring timely response and correction will be noted as observations or long term corrective actions. While such observations and long term corrective actions will not require a response and correction in connection with the relevant audit or assessment, existing NRTLs will need to comply with the revised NRTL Program Directive no later than October 1, 2020.

II. OSHA's Proposed Transition Policy

OSHA recognizes that immediate termination of the SNAP may cause an undue burden on some NRTLs with existing SNAP sites. OSHA therefore proposes the following policy to permit a smooth transition to SNAP termination for NRTLs with existing SNAP sites. Although OSHA is not required by the Administrative Procedures Act, 5 U.S.C. 551, *et seq.,* to engage in notice and comment rulemaking procedures prior to the adoption and implementation of this proposed policy, OSHA is requesting public comment regarding the proposed policy in order to gain input and insight from interested parties.

OSHA notes that, as of October 1, 2019 (the date OSHA issued the revised NRTL Program Directive), in accordance with current OSHA policy, OSHA will reject any application submitted by a NRTL or NRTL applicant-organization to be recognized for any of the previous supplemental programs, including SNAP. Under the proposed policy, SNAP would be entirely terminated one year after the date of publication of the **Federal Register** notice announcing OSHA's final decision on this proposed policy. Prior to that time, if a NRTL with existing SNAP sites followed the proposed procedures described in this Notice, that NRTL could continue to perform SNAP activities at the NRTL's existing SNAP sites (for a period, or periods, that would be established by this proposed policy, and ending no later than one year after the date of publication of the **Federal Register** notice announcing OSHA's final decision on this proposed policy). OSHA notes that the policies proposed in this Notice would supersede the policies contained in the Revised NRTL Program Directive Implementation Memorandum (discussed above), to the extent there is a conflict.

Proposed Procedures for the Conversion of Existing SNAP Sites to Recognized Sites and the Interim Performance of SNAP Activities at SNAP Sites. OSHA proposes the following procedures to allow for the conversion of existing SNAP sites to NRTL-recognized sites under 29 CFR 1910.7 and the interim performance of SNAP activities at SNAP sites:

1. *Preconditions of Eligibility.* To meet the preconditions of eligibility, a NRTL would need to:

a. Submit to OSHA a list of the NRTL's existing SNAP sites no later than the 30th day after the date of publication of the **Federal Register** notice announcing OSHA's final decision on this proposed policy. For each SNAP site listed, a NRTL would need to include the date the SNAP site was approved by the NRTL.

b. Not designate any new SNAP sites after submitting to OSHA the list of existing SNAP sites.

c. Submit to OSHA an application for scope expansion (*i.e.,* to convert existing SNAP sites to recognized sites) no later than the 60th day after the date of publication of the **Federal Register** notice announcing OSHA's final decision on this proposed policy.

d. Include in the scope expansion application a list of the SNAP sites the NRTL wants converted to recognized sites. The NRTL would be permitted to include in the scope expansion application list only those SNAP sites the NRTL also included in the list of SNAP sites it submitted to OSHA by the 30th day after the date of publication of the **Federal Register** notice announcing OSHA's final decision on this proposed policy.

e. Specify that it wants the scope expansion application processed under the proposed procedures described here.

f. Submit to OSHA all required application fees as outlined in the Revised NRTL Schedule of Fees. See *https://www.osha.gov/dts/otpca/nrtl/nrtlfees.html.* The following fees would need to accompany the scope expansion application: $2,490 for the Expansion application—Limited review; and $2,490 for each site for which the NRTL seeks recognition. (Other fees would be invoiced as necessary (for example the $3,180 fee for a **Federal Register** notice application, and fees for onsite assessments, if conducted)).

g. At a minimum, submit to OSHA, for each SNAP site listed in the application, the following historical assessment records and supporting documentation:

i. The NRTL functions performed at the SNAP site (testing, certification—audits of testing laboratories);

ii. Copies of any audit or other reports of, or about, the SNAP site generated (either internally (*e.g.,* by the NRTL) or externally (*e.g.,* by OSHA or other accreditor)) in connection with any audits, assessments, or other investigations conducted (a) by OSHA, the NRTL, any other entity, and (b) within the 30 months preceding the date of publication of the **Federal Register** notice announcing OSHA's final decision on this proposed policy;

iii. Supporting Documentation that shows (a) what was reviewed during any audits, assessments, or other investigations of the SNAP site conducted by OSHA, the NRTL, any other entity within the NRTL's organizational structure, or any other investigative body, and within the 30 months preceding the date of publication of the **Federal Register** notice announcing OSHA's final decision on this proposed policy, (b) any nonconformances identified during these audits, assessments, or investigations, and (c) a root cause analysis of these nonconformances; and

iv. An organizational chart for the SNAP site identifying leadership and employees involved with NRTL-related work activities.

2. *Continued Performance of SNAP Activities at Existing SNAP Sites Contingent on Timely Submission of Documents.*

a. If a NRTL fails to timely submit to OSHA a list of the NRTL's existing SNAP sites (by the 30th day after the date of publication of the **Federal Register** notice announcing OSHA's final decision on this proposed policy), the NRTL would be required to cease performing SNAP activities at all of the NRTL's existing SNAP sites on the 31st day after the date of publication of the **Federal Register** notice announcing OSHA's final decision on this proposed policy.

b. If a NRTL timely submits to OSHA a list of the NRTL's existing SNAP sites (by the 30th day after the date of publication of the **Federal Register** notice announcing OSHA's final decision on this proposed policy), but that list does not contain all of the NRTL's existing SNAP sites, the NRTL would be required to cease performing

SNAP activities at existing SNAP sites not contained in the list on the 31st day after the date of publication of the **Federal Register** notice announcing OSHA's final decision on this proposed policy.

c. If a NRTL timely submits to OSHA a list of the NRTL's existing SNAP sites (by the 30th day after the date of publication of the **Federal Register** notice announcing OSHA's final decision on this proposed policy), but does not submit to OSHA a timely application to convert the existing SNAP sites in the list to recognized sites (by the 60th day after the date of publication of the **Federal Register** notice announcing OSHA's final decision on this proposed policy), then the NRTL would be required to cease performing SNAP activities at all of the NRTL's existing SNAP sites no later than the 61st day after the date of publication of the **Federal Register** notice announcing OSHA's final decision on this proposed policy.

d. If a NRTL timely submits to OSHA a list of the NRTL's existing SNAP sites (by the 30th day after the date of publication of the **Federal Register** notice announcing OSHA's final decision on this proposed policy), and then submits to OSHA a timely application to convert only some of the existing SNAP sites in the list to recognized sites (by the 60th day after the date of publication of the **Federal Register** notice announcing OSHA's final decision on this proposed policy), then the NRTL would be required to cease performing SNAP activities at SNAP sites that the NRTL did not list in the application no later than the 61st day after the date of publication of the **Federal Register** notice announcing OSHA's final decision on this proposed policy.

e. OSHA might allow for short extensions of these time limits, at the discretion of the agency, and if good cause is shown by the NRTL.

3. *Effect of Meeting the Preconditions of Eligibility.* If a NRTL meets all the preconditions of eligibility for a SNAP site, it would be entitled to the following:

a. *Potential Streamlined Conversion.* OSHA typically performs onsite assessments in connection with site expansion requests. However, OSHA might, at the discretion of the agency, opt not to do so with respect to SNAP sites that meet the preconditions of eligibility. Appendix A to the NRTL Program Regulation, 29 CFR 1910.7, provides that, in reviewing expansion applications, OSHA shall, as necessary, conduct an on-site review of the testing facilities of the applicant, and may decide not to conduct an on-site review, where the substantive scope of the request to expand recognition is closely related to the current area of recognition. Consistent with Appendix A, OSHA would make determinations as to whether on-site reviews are necessary on a case-by-case basis.

b. Interim Performance of SNAP Activities at SNAP Sites. NRTLs would be permitted to continue performing SNAP functions, but only at the SNAP sites that are listed in the NRTL's application and that meet the preconditions of eligibility, and only for the time period(s) permitted by these proposed procedures.

4. Review of Applications.

a. To the extent SNAP sites in an application meet the preconditions of eligibility, OSHA would review that application, or portion of application, in accordance with the NRTL Program regulation, 29 CFR 1910.7, Appendix A to that regulation, the Revised NRTL Program Directive Implementation Memorandum, discussed above, and these proposed SNAP conversion procedures, to determine the capability of the SNAP site to operate as a NRTL-recognized site. OSHA would base this determination on the documentation submitted with the application, historical on-site assessments of the NRTL's SNAP Sites and SNAP Headquarters, and any other factors it deems relevant, including, for example, the conduct of an on-site assessment(s), if deemed necessary.

b. In reviewing applications, or portions of applications, concerning SNAP sites that do not meet the preconditions of eligibility, OSHA would follow normal site expansion procedures, including the conduct of on-site assessments. NRTLs should consult the NRTL Program regulation, 29 CFR 1910.7, Appendix A to that regulation, and the Revised NRTL Program Directive Implementation Memorandum, discussed above, for the procedures that OSHA would follow with respect to these SNAP sites.

5. *Opportunity to Respond (Discretionary) for NRTLs That Specify in Their Scope Expansion Applications That They Want Their Applications Processed Under the Proposed Procedures Described.* Although a NRTL timely submits to OSHA a list of the NRTL's existing SNAP sites (by the 30th day after the date of publication of the **Federal Register** notice announcing OSHA's final decision on this proposed policy), and then submits to OSHA a timely application to convert all or some of the NRTL's existing SNAP sites in the list to recognized sites (by the 60th day after the date of publication of the **Federal Register** notice announcing OSHA's final decision on this proposed policy), the NRTL might not meet one or more of the other preconditions of eligibility for some or all of the SNAP sites listed in the application. For example, a NRTL might fail to submit to OSHA the required historical assessments or supporting documentation for one or more of the SNAP sites listed in an application. In addition, to make a determination on an application, OSHA might require further information or clarification, in addition to the information that would be required by the preconditions of eligibility. Therefore, after conducting a review of a scope expansion application in which a NRTL specifies that it wants the application processed under the proposed procedures described here (Precondition of Eligibility (e)), OSHA might, at the discretion of the agency, give the NRTL 15 days to provide clarification or missing information.

a. If OSHA receives a timely response from the applicant (within 15 days), or a timely written request for an extension (within 15 days) and subsequent response within the time permitted for extension (if the request for extension is granted), OSHA would recommend a positive or negative finding on the application.

b. Alternatively, OSHA would treat the application as a normal site expansion application, outside of these proposed procedures, if the NRTL requested in a timely-filed response that the application be treated as such. At this point (when the NRTL made the request), the NRTL would be required to immediately cease performing SNAP activities at the SNAP sites listed in the application.

c. If OSHA does not receive a timely response, or a timely request for an extension and subsequent response within the time permitted for extension (if granted), it would consider the application withdrawn.

6. *Effect of a Negative Finding on an Application.* If a negative finding is issued, the NRTL would have an opportunity (a) to withdraw the application, (b) revise the application (for example, to remove from the application those sites OSHA staff considers non-compliant, or to indicate that OSHA should process the application as a traditional application for site expansion rather than under these proposed procedures), or (c) request that the original application be forwarded to the Assistant Secretary for Occupational Safety and Health, as outlined in Appendix A to the NRTL Program regulation, 29 CFR 1910.7.

7. *Effect of Withdrawal of an Application Meeting the Preconditions of Eligibility.* If the application is withdrawn by the applicant or considered withdrawn by OSHA, the NRTL would be required to immediately cease performing SNAP activities at the SNAP sites that were listed in the withdrawn application and met the preconditions of eligibility. While the NRTL could still apply to have these sites included in the NRTL's scope of recognition, OSHA would follow normal site expansion procedures, including the conduct of on-site assessments, for any such applications.

8. *Effect of the Revision of an Application Meeting the Preconditions of Eligibility.* If the applicant revises the application to remove from the application individual SNAP sites listed in the application, the NRTL would be permitted to continue to perform SNAP activities only at those SNAP sites that remain in the application and meet the preconditions of eligibility. The applicant would be required to immediately cease performing SNAP activities at SNAP sites no longer in the application. While the NRTL could still apply for recognition of any sites removed from the application, OSHA would follow normal site expansion procedures, including the conduct of on-site assessments, for any such applications.

9. *Effect of Final Decision on Application Meeting the Preconditions of Eligibility.* Once a final decision is made regarding the capability of a SNAP site to operate as a NRTL-recognized site, this decision would be published in the **Federal Register**, upon which time the NRTL would be required to immediately cease performing SNAP activities at the SNAP sites that were listed in the application and met the preconditions of eligibility.

10. *Termination of the SNAP Entirely.* A NRTL would be required to cease performing SNAP activities at existing SNAP sites that were listed in the application and met the preconditions of eligibility one year after the date of publication of the **Federal Register** notice announcing OSHA's final decision on this proposed policy. This would be the case even if OSHA does not issue a final decision on the NRTL's application by that date. The SNAP would be entirely terminated one year after the date of publication of the **Federal Register** notice announcing OSHA's final decision on this proposed policy.

11. *Potential Extension of SNAP Termination Date.* OSHA might, at the discretion of the agency, extend the SNAP termination date. OSHA notes that it would not extend the termination date because final decisions on some applications could not be issued on a streamlined basis. OSHA would not be able to issue a final decision on a streamlined basis, for example, if it determines that it needs to conduct an on-site assessment or a negative finding is issued in connection with an application. An extension of the SNAP termination date based on these time-intensive issues would not be justified.

OSHA requests comment on this proposed policy. Comments should consist of pertinent written documents and exhibits. OSHA will review all comments submitted to the docket in a timely manner, and, after considering the issues raised by these comments, will make a recommendation to the Assistant Secretary for Occupational Safety and Health regarding this proposed policy for transitioning to the termination of SNAP, who will then make a final decision.

OSHA will publish a public notice of this final decision in the **Federal Register**.

IV. Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2)), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on February 4, 2020.

Loren Sweatt,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2020–02564 Filed 2–7–20; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30am, Tuesday, February 25, 2020

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW, Washington, DC 20594.

STATUS: The one item is open to the public.

MATTERS TO BE CONSIDERED:

59775 Highway Accident Report—*Collision Between a Sport Utility Vehicle Operating With Partial Driving Automation and a Crash Attenuator, Mountain View, California, March 23, 2018* (HWY18FH011)

CONTACT PERSON FOR MORE INFORMATION: Candi Bing at (202) 314–6403 or by email at *bingc@ntsb.gov.*

Media Information Contact: Christopher O'Neil by email at *christopher.oneil@ntsb.gov* or at (202) 314–6100.

The press and public may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting specific accommodations should contact Rochelle McCallister at (202) 314–6305 or by email at *Rochelle.McCallister@ntsb.gov* by Wednesday, February 19, 2020.

The public may view the meeting via a live or archived webcast by accessing a link under ''News & Events'' on the NTSB home page at *www.ntsb.gov.*

Schedule updates, including weather-related cancellations, are also available at *www.ntsb.gov.*

The National Transportation Safety Board is holding this meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b).

Dated: February 6, 2020.

LaSean R. McCray,

Alternate Federal Register Liaison Officer.

[FR Doc. 2020–02722 Filed 2–6–20; 4:15 pm]

BILLING CODE 7533–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2020–93 and CP2020–92]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* February 12, 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. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3007.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3010, and 39 CFR part 3020, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2020–93 and CP2020–92; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 141 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* February 4, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3020.30 *et seq.,* and 39 CFR 3015.5; *Public Representative:* Curtis E. Kidd; *Comments Due:* February 12, 2020.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2020–02588 Filed 2–7–20; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* February 10, 2020.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on February 4, 2020, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 141 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2020–93, CP2020–92.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2020–02501 Filed 2–7–20; 8:45 am]

BILLING CODE 7710–12–P

RAILROAD RETIREMENT BOARD

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., February 19, 2020

PLACE: 8th Floor Board Conference Room, 844 North Rush Street, Chicago, Illinois, 60611

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

1. Necessity of mandatory specialized consultative exams for disability adjudication
2. Report from the Director of Programs and the Director of Disability on possible procedural improvements to the disability process
3. Discussion of next steps regarding NRRIT following Segal Marco Advisers review

CONTACT PERSON FOR MORE INFORMATION: Stephanie Hillyard, Secretary to the Board, Phone No. 312–751–4920.

Authority: 5 U.S.C. 552b.

Dated: February 6, 2020.

Stephanie Hillyard,

Secretary to the Board.

[FR Doc. 2020–02728 Filed 2–6–20; 4:15 pm]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–88118; File No. SR–NYSENAT–2019–31]

Self-Regulatory Organizations; NYSE National, Inc.; Notice of Withdrawal of a Proposed Rule Change To Establish Fees for the NYSE National Integrated Feed

February 4, 2020.

On December 4, 2019, NYSE National, Inc. (''NYSE National'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish fees for the NYSE National Integrated Feed. The proposed rule change was immediately effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act.[3] The proposed rule change was published for comment in the **Federal Register** on December 26, 2019.[4] The Commission received two comment letters on the proposal.[5] On January 31, 2020, the Commission issued an order temporarily suspending the proposed rule change pursuant to Section 19(b)(3)(C) of the Act[6] and simultaneously instituting proceedings under Section 19(b)(2)(B) of the Act[7] to determine whether to approve or disapprove the proposed rule change.[8] On February 3, 2020, the Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] *See* Securities Exchange Act Release No. 87797 (December 18, 2019), 84 FR 71025.

[5] *See* letters to Vanessa Countryman, Secretary, Commission, from Tyler Gellasch, Executive Director, The Healthy Markets Association, dated January 16, 2020; and Robert Toomey, Managing Director and Associate General Counsel, Securities Industry and Financial Markets Association, dated January 21, 2020.

[6] 15 U.S.C. 78s(b)(3)(C).

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Securities Exchange Act Release No. 88109.

withdrew the proposed rule change (SR–NYSENAT–2019–31).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–02523 Filed 2–7–20; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: 2:00 p.m. on Wednesday, February 12, 2020.

PLACE: The meeting will be held at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at *https://www.sec.gov.*

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matters of the closed meeting will consist of the following topics:

Institution and settlement of injunctive actions;
Institution and settlement of administrative proceedings;
Litigation matters;
Resolution of litigation claims; and
Other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

CONTACT PERSON FOR MORE INFORMATION: For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: February 5, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–02649 Filed 2–6–20; 11:15 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 11023]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition—Determinations: "Cézanne: The Rock and Quarry Paintings" Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in the exhibition ''Cézanne: The Rock and Quarry Paintings,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Princeton University Art Museum, Princeton, New Jersey, from on or about March 7, 2020, until on or about June 14, 2020, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Paralegal Specialist, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000.

Matthew R. Lussenhop,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2020–02581 Filed 2–7–20; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 11028]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition—Determinations: "Alexander von Humboldt and the United States: Art, Nature, and Culture" Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in the exhibition ''Alexander von Humboldt and the United States: Art, Nature, and Culture,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Smithsonian American Art Museum, Washington, District of Columbia, from on or about March 20, 2020, until on or about August 16, 2020, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Paralegal Specialist, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000.

Matthew R. Lussenhop,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2020–02583 Filed 2–7–20; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 11029]

Notice of Determinations; Culturally Significant Objects Imported for Exhibition—Determinations: ''El Greco: Ambition and Defiance'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects to be included in the exhibition ''El Greco: Ambition and Defiance,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Art Institute of Chicago, Chicago, Illinois, from on or about March 7, 2020, until on or about June 21, 2020, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Paralegal Specialist, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, SA–5, Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000.

Matthew R. Lussenhop,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2020–02578 Filed 2–7–20; 8:45 am]

BILLING CODE 4710–05–P

SURFACE TRANSPORTATION BOARD

[Docket No. EP 290 (Sub-No. 4)]

Railroad Cost Recovery Procedures—Productivity Adjustment

AGENCY: Surface Transportation Board.

ACTION: Presentation of the Board's calculation for the change in railroad productivity for the 2014–2018 averaging period.

SUMMARY: In a decision served on February 6, 2020, the Board proposed to adopt 1.010 (1.0% per year) as the measure of average (geometric mean) change in railroad productivity for the 2014–2018 (five-year) period. This represents an increase of 0.5% from the average for the 2013–2017 period. The Board's February 6, 2020 decision in this proceeding stated that comments may be filed addressing any perceived data and computational errors in the Board's calculation. The decision also stated that, unless a further order is issued postponing the effective date, this decision will take effect on March 1, 2020.

DATES: Comments are due by February 21, 2020.

ADDRESSES: Comments may be filed with the Board either via e-filing or in writing addressed to: Surface Transportation Board, Attn: Docket No. EP 290 (Sub-No. 4), 395 E Street SW, Washington, DC 20423–0001. Comments must be served on all parties appearing on the service list.

FOR FURTHER INFORMATION CONTACT: Pedro Ramirez at (202) 245–0333. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Board's decision is posted at *http://www.stb.gov*. Copies of the decision may be purchased by contacting the Board's Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238.

Authority: 49 U.S.C. 10708.

Decided: February 4, 2020.

By the Board, Board Members Begeman, Fuchs, and Oberman.

Eden Besera,

Clearance Clerk.

[FR Doc. 2020–02568 Filed 2–7–20; 8:45 am]

BILLING CODE 4915–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Designations of Developing and Least-Developed Countries Under the Countervailing Duty Law

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The U.S. Trade Representative is designating World Trade Organization (WTO) Members that are eligible for special *de minimis* countervailable subsidy and negligible import volume standards under the countervailing duty (CVD) law. Elsewhere in this issue of the **Federal Register**, the U.S. Trade Representative is removing the Office of the United States Trade Representative's rulesthat contain the designations superseded by this notice.

DATES: The designations are applicable as of February 10, 2020.

FOR FURTHER INFORMATION CONTACT: David P. Lyons, Assistant General Counsel, at 202–395–9446, or Roy Malmrose, Director for Industrial Subsidies, at 202–395–9542.

SUPPLEMENTARY INFORMATION:

A. General Background

In the Uruguay Round Agreements Act (URAA), Public Law 103–465, Congress amended the CVD law to conform to U.S. obligations under the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement). Under the SCM Agreement, WTO Members that have not yet reached the status of a developed country are entitled to special treatment for purposes of countervailing measures. Specifically, imports from such Members are subject to different thresholds for purposes of determining whether countervailable subsidies are *de minimis* and whether import volumes are negligible.

Under section 771(36) of the Tariff Act of 1930, as amended (the Act), 19 U.S.C. 1677(36), Congress delegated to the U.S. Trade Representative the responsibility for designating those WTO Members whose imports are subject to these special thresholds. In addition, section 771(36)(D) requires the U.S. Trade Representative to publish a list of designations, updated as necessary, in the **Federal Register**. This notice implements the requirements of section 771(36)(D).

On June 2, 1998, the U.S. Trade Representative published an interim final rule (1998 rule) designating Subsidy Agreement countries eligible for special *de minimis* countervailable subsidy and negligible import volume standards under the CVD law. *See* 63 FR 29945. ''Subsidies Agreement country'' is defined in section 701(b) of the Act, 19 U.S.C. 1671(b), and includes countries that are WTO Members. The U.S. Trade Representative is revising the lists in the 1998 rule, as described below, and removing the 1998 rule because it now is obsolete.

B. Explanation of the List

1. Introduction

For purposes of countervailing measures, the SCM Agreement extends special and differential treatment to

developing and least-developed Members in the following manner:

De Minimis Thresholds: Under Article 11.9 of the SCM Agreement, authorities must terminate a CVD investigation if the amount of the subsidy is *de minimis,* which normally is defined as less than 1 percent *ad valorem.* Under Article 27.10(a), however, for a developing Member the *de minimis* standard is 2 percent or less. Consistent with Article 27.11 and section 703(b)(4) of the Act, the 2 percent *de minimis* threshold also now applies to least-developed countries.

Negligible Import Volumes: Under Article 11.9, authorities must terminate a CVD investigation if the volume of subsidized imports from a country is negligible. Under the CVD law, imports from an individual country normally are considered negligible if they are less than 3 percent of total imports of a product into the United States. Imports are not considered negligible if the aggregate volume of imports from all countries whose individual volumes are less than 3 percent exceeds 7 percent of all such merchandise. However, under Article 27.10(b) and section 771(24)(B) of the Act, imports from a developing or least-developed Member are considered negligible if the import volume is less than 4 percent of total imports, unless the aggregate volume of imports from countries whose individual volumes are less than 4 percent exceeds 9 percent.

In the URAA, Congress incorporated into the CVD law the SCM Agreement standards for *de minimis* thresholds and negligible import volumes. Section 703(b)(4)(B)–(D) of the Act, 19 U.S.C. 1671b(b)(4)(B)–(D), incorporates the *de minimis* standards, while section 771(24)(B), 19 U.S.C. 1677(24)(B), incorporates the negligible import standards. However, in the statute itself, Congress did not identify by name those WTO Members eligible for special treatment. Instead, section 267 of the URAA added section 771(36) to the Act, which delegates to the U.S. Trade Representative the responsibility to designate those WTO Members subject to special standards for *de minimis* and negligible import volume. In addition, section 771(36) requires the U.S. Trade Representative to publish in the **Federal Register**, and update as necessary, a list of the Members designated as eligible for special treatment under the CVD law.

The effect of these designations is limited to Title VII of the Act. Specifically, section 771(36)(E) of the Act provides that the fact that a WTO Member is designated in the list as developing or least-developed has no effect on how that Member may be classified with respect to any other law.

2. Data Sources

In making the designations, the U.S. Trade Representative relied on per capita gross national income (GNI) data from the World Bank and trade data from the Trade Data Monitor, which contains official data from national statistical bureaus, customs authorities, central banks, and other government agencies.

3. Designation of WTO Members as Least-Developed Countries

As explained above, the distinction between developing and least-developed countries no longer matters for purposes of the *de minimis* threshold: both are eligible for the same 2 percent rate. Nonetheless, for clarity and consistent with section 771(36) of the Act, this notice separately identifies developing and least-developed countries. The list of WTO Members that are least-developed countries is derived from Annex VII to the SCM Agreement, which describes least-developed countries as those designated by the United Nations (Annex VII(a)) and named in Annex VII(b)), provided the per capita GNP has not reached $1,000 per annum. A number of WTO Members are included on the United Nations list of least-developed countries,[1] and several more are included under Annex VII(b) based upon their GNI per capita at constant 1990 dollars: Côte d'Ivoire, Ghana, Honduras, Kenya, Nicaragua, Nigeria, Pakistan, Senegal, and Zimbabwe.[2]

C. Designation of WTO Members Eligible for 2 Percent *De Minimis* Standard

1. Introduction

Based on section 771(36)(D) of the Act, in determining which WTO Members should be considered as developing and, thus, eligible for the 2 percent *de minimis* standard, the U.S. Trade Representative has considered appropriate economic, trade, and other factors, including the level of economic development of a country (based on a review of the country's per capita GNI) and a country's share of world trade. The U.S. Trade Representative developed the list of Members eligible for the 2 percent *de minimis* standard based on the following criteria: (1) Per capita GNI, (2) share of world trade, and (3) other factors such as Organization for Economic Co-operation and Development (OECD) membership or application for membership, European Union (EU) membership, and Group of Twenty (G20) membership.

2. Per Capita GNI

Similar to the 1998 rule, the U.S. Trade Representative relied on the World Bank threshold separating ''high income'' countries from those with lower per capita GNIs.[3] This means that WTO Members with a per capita GNI below $12,375 were treated as eligible for the 2 percent *de minimis* standard, subject to the other factors described below. Advantages of relying upon the World Bank high income designation include that it is straightforward to apply, based on a recognized GNI dividing line between developed and developing countries for purposes of the world's primary multilateral lending institution, and consistent with the test for beneficiary developing country status set out in the U.S. Generalized System of Preferences statute, section 502(e) of the Trade Act of 1974.

3. Share of World Trade

The U.S. Trade Representative also considered whether countries account for a significant share of world trade and, thus, should be treated as ineligible for the 2 percent *de minimis* standard. In the 1998 rule, the U.S. Trade Representative considered a share of world trade of 2 percent or more to be ''significant'' because of the commitment in the Statement of Administration Action (SAA), approved by the Congress along with the URAA, that Hong Kong, Korea, and Singapore would be ineligible for developing country treatment, and each of these countries accounted for a share of world trade in excess of 2 percent. The U.S. Trade Representative now considers 0.5 percent to be a more appropriate indicator of a ''significant'' share of world trade. According to the most recent available data from 2018,

[1] United Nations World Economic Situation and Prospects (2019), p. 173, available at *https://www.un.org/development/desa/dpad/wp-content/uploads/sites/45/WESP2019_BOOK-ANNEX-en.pdf.*

[2] *See* Doha Ministerial Decision on Implementation-Related Issues and Concerns, WT/MIN(01)17 (November 20, 2001) (specifying that Annex VII(b) is to list Members until their GNP per capita reaches $1,000 in constant 1990 U.S. dollars for three consecutive years; *see also* Updating GNP Per Capita for Members Listed in Annex VII(b) as Foreseen in Paragraph 10.1 of the Doha Ministerial Decision and in Accordance with the Methodology in G/SCM/38, G/SCM/110/Add.16 (May 14, 2019) (circulating updated calculations by the Secretariat).

[3] The 1998 rule used per capita gross national product rather than GNI. The most recent World Bank data set this dividing line at $12,375. *See* New country classifications by income level: 2019–2020, World Bank Data Blog, July 1, 2019, available at *https://blogs.worldbank.org/opendata/new-country-classifications-income-level-2019-2020.*

relatively few countries account for such a large share (*i.e.,* more than 0.5 percent) of world trade, and those that do include many of the wealthiest economies.

For purposes of U.S. CVD law, the U.S. Trade Representative therefore considers countries with a share of 0.5 percent or more of world trade to be developed countries. Thus, Brazil, India, Indonesia, Malaysia, Thailand, and Viet Nam are ineligible for the 2 percent *de minimis* standard, notwithstanding that, based on the most recent World Bank data, each country has a per capita GNI below $12,375.

4. Other Factors

Section 771(36)(D) of the Act contemplates that the U.S. Trade Representative may consider additional factors. To that end, consistent with the 1998 rule, the U.S. Trade Representative took into account EU membership, which indicates a relatively high level of economic development. In addition, under section 771(3) of the Act, the EU may be treated as a single country for purposes of the CVD law and, while uncommon, there have been CVD investigations against merchandise from the European Communities, rather than EU Member States. Because the EU is ineligible for the 2 percent *de minimis* standard, it would be anomalous to treat an individual EU Member as eligible for that standard. Accordingly, for purposes of U.S. CVD law, the U.S. Trade Representative considers all EU Members as developed countries. Thus, Bulgaria and Romania are ineligible for the 2 percent *de minimis* standard, notwithstanding that, based on the most recent World Bank data, each country has a per capita GNI below $12,375.

The U.S. Trade Representative also took into account OECD membership and applications for OECD membership. The characterization of the OECD as a grouping of developed countries has been confirmed throughout its existence in a number of published OECD documents, and the OECD consistently has been viewed as, and acts itself in the capacity of, the principal organization of developed economies worldwide. Thus, by joining or applying to join the OECD, a country effectively has declared itself to be developed. Although the 1998 rule considered OECD membership only, given the significance of this self-designation, the act of applying to the OECD, in addition to joining, indicates that a country is developed. Accordingly, the U.S. Trade Representative has determined that an OECD member or applicant should not be eligible for the 2 percent *de minimis* standard. Thus, Colombia and Costa Rica are ineligible for the 2 percent *de minimis* standard, notwithstanding that, based on the most recent World Bank data, each country has a per capita GNI below $12,375.

The U.S. Trade Representative also took into account G20 membership. The G20 was established in September 1999, and so was not considered in the 1998 rule. The G20 is a preeminent forum for international economic cooperation, which brings together major economies and representatives of large international institutions such as the World Bank and International Monetary Fund. Given the global economic significance of the G20, and the collective economic weight of its membership (which accounts for large shares of global economic output and trade), G20 membership indicates that a country is developed. Thus, Argentina, Brazil, India, Indonesia, and South Africa are ineligible for the 2 percent *de minimis* standard, notwithstanding that, based on the most recent World Bank data, each country has a per capita GNI below $12,375.

The U.S. Trade Representative did not consider social development indicators such as infant mortality rates, adult illiteracy rates, and life expectancy at birth, as a basis for changing a designation. The U.S. Trade Representative did consider that if a country considers itself a developed country, or has not declared itself a developing country in its accession to the WTO, it should not be considered a developing country for purposes of the SCM Agreement. Therefore, Albania, Armenia, Georgia, Kazakhstan, the Kyrgyz Republic, Moldova, Montenegro, North Macedonia, and Ukraine are ineligible for the 2 percent *de minimis* standard, notwithstanding that, based on the most recent World Bank data, each country has a per capita GNI below $12,375.

Furthermore, the 1998 rule omitted WTO Members that in the past had been, or could have been, considered as nonmarket economy countries not subject to the CVD law. Because nonmarket economies may now be subject to CVD law, the lists set forth in this notice do not omit nonmarket economies.

D. Designation of Developed Countries

The 1998 rule included a list of ''developed countries'' that did not qualify as developing or least developed. Because section 771(36) of the Act does not require the U.S. Trade Representative to maintain a list of developed countries, this notice does not include such a list.

E. List of Least-Developed and Developing Countries

In accordance with section 771(36) of the Act, imports from least-developed and developing WTO Members set forth in the following lists are subject to a *de minimis* standard of 2 percent and a negligible import standard of 4 percent:

Least-Developed Countries Under Section 771(36)(B) of the Act

Afghanistan
Angola
Bangladesh
Benin
Burkina Faso
Burundi
Cambodia
Central African Republic
Chad
Côte d'Ivoire
Democratic Republic of the Congo
Djibouti
Gambia
Ghana
Guinea
Guinea-Bissau
Haiti
Honduras
Kenya
Lao People's Democratic Republic
Lesotho
Liberia
Madagascar
Malawi
Mali
Mauritania
Mozambique
Myanmar
Nepal
Nicaragua
Niger
Nigeria
Pakistan
Rwanda
Senegal
Sierra Leone
Solomon Islands
Tanzania
Togo
Uganda
Vanuatu
Yemen
Zambia
Zimbabwe

Developing Countries Under Section 771(36)(A) of the Act

Bolivia
Botswana
Cabo Verde
Cameroon
Cuba
Dominica
Dominican Republic
Ecuador
Egypt
El Salvador

Eswatini
Fiji
Gabón
Grenada
Guatemala
Guyana
Jamaica
Jordan
Maldives
Mauritius
Mongolia
Morocco
Namibia
Papua New Guinea
Paraguay
Peru
Philippines
St. Lucia
St. Vincent & Grenadines
Samoa
Sri Lanka
Suriname
Tajikistan
Tonga
Tunisia
Venezuela

Joseph Barloon,

General Counsel, Office of the U.S. Trade Representative.

[FR Doc. 2020–02524 Filed 2–7–20; 8:45 am]

BILLING CODE 3290–F0–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2020–0141]

Agency Information Collection Activities: Requests for Comments; Clearance of a New Approval of Information Collection: FAA Veteran's Flight Training Services Workforce Development Grant Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for a new information collection. The collection involves the establishment of a new grant program in the FAA for Veteran's Flight Training Services Workforce Development. The information to be collected will be used for selecting projects.

DATES: Written comments should be submitted by April 10, 2020.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By mail: Linda Long, William J. Hughes Technical Center, Atlantic City International Airport, B300, 2nd Floor, Column H–15, Atlantic City, NJ 08405.

By fax: 609–485–4101.

FOR FURTHER INFORMATION CONTACT: Linda Long by email at: *Linda.Long@faa.gov*; phone: 609–485–8902.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–XXXX.

Title: FAA Veteran's Flight Training Services Workforce Development Grant Program.

Form Numbers:

SF–424_2_1–V2.1 Application for Federal Assistance

SF–424A–V1.0 Budget Narrative

SF424B–V1.1, Assurances Non-Construction

Project/Performance Site Location_2_0–V2.0

Project Narrative, Project Narrative Attachments_1_2–V1.2

Attachment Form_1–2–V1.2

SF–LLL_1_2–V1.2, Disclosure of Lobbying Activities

GG Lobbying Form–v1.1, Certification Regarding Lobbying

Key Contacts–V1.0,

SF–272, Federal Cash Transactions

SF–3881, ACH Vendor Payment Enrollment

Type of Review: New information collection.

Background: This is a new collection and is required to retain a benefit from the Federal Aviation Administration's (FAA). The new collection will be conducted for reporting purposes and will assist in the FAA in administering a new Veteran's Flight Training Services Workforce Development Grant Program. As part of the FAA's FY20 appropriation, Congress directed the FAA to use a portion of the appropriation to help facilitate the future supply of adequate pilots and to award competitive grants with a priority given to accredited flight schools by the Department of Education or hold a restricted airline transport pilot letter of authorization. The collection will be conducted by the FAA in applications for grant awards not more frequently than annually with bi-annual final reports from all grant recipients. It will provide critical data on locations where the grant dollars are being used to plan and respond the aircraft pilot workforce shortage. This information will provide the FAA with an indication of where gaps exist in planning for the workforce shortage and will help the FAA determine which projects have the great ability to help address the forecasted aircraft pilot shortage. At a date that is still to be determined, the FAA will post a Notice of Funding Opportunity (NOFO) *www.grants.gov* upon completing the Paperwork Reduction Act's required 30 Day **Federal Register** Notice, Office of Management and Budget (OMB) review period and OMB's final issuance of a Paperwork Reduction Act Clearance number for the program.

Respondents: The FAA estimates approximately 30 respondents from Accredited flight schools by the Department of Education or hold a restricted airline transport pilot letter of authorization.

Frequency: The collection will be conducted by the FAA in applications for grant awards not more frequently than annually with bi-annual and final reports from all grant recipients.

Estimated Average Burden per Response: 4 Hours.

Estimated Total Annual Burden: 360 Hours (4 Hours × 30 respondents × 3 responses per year).

Linda A Long,

Program Manager, Aviation Workforce Development Grant Programs, NextGen Partnership Contracts Branch (ANG–A17).

[FR Doc. 2020–02567 Filed 2–7–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that were placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of these persons were blocked, and U.S. persons were generally prohibited from engaging in transactions with them.

Subsequently, on October 23, 2019, pursuant to a Presidential directive, the names published were removed from OFAC's Specially Designated Nationals and Blocked Persons List and were unblocked.

DATES: See **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: OFAC: Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel. 202–622–4855; or the Department of the Treasury's Office of the General Counsel: Office of the Chief Counsel (Foreign Assets Control), tel.: 202–622–2410.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Actions

On October 14, 2019, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following persons were blocked under the relevant sanctions authorities listed below. On October 23, 2019, pursuant to a Presidential directive, OFAC removed the following from the Specially Designated Nationals and Blocked Persons List. Therefore, the property and interests in property subject to U.S. jurisdiction of the following persons are unblocked and these persons are no longer subject to the blocking provisions of Section 1(a) of E.O. 13894.

Individuals

1. AKAR, Hulisi, Turkey; DOB 1952; POB Kayseri, Turkey; Gender Male (individual) [SYRIA–EO13894].

Designated pursuant to section 1(a)(i)(B) of Executive Order 13894, for being a current or former official of the Government of Turkey.

2. DONMEZ, Fatih, Turkey; DOB 1965; POB Bilecik, Turkey; Gender Male (individual) [SYRIA–EO13894].

Designated pursuant to section 1(a)(i)(B) of Executive Order 13894, for being a current or former official of the Government of Turkey.

3. SOYLU, Suleyman, Turkey; DOB 21 Nov 1969; POB Istanbul, Turkey; Gender Male (individual) [SYRIA–EO13894].

Designated pursuant to section 1(a)(i)(B) of Executive Order 13894, for being a current or former official of the Government of Turkey.

Entities

1. REPUBLIC OF TURKEY MINISTRY OF NATIONAL DEFENCE, Ankara, Turkey [SYRIA–EO13894].

Designated pursuant to section 1(a)(i)(C) of Executive Order 13894, for being a subdivision, agency, or instrumentality of the Government of Turkey.

2. REPUBLIC OF TURKEY MINISTRY OF NATIONAL DEFENCE, Ankara, Turkey [SYRIA–EO13894].

REPUBLIC OF TURKEY MINISTRY OF ENERGY AND NATURAL RESOURCES, Ankara, Turkey [SYRIA–EO13894].

Dated: February 5, 2019.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2020–02575 Filed 2–7–20; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4422 and Form 15056

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 4422, Application for Certificate Discharging Property Subject to Estate Tax Lien and Form 15056, Escrow Agreement for Estates.

DATES: Written comments should be received on or before April 10, 2020 to be assured of consideration.

ADDRESSES: Direct all written comments to Dr. Philippe Thomas, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Sara Covington at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Sara.L.Covington@irs.gov.*

SUPPLEMENTARY INFORMATION:

Titles: Form 4422—Application for Certificate Discharging Property Subject to Estate Tax Lien and Form 15056—Escrow Agreement for Estates.

OMB Number: 1545–0328.

Form Numbers: 4422 and 15056.

Abstract: Form 4422 is completed by either an executor, administrator, or other interested party for requesting release of any or all property of an estate from the Estate Tax Lien. Form 15056 is a contractual agreement between three parties (the IRS, taxpayer and escrow agent) to hold funds from property sales subject to the federal estate tax lien. The only information it requires is a quarterly statement reflecting the balance in the escrow account as proof that the funds are being held in accordance with the agreement.

Current Actions: There are changes in the paperwork burden previously approved by OMB, due to the reduction of filers, and the revision of form 4422. Also, form 15056 was added to this collection.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households, Business or other for-profit, Not-for-profit institutions, Farms, Federal Government, State, Local, or Tribal Gov't.

Estimated Number of Respondents: 2,500.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 1,250.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or 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 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 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.

Approved: February 3, 2020.

Philippe Thomas,

IRS Supervisory Tax Analyst.

[FR Doc. 2020–02591 Filed 2–7–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In accordance with section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries require or may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

Iraq
Kuwait
Lebanon
Libya
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen

Dated: January 30, 2020.

Douglas Poms,

International Tax Counsel, (Tax Policy).

[FR Doc. 2020–02598 Filed 2–7–20; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Report of Matching Program

AGENCY: Department of Veterans Affairs

ACTION: Notice of Computer Matching Program

SUMMARY: The Department of Veterans Affairs (VA) provides notice that it intends to conduct a recurring computer-matching program matching Social Security Administration (SSA) Master Beneficiary Records (MBRs) and the Master Files of Social Security Number (SSN) Holders and SSN Applications (Enumeration System) with VA pension, compensation, and dependency and indemnity compensation (DIC) records. The goal of this match is to identify beneficiaries, who are receiving VA benefits and SSA benefits or earned income, and to reduce or terminate VA benefits, if appropriate. The match will include records of current VA beneficiaries.

DATES: The match will start no sooner than 30 days after publication of this notice in the **Federal Register** (FR), or 40 days after copies of this notice and the agreement of the parties is submitted to Congress and the Office of Management and Budget, whichever is later, and end not more than 18 months after the agreement is properly implemented by the parties. The involved agencies' Data Integrity Boards (DIB) may extend this match for 12 months provided the agencies certify to their DIBs, within three months of the ending date of the original match, that the matching program will be conducted without change and that the matching program has been conducted in compliance with the original matching program.

ADDRESSES: Written comments concerning this matching program may be submitted by: mail or hand-delivery to Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Avenue NW, Room 1068, Washington, DC 20420; fax to (202) 273–9026; or email to *http://www.Regulations.gov*. All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 (this is not a toll-free number) for an appointment.

FOR FURTHER INFORMATION CONTACT: Pension and Fiduciary Service, Front Office, Pension and Fiduciary Service (21P), Department of Veterans Affairs, 810 Vermont Ave. NW, Washington, DC 20420, (202) 632–8863.

SUPPLEMENTARY INFORMATION: VA will use this information to verify the income information submitted by beneficiaries in VA's needs-based benefit programs and adjust VA benefit payments as prescribed by law.

The legal authority to conduct this match is 38 U.S.C. 5106, which requires any Federal department or agency to provide VA such information as VA requests for the purposes of determining eligibility for benefits, or verifying other information with respect to payment of benefits.

The VA records involved in the match are in ''Compensation, Pension and Education and Rehabilitation Records—VA (58 VA 21/22/28),'' a system of records which was first published at 41 FR 9294 (March 3, 1976), amended and republished in its entirety at 77 FR 42593 (July 19, 2012). The SSA records consist of information from the system of records identified as the SSA MBR, 60–0090, and SSA Enumeration System, 60–0058.

In accordance with the Privacy Act, 5 U.S.C. 552a(o)(2) and (r), copies of the agreement are being sent to both Houses of Congress and to the Office of Management and Budget. This notice is provided in accordance with the provisions of Privacy Act of 1974 as amended by Public Law 100–503.

Participating Agencies: The Social Security Administration (SSA)

Authority for Conducting the Matching Program: The Privacy Act, 5 U.S.C. § 552a, and 38 U.S.C § 5106 authorize VA to enter into this CMA with SSA.

Purpose(s): To re-establish a CMA with SSA for determining eligibility to continue to receive benefits authorized by the Department of Veterans Affairs (VA).

Categories of Individuals: Veterans and beneficiaries who apply for VA income benefits.

Categories of Records: VA will provide SSA with an electronic file in a format defined by SSA that contains the necessary identifying information for applicable beneficiaries and their dependents. Each VA input file will contain variables such as: Social Security Number for Primary Number Holder; Last Name; First Name; Middle Name/Initial; Date of Birth (MMDDCCYY); Sex Code (Blank); VA File Number; Agency Code ''VA''; Type of Benefit; Veteran with Spouse Indicator; Payee Number; Type of Record; Verified Payment Indicator; Verification Indicator; Processing Code ''212''; Verification Account Number (VAN); and Blanks, or Multiple Request Code. SSA will match the file against the Enumeration System and MBR will generate an output file with information on: Verification code; Death Indicator; Filler; Verification Code; Type of Benefit—Retirement (R), Disability (D) or Survivor (S); MBC (Monthly Benefit Credited); MBP (Monthly Benefit Payment); Medicare Deduction (SMI–B); Effective Date of Monthly Social Security Payment ''CCYYMM''; LAF Code (D = Deferred/withheld money), (E = Monies paid through the Railroad Board), (C = Current pay); Type of Benefit—Retirement (R), Disability (D), or Survivor (S); MBC (Monthly Benefit

Credited); MBP (Monthly Benefit Payment); Medicare Deduction (SMI–B); Effective Date of Monthly Social Security Payment ''CCYYMM''; LAF Code (D = Deferred/withheld money), (E = Monies paid through the Railroad Board), (C = Current pay); Type of Benefit—Retirement (R), Disability (D), or Survivor (S); MBC (Monthly Benefit Credited); MBP (Monthly Benefit Payment); Medicare Deduction (SMI–B); Effective Date of Monthly Social Security Payment ''CCYYMM''; and LAF Code (D = Deferred/withheld money), (E = Monies paid through the Railroad Board), (C = Current pay) for each of VA's records containing a verified SSN.

System(s) of Records: SSA will disclose the necessary benefit information electronically from the files of the MBR, system of records number 60–0090, last fully published at 71 FR 1826 (January 11, 2006), amended at 72 FR 69723 (December 10, 2007), and at 78 FR 40542 (July 5, 2013). SSA will disclose SSN verification information from the Enumeration System, system of records number 60–0058, last fully published at 75 FR 82121 (December 29, 2010), amended at 78 FR 40542 (July 5, 2013), and at 79 FR 8780 (February 13, 2014), and at 83 FR 31250–31251 (July 3, 2018), and at 83 FR 54969 (November 1, 2018).

VA records involved in this match are in ''VA Compensation, Pension, Education, and Vocational Rehabilitation and Employment Records—VA'' (58 VA 21/22/28), a system of records that was first published at 41 FR 9294 (March 3, 1976), last amended and republished in its entirety at 77 FR 42593 (July 19, 2012).

Signing Authority: The Senior Agency Official for Privacy, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. James P. Gfrerer, Assistant Secretary for Information and Technology and Chief Information Officer, Department of Veterans Affairs, approved this document on January 21, 2020 for publication.

Dated: February 5, 2020.

Amy L. Rose,

Program Analyst, VA Privacy Service, Department of Veterans Affairs.

[FR Doc. 2020–02550 Filed 2–7–20; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 85 Monday,

No. 27 February 10, 2020

Part II

Small Business Administration

13 CFR Part 103, 120 and 121

Express Loan Programs; Affiliation Standards; Interim Final Rule

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 103, 120, and 121

RIN 3245–AG74

Express Loan Programs; Affiliation Standards

AGENCY: U.S. Small Business Administration.

ACTION: Interim final rule; request for comments.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) is amending various regulations governing its business loan programs, including the SBA Express and Export Express Loan Programs and the Microloan and Development Company (504) loan programs. SBA previously published a Notice of Proposed Rulemaking addressing all of the topics and issues covered by this interim final rule and received extensive comments from the public. SBA is publishing this rule interim final rather than proceeding to a final rule in order to provide the public with an additional opportunity to comment. In addition, the rule will become effective in 30 days but compliance with two of the regulatory changes will not be required until October 1, 2020.

DATES:

Effective date: This rule is effective March 11, 2020.

Compliance date: The compliance date for §§ 103.5(b) and 120.221(a) is October 1, 2020.

Comment date: Comments on this rule must be received on or before April 10, 2020.

ADDRESSES: You may submit comments, identified by RIN 3245–AG74, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments (*Regulations.Gov* Docket: SBA–2018–0009).
- *Mail:* Rosemarie Drake, Office of Financial Assistance, Office of Capital Access, Small Business Administration, 409 Third Street SW, Washington, DC 20416.
- *Hand Delivery/Courier:* Rosemarie Drake, Office of Financial Assistance, Office of Capital Access, Small Business Administration, 409 Third Street SW, Washington, DC 20416.

SBA will post all comments on *www.regulations.gov*. If you wish to submit confidential business information (CBI) as defined in the User Notice at *www.regulations.gov,* please submit the information to Rosemarie Drake, Office of Financial Assistance, Office of Capital Access, 409 Third Street SW, Washington, DC 20416. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Dianna L. Seaborn, Director, Office of Financial Assistance, Office of Capital Access, Small Business Administration, 409 Third Street SW, Washington, DC 20416; telephone: (202) 205–3645; email: *Dianna.Seaborn@sba.gov*.

SUPPLEMENTARY INFORMATION:

I. Background Information

The SBA programs affected by this interim final rule are:

1. The 7(a) Loan Program authorized pursuant to Section 7(a) of the Small Business Act (the Act) (15 U.S.C. 636(a));
2. The Business Disaster Loan Programs (collectively, Economic Injury Disaster Loans, Military Reservist Economic Injury Disaster Loans, and Physical Disaster Business Loans) authorized pursuant to Section 7(b) of the Act (15 U.S.C. 636(b));
3. The Microloan Program authorized pursuant to Section 7(m) of the Act (15 U.S.C. 636(m));
4. The Intermediary Lending Pilot (ILP) Program authorized pursuant to Section 7(l) of the Act (15 U.S.C. 636(l));
5. The Surety Bond Guarantee Program authorized pursuant to Part B of Title IV of the Small Business Investment Act of 1958 (15 U.S.C. 694b *et seq.*); and
6. The Development Company Program (the 504 Loan Program) authorized pursuant to Title V of the Small Business Investment Act of 1958 (15 U.S.C. 695 *et seq.*). (In this interim final rule, the 7(a), Microloan, ILP, and 504 Loan Programs are collectively referred to as the Business Loan Programs.)

On September 28, 2018, SBA published a proposed rule with request for comments in the **Federal Register** to incorporate the requirements related to the SBA Express and Export Express Loan Programs; add a regulation pertaining to the 7(a) and Development Company (504) loan programs regarding when the owners of a small business Applicant are required to inject excess liquid assets into the project; amend certain regulations setting forth the affiliation principles applicable to SBA financial assistance programs; limit certain fees payable by loan Applicants to amounts deemed reasonable by SBA; clarify the responsibility of a Lender for the contingent liabilities associated with 7(a) loans purchased from the Federal Deposit Insurance Corporation; and, finally, amend certain regulations governing the use of microloan grant funds by Microloan Intermediaries and the maximum maturity of a microloan. (83 FR 49001) The original comment period was scheduled to end November 27, 2018. On November 16, 2018, SBA announced an extension of the public comment period for an additional 15 business days to December 18, 2018. (83 FR 57693)

II. Summary of Comments

During the public comment period, 4,251 comments were submitted, 142 of which were duplicate submissions, meaning an identical comment submitted multiple times by the same commenter.

The comments submitted came from 17 Congressional representatives or State government offices, 48 trade associations or non-profit organizations, 64 Certified Development Companies (CDCs), 86 Agents or Lender Service Providers (LSPs), 259 banks and non-bank lenders, SBA's Office of Advocacy, and 3,635 individuals. The Agency's responses to the Office of Advocacy's comments are included in section III.C below.

The majority of the regulatory changes proposed by SBA, including but not limited to incorporating SBA Express and Export Express Loan Program Requirements, modifying certain regulations concerning the Microloan Program, and technical corrections or conforming amendments, were supported by the commenters with either no opposition or recommendation for minor modifications.

While there were a significant number of comments in opposition to the proposed changes to limit fees that Lenders and Agents may charge small business Applicants in connection with an SBA-guaranteed loan, SBA notes that most of these comments were generated through a single website through which interested parties could submit a public comment to SBA ''with one click.'' This website's electronic mechanism auto-generated a rotating boilerplate comment letter and submitted the comment letter on behalf of the individual who simply had to provide a name, street address, zip code, phone number, and email address. Approximately 54 percent of the total comments received by SBA were comprised of these auto-generated boilerplate comments, and more than 90 percent of the comments received on the proposed changes to the regulations

concerning fees that Agents may charge Applicants in connection with SBA-guaranteed loans were comprised of these auto-generated boilerplate comments. The website promoting these auto-generated comments was created by a coalition made up of small business-focused lenders, facilitators, and associations working with small businesses and entrepreneurs. As discussed more fully in the Section-by-Section Analysis below, the information contained on the coalition's website and communicated on their social media platforms contained significant inaccuracies regarding both the current and proposed SBA rules regarding Agent fees. SBA considered this misinformation by the coalition when reviewing the comments received.

SBA received a large number of comments on the proposed changes to the affiliation principles applicable to the financial assistance programs set out in § 121.301(f). The majority of these comments were in response to the proposed changes to § 121.301(f)(4), which would expand the ''identity of interest'' basis for affiliation to include businesses with common investments and businesses that are economically dependent. Many commenters who opposed these proposed changes expressed concern that the changes would negatively impact poultry farmers and other agricultural producers.

SBA also received comments from 75 individuals or entities expressing general concerns unassociated with any specific section of the proposed regulations. One concern, expressed by 58 commenters, was related to the determination that the rule is not a ''significant'' regulatory action for the purposes of Executive Order 12866. Since the end of the public comment period, the Office of Management and Budget has changed the designation of the rule to ''significant.'' In this interim final rule, SBA has amended the Regulatory Impact Analysis and Regulatory Flexibility Analysis to reflect the change in designation.

SBA also received 54 recommendations for the Agency to consider requesting a statutory amendment to increase the maximum size of SBA Express loans from $350,000 to $500,000. SBA included a request in the President's fiscal year 2020 budget to increase the maximum SBA Express loan amount to $1,000,000 and agrees that an increase in the maximum loan size is needed.

SBA received 13 comments that generally opposed the proposed rule as a whole, but none provided specific reasons or explanation for why the proposed regulations should not be put into place.

Finally, SBA received two comments related to general 7(a) Loan Program policy that were not related to any regulation included in the proposed modifications. SBA will consider those comments when updating future program guidance.

SBA has addressed in detail the comments received on specific proposed regulatory changes within the appropriate Section-by-Section analysis below.

III. Section-by-Section Analysis of Comments and Changes

A. Business Loan Programs

1. SBA Express and Export Express Loan Programs

Section 120.441 SBA Express and Export Express Loan Programs

SBA proposed to add a regulation providing general descriptions of the SBA Express and Export Express Loan Programs.

SBA received 60 comments on this proposed change. Fifty-nine of the comments supported this proposed change with a recommendation that SBA amend this section and other relevant subsections to clarify that SBA's general Loan Program Requirements apply to SBA Express and Export Express loans, except when such requirements are inconsistent with other requirements or guidance provided in SBA Loan Program Requirements specific to SBA Express or Export Express. SBA believes that this recommendation has already been addressed in the regulatory language proposed in § 120.441(a) and (b), which applies to the associated regulations in §§ 120.442 through 120.447. It is repetitive and unnecessary to include this statement in all subsequent related sections.

One commenter expressed concern that SBA granting Lenders unilateral authority to process SBA Express and Export Express loans could ''disproportionately affect'' women and minority business owners because the proposed regulations do not appear to incorporate necessary safeguards against ''stifled growth in urban communities and sustainability for women and other minority businesses within these communities.'' The commenter did not provide any evidence to support his or her concern. SBA does not agree that delegating loan making authority to lenders disproportionately affects women or minority business owners. The SBA Express and Export Express Programs began operating as pilot programs in 1995 and 1998, respectively, and were made permanent in 2004 and 2010, respectively. As explained in the description of the programs being added as § 120.441, both programs were designed for Lenders to process loans exclusively under delegated authority and Congress has authorized SBA to permit qualified Lenders to make SBA Express and Export Express loans using, to the maximum extent practicable, their own processes, analyses, and documentation.

SBA is adopting the regulation as proposed.

Section 120.442 Process To Obtain or Renew SBA Express or Export Express Authority

SBA proposed adding a regulation that sets forth the criteria and process to obtain or renew SBA Express or Export Express authority.

SBA received 57 comments on this proposed change. All commenters supported the addition of the regulation. SBA is adopting the regulation as proposed.

Section 120.443 SBA Express and Export Express Loan Processing Requirements

SBA proposed adding a regulation that sets forth the requirements for loan processing under the SBA Express and Export Express loan programs.

SBA received 59 comments on this proposed change. All commenters supported the addition of the regulation. SBA is adopting the regulation as proposed with one modification.

An additional eligibility requirement applicable to Export Express, which has been a part of the Export Express Program since it was established and which is currently set out in SBA's *Standard Operating Procedures 50 10,* Lender and Development Company Loan Programs, as amended from time to time (SOP 50 10), was inadvertently omitted from the proposed rule. This additional eligibility requirement states that, in addition to the eligibility requirements for all 7(a) loans, Applicants for Export Express loans must have been in operation, although not necessarily in exporting, for at least 12 full months. However, Applicants that have been in operation for less than 12 months are eligible if the Lender determines that the Applicant's key personnel have clearly demonstrated export expertise and substantial previous successful business experience, and the Lender processes the Export Express loan using conventional commercial loan underwriting procedures and does not rely solely on credit scoring or credit

matrices to approve the loan.[1] The Export Express Lender must document that the Applicant's key personnel have the requisite experience in exporting. The Export Working Capital Program, which Export Express was based on, has a similar requirement set out in § 120.341.

As one of the stated purposes of the proposed rule was to ''incorporate into the regulations governing the 7(a) Loan Program the requirements specifically applicable to the SBA Express and Export Express Loan Programs in order to provide additional clarity for SBA Express and Export Express Lenders,'' SBA is modifying § 120.443 to include the additional eligibility requirement applicable to Export Express which was inadvertently omitted in the proposed rule. SBA is adding a new paragraph (b) to incorporate the requirement. SBA is redesignating the remaining paragraphs as (c) through (f).

Section 120.444 Eligible Uses of SBA Express and Export Express Loan Proceeds

SBA proposed adding a regulation to identify the eligible uses of loan proceeds for SBA Express and Export Express loans.

SBA received 59 comments on this proposed change. Fifty-seven commenters supported the addition of the regulation. One SBA Lender commented in opposition to § 120.444(b)(4) which states, ''Export Express Lenders are responsible for ensuring that U.S. companies are authorized to conduct business with the Persons and countries to which the Borrower will be exporting.'' This Lender believes this requirement to be unnecessary and burdensome and instead recommends a risk-based approach, such as having the customer sign an attestation as to the licensing requirements for lower-risk transactions or, for higher-risk transactions, requiring customers to provide a copy of the license(s) or a letter from an export attorney as to why a license is not required. This requirement has always been part of the Export Express Program and, pursuant to the current procedure in SOP 50 10, Export Express Lenders can satisfy this requirement by checking the *Ex-Im Bank Country Limitation Schedule* and, for certain types of Export Express loans, the Department of Treasury's *Office of Foreign Assets Control (OFAC) sanctions list.* SBA is not expanding this requirement and, therefore, the Agency does not agree that this regulation as proposed will cause any undue burden on Export Express Lenders.

Another Lender expressed concern that while the summary of the proposed change in the preamble to the proposed rule references the SBA Express Lender's responsibility to ''take reasonable steps to ensure and document that the loan proceeds are used exclusively for business-related purchases,'' there is no regulatory language proposed in § 120.444 that describes this requirement. The Lender objected to the language in the preamble, claiming that it would be impractical for the Lender to fulfill any such proposed responsibility ''postdisbursement.'' In addition, the Lender stated that during the loan application and documentation processes, the Applicant already attests that all funds will be exclusively used for business-related purposes. This responsibility is an existing requirement for all Lenders making 7(a) loans, including SBA Express Lenders on SBA Express loans, pursuant to §§ 120.120 and 120.130. SBA's SOP 50 10, Subpart B, Chapter 7 clearly outlines the acceptable documentation with which Lenders may document disbursement. The Lender's responsibility as described in the preamble of the proposed rule references this existing requirement, which SBA is not expanding and, therefore, the Agency does not agree with the commenter's objections.

SBA is adopting the regulation as proposed with two minor technical clarifications to § 120.444(b)(3) to replace ''overseas operations'' with ''operations outside of the United States'' and to replace ''U.S.'' with ''United States.''

Section 120.445 Terms and Conditions of SBA Express and Export Express Loans

SBA proposed to add a new regulation to identify those terms and conditions of SBA Express and Export Express loans that are unique to these two programs, including maximum loan amounts and guaranty percentages, maturities, interest rates, collateral and insurance requirements, allowable fees, and requirements concerning loan increases.

SBA received 59 comments on this proposed regulation, with 57 commenters supporting the addition of the regulation. One individual opposed the provision in § 120.445(g) that prohibits SBA Express and Export Express Lenders from selling the guaranteed portion of an SBA Express or Export Express revolving line of credit on the secondary market. This commenter argued that any product that has ended its draw period and is in principal and interest repayment should be able to be sold on the secondary market, regardless of delivery method or whether the loan is a line of credit. SBA's existing Loan Program Requirements for all 7(a) loans, including SBA Express and Export Express loans, prohibit revolving loans or line of credit facilities to be sold on the secondary market. SBA appreciates the opinion expressed by this commenter but is not electing to modify this Loan Program Requirement.

One SBA Lender objected to the proposed change to require SBA Express and Export Express Lenders to comply with the same rules that apply to all other 7(a) Lenders with respect to the fees that may be collected from an Applicant or Borrower on SBA Express and Export Express loans. This Lender stated that it does not charge an ''application fee'' in connection with its SBA-guaranteed loans; rather, it charges a ''loan fee.'' Further, this Lender asserted that, if it ''will be required to document 'packaging fees' and process the related paperwork and transmittal [to SBA's Fiscal and Transfer Agent]'' then the Lender will likely have to increase the fees it charges to Applicants and the Lender's ''delivery process efficiency will be impaired.'' This Lender appears to have misunderstood the proposed changes regarding fees, as well as the current requirements concerning disclosure of fees.

As stated in the preamble to the proposed rule, SBA proposed changes to the fees a Lender is permitted to collect from an Applicant in order to simplify the rules regarding such fees. SBA stated that, regardless of what the fee is called (*e.g.,* a packaging fee, an application fee, etc.), the Lender would be permitted to charge an Applicant a fee up to a certain amount, depending on the loan amount. Thus, whether this Lender calls the fee an ''application fee'' or a ''loan fee,'' as long as the fee charged does not exceed the maximum set forth in § 120.221(a), the Lender would be permitted to charge the fee. Further, while the proposed rule did not change the requirement that, if the Lender charges an Applicant a fee for assistance with obtaining an SBA-guaranteed loan, the Lender must disclose the fee on SBA Form 159, the proposed rule did eliminate the current requirement that the Lender itemize fees over $2,500. Thus, if this Lender charges a ''loan fee'' it would need to disclose the fee on SBA Form 159, but it would not be required to itemize the fee or

[1] Non-bank Lenders that do not have a conventional loan portfolio must submit their underwriting procedures to the Office of Credit Risk Management for written approval prior to making an Export Express loan.

provide supporting documentation. Finally, the requirement to submit the completed SBA Form 159 to SBA's Fiscal and Transfer Agent after there has been an initial disbursement on the loan is a current requirement applicable to all 7(a) Lenders, including SBA Express and Export Express Lenders. SBA disagrees with the Lender's contention that the proposed change will increase the burden on SBA Express and Export Express Lenders and is adopting as proposed the change to require SBA Express and Export Express Lenders to comply with the same rules that apply to all other 7(a) Lenders with respect to the fees that may be collected from an Applicant or Borrower.

With respect to interest rates, SBA stated in the proposed rule that SBA Express and Export Express Lenders may charge up to 4.5 percent over the prime rate on loans over $50,000 and up to 6.5 percent over the prime rate for loans of $50,000 or less, regardless of the maturity of the loan, and did not distinguish between fixed or variable interest rate loans. Since the publication of the proposed rule, SBA published a document in the **Federal Register** revising the maximum allowable fixed interest rate for 7(a) loans under 13 CFR 120.213. (83 FR 55478, November 6, 2018) In that **Federal Register** document, SBA set the maximum allowable fixed interest rates for SBA Express and Export Express loans at the same levels as the maximum fixed interest rates allowable for 7(a) loans generally.

Consequently, SBA is modifying § 120.445(d) to differentiate between fixed and variable rate loans and to provide that the maximum allowable fixed interest rate for SBA Express and Export Express loans is the same as the maximum fixed interest rate allowable for 7(a) loans generally as set forth in 13 CFR 120.213. SBA is adopting the remainder of the regulation as proposed.

Section 120.446 SBA Express and Export Express Loan Closing, Servicing, Liquidation, and Litigation Requirements

SBA proposed to add a new regulation providing that SBA Express and Export Express Lenders must close, service, liquidate, and litigate their SBA Express and Export Express loans using the same documentation and procedures they use for their similarly-sized, non-SBA guaranteed commercial loans, which must comply with law, prudent lending practices, and Loan Program Requirements. Additionally, the proposed regulation provided that SBA Express and Export Express Lenders must comply with the loan servicing and liquidation responsibilities set forth for 7(a) Lenders in 13 CFR part 120, subpart E, and other Loan Program Requirements. The proposed regulation also described the circumstances under which SBA will honor the guaranty on SBA Express and Export Express loans.

SBA received 59 comments on this proposed regulation, all of which supported its incorporation into the regulations. SBA is adopting the regulation as proposed.

Section 120.447 Oversight of SBA Express and Export Express Lenders

SBA proposed to add a new regulation explaining that SBA Express and Export Express Lenders are subject to the same risk-based lender oversight as other 7(a) Lenders, including supervision and enforcement provisions, in accordance with 13 CFR part 120, subpart I.

SBA received 57 comments on this proposed regulation, all of which supported its incorporation into the regulations. SBA is adopting the regulation as proposed with one minor technical clarification to insert ''other'' before ''7(a) Lenders'' and a minor edit to the section heading.

2. Credit Elsewhere and the Personal Resources of Owners of the Small Business Applicant

Section 120.102 Funds Not Available From Alternative Sources, Including the Personal Resources of Owners

To aid SBA Lenders in determining whether an Applicant has access to ''credit elsewhere,'' SBA proposed to reinstitute a ''personal resources test.'' The personal resources test provides SBA Lenders (*i.e.,* both 7(a) Lenders and CDCs) with a bright-line test to analyze the resources of individuals and entities that own 20 percent or more of the Applicant business in order to determine if any of the owners have liquid assets available that can provide some or all of the desired financing. When an owner of 20 percent or more has liquid assets that exceed stated thresholds, SBA proposed to require an injection of cash from any such owner to reduce the SBA loan amount. SBA proposed specific thresholds setting the required injection of such owners' excess liquid assets based on the size of the total financing package (defined for the purposes of this section as any SBA loans and any other financing, including loans from any other source, requested by the Applicant business at or about the same time). As set forth in SOP 50 10, SBA considers ''at or about the same time'' to mean loans approved within 90 days of each other.

SBA received 200 comments on this proposed change. Of these comments, 135 expressed concern with this change, including 103 SBA Lenders, 18 individuals, 9 trade associations, 4 Agents, and SBA's Office of Advocacy.

There were a few main concerns expressed by these commenters. Some argued that the personal resources test and required equity injection of excess personal liquid assets should not apply to the 504 Loan Program because Congress already requires an equity injection for 504 loans and because 504 loans are statutorily required to create jobs; therefore, these small businesses need liquidity to meet these objectives. Another concern expressed by many commenters was that compliance with the proposed regulation would be onerous and burdensome for SBA Lenders. Lastly, commenters expressed concern that the personal resources test may limit the resources available to a small business owner in the event of an unforeseen emergency or may eliminate potential borrowers from seeking SBA financing altogether due to owners' aversion to additional equity injections.

SBA disagrees with the argument that the personal resources test should not apply to the 504 Loan Program. Regardless of other program-specific requirements, SBA's statutory responsibility for both financial assistance programs includes ensuring that loans are not made if the Applicant has access to funds from private sources or elsewhere on reasonable terms. Subsequent to SBA's removal of the personal resources test from the regulations in 2014 (79 FR 15641), many SBA Lenders expressed confusion as to how to adequately determine whether a small business has access to credit elsewhere based on personal liquid assets. During SBA Lender reviews, SBA has identified inconsistent and irregular applications of this assessment when the determination was left to the SBA Lender's discretion, including approval of loans to businesses with principals that maintained extremely high levels of personal liquid assets. Reinstatement of the personal resources test will eliminate the ambiguity of the credit elsewhere determination and provide SBA Lenders the certainty they have sought in recent years. With respect to the job creation or retention requirements in the 504 Loan Program, in November 2018, SBA increased the dollar amounts used in calculating the number of jobs that must be created or retained, thereby making it easier for 504 loans to satisfy the statutory job creation requirement. In addition, SBA designated additional areas for application of the higher portfolio

average. (83 FR 55224, November 2, 2018) Thus, SBA already has taken steps to facilitate compliance with the job creation requirements in the 504 Loan Program. Further, while SBA recognizes that the requirement of additional equity injections in the proposed rule may be unattractive to some potential borrowers, SBA proposed to increase the thresholds set forth in the 2014 personal resources test to allow for greater personal liquidity to be maintained by owners.

Sixty-five commenters supported reinstatement of the personal resources test with suggested modifications. The commenters included 53 SBA Lenders, 5 Agents, 3 individuals, 3 trade associations, and 1 member of Congress. While these commenters supported reinstatement, many recommended that the personal liquidity thresholds be modified, especially for smaller loans. Commenters also recommended that SBA more clearly define what assets are considered ''liquid'' and provide further explanation or additional examples of the extraordinary circumstances that may qualify as an exception to the injection requirement. Additionally, some commenters requested that SBA modify the test to be based on the SBA loan amount, rather than the total financing package, and to apply the test only to individual persons and not entities. Two commenters suggested that SBA consider allowing an alternative to requiring the owner to inject excess liquid assets by allowing the owner to instead pledge the liquid assets as collateral for the loan.

After considering the comments received on this change, SBA has reevaluated the personal liquidity threshold for smaller loans and agrees to modify the limits to ensure that Applicants applying for smaller loans are not adversely affected. SBA is adopting the regulation as proposed for loans greater than $350,000; however, based on the comments received, SBA is increasing the liquidity that 20 percent or more owners may retain for loans of $350,000 or less. When the total financing package (*i.e.,* any SBA loans and any other financing, including loans from any other source, requested by the Applicant business at or about the same time, as defined in SOP 50 10) is $350,000 or less, each 20 percent owner of the Applicant must inject any liquid assets that are in excess of two times the total financing package, or $500,000, whichever is greater. (The proposed rule would have required injection of any liquid assets that were in excess of one and three-quarter times the total financing package, or $200,000, whichever was greater.) SBA also is modifying the regulatory text to provide that SBA will reexamine the thresholds periodically and, if adjustments are necessary, SBA may modify the thresholds through rulemaking from time to time based on nationally-recognized economic indicators.

SBA is adopting the proposed definition of ''liquid assets,'' with a modification to exclude the cash value of life insurance policies from the definition. The Agency will provide additional examples as to what will or will not be considered ''liquid assets'' in SOP 50 10. SBA will continue to base the personal resources test on the total financing package, but is adding language to clarify that the phrase ''at or about the same time'' has the meaning set forth in SBA Loan Program Requirements. (As noted above, SOP 50 10 sets forth that SBA considers ''at or about the same time'' to mean loans approved within 90 days of each other.) SBA, in its sole discretion, may permit exceptions to the required injection of an owner's excess liquid assets only in extraordinary circumstances, such as when the excess funds are needed for immediate medical expenses of a family member.

3. Permissible Fees That a Lender or Agent May Collect From an Applicant or Borrower in Connection With an SBA-Guaranteed Loan

Section 120.221 Fees and Expenses That the Lender May Collect From an Applicant or Borrower

SBA proposed revisions to paragraphs (a) and (b) of this section. SBA proposed to amend § 120.221(a) to limit the total fees an Applicant can be charged by a Lender for assistance with obtaining an SBA-guaranteed loan. Regardless of what the fee is called (*e.g.,* a packaging fee, application fee, etc.), the Lender would be permitted to collect a fee from the Applicant of no more than $2,500 for a loan up to and including $350,000, and no more than $5,000 for a loan over $350,000. With the exception of necessary out-of-pocket costs, such as filing or recording fees permitted in § 120.221(c) and legal fees that are charged on an hourly basis permitted in § 120.221(e), this is the only fee that a Lender may collect directly or indirectly from an Applicant for assistance with obtaining an SBA-guaranteed loan.

SBA received 294 comments on this proposed change. Of these comments, 215 (73 percent) were comprised of 7 different auto-generated templates submitted by individuals and SBA Lenders. Each template varied slightly in wording; however, all template comments opposed the proposed changes and expressed concern that limiting the fees an SBA Lender may charge to an Applicant will hurt small businesses by forcing Lenders to leave the market for smaller loans of $350,000 or less.

SBA received 17 other non-automated comments expressing similar concern: 9 from SBA Lenders; 4 from individuals; 3 from trade associations; and 1 from an Agent. Many of these comments echoed the sentiment that the fee limits, specifically for loans of $350,000 or less, were set too low.

The remaining 62 comments received on this proposed change supported SBA's proposal to clarify the fees that Lenders can charge 7(a) loan Applicants, with modification. These commenters included 52 SBA Lenders, 4 trade associations, 4 Agents, and 2 individuals. While these commenters generally supported the proposed change, they recommended that SBA consider increasing the fee that a Lender may charge an Applicant for a loan of $350,000 or less.

SBA has considered these comments and agrees to increase the maximum permissible fee a Lender may charge an Applicant for a loan of $350,000 or less. Regardless of what the fee is called (*e.g.,* a packaging fee, application fee, etc.), the Lender will be permitted to collect a fee from the Applicant that is no more than $3,000 for a loan up to and including $350,000 and no more than $5,000 for a loan over $350,000.

Based on the comments and SBA's observations during lender reviews, SBA considers the revised fees to be reasonable for the services provided by a Lender to an Applicant for assistance with obtaining an SBA-guaranteed loan. SBA will monitor these fee levels and, if adjustments are necessary, SBA may revise these amounts from time to time through rulemaking.

SBA received several comments on proposed § 120.221 suggesting that SBA modify the circumstances under which SBA may require a Lender to refund excess fee amounts. SBA considered these comments and is modifying the regulatory text to specifically state that SBA may require a Lender to refund any amount charged to an Applicant in excess of what is permitted by SBA in this regulation.

In addition, in accordance with longstanding Agency policy, the Lender may not split a loan into two loans for the purpose of charging an additional fee to an Applicant. Even if there is a legitimate business need for the Applicant's loan request to be split into two loans (*e.g.,* a term loan and a line of credit), the Lender may only charge the Applicant one fee within the

maximums set forth above, based on the combined loan amounts. However, it is not SBA's intention to restrict a Lender from charging a new fee if an Applicant subsequently returns to the Lender to apply for a new loan for a different project or purpose. SBA will provide additional guidance in SOP 50 10 as necessary.

If the Lender charges the Applicant a fee for assistance with obtaining an SBA-guaranteed loan, the Lender must disclose the fee to the Applicant and SBA by completing the Compensation Agreement (SBA Form 159) in accordance with § 103.5 and the procedures set forth in SOP 50 10. However, the Lender will no longer be required to itemize the fees charged to the Applicant.

SBA recognizes that some Lenders may need to revise their policies, procedures or documentation in order to comply with the new limits on fees in § 120.221(a). In order to minimize the impact of the change on affected Lenders, SBA is not requiring compliance with revised § 120.221(a) until October 1, 2020. Until that time, Lenders are to continue to comply with the requirements in § 120.221(a) as published in the 2019 edition of the Code of Federal Regulations, and the guidance in SOP 50 10 5(K). However, considering the benefits that the new fee limits offer, SBA expects that many Lenders will want to comply with them before October 1, 2020. They are permitted to do so. SBA recommends that these Lenders document in each loan file their decision to use the new fee limits.

SBA also proposed to amend § 120.221(b) to permit extraordinary servicing fees in excess of 2 percent per year for Export Working Capital Program (EWCP) loans and Working Capital CAPLines that are disbursed based on a Borrowing Base Certificate. In these programs, the fees charged would need to be reasonable and prudent based on the level of extraordinary effort required and could not be higher than the fees charged on the Lender's similarly-sized, non-SBA guaranteed commercial loans.

SBA received 54 comments on this proposed change. All comments supported the amendment to allow different extraordinary servicing fees to be charged in connection with EWCP loans and Working Capital CAPLines that are disbursed based on a Borrowing Base Certificate. However, one commenter noted that the regulatory language proposed makes no mention of the extraordinary servicing fees permissible for other 7(a) loans that may be allowed in certain cases, such as construction. This commenter recommended that SBA clearly identify that extraordinary servicing fees previously allowed are not impacted by the rule change.

SBA appreciates this comment and agrees that the proposed regulatory language inadvertently omitted the current language in the regulation. It was not SBA's intent to eliminate the permissible extraordinary servicing fees previously allowed in appropriate circumstances for certain 7(a) loans. SBA is adopting the amendment to the regulation and is correcting the inadvertent error that would have eliminated the current language in the regulation.

Section 103.4 What is ''good cause'' for suspension or revocation?

SBA proposed to eliminate the limited exception to the ''two master prohibition'' currently contained in § 103.4(g). This exception currently applies when an Agent acts as a Packager and is compensated by the Applicant for packaging services, and the same Agent also acts as a Referral Agent and is compensated by the Lender for those activities in connection with the same loan application. SBA's proposed elimination of this exception would prevent an Agent, including an LSP, from providing services to both the Applicant and the SBA Lender and being compensated by both parties in connection with the same loan application. SBA also proposed to revise the remaining text of § 103.4(g) for clarity and to use the defined term ''SBA Lender'' in the revised regulation to clarify that it applies to both 7(a) Lenders and CDCs.

SBA received 987 comments on this proposal. Of these comments, 915 were auto-generated comments submitted by individuals (*i.e.,* 93 percent of all comments received on this issue). The comments were comprised of 11 templates which varied slightly in wording; however, all template comments opposed the proposed changes and expressed the concern that eliminating an Agent's ability to serve both the SBA Lender and the Applicant would restrict a small business's access to capital, specifically for loans under $350,000. The commenters asserted that the changes proposed in this section and § 103.5 would force Agents out of the market for loans under $350,000 and, according to these commenters, without Agents, small businesses would have no other way to gain access to affordable credit from an SBA Lender.

SBA strongly disagrees with the claims and underlying assumptions made by these commenters. Applicants are in no way obligated or expected to engage a third party or pay for assistance in order to obtain an SBA-guaranteed loan. For those Applicants who would like assistance in applying for a loan, SBA provides several options for free and low-cost assistance through our resource partners, including Small Business Development Centers, Women's Business Centers, Veteran's Business Outreach Centers, United States Export Assistance Centers, SCORE Business Mentors, Lender Match, and local SBA District Offices, which are accessible nationwide. Over the course of five fiscal years (FY2013–FY2017), only 2.78 percent of total approved 7(a) loans reported utilizing an Agent (other than the participating Lender) to provide assistance to an Applicant for a fee. Therefore, SBA disagrees with the claim that small businesses will not be able to obtain SBA loans, or that SBA Lenders will not be willing to make such SBA loans, if the proposed changes to § 103.4 are made final.

SBA received only 12 other comments opposing the proposed change: 4 from associations representing bankers or small business owners; 3 from SBA Lenders; 3 from Agents; 1 from a Member of Congress; and 1 from an individual. These comments aligned with the sentiments of the auto-generated comments, also claiming that the elimination of the limited exception to the ''two master'' rule would lead to a reduction in small SBA loans and would negatively impact both the small businesses seeking SBA loans and the economic interests of the Agents that serve them.

Five individuals commented that the proposed changes to § 103.4 would eliminate SBA-guaranteed lending to small business poultry farmers. SBA believes these comments were misdirected and intended to be made instead on the proposed affiliation regulations and has included these comments in that discussion later in the Section-by-Section Analysis.

The remaining 55 commenters (47 bank and non-bank lenders, 5 Agents, 2 individuals, and 1 trade association representing government-guaranteed lenders) supported the proposal, with some providing recommendations for improvement. The recommendations for improvement included: Allowing specific and nominal fees to be charged by an Agent to both the Lender and the Applicant; requiring more transparent disclosure of Agent involvement on SBA forms; and defining the terms ''Agent'' and ''Associate'' more clearly.

After consideration of the comments received on the proposed change to

§ 103.4(g), SBA continues to believe that there is, at a minimum, an appearance of a conflict of interest when an Agent represents both the Applicant and the SBA Lender on the same loan application, which SBA believes should not be permitted under SBA regulations. Therefore, SBA is adopting the proposal to eliminate the limited exception to the ''two master'' prohibition. No Agent, including an LSP, may provide services to both the Applicant and the SBA Lender and be compensated by both parties in connection with the same loan application.

One commenter, a trade association representing hundreds of government-guaranteed Lenders and other members of the SBA lending community, including Agents, recommended that the regulation include a provision clarifying that ''agent'' includes any ''associates'' of the Agent. This would make clear that, for example, an Agent cannot use a separate (but related) entity to circumvent the two master prohibition. SBA agrees that this recommendation is consistent with the intent of the proposed rule and is modifying the regulatory text to add the clarification. For additional clarity, SBA is using the term ''Affiliate'' of an agent (as defined in § 121.103), rather than ''associate.'' Further, SBA is adopting the proposal to use the defined term ''SBA Lender'' in the revised regulation to clarify that this rule applies to both 7(a) Lenders and CDCs.

In addition, based on the comments received, SBA reviewed the definitions in § 103.1 to determine if further clarification of the defined terms is necessary. The rules governing Agents in part 103, including the definitions within § 103.1, were last modified in 1996. Since that time, the number of Agents, including LSPs, as well as their involvement in SBA loan making has increased dramatically. According to Lenders' reporting of fees charged to an Applicant in connection with obtaining a 7(a) loan, and other information gathered by the Office of Credit Risk Management (OCRM) during lender oversight reviews, the number of loans where an Agent was reported to have been used has increased by an average of 49 percent each year from FY2013 to FY2017 (although the total reported number of such loans is only 2.78 percent of total approved 7(a) loans for such period). Further, advancements in technology have resulted in Agents charging fees for services to both Applicants and SBA Lenders that could not have been considered at the time these rules were last revised. Based on the foregoing, SBA agrees with the commenters that the definitions in part 103 need clarification as to whom SBA considers to be an Agent.

Therefore, in this interim final rule, SBA is clarifying the definitions of the various categories of Agents, including LSPs, Packagers, and Referral Agents for purposes of the business loan programs.[2]

Specifically, SBA is moving the definitions of LSP, Packager, and Referral Agent into § 103.1(a) (the definition of ''Agent''), which will clarify that these are different types of Agents for purposes of the business loan programs. In addition, in the definition of the term ''Agent'' in § 103.1(a), SBA is replacing the term ''person'' with ''individual or entity,'' consistent with the longstanding understanding of that term.

In the definition of LSP, SBA is simplifying the language describing the services that an LSP provides to a Lender. An LSP ''assists the Lender with originating, disbursing, servicing, liquidating, or litigating SBA loans.'' To further clarify that the LSP may only assist the Lender (and not make decisions on behalf of the Lender), SBA is including in the definition a statement that the Lender bears full responsibility for all aspects of its SBA loan operation, including, but not limited to, approvals, closings, disbursements, servicing actions, and due diligence. This description of the Lender's responsibility over all aspects of its SBA loan operation is longstanding SBA policy that has been included in SBA's SOP 50 10. SBA is incorporating this important concept into the definition of an LSP to further clarify the relationship between an LSP and Lender.

SBA also is clarifying in the definition that LSPs may only receive compensation from the Lender and such compensation may not be passed on to the Applicant or paid out of SBA-guaranteed loan proceeds. This conforms the definition of LSP to the proposed change to § 103.5(c) discussed below. This also is consistent with longstanding SBA policy regarding LSPs.

Further, SBA is making a conforming change to the definition of ''Packager'' to clarify that, going forward, the term will apply only to those Agents who provide packaging services to Applicants. SBA's SOP 50 10 defines ''packaging services'' as ''assisting the Applicant with completing one or more applications, preparing a business plan, cash flow projections, and other documents related to the application.'' (SOP 50 10 5, Subpart B, Chapter 3, Paragraph VI.) Accordingly, SBA is clarifying that Packagers may only be compensated by the Applicant (as opposed to the Applicant or the Lender as in the current regulation). Agents that provide ''loan packaging services'' to Lenders are considered to be LSPs, not Packagers. This is because, based on OCRM's observations during lender oversight reviews, when an Agent provides ''loan packaging services'' for the Lender, the services provided typically include underwriting and assisting the Lender with its analysis of the application. Because this type of Agent is assisting the Lender with originating loans, it is considered to be an LSP.

SBA also is modifying the definition of ''Referral Agent'' by changing the term to ''Loan Broker'' in order to more closely align with the terminology used in the industry. In addition, consistent with the change to the two master prohibition in § 103.4(g) discussed above, SBA is using the term ''SBA Lender'' to clarify that the defined term ''Loan Broker'' applies to both 7(a) Lenders and CDCs. The revised definition of Loan Broker will include a statement that a Loan Broker may be employed and compensated by either the Applicant or the SBA Lender, but not both. (The current definition of ''Referral Agent'' includes a similar statement.)

As a result, an Agent may be both a Loan Broker and a Packager for the Applicant; however, under the two master prohibition in § 103.4(g), an Agent that is a Packager for the Applicant may not also serve as a Loan Broker for the SBA Lender. In addition, SBA is clarifying in the definition that compensation paid to a Loan Broker from an SBA Lender cannot be passed on to the Applicant or paid out of SBA-guaranteed loan or debenture proceeds. Again, this is consistent with longstanding policy that an SBA Lender may not pass on to the Applicant any fees paid by an SBA Lender to an Agent the SBA Lender has employed in connection with an SBA-guaranteed loan.

The above described clarifications to the definitions related to Agents in § 103.1 also will assist Agents and SBA Lenders in properly identifying Agents and their services when completing SBA Form 159 and will provide the transparency requested by commenters.

During the course of lender oversight reviews, OCRM has found arrangements between Agents and Lenders where the Agent and/or Lender assert that the

[2] The clarifications being made to the definitions in § 103.1 do not affect the use of the terms ''packager, agent, or representative'' in § 124.4, regarding the 8(a) Business Development Program.

Agent is not an LSP (and, therefore, not subject to the requirements that an LSP Agreement be reviewed by SBA and the prohibition on sharing secondary market premiums). In some instances, although these Agents state they are providing ''packaging'' and/or ''referral services'' to the Applicant and being paid out of the guaranteed loan proceeds, the Agent actually is operating under a written contract with the Lender to package and refer Applicants that meet the Lender's internal credit policies and is providing a fully underwritten loan application to the Lender. In other instances, the ''packaging'' services the Agent is providing are actually underwriting functions for the Lender (*e.g.,* the Agent is pulling credit reports/credit scores, obtaining IRS tax transcripts, providing financial ratios and analyses, analyzing applicant eligibility). In still other instances, the services are provided by the Agent to the Lender through a software platform and are called ''technology services'' or a ''technology license,'' but the ''technology'' is performing underwriting functions for the Lender.

One Agent asserted in its comment letter that it serves only as a referral and packaging agent for Applicants and that it does not perform any Lender functions on behalf of the bank. This Agent stated that it charges the Applicant a packaging fee of 2 percent of the loan amount and a referral fee of 2 percent of the loan amount. This Agent also stated that it licenses a software platform to banks to assist them with evaluating and processing SBA loans of $350,000 or less and that, as a technology licensor, the Agent does not perform any Lender functions on behalf of the bank. SBA disagrees with this characterization. Regardless of whether the assistance is provided through technology or otherwise, SBA believes that an Agent who is assisting a Lender with evaluating and processing loans is assisting the Lender with originating loans and, therefore, meets the definition of an LSP.

SBA intends to provide additional guidance on the circumstances under which SBA considers an individual or entity to be an Agent in SOP 50 10. However, in response to comments requesting additional clarity in this rulemaking, SBA is providing the following example of individuals or entities that SBA considers to be Agents and, more specifically, when SBA considers an Agent to be working for an SBA Lender (such Agents cannot also provide services to the Applicant on the same loan application):

- An individual or entity engaged by an SBA Lender to provide services that include interaction with the Applicant, either in-person or through the use of technology, to request or obtain eligibility and/or financial information that will be provided to the SBA Lender for the purposes of obtaining Federal financial assistance. This includes Agents who perform any pre-qualification review based on SBA's eligibility and credit criteria or the SBA Lender's internal policies prior to submitting the Applicant's information to the SBA Lender. This also includes Agents who provide to the SBA Lender an underwritten application, whether through the use of technology or otherwise. In all such cases, the Agent is providing services to the SBA Lender and, therefore, may not also provide services to the Applicant in connection with the same loan.

Further, when determining whether an Agent is considered to be an LSP for the Lender (and therefore required to enter into a written agreement with the Lender, among other requirements), the degree to which a Lender relies on a Loan Broker to generate loan originations may be considered. Again, SBA will provide additional guidance in SOP 50 10.

SBA also intends to include guidance in SOP 50 10 as to when certain entities will not be considered by the Agency to be Agents, such as:

- Entities that license software or software platforms to SBA Lenders solely for the purpose of performing administrative functions (not including any underwriting functions), such as generating SBA-required forms; and
- Entities that develop systems or lending platforms to automate the SBA Lender's internal loan decision making process for the SBA Lender's use in determining an Applicant's eligibility or creditworthiness.

Finally, in response to public comments asking for clarity in the definitions of ''Agent'' and ''Associates,'' SBA also is clarifying the definition of ''Associate'' of a Lender or CDC in § 120.10. The current definition of an Associate of a Lender or CDC includes, among others, ''an agent involved in the loan process.'' In order to provide more clarity for SBA Lenders and their Associates, SBA is modifying this definition to capitalize the term ''Agent'' and add a parenthetical to clarify that ''an Agent involved in the loan process'' means an Agent, as that term is defined in 13 CFR 103.1. This is consistent with SBA's longstanding interpretation of the definition of Associate in § 120.10.

Some Agents may need to make adjustments to conform to the definitions of the various types of Agents, as clarified in this interim final rule. For example, some Agents may need to enter into LSP agreements with the Lenders they provide services to, and the agreement must be submitted to SBA for review in accordance with § 103.5. (SBA's SOP 50 10 provides guidance related to the content of LSP agreements and the process to submit the agreement for SBA's review.) While Agents will not be permitted to provide assistance to both the Applicant and the SBA Lender in connection with the same loan beginning on the effective date of this interim final rule, SBA will permit Agents and Lenders a period of 120 days from the date of publication of this interim final rule in order to enter into an LSP agreement that has been reviewed by SBA. SBA will work with Agents and Lenders to help them meet that deadline.

Section 103.5 How does SBA regulate an Agent's fees and provision of service?

SBA proposed to revise paragraphs (b) and (c) of this regulation. Section 103.5(b) contains the requirement for all Agents to disclose to SBA the compensation received for services provided to an Applicant and requires that fees charged must be considered reasonable by SBA. In an effort to clarify what SBA considers reasonable compensation for services provided to an Applicant by an Agent or Agents and to prevent Applicants from being overcharged by Agents, SBA proposed to amend this section to limit the total fees that one or more Agents may charge an Applicant for assistance with obtaining an SBA-guaranteed loan. SBA proposed the following limitations on the fees that an Agent (or Agents) may charge an Applicant:

- *For loans up to and including $350,000:* A maximum of up to 2.5 percent of the loan amount, or $7,000, whichever is less;
- *For loans $350,001–$1,000,000:* A maximum of up to 2 percent of the loan amount, or $15,000, whichever is less; and
- *For loans over $1,000,000:* A maximum of up to 1.5 percent of the loan amount, or $30,000, whichever is less.

SBA received 2,441 comments on this proposal. Similar to the comments received on § 103.4, 2,343 of these comments were comprised of 26 auto-generated templates (96 percent of the comments received on this issue). Of these comments, 2,242 were submitted by individuals, 70 by Agents, 30 by SBA Lenders, and 1 by a banking association.

Each template varied slightly in wording; however, all template comments opposed the proposed changes and expressed concern that limiting the fees an Agent may charge to an Applicant will restrict a small business's access to capital, specifically for loans under $350,000.

SBA received 35 non-automated comments that expressed a similar concern with this proposal: 14 from individuals; 7 from SBA Lenders; 6 from associations representing commercial lenders; 5 from Agents; 2 from Members of Congress; and 1 from SBA's Office of Advocacy. These comments expressed concern that the proposed fee limits are set below market rates and, with these caps in place, it would not be economically feasible for Agents to continue to assist small businesses with loans under $350,000, which would in turn force small businesses to predatory lenders with no other way to gain access to affordable credit from an SBA Lender. These commenters requested that the permitted fee structure remain at the current limits, which as stated in the Summary of Comments above has been inaccurately interpreted by the coalition that created a website to facilitate the auto-generated comments, as well as by many Agents who charge Applicants multiple fees of up to 2 percent of the loan amount for each fee in connection with the same loan application.

The coalition website incorrectly states that SBA currently caps fees an Agent may charge an Applicant at 2 percent for ''Referral'' *and* 2 percent for ''Packaging'' services, for a total of 4 percent of the loan amount, for loans between $50,000 and $1,000,000. SBA's current policy regarding fees for loan packaging and other services (including referral fees paid by the Applicant) is that the fees must be reasonable and customary and must be for services actually performed; a standard or flat fee is not acceptable; and for fees charged based on a percentage of the loan amount, the fee may not exceed 2 percent of the loan amount for loans between $50,000 and $1,000,000. While some have apparently interpreted SBA's current policy to permit multiple fees exceeding, in the aggregate, the maximum fee amount, SBA does not permit an Applicant to be charged multiple fees, with each fee permitted to be up to the maximum of 2 percent of the loan amount. If an Agent performs multiple services for an Applicant in connection with a loan application between $50,000 and $1,000,000 (*e.g.,* packaging and referral services), the total amount the Agent can charge the Applicant for all services may not exceed 2 percent of the loan amount.

Five individuals commented that the proposed changes to § 103.5 would eliminate SBA-guaranteed lending to small business poultry farmers. SBA believes these comments were misdirected and intended to be made on the proposed affiliation regulations and has included the comments in that discussion later in the Section-by-Section Analysis.

The remaining 59 commenters (50 SBA Lenders, 4 Agents, 3 individuals, and 2 trade associations) supported the proposal with recommended modifications. The main recommendation presented to SBA was to increase the maximum fee limit for loans under $350,000.

Once again, SBA strongly disagrees with the commenters' claims that these proposed fee limits will eliminate access to capital for small businesses seeking small SBA loans. SBA developed the proposed fee limits based on Lender-reported data and other information gathered by OCRM during lender oversight reviews in fiscal years 2013 through 2017. In that period, 288,398 7(a) loans were guaranteed. Of the total 7(a) loans guaranteed, only 8,025 loans, or 2.78 percent of total 7(a) loans guaranteed, reported using an Agent (other than the participating Lender) to provide assistance to the Applicant in securing the loan. Therefore, it is a very small portion of the SBA loan portfolio that will be affected by limits imposed on Agents.

When conducting lender oversight activities, OCRM has found that many SBA Lenders receive findings of non-compliance related to Agent and Lender fees charged to an Applicant. Typically, these findings involve the failure to submit the SBA Form 159 to SBA's Fiscal Transfer Agent in a timely manner, failure to complete SBA Form 159 correctly and/or completely, charging the Applicant for services provided to the SBA Lender by an LSP, or charging the Applicant fees that are not permitted (*e.g.,* for underwriting of the loan). Further, as noted above, many public commenters, including Agents, incorrectly interpret SBA's current fee rules. This demonstrates the lack of clarity of the existing rules governing permissible fees and the need for simplification. SBA believes it can address any confusion among SBA Lenders and Agents by providing a bright-line test for what is considered ''reasonable'' by the Agency. As discussed more fully below in the Regulatory Impact Analysis, providing this bright-line test will reduce the burden on SBA Lenders and Agents with respect to the time it takes to review fees and determine whether they are permissible and reasonable.

Based on the foregoing, the Agency reaffirms its decision to set specific limitations on the fees that an Agent or Agents may charge an Applicant for assistance with obtaining an SBA-guaranteed loan. However, in an effort to avoid unintended consequences for loans of $350,000 or less, SBA is increasing the maximum amount an Agent or Agents may charge an Applicant for those loans. In addition, in order to prevent fees from loans over $350,000 and up to $500,000 from having a lower maximum permissible fee than loans of $350,000 or less, SBA also is revising the lower two ranges. Thus, in this interim final rule, the maximum amount an Agent or Agents may charge an Applicant for assistance with obtaining an SBA-guaranteed loan is as follows:

- *For loans up to and including $500,000:* A maximum of 3.5 percent of the loan amount, or $10,000, whichever is less;
- *For loans $500,001–$1,000,000:* A maximum of 2 percent of the loan amount, or $15,000, whichever is less; and
- *For loans over $1,000,000:* A maximum of 1.5 percent of the loan amount, or $30,000, whichever is less.

According to SBA's analysis of all loans guaranteed by SBA during FY2013 through FY2017, only 1% of the loans reported fees charged to an Applicant by an Agent (other than the participating Lender) that were in excess of the revised maximums in this interim final rule. It is important to note that all of the fees charged by Agents that were in excess of the revised limits in this interim final rule also were in excess of the current permitted fees, and were therefore not in compliance with current SBA policy.

SBA received several comments suggesting SBA modify the circumstances under which SBA may require an Agent to refund any excess fee amount to the Applicant. SBA considered these comments and is modifying the regulatory text to clearly state that SBA may require an Agent to refund any amount charged to an Applicant in excess of what is permitted by SBA in § 103.5. SBA will monitor these fee levels and, if adjustments are necessary, SBA may revise these amounts from time to time through rulemaking.

Because SBA's primary concern is to minimize the cost for a small business Applicant to obtain an SBA-guaranteed loan, these fee limitations will not apply when an SBA Lender pays fees to an Agent for services in connection with an

SBA-guaranteed loan; however, SBA Lenders are reminded that such fees may not be passed on to the Applicant either directly or indirectly and such fees may not be paid out of SBA-guaranteed loan or debenture proceeds. Also, SBA reiterates that if an Agent provides more than one service (*e.g.,* packaging and referral services) to an Applicant, only one fee is permitted for all services performed by the Agent. Further, if more than one Agent (*e.g.,* a Packager and a Loan Broker/Referral Agent) provides assistance to the Applicant in obtaining the loan, the total amount of all fees that the Applicant is required to pay must not exceed the maximum allowable fee set by SBA. (However, a fee charged to the Applicant by the Lender in accordance with § 120.221(a) will not be counted toward the maximum allowable fee for an Agent or Agents.) These maximum limits apply regardless of whether the Agent's fee is based on a percentage of the loan amount or on an hourly basis.

If an Agent or Agents charge an Applicant fees in connection with obtaining an SBA-guaranteed loan, the Agent(s) must disclose the fees to SBA by completing a Compensation Agreement (SBA Form 159) in accordance with the regulation at § 103.5 and must provide supporting documentation as set forth in SOP 50 10.

SBA recognizes that some Agents may need to revise their business practices or documentation in order to comply with the new limits on fees in § 103.5(b). In order to minimize the impact of the change on affected Agents, SBA is not requiring compliance with revised § 103.5(b) until October 1, 2020. Until that time, Agents are to continue to comply with the requirements in § 103.5(b) as published in the 2019 edition of the Code of Federal Regulations, and the guidance in SOP 50 10 5(K). However, considering the benefits that the new fee limits offer, SBA expects that many Agents will want to comply with them before October 1, 2020. They are permitted to do so. SBA recommends that these Agents document their decision to use the new fee limits when reporting the fees on SBA Form 159.

In § 103.5(c), SBA proposed to remove the word ''directly'' from the last sentence to clarify that compensation paid by the SBA Lender to an LSP may not be charged to the Applicant, either directly or indirectly.

SBA received two comments on this proposed change, both from SBA Lenders. Both SBA Lenders expressed concern over the removal of the word ''directly'' and believed that it could lead to SBA inaccurately determining fees are indirectly being passed on to the borrower either as part of the interest rate or if, for example, the SBA Lender charges the Applicant a packaging fee.

SBA sets parameters on both the maximum allowable interest rate and permissible fees SBA Lenders may charge an Applicant. As long as the SBA Lender does not charge the Applicant beyond what is permitted, SBA would not consider that fees are being passed on to the Applicant through these means. SBA is adopting the modification to § 103.5(c) as proposed.

4. Loans to Qualified Employee Trusts

Section 120.350 Policy

The regulations governing SBA-guaranteed loans to qualified employee trusts or ''Employee Stock Ownership Plans'' (ESOPs) are set forth in §§ 120.350 through 120.354. Because of the complex nature of these transactions, SBA proposed to amend § 120.350 to require such applications be processed only on a non-delegated basis.

SBA received 78 comments on this proposal. One comment supported the proposed change. The rest of the comments expressed concern with the amendment as proposed. The concerns center around two positions. The first position is that delegated Lenders should be permitted to process ESOP loans under their delegated authority, in line with the spirit of the policy enacted by Congress in Section 862 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232) (NDAA FY19), which charges SBA with promoting enhanced employee ownership of small businesses by maximizing their ability to affordably access capital. This position was expressed by 22 commenters, including 10 trade associations, 8 individuals, 3 members of Congress, and 1 SBA Lender.

The second position was whether SBA's decision to require ESOP loans to be processed on a non-delegated basis could be addressed in SBA's SOP 50 10, rather than be incorporated into the regulation. This position was expressed by 55 commenters, including 46 SBA Lenders, 5 Agents, 2 trade associations, and 2 individuals.

SBA considered the comments and the statutory text of the NDAA FY19. The legislation provides the Administrator with the discretion to permit loans to qualified employee trusts and cooperatives to be processed under a Lender's delegated authority. SBA maintains its position that these transactions are complex in nature and, for the time being, should continue to be processed on a non-delegated basis, as current procedures direct. SBA agrees, however, to eliminate the proposed regulatory change requiring SBA-guaranteed loans to a qualified employee trust to be processed under non-delegated procedures. SBA will maintain the specific processing instruction that ESOP loans must be processed on a non-delegated basis in SOP 50 10 and will monitor the activity of ESOP loans during the initial implementation period of the revised statutory requirements in order to ensure compliance with Loan Program Requirements for such loans.

SBA is, however, making a technical amendment to both § 120.350, Policy, and § 120.352, Use of Proceeds, to incorporate the statutory change made in the NDAA that permits SBA to guarantee a loan to the small business concern (rather than the qualified employee trust), if the proceeds from the loan are used only to make a loan to a qualified employee trust that results in the qualified employee trust owning at least 51 percent of the small business concern. SBA is making this technical amendment in order to ensure that the regulations are not inconsistent with the statute and to provide clarity to SBA Lenders and SBA employees with respect to guaranteed loans involving ESOPs. Additional guidance governing these loans will be provided in SOP 50 10.

5. A Lender's Responsibility When Purchasing 7(a) Loans From the FDIC as Receiver, Conservator, or Other Liquidator of a Failed Financial Institution

Section 120.432 Under what circumstances does this subpart permit sales of, or sales of participating interests in, 7(a) loans?

SBA proposed modifying § 120.432(a) to implement its longstanding policy of holding Assuming Institutions and investors responsible for the contingent liabilities (including repairs and denials) associated with 7(a) loans originated by failed insured depository institutions, whether the 7(a) loans are purchased by a Lender through a Federal Deposit Insurance Corporation (FDIC) loan sale or transferred to an Assuming Institution through a whole bank transfer.

SBA received three comments on this proposed change. One SBA Lender commented in support of the modification. The other two commenters, one banking association representative and one SBA Lender,

objected to the proposed modification, stating that as drafted the proposed change may preclude the Agency from entering into agreements with the FDIC to affirm the validity of the guaranties at the time of such loan sale or whole bank transfer. According to both commenters, the proposed change would create a perception in the minds of qualified purchasers that a large number of guaranties will be denied, thus creating a disincentive for qualified SBA Lenders to enter into such transactions.

SBA proposed this modification to ensure consistent treatment of all portfolio loan transfers whether through voluntary bank mergers or asset sales, or through FDIC-led portfolio transfers following the failure of a Lender. SBA is modifying the regulatory language to include a statement that clarifies the applicability of the paragraph and the ability for the Agency to agree otherwise in writing (*i.e.,* to affirm the validity of the guaranties). SBA also is modifying the regulatory language to remove the specific reference to the FDIC and make it applicable to all 7(a) loans purchased from any Federal or state banking regulator, any receiver, or any conservator.

6. Microloan Program

Section 120.707 What conditions apply to loans by Intermediaries to Microloan borrowers?

SBA proposed to revise the regulation at § 120.707(b) to increase the maximum maturity of a loan from an Intermediary to a Microloan borrower from 6 years to 7 years. SBA received two comments supporting this change. SBA is amending this section as proposed.

Section 120.712 How does an Intermediary get a grant to assist Microloan borrowers?

In § 120.712(b), SBA proposed to incorporate a recent statutory change to the percentage of grant funds that may be used by the Intermediary for marketing, managerial, and technical assistance to prospective Microloan borrowers. In § 120.712(d), SBA proposed to incorporate a recent statutory change to the percentage of grant funds the Intermediary may use to contract with third parties to provide technical assistance to Microloan borrowers. SBA received one comment in support of each respective change. SBA is amending this section as proposed.

7. Technical Corrections and Conforming Amendments

Section 120.130 Restrictions on Uses of Proceeds

SBA proposed a conforming amendment to § 120.130 to include a reference to the proposed § 120.444 (Eligible uses of SBA Express and Export Express loan proceeds) to clarify that revolving lines of credit are an eligible use of 7(a) loan proceeds under SBA Express and Export Express. SBA did not receive any comments on this proposal. SBA is adopting the amendment as proposed.

Section 120.222 Prohibition on Sharing Premiums for Secondary Market Sales

SBA proposed a technical correction to § 120.222 to remove an extra word (''in'') that was inserted in error. SBA did not receive any comments on this proposal. SBA is adopting the rule as proposed.

Section 120.344 Unique Requirements of the EWCP

SBA proposed a conforming amendment to § 120.344(b) to ensure that the extraordinary servicing fees charged on EWCP loans, as permitted by the revised § 120.221(b), are reasonable and prudent.

SBA received 53 comments on this section, all in support of the proposed change. SBA is adopting the amendment as proposed.

Section 120.440 How does a Lender obtain delegated authority?

SBA proposed several technical corrections and a conforming amendment to the delegated authority criteria regulation at § 120.440(c) to clarify that a Lender's authority to participate in SBA Express may be renewed for a maximum term of 3 years.

SBA received 54 comments on this proposed change, 1 of which opposed the proposed change and recommended that the SBA Express renewal period remain a 2-year renewal period to remain consistent with other delegated authority renewal periods and to ensure efficient SBA oversight over delegated authorities. While the other 53 commenters expressed a similar concern that an increase in renewal period may conflict with the maximum 2-year renewal period allowed for general delegated authority, they supported the proposal with modification. In order to address this concern, these 53 commenters requested that SBA provide additional information on how delegated authority renewals will be processed when a Lender holds both SBA Express authority and Preferred Lenders Program (PLP) authority.

SBA considered the comments received and is adopting the amendment as proposed. As a point of clarification, the amendment to this regulation will permit SBA to grant a longer term for renewals of SBA Express authority, not to exceed three (3) years. SBA may continue to grant shorter renewals and SBA's OCRM will coordinate with those Lenders concerned with maintaining alignment of their SBA Express renewal periods with any other delegated authorities they may hold. SBA will provide additional information on how delegated authority renewals will be processed when a Lender holds SBA Express authority and other delegated authority (*e.g.,* PLP, Export Express) in SOP 50 10.

Section 120.840 Accredited Lenders Program (ALP)

SBA proposed a technical correction to § 120.840 to replace the reference in this section to the Director, Office of Financial Assistance with ''appropriate SBA official in accordance with Delegations of Authority.''

SBA received 68 comments on this proposed change. All of these comments recommended that SBA also revise the ALP application requirements outlined in this section under § 120.840(b) to reflect the modernized application submission process, which will allow CDCs to submit ALP applications electronically into the Corporate Governance Repository, rather than apply to the Lead SBA Office.

SBA appreciates the recommendation and agrees to make both the correction proposed by SBA and the revision recommended through public comment in order to reflect SBA's current ALP application process.

B. Affiliation Principles for the Business Loan, Business Disaster Loan, and Surety Bond Guarantee Programs

Section 121.301 What size standards and affiliation principles are applicable to financial assistance programs?

The proposed § 121.301(f) expanded the ''identity of interest'' regulation to include affiliation between individuals or firms that have identical or substantially identical business or economic interests (individuals or firms with common investments, or firms that are economically dependent through contractual or other relationships). This was how the identity-of-interest affiliation rule operated prior to the 2016 rule change that limited such affiliation to ''close relatives.'' (81 FR

41423, June 27, 2016) SBA's proposal was intended to return SBA's identity-of-interest affiliation rule closer to the pre-2016 rule. SBA received 1,137 comments on this proposed identity-of-interest regulation. Of those, 52 comments supported the rule as proposed, 4 supported the rule with some modifications, and the remainder opposed the rule as written. Most of the comments opposed either the rule change in general or the specific economic-dependence ground of affiliation in § 121.301(f)(4)(iv).

Close relatives. Businesses that are owned by family members may be affiliated under SBA's longstanding close-relatives rule. In 2016, SBA clarified that the rule applies where family members have overlapping business interests and are operating in the same geographic area. In the proposed rule, SBA retained the identity-of-interest ground for affiliation based on close relatives, but moved it to paragraph (f)(4)(ii). SBA is adopting paragraph (f)(4)(ii) of the rule as proposed.

Common Investments. The proposed rule provided that SBA would find affiliation based on common investments under the identity-of-interest rule when multiple entities are owned by the same individuals or firms, and the entities owned by such investors conduct business with each other or share resources. In order to find an identity of interest between investors, the common investments would need to be substantial, either in number of investments or total value. Under the proposed rule, SBA would consider businesses to be affiliated based on common investments only if they conduct business with each other, or share resources, equipment, locations or employees; or provide loan guaranties or other financial or managerial support to each other. One comment criticized the proposed common investments rule as being better addressed through SBA's program eligibility rules and another comment criticized the proposal as vague.

In response to comments, SBA is limiting the application of affiliation under common investments to firms that operate in the same or related industry. Thus, firms that operate in different, unrelated industries would not be subject to common-investment affiliation.

Additionally, in this common-investments ground of affiliation and several others that follow, SBA adopts a reasonableness standard for reviewing affiliation determinations made by SBA Lenders. SBA acknowledges that some SBA Lenders may have limited experience in applying some of SBA's more complicated affiliation standards. Thus, in instances in which SBA reviews an SBA Lender's determination that there is no affiliation under the common investments rule, SBA will not overturn the SBA Lender's determination if the SBA Lender's determination was reasonable at the time that the SBA Lender made it, given the information that the SBA Lender had available. For example, if the SBA Lender *reasonably* determined that two firms with common investors with substantial ownership interests were not affiliated because, even though the firms shared employees and locations, the firms were in what the SBA Lender deemed to be unrelated industries, SBA will accept that determination even if SBA would have found the industries to be related if presented with the same facts. SBA's reasonableness standard takes into account that the SBA Lender's determination might not be the same as SBA's, but still would be consistent with the regulation as long as it was reasonable. SBA believes using this standard will provide SBA Lenders with the ability to make a prudent lending decision without concern that their decision, if reasonable, will be second-guessed. SBA Lenders are reminded that they must document their analysis and determination in each loan file.

Economic Dependence. The proposed rule provided that, if a small business Applicant derived more than 85 percent of its revenue from another business over the previous three fiscal years, SBA would find that the small business Applicant is economically dependent on the other business and, therefore, that the two businesses are affiliated. SBA proposed that the rule would include an exception for a firm that has been in business for a short amount of time and has a plan to lessen its dependence on the other concern. In response to comments, SBA is replacing the exception for a firm that has been in business for a short amount of time with two different exceptions in the interim final rule.

The comments raised the issue that economic-dependence affiliation would apply where a seller limited its sales to one buyer because of circumstances unrelated to control. Such circumstances might include situations where, though the terms of its relationship with its single buyer do not restrict selling to other customers, the seller does not have sufficient inventory to do so. For example, the buyer might have several locations or lines of business, and the seller could be selling to multiple locations or business lines under the buyer's control but is not restricted from selling to other customers. As another example, the seller could be selling exclusively to the Federal Government either through a prime contract or subcontract. Under SBA affiliation principles, affiliation applies only where there is control or the power to control. Therefore, SBA is creating an exception to the economic-dependence rule for contracts that do not restrict the concern in question from selling the same type of products or services to another purchaser. This exception avoids applying the rule to situations where the seller's product only has one buyer or where the seller chooses to sell only to one buyer. This exception replaces the exception in the proposed rule for newly created businesses that have a plan to lessen their dependence on the other concern, which SBA concluded would be too easily circumvented and was not practical to apply in the loan programs.

Many comments expressed concern over how economic-dependence affiliation would apply to an agreement between a poultry farmer and a large poultry producer (integrator) and whether most poultry farmers would be considered ineligible for SBA financial assistance under the provisions of the proposed rule. SBA's proposal was not intended to eliminate lending to poultry and other farmers in the Business Loan Programs. The Small Business Act authorizes SBA to make non-disaster business loans to farming and agricultural related industries and SBA understands the need for SBA financial assistance to small businesses in those industries. SBA also recognizes, however, that integrator agreements generally restrict the poultry farmer from raising another producer's chicks on the same farm and therefore would not qualify for the first exception described above. Accordingly, SBA is creating a second exception to address this circumstance and others where the first exception does not apply.

Under this second exception, an SBA Lender or other party may request SBA to review a contractual relationship where one firm derived more than 85 percent of its receipts over the previous three fiscal years from the other firm, and the contract restricts the seller from selling the same type of products or services to another purchaser. For businesses that have been in operation for less than 1 year, the 85 percent threshold will be applied based on the Applicant's business plan and projected revenues. For businesses that have been in operation for at least 1 year, but less than 3 years, the threshold will be applied based on the receipts for the

period the business has been in operation.

In assessing whether economic-dependence affiliation exists, SBA will review the contract to determine whether, notwithstanding the concentration of sales and the restriction, the buyer does not have control or the power to control the seller. In determining control under these circumstances, SBA will consider the volume of sales that the contract covers, the contract's termination provisions, the risk that the concern in question bears under the contract, the concern's right to profit from its efforts, the rationale for restrictions that the contract places on the small business, and other factors. SBA is making available for public comment on its website guidance on the types of provisions that establish control or do not establish control for purposes of this provision, and the process for requesting SBA review of a contract. The guidance can be found at *https://www.sba.gov/offices/headquarters/oca/spotlight*. If SBA finds no control, SBA will determine that there is no affiliation between the two concerns under the economic-dependence rule. Even where SBA finds no economic-dependence affiliation, SBA Lenders are reminded that they still must ensure that the applicant business meets all other eligibility criteria and they must make a credit determination. SBA will accept comments on the guidance during the 60-day comment period for this interim final rule.

Newly Organized Concerns. In order to create greater uniformity among SBA's various affiliation rules, SBA proposed to add to § 121.301(f) a newly organized concern rule, similar to the one which had applied to the Business Loan Programs prior to the 2016 rule change. Under the proposed newly organized concern rule, a newly organized spin-off company may be found affiliated with the original company where all of the following four conditions are met: (1) Former or current officers, directors, principal stockholders, managing members, general partners, or key employees of one concern organize a new concern; (2) the new concern is in the same or related industry or field of operation; (3) the individuals who organized the new concern serve as the new concern's officers, directors, principal stockholders, managing members, general partners, or key employees; and (4) the original concern is furnishing or will furnish the new concern with contracts, financial or technical assistance, indemnification on bid or performance bonds, and/or other facilities, whether for a fee or otherwise. The proposed rule defined a key employee to be an employee who, because of his or her position in the concern, has a critical influence in or substantive control over the operations or management of the concern. The proposed rule further defined a ''newly organized'' concern to be one that has been actively operating continuously for two years or less. The proposed newly organized concern basis of affiliation would be a rebuttable presumption that may be rebutted if there is a clear line of fracture between the new concern and the other firm.

SBA received 130 comments on this proposed regulation. Three commenters, consisting of two SBA Lenders and one non-profit organization, were supportive of the proposed rule. The remaining 127 commenters expressed concern with the proposed regulation. Commenters observed that the newly organized concern rule included several undefined terms and could hamper a new firm's ability to recruit employees. SBA agrees that it can provide greater clarity with respect to the undefined terms and can simplify the rule to make it easier to apply and to ensure that recruitment or hiring efforts are not adversely affected by the rule. In the interim final rule, in response to the comments, SBA is replacing the term ''principal stockholders'' with the term ''owners of a 20 percent interest or greater'' (in conditions number (1) and (3) above). SBA also is replacing the term ''key employees'' with ''persons hired to manage day-to-day operations'' in the list of affected individuals in the original concern (in condition number (1) above), and is deleting the term ''key employee'' from the list of affected individuals in the new concern (in condition number (3) above). Therefore, a new firm can hire anyone, including a former owner or key employee of another firm, as an employee without the employee causing affiliation under the newly organized concern rule. Due to these changes, SBA is eliminating the definition of ''key employee'' from the regulatory text, as it is no longer necessary.

SBA also is revising the interim final rule with respect to the benefits that flow from the original concern to the new concern (in condition number (4) above). Rather than applying the newly organized concern rule based on whether the original concern is furnishing or will furnish the new concern with contracts, financial or technical assistance, indemnification on bid or performance bonds, and/or other facilities, whether for a fee or otherwise, SBA is revising the regulatory text so that the newly organized concern rule only applies when direct monetary benefits flow from the new concern to the original concern. It is not SBA's intent to apply the rule where the original concern does not receive direct monetary benefits from the new concern. Examples of direct monetary benefits would include profit or revenue sharing agreements or royalty payments. Further, SBA will not consider the referral of business without compensation to constitute ''direct monetary benefits.'' In addition, in the definition of a new concern, SBA is deleting the term ''continuously,'' because that term might cause confusion for businesses that operate on a seasonal or intermittent basis.

Finally, in the newly organized concern ground of affiliation, SBA adopts a reasonableness standard for reviewing affiliation determinations made by SBA Lenders. In instances in which SBA reviews an SBA Lender's initial determination that there is no affiliation under the newly organized concern rule, SBA will not overturn the SBA Lender's determination if it was reasonable at the time it was made, given the information that the SBA Lender had available. For example, if the SBA Lender reasonably determined that the new firm's owners were corporate officers of another firm, but that the benefits flowing from the new firm to the other firm are not direct monetary benefits, SBA will accept the determination even if SBA would have found the benefits to be direct monetary benefits if presented with the same facts. SBA's reasonableness standard takes into account that the SBA Lender's determination might not be the same as SBA's, but still would be consistent with the regulation as long as it was reasonable. SBA believes using this standard will provide SBA Lenders with the ability to make a prudent lending decision without concern that their decision, if reasonable, will be second-guessed. SBA Lenders are reminded that they must document their analysis and determination in each loan file.

Totality of the Circumstances. The proposed rule added a new paragraph (f)(6) to § 121.301 to explain that, when making affiliation determinations, SBA would consider the totality of the circumstances, and may find affiliation even though no single factor is sufficient to constitute affiliation. The totality of the circumstances criterion for determining affiliation was removed from the regulations in 2016. At that time, SBA stated that, generally, examples of when this criterion was used involved negative control or control through management

agreements. Thus, in 2016, SBA provided additional specific guidance in § 121.301(f)(1) and (3) to address negative control and control through management agreements. However, SBA now believes that there are other examples of when affiliation may be present but not covered by the specific affiliation rules and, therefore, proposed to reinstate the totality of the circumstances criterion. In proposing to reinsert the criterion in the regulations, SBA provided two examples of where the totality of the circumstances test would result in a finding of affiliation.

SBA received 146 comments on this proposed change. Four commenters, comprised of three individuals and one non-profit organization, expressed support of the proposal. These comments expressed the same opinion, that it is critical for SBA to consider the totality of the circumstances in determining affiliation, specifically with respect to contracts and agreements between poultry farmers/growers and poultry integrators.

The remaining 142 comments were submitted by 117 SBA Lenders, 10 individuals, 8 Agents, and 7 trade associations. These comments expressed concern that the totality of the circumstances test could result in arbitrary and unpredictable application of SBA's affiliation rules. SBA believes that this overstates the potential reach of the totality of the circumstances rule. The rule is merely an application of the general principle that affiliation is caused by control or the power to control of one firm by another, or common control of multiple firms. There may be instances of control that are not covered by the specific grounds of affiliation, and the totality of the circumstances test merely states that those instances are not exempt from affiliation analysis. For example, the relationship between a recording artist and a record company might cause affiliation if the record company has exclusive rights over the recording artist and closely controls the activities of the recording artist, but none of the specific grounds of affiliation would reach that relationship necessarily. As another example, a firm's operating agreement might require that the firm obtain approval from a third party prior to making certain decisions that typically are made independently by firms in that industry in the ordinary course of business. This approval requirement might grant the third party control over the firm and could result in affiliation under the totality of the circumstances, even though none of the specific grounds of affiliation might apply. The totality of the circumstances test should not reach routine and typical business relationships, however.

In order to address concerns raised by the commenters, SBA is modifying the regulatory language to provide that, when applying the totality of the circumstances test, SBA may consider all connections between the Applicant business and a possible affiliate and, if no single factor is sufficient to constitute affiliation, SBA may determine on a case-by-case basis that affiliation exists when there is ''clear and convincing evidence'' based on the totality of the circumstances. Further, as with the common investments rule and the newly organized concern rule, SBA is adopting a reasonableness standard for reviewing affiliation determinations made by SBA Lenders under the totality of the circumstances rule. For the totality of the circumstances rule, SBA will not overturn the SBA Lender's determination if it was reasonable at the time it was made, given the information that the SBA Lender had available. For example, if the SBA Lender *reasonably* determined that a firm whose day-to-day operations required the approval of a minority owner in some situations was not affiliated with the minority owner, SBA will accept that determination even if SBA would have found the firm and the minority owner to be affiliated in the first instance. SBA Lenders are reminded that they must document their analysis and determination in each loan file.

121.301(f)(7) Affiliation Based on Franchise Agreements

SBA proposed to revise this paragraph to clarify that the term ''franchise'' has the meaning given by the Federal Trade Commission (FTC) in its definition of ''franchise'' as set forth in 16 CFR part 436. SBA proposed to cross-reference the FTC definition of ''franchise'' in the regulation to clarify that the regulation applies to all agreements or relationships, whatever they may be called, that meet the FTC definition of a franchise. All such agreements would be referred to in the regulation as ''franchise agreements'' and the parties to such agreements will be referred to as ''franchisor'' and ''franchisee.'' Further, SBA proposed to add to this regulation a statement that SBA will maintain a publicly available centralized list of franchise and other similar agreements that are eligible for SBA financial assistance, consistent with SBA's current policy and procedure.

SBA received 125 comments on this proposed change, all of which supported the proposal. Two of the 125 commenters also recommended that SBA expand paragraph (7) to define the relationship between poultry or swine farmers and their integrators. In addition, these 2 commenters suggested that, in order to expedite the approval process, SBA should maintain a centralized list of integrator agreements in the same manner as franchise agreements. SBA appreciates the recommendation, but is not going to expand the principle of affiliation based on franchise or license agreements to include integrator agreements or maintain a separate centralized list of agreements between poultry or swine farmers and their integrators at this time. SBA has discussed how the relationships between poultry or swine farmers and their integrators will be reviewed in the section above on economic-dependence affiliation. SBA is adopting paragraph (7) as proposed.

Section 121.302 When does SBA determine the size status of an applicant?

SBA proposed to incorporate the SBA Express and Export Express programs into this regulation to clarify that, with respect to applications for financial assistance under these programs, size is determined as of the date of approval of the loan by the SBA Express or Export Express Lender. SBA did not receive any comments on this proposal. SBA is adopting the regulation as proposed.

C. Agency Responses to the Office of Advocacy's Comments on the Proposed Rule

1. Proposed Fee Caps

SBA's Office of Advocacy expressed concern that, although the proposed fee caps will reduce the fees that small businesses pay to obtain a loan, some members of the public believe that the proposed caps will hurt small banks and possibly eliminate the incentives to facilitate small SBA loans that small businesses need. Advocacy also expressed concern that SBA is attempting to address a problem that is being created by a few bad actors, and that in doing so SBA may discourage the facilitation and use of SBA's products. SBA does not agree that the proposed fee limits will hurt small SBA Lenders, as the Agency believes the changes in these rules will simplify the rules regarding fees and will reduce the burden on all SBA Lenders, including small SBA Lenders. (For additional discussion of the estimated reduction in the burden on SBA Lenders, see the discussion in the Regulatory Impact Analysis and Regulatory Flexibility Act sections below.) Further, as Advocacy acknowledges in its comment letter, in approximately 96 percent of the loans

guaranteed during FY2013–FY2017, Applicants were charged fees (by Lenders and Agents) that were less than the maximum fees in the proposed rule. As discussed earlier in the Section-by-Section Analysis, in consideration of the comments received and in order to ensure there are no unintended consequences for smaller loans, SBA has increased the maximum fees that both Lenders and Agents will be permitted to charge Applicants in connection with smaller loans. When the revised fee limits for smaller loans in the interim final rule are taken into consideration, the percentage of loans guaranteed in FY2013–FY2017 with fees less than the permitted maximums increases to nearly 99%.

In addition, recognizing that some SBA Lenders and Agents, including LSPs, may need to revise their practices, policies, procedures, or documentation to comply with revised § 103.5(b) or § 120.221(a), SBA is not requiring compliance with those provisions until October 1, 2020. As discussed more fully in the Regulatory Flexibility Act section of this interim final rule, SBA believes the extended period for SBA Lenders and Agents to comply with those sections of the interim final rule will help to minimize any potential adverse effects on small SBA Lenders and Agents. Further, with the modifications to the maximum permitted fees made in this interim final rule and the extended time period for compliance, the Agency believes it has addressed any concern that small SBA Lenders will be unable to find Agents to assist them with facilitating SBA-guaranteed loans. Finally, as noted earlier in the Section-by-Section Analysis, SBA provides several options for free or low-cost assistance through its resource partners, which are accessible nationwide.

2. The Personal Resources Test

The Office of Advocacy expressed concern that the proposed reinstatement of a personal resources test will limit the resources available to a small business owner in the event of an emergency. Additionally, Advocacy expressed concern that the proposed personal resources test would eliminate potential borrowers and be difficult to include in the current underwriting practices of small financial institutions. Advocacy encouraged SBA to consider a contribution level that will allow small businesses to have a buffer in the event of unforeseen circumstances. After considering the comments received on this change, SBA has reevaluated the personal liquidity threshold for smaller loans and agrees to modify the limits to ensure that Applicants applying for smaller loans are not adversely affected.

In this interim final rule, SBA has increased the threshold for loans of $350,000 or less to allow the owners of the small business Applicant to retain more personal liquidity. SBA also is modifying the regulatory text to provide that SBA will reexamine the thresholds periodically and, if adjustments are necessary, SBA may modify the thresholds through rulemaking from time to time based on nationally-recognized economic indicators. Also, the regulation will provide SBA with the ability to permit exceptions to the required injection of an owner's excess liquid assets in extraordinary circumstances, such as when the excess funds are needed for immediate medical expenses of a family member. With respect to Advocacy's concern that small financial institutions will have difficulty implementing this change, as discussed in the Regulatory Impact Analysis below, SBA believes that providing a bright-line test will assist SBA Lenders in analyzing the resources of individuals and entities that own 20 percent or more of the Applicant business in order to determine if any of the owners have liquid assets available that can provide some or all of the desired financing. This bright-line test will reduce the burden on SBA Lenders when making this critical eligibility determination. In addition, SBA notes that a personal resources test was in SBA's regulations until 2014, so SBA Lenders have experience applying such a test and should not have difficulty implementing this change.

3. Affiliation

The Office of Advocacy expressed concern that the affiliation sections of the proposed rule may be vague and confusing to small entities. In addition, Advocacy expressed concern that the proposed changes may be problematic in small rural communities that rely on contracts with large companies/integrators to buy agricultural goods. Advocacy encouraged SBA to clarify the proposed changes.

As discussed more fully in section III.B. above, in this interim final rule, SBA has clarified several of the proposed changes, including the common-investments affiliation rule, the economic-dependence affiliation rule, the newly organized concern affiliation rule, and the totality of the circumstances affiliation rule. Specifically, in order to ensure there would be no adverse impact on rural areas or small agricultural businesses, SBA added a second exception to the economic-dependence affiliation rule for businesses operating under contracts that restrict the seller from selling the same type of products or services to another purchaser. Under this second exception, an SBA Lender or other party may request SBA to review the contractual relationship between the large company/integrator and the small business Applicant to determine whether affiliation exists.

4. Additional Outreach

The Office of Advocacy encouraged SBA to perform additional business outreach with the industries that may be impacted by the proposed rule to determine the best way to implement changes that will achieve SBA's goals without being unduly burdensome. As discussed more fully in the Regulatory Impact Analysis and Regulatory Flexibility Analysis below, SBA believes it has received sufficient input and feedback from program participants and other stakeholders to implement the proposed changes, with the modifications identified in this Section-by-Section Analysis, in a manner that will reduce the burden on those participants and stakeholders and provide meaningful benefits to small business Applicants. Nevertheless, SBA is publishing this rule interim final rather than proceeding to a final rule in order to provide the public with an additional opportunity to comment. See Justification for Interim Final Rule below. SBA will consider comments submitted during the 60-day comment period and address them in a Final Rule.

D. Severability

The provisions of this interim final rule are separate and severable from one another. If any provision is stayed or is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, it is SBA's intention that the remaining provisions of the interim final rule will remain in effect.

Justification for Interim Final Rule

SBA finds that good cause exists to publish this rule as an interim final rule. As discussed above, SBA previously published a Notice of Proposed Rulemaking (NPRM) addressing all of the topics and issues covered by this interim final rule. SBA has already allowed for public comment (including an extension of the original comment period), reviewed the comments, and made changes accordingly. SBA has determined that the changes made in this rule are a logical outgrowth of the proposed rule and the comments received on the proposed rule.

Procedurally, SBA could therefore issue a final rule; however, SBA is publishing this rule interim final rather than proceeding to a final rule in order to provide the public with an additional opportunity to comment. Although not legally required, the additional opportunity to comment on the interim final rule is desirable given the level of interest in the proposed changes and the recommendation by the Office of Advocacy for additional outreach to affected parties.

SBA invites public comment on this interim final rule and will consider amendments to the rule based on comments submitted during the 60-day comment period. SBA will address any comments through the publication of a Final Rule.

Compliance With Executive Orders 12866, 13563, 13771, 12988, and 13132, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

As referenced above, the Office of Management and Budget (OMB) has determined that this interim final rule is a ''significant'' rulemaking for the purposes of Executive Order 12866. Accordingly, the next section contains SBA's Regulatory Impact Analysis. However, this is not a major rule under the Congressional Review Act, 5 U.S.C. 800.

Regulatory Impact Analysis

1. Is there a need for this regulatory action?

The primary objective of this interim final rule is to incorporate into the regulations governing the 7(a) Loan Program the requirements specifically applicable to the SBA Express and Export Express Loan Programs in order to provide additional clarity for SBA Express and Export Express Lenders. Congress has authorized SBA to permit qualified lenders to make SBA Express and Export Express loans using, to the maximum extent practicable, their own analyses, procedures, and documentation. It is necessary to provide clear and succinct regulatory guidance for Lenders to encourage participation in extending these smaller dollar loans, and to enable these Lenders to extend credit with confidence in their ability to rely on payment by SBA of the guaranty, if necessary.

The Small Business 7(a) Lending Oversight Reform Act of 2018 (Pub. L. 115–189) was signed into law on June 21, 2018. As part of this legislation, Congress has authorized the Agency to direct the methods by which Lenders determine whether a borrower is able to obtain credit elsewhere. SBA is implementing that legislation in a separate rulemaking, but in this interim final rule SBA is reinstating a personal resources test in an effort to provide clear direction to SBA Lenders for analyzing whether a borrower has credit available elsewhere on reasonable terms from non-Federal, non-state, non-local, or alternative sources. Many SBA Lenders expressed confusion and sought guidance from SBA on how to adequately determine whether a small business had access to credit elsewhere based on personal liquid assets. This interim final rule will provide a bright-line test to assist SBA Lenders in analyzing the resources of individuals and entities that own 20 percent or more of the Applicant business in order to determine if any of the owners have liquid assets available that can provide some or all of the desired financing.

The statutory changes in the Consolidated Appropriations Act of 2018 (Pub. L. 115–141) regarding the Microloan Program require amendments to existing regulations for the percentage of grant funds that may be used by the Microloan Intermediary for marketing, managerial, and technical assistance to prospective Microloan borrowers. Existing regulations must be revised as proposed to reflect the statutory changes.

Further, the Agency believes it needs to streamline Loan Program Requirements and reduce regulatory burdens to facilitate robust participation in the business loan programs that assist small U.S. businesses, particularly those small businesses in underserved markets. For that reason, SBA has modified regulatory provisions related to allowable fees that a Lender or an Agent may collect from an Applicant for financial assistance. It is clear to the Agency, based on results from reviews conducted by OCRM, public comments received in response to the proposed rule, and technical assistance requests received by SBA from SBA Lenders and Agents, that confusion is widespread across the industry regarding what fees Agents and Lenders may charge to an Applicant. In this interim final rule, SBA is simplifying the regulations applicable to Agents, as well as the fees that Agents and Lenders may charge to Applicants for assistance with obtaining an SBA-guaranteed loan, in order to provide more clarity to the industry.

The interim final rule also revises the affiliation principles applicable to the Business Loan, Disaster Loan, and Surety Bond Guarantee Programs in order to simplify and clarify the determination of eligibility of a business as a small concern and to ensure that only small independently owned and operated businesses benefit from SBA's small business financial assistance programs.

SBA does not expect the proposed changes to change loan volume significantly. Overall program participation is driven by broad economic activity, making it difficult to attribute increased or decreased loan volume to a particular cause. The overriding public policy objective of the rule changes is the creation of economic efficiencies and compliance in program participation. The codification of the rules for delivering SBA Express and Export Express loans will provide Lenders with confidence as the requirements will be found in regulation as opposed to Agency procedural guidance. The inclusion of the SBA Express and Export Express guidance may positively impact small loan volume.

SBA expects that the additional detailed clarity on the requirements for program delivery in the subject areas of this rule would increase understanding for program users, decrease time spent qualifying small business Applicants, and result in a reduction of overall cost to participants.

The interim final rule changes for the codification of the SBA Express and Export Express Loan Program Requirements and for the Personal Resources Test impact the Lenders directly, and would not be considered a transfer to or from Applicants as the Lender currently bears responsibility for determining eligibility. The interim final rule changes relative to Lender and Agent fees reduce or limit the fees a small business Applicant may expend to gain access to the loan guarantee programs, which benefits the Applicant. This also potentially transfers an economic benefit between Lenders and Agents because Lenders, given the authority to charge an SBA-controlled fee to Applicants, may choose to provide application services through either internal lending staff or outsourced Agents. In either case the Lender's decision is driven by cost effectiveness and efficiency.

The interim final rule changes for affiliation determinations provides detailed guidance for the Lender charged with determining the size of a small business Applicant. This currently is and will continue to be the responsibility of the Lender, who will benefit from the time savings in making the eligibility determination. The benefits further transfer or inure to the Applicant via streamlined loan

processing. SBA believes that the interim final rule presents the optimum net benefit to the overall affected population of small entities (*i.e.,* small business Applicants, small Lenders, and small Agents). For instance, receipt and consideration of the public comments prompted SBA to adopt a more generous fee structure than was originally proposed.

Baseline Scenario

The interim final rule will provide clear and streamlined guidance to loan program participants. In order to estimate the net economic impact of this interim final rule on stakeholders, an approximation of the change in behavior of Applicants, SBA Lenders, and Agents is needed. The effects of the interim final rule are estimated relative to a baseline, and where the regulatory changes are required by statutory requirements, the analysis uses a pre-statutory baseline to determine impact in the analysis. The baseline represents the state of SBA's financial assistance programs in the absence of this final regulatory action.

Based on lender oversight reviews by SBA's OCRM, fees charged to Applicants by Agents have increased dramatically in the past few years (although the total reported number of loans that reported using an Agent is only 2.78 percent of total approved 7(a) loans over a five year period) and some Applicants have been charged fees by Lenders and Agents that are not permissible under SBA's current Loan Program Requirements. In addition, OCRM has observed that there is confusion by both Lenders and Agents as to who can charge fees to an Applicant, for which services, and how much can be charged. In the absence of this final regulatory action, the cost of financial assistance may continue to rise for those loan Applicants who opt to use the services of Agents, including Packagers and other similar providers, despite free and low-cost assistance and resources made available by SBA. The costs incurred by OCRM when conducting lender oversight reviews involving issues related to fees also would continue to rise, with some of those costs being passed on to Lenders.

In addition, many SBA Lenders struggle with making the determination of credit elsewhere and identifying when an Applicant's owners have excess personal liquidity that could affect their eligibility for SBA financial assistance. SBA has identified some examples of loans made to businesses with owners who have extremely high amounts of personal liquid assets. Without this final regulatory action, SBA Lenders and small businesses may continue to take advantage of government/taxpayer funded financial assistance programs and SBA Lenders may continue to erroneously make loans to businesses that do not meet SBA's lending criteria.

Finally, under the current affiliation rules, some businesses have been considered to be small when they should have been combined as affiliates and may, in fact, be large. This has allowed some businesses that are not considered ''small businesses'' to receive SBA financial assistance. SBA's Office of Inspector General (OIG) published a report in March 2018 on SBA 7(a) Loans Made to Poultry Farmers and recommended that the Agency review the arrangements between integrators and growers and establish and implement controls, such as supplemental guidance, to ensure that SBA loan specialists and lenders make appropriate affiliation determinations. SBA reviewed its regulations and determined that the regulations should be modified to clarify the meaning of affiliation in the context of contractual relationships, so that only independently owned and operated small businesses continue to receive SBA financial assistance. In the absence of this final regulatory action, this needed clarification will not be provided.

2. What are the potential benefits and costs of this regulatory action?

Benefits to SBA Lenders, Applicants, and Agents

The greatest benefit from this interim final rule to all program participants, including SBA Lenders, Applicants, and Agents, is clear regulatory guidance and bright-line tests to increase efficiency. SBA anticipates that incorporating the SBA Express and Export Express Loan Programs into the regulations governing the 7(a) Loan Program may result in an increase in the number of participating Lenders and loans in both programs, which would mean increased access to capital for small businesses. SBA Lenders will be provided with bright-line tests for making certain determinations about eligibility which will eliminate the ambiguity and uncertainty that has hindered some SBA Lenders in recent years. Reinstating the personal resources test, in particular, will aid SBA Lenders in making the determination of an Applicant's access to credit elsewhere, which will increase efficiencies and reduce the efforts currently required by the Agency to provide assistance due to the subjectivity of the analysis in the prior rule. SBA Lenders will be more confident in their loan making with a better understanding of SBA's expectations. SBA estimates that the reinstatement of the personal resources test at section § 120.102 will save SBA Lenders a total of approximately 67,000 hours annually, monetized to $2,456,890 per year.

TABLE 1—ESTIMATED ANNUAL BENEFIT TO SBA LENDERS FROM PERSONAL RESOURCES TEST

Outcomes	Number of expected occurrences per year	Average time saved per occurrence (hours)	Total benefit
Increased efficiency in determining credit elsewhere ..	67,000	1–2	67,000–134,000 hours, $2,456,890–$4,913,780.
Estimated Annual Benefit	.....	.....	67,000–134,000 hours, $2,456,890–$4,913,780.[1]

[1] SBA arrived at this estimate by inquiring with various Lenders as to the average time required to determine an Applicant's access to credit elsewhere. SBA calculated the average of the timeframes provided to estimate the range of time the personal resources test will save SBA Lenders, on average, in their analysis. Since each loan is required to address an Applicant's access to credit elsewhere, the number of expected occurrences per year was estimated by using the average number of 7(a) and 504 loans guaranteed in the most recent five fiscal years (2014–2018), according to SBA's 7(a) and 504 loan data reports. The number of expected occurrences per year was multiplied by the average time saved per occurrence to estimate the total hourly benefit. The cost benefit was estimated by multiplying the hours saved by the mean hourly wage for a loan officer, as reported by the U.S. Department of Labor's Bureau of Labor Statistics as of May 2018 ($36.67).

The clear limitations on fees an Agent or Lender may charge to an Applicant leave no question as to what fees SBA considers to be reasonable. Further, the revisions to the definitions of Agents and Associates of Lenders and CDCs also will provide clarity as to whom SBA considers an Agent and what services the different types of Agents may perform and be compensated for by the Applicant or the SBA Lender. This will save SBA Lenders and Agents time in making these determinations for each loan. In addition, 7(a) Lenders will no longer be required to itemize fees charged to Applicants when the amount is over $2,500, which also will save these Lenders time. Applicants will benefit from protection against impermissible or unreasonable costs for assistance with obtaining an SBA-guaranteed loan and may become more aware of the free and low-cost resources provided by the Agency.

TABLE 2—ESTIMATED ANNUAL BENEFIT TO SBA LENDERS AND AGENTS FROM FEE LIMITS

Outcomes	Number of expected occurrences per year	Average time saved per occurrence (hours)	Total benefit
Increased efficiency for SBA Lenders when determining permissibility and reasonableness of fees.	67,000	0.5–1	33,500–67,000 hours, $1,228,445–$2,456,890.
Increased efficiency for Agents determining permissibility and reasonableness of fees.	1,605	0.5–1	803–1,605 hours, $29,446–$58,855.
Increased efficiency for 7(a) Lenders no longer required to itemize fees.	60,951	0.5–1	30,476–60,951 hours, $1,117,555–$2,235,073.
Estimated Annual Benefit			64,779–129,556 hours, $2,375,446–$4,750,818.[2]

[2] SBA arrived at this estimate by inquiring with various Lenders as to the average time required to determine the reasonableness and permissibility of all fees charged to an Applicant for assistance with obtaining an SBA-guaranteed loan. SBA calculated the average of the timeframes provided to estimate the range of time SBA Lenders will save, on average, in determining permissible and reasonable fees with the bright-line tests included in this interim final rule, which SBA estimates would be the same for an Agent. The number of expected occurrences per year for SBA Lenders is estimated based on the average number of 7(a) and 504 loans guaranteed in the most recent five fiscal years (2014–2018), according to SBA's 7(a) and 504 loan data reports. The total number of guaranteed loans is used, versus the number of loans identified to have charged fees as discussed in the preamble of this rule, because SBA Lenders must review every loan application to determine whether any fees were charged to an Applicant and, if so, whether the fees are permissible and reasonable. Because Agents are not involved in every SBA-guaranteed loan, the number of expected occurrences per year for Agents is estimated based on averaging the total number of loans identified to have used an Agent (other than the participating Lender) in fiscal years 2013–2017. The number of expected occurrences per year for 7(a) Lenders no longer being required to itemize fees is based on the average number of 7(a) loans guaranteed over the most recent five fiscal years. The number of expected occurrences per year for each outcome was multiplied by the average time saved per occurrence to estimate the total hourly benefit. The cost benefit was estimated by multiplying the hours saved by the mean hourly wage for a loan officer, as reported by the U.S. Department of Labor's Bureau of Labor Statistics as of May 2018 ($36.67).

Finally, by modifying the principles of affiliation, the Agency and SBA Lenders will be better able to uphold the Agency's statutory obligation to provide financial assistance only to businesses determined to be small. Further, SBA Lenders will be provided with assistance from the Agency in making determinations of affiliation for businesses with certain types of contractual relationships, such as poultry farmers, which will provide additional needed clarity with regard to affiliation in the financial assistance programs.

TABLE 3—ESTIMATED ANNUAL BENEFIT TO SBA LENDERS AND SURETIES FROM MODIFIED PRINCIPLES OF AFFILIATION

Outcomes	Number of expected occurrences per year	Average time saved per occurrence (hours)	Total benefit
Increased efficiency in determining affiliation	77,000	2–4	154,000–308,000 hours, $5,647,180–$11,294,360.
Estimated Annual Benefit			154,000–308,000 hours, $5,647,180–$11,294,360.[3]

[3] SBA arrived at this estimate by inquiring with various Lenders as to the average time required to determine affiliation. SBA calculated the average of the timeframes provided to estimate the range of time SBA Lenders will save, on average, in determining affiliation with the guidance provided in this interim final rule. Since an affiliation determination must be made for each application for SBA financial assistance, the number of expected occurrences per year for SBA Lenders and Sureties was estimated by using the average number of 7(a) and 504 loans and the average number of Bid and Final Bonds guaranteed during the most recent five fiscal years (2014–2018), according to SBA's 7(a) and 504 loan data reports and information on surety bonds entered into SBA's Capital Access Finance System. The total number of expected occurrences for loans and surety bonds per year was multiplied by the average time saved per occurrence to estimate the total hourly benefit. The cost benefit was estimated by multiplying the hours saved by the mean hourly wage for a loan officer, as reported by the U.S. Department of Labor's Bureau of Labor Statistics as of May 2018 ($36.67).

SBA expects these benefits to be realized immediately upon enactment of the interim final rule and should remain the same each year thereafter, subject to changes in number of loans and hourly rates.

Benefits to SBA

Like the program participants, SBA will benefit from the clear regulatory guidance and bright-line tests included in this interim final rule, especially when performing lender oversight activities. OCRM will realize increased efficiencies in conducting loan file reviews of SBA Lenders. With the reinstatement of the personal resources test, clear limitations on fees an Agent or Lender may charge to an Applicant, revised definitions of Agents and Associates of Lenders and CDCs, and simplified affiliation principles, SBA has removed the subjectivity of a

Lender's assessment of these issues, which will improve SBA Lenders' compliance and will allow OCRM to develop more efficient methods of testing SBA Lenders' compliance. In addition, the removal of the requirement that a Lender itemize fees charged to an Applicant when the fee is over $2,500, also will reduce the burden on OCRM of reviewing these additional documents.

TABLE 4—ESTIMATED ANNUAL BENEFIT TO SBA FROM INTERIM FINAL RULE

Outcomes	Number of expected occurrences per year	Average time saved per occurrence (hours)	Total benefit
Increased efficiency in reviewing credit elsewhere assessment.	2,000	0.25–0.5	500–1,000 hours, $18,375–$36,750.
Increased efficiency in reviewing fees charged to Applicants.	1,300	0.5–1	650–1,300 hours, $23,888–$47,775.
Increased efficiency in reviewing Lender's affiliation determination.	2,000	0.25–0.5	500–1,000 hours, $18,375–$36,750.
Estimated Annual Benefit			1,650–3,300 hours, $60,638–$121,275.[4]

[4] SBA developed this estimated annual benefit based on an estimate from OCRM on the range of time that the guidance and bright-line tests included in the interim final rule will save a Financial Analyst, on average, in reviewing each relevant element of an SBA Lender's analysis during OCRM-conducted loan file reviews. The number of expected occurrences per year is based on the approximately 2,000 loan files reviewed by OCRM annually. The SBA Lender is required to address credit elsewhere and affiliation on every loan, but fees are not charged in connection with every loan. OCRM estimates that in approximately 65 percent of the 2,000 loans reviewed annually, OCRM identifies an issue related to fees charged to Applicants by SBA Lenders and/or Agents, including underreporting, inaccurate reporting, or impermissible fees. The number of expected occurrences per year for each outcome was multiplied by the average time saved per occurrence to estimate the total hourly benefit. The cost estimate was obtained by multiplying the hourly rate of a GS–13, Step 1 ($36.75 per hour) by the number of expected occurrences per year and the average time saved per occurrence.

SBA expects these benefits to be realized immediately upon enactment of the rule and should remain the same each year thereafter, subject to changes in the number of loan files reviewed and hourly rates.

Costs

Costs to SBA Lenders, Applicants, and Agents

For purposes of this Regulatory Impact Analysis (RIA), the only costs to program participants and relevant stakeholders necessary to comply with the interim final rule are administrative costs. Administrative costs considered include estimations on reading and interpreting the regulation, developing and revising internal policies and procedures, and training. It is noted that program participants are presumed to incur such administrative costs continuously in order to maintain familiarity with SBA Loan Program Requirements, as required by 13 CFR 120.180, and to remain in good standing with SBA as defined in 13 CFR 120.420(f). The Table below shows the administrative costs SBA has estimated that are attributable to this specific rule, which are expected to occur mainly in the first year of implementation, decrease by half in the second year, and be eliminated by the third year.

TABLE 5—ESTIMATES OF ADMINISTRATIVE COMPLIANCE COSTS TO SBA LENDERS AND AGENTS

	Amount of time required (hours)	Value of time	Frequency for first year	Number of SBA lenders/ agents affected	Total cost
Read and interpret the regulation	2–3	$36.67	5–7	3,500	35,000–73,500 hours, $1,283,450–$2,695,245.
Develop or Revise Internal Policies and Procedures.	5–7	36.67	5–6	3,500	87,500–147,000 hours, $3,208,625–$5,390,490.
Training	5–8	36.67	10–12	3,500	175,000–336,000 hours, $6,417,250–$12,321,120.
Estimated First Year Administrative Costs.					297,500–556,500 hours, $10,909,325–$20,406,855.[5]

[5] SBA developed the estimate for the administrative costs in the first year of the interim final rule based on the approximate number of active SBA Lenders and Agents. Although approximately 4,500 Lenders have executed agreements to participate as a 7(a) Lender, over the past two fiscal years, the average number of active Lenders has totaled only 1,958. (A 7(a) Lender is considered to be "active" if it has approved at least one 7(a) loan in that fiscal year.) SBA estimates that only those Lenders actively participating in the program will actually be affected by the costs of this interim final rule since the estimated costs are strictly administrative. The number of SBA Lenders and Agents affected includes approximately 2,474 active SBA Lenders (including approximately 2,061 active 7(a) Lenders, 213 CDCs, 135 Microloan Intermediaries, 33 ILP Intermediaries, and 32 Sureties), plus approximately 1,018 Agents identified as having conducted business with SBA during fiscal years 2013–2017, rounded up to the next hundred to account for trade associations, and other resource partners. SBA estimates that on average between 5–7 employees at each SBA Lending institution or Agent entity may spend between 2–3 hours each reading and interpreting the rule in the first year and that these employees are compensated at the mean hourly wage for a loan officer, as reported by the U.S. Department of Labor's Bureau of Labor Statistics ($36.67). SBA also estimates that 5–6 employees on average may be involved in developing or revising the internal policies of the respective program participant and would likely spend between 5–7 hours updating policies specifically related to this interim final rule. Finally, SBA estimates that between 10–12 employees on average for each program participant would spend between 5–8 hours on training related to updates and modifications made by this interim final rule. Applicants are not included as an entity affected by the administrative costs of the rule, as the Applicant relies on the SBA Lender or third-party Agent to inform them of SBA policy and procedure.

Costs to SBA

There are no additional costs to the Agency required to achieve the outcomes of the rule. The administrative costs considered for the loan program participants, including reading and interpreting the regulation, developing and revising internal policies and procedures, and training are already inherent requirements of SBA employees and therefore, the publication of this interim final rule has no additional bearing on the responsibilities of relevant SBA

employees involved in the Agency's loan programs. Further, SBA does not anticipate any additional costs related to implementing the second exception to the economic-dependence affiliation rule because the Agency expects to absorb any costs related to reviewing integrator agreements by using existing SBA employees to conduct the reviews.

Transfers

SBA has also identified a transfer of costs, due to the limits on permissible fees charged to an Applicant by Agents and Lenders, as well as the prohibition against Agents providing services to both an Applicant and an SBA Lender in connection with the same SBA loan application, which was previously permitted under limited circumstances. These limitations will provide a cost savings to Applicants; however, the Agency acknowledges that this savings to the Applicant will result in a cost (''transfer'') to the small number of Agents and Lenders that reported charging fees in excess of the limits imposed by this interim final rule. (As discussed in the Regulatory Flexibility Act section below, the excess fees charged by this small number of Agents and Lenders also are in excess of the current limits on fees and are therefore not in compliance with current SBA Loan Program Requirements.)

TABLE 6—ESTIMATED TRANSFERS OF COSTS

Outcomes	Number of expected occurrences per year	Average money saved per occurrence	Total transfer
Elimination of fees exceeding set limits	746	$2,380.75	$1,776,042.63
Estimated Annual Transfer			[6] 1,776,042.63

[6] SBA arrived at this estimate based on the total number of loans guaranteed between FY2013 and FY2017 that reported fees charged to an Applicant by an Agent or Lender over the limits imposed in this interim final rule and the total amount that those loans exceeded the imposed limit for each threshold.

Below is a table showing an estimation of the total costs and benefits of the rule over three years:

TABLE 7—ESTIMATED UNDISCOUNTED BENEFITS AND COSTS SCHEDULE

Benefits		Costs	
Year 1		Year 1	
Low estimate	High estimate	Low estimate	High estimate
267,429 hours $9,806,754	534,856 hours $19,613,433	297,500 hours $10,909,325	556,500 hours. $20,406,855.
Year 2		Year 2	
267,429 hours $9,806,754	534,856 hours $19,613,433	148,750 hours $5,454,662.50	278,250 hours. $10,203,427.50.
Year 3		Year 3	
267,429 hours $9,806,754	534,856 hours $19,613,433	0 hours $0	0 hours. $0.

Below is a table showing the annualized values of the estimated costs and cost savings, as of 2016, over an infinite horizon.

TABLE 8—ANNUALIZED VALUES AS OF 2016 OVER AN INFINITE HORIZON

	Primary estimate			
	3% Discount rate		7% Discount rate	
	Low estimate	High estimate	Low estimate	High estimate
Annualized Cost Savings	$9,806,751	$19,613,433	$9,806,754	$19,613,433
Annualized Costs	485,479	908,132	1,077,116	2,014,841
Annualized Net Cost Savings	9,321,272	18,705,301	8,729,638	17,598,592

3. What are the alternatives to this interim final rule?

SBA considered various alternatives to proceeding with the preferred option of promulgating this interim final rule. The first and most stringent alternative would be to adopt the rule as proposed. SBA chose not to pursue this option due to the concerns expressed by the industry and general public. Many commenters expressed concern that parts of the proposed rule may cause unintended consequences that would make it more difficult for Applicants seeking SBA loans of $350,000 or less. Specifically, these commenters referred to the limits set for the fees Agents and Lenders may charge to an Applicant for loans of this size, and the maximum amount of personal liquidity that owners of 20 percent or more of such Applicants may retain, rather than inject into the project as additional equity in accordance with the proposed personal resources test. Also, several commenters expressed concern that the proposed changes to the principles of affiliation may render certain industries, like poultry farmers, ineligible for SBA financial assistance. Due to all of these concerns expressed by commenters, SBA has modified the interim final rule in several respects, including increasing the amount of personal liquidity that owners of 20 percent or more of a small business Applicant may retain, increasing the fees that a Lender or an Agent may charge a small business Applicant for assistance with obtaining an SBA-guaranteed loan of $350,000 or less, and revising the principles of affiliation to prevent any unintended consequences for certain industries, such as farmers. SBA also has provided an extended period for Lenders and Agents to comply with the fee provisions in §§ 103.5(b) and 120.221(a).

If the rule were finalized as proposed, the personal liquidity limits would have been more restrictive than the limits in the interim final rule. Under the interim final rule, fewer individuals will be required to inject excess liquid assets for small loans, which is a change (or transfer) that favors small business Applicants.

The original proposed rule included fee limitations for Lenders of $2,500 for loans up to and including $350,000; and $5,000 for loans over $350,000. Per the comments received and based on the costs to deliver small dollar loans, the interim final rule increases the fee limitation for loans up to and including $350,000 to $3,000. This change will not significantly transfer benefits or costs for the following reasons: (1) Increased use by Applicants of SBA's no cost Lender Match to connect them to SBA Lenders; (2) increased development by SBA Lenders of in-house electronic application systems to better manage service and costs; and (3) continued innovation in the use of scoring and other data. All of these evolving technological improvements expand user options and level the playing field for services and costs.

If the rule were finalized as originally proposed, the change to limit fees Lenders may charge Applicants on small loans would have impacted 2,944 loans from Lenders who exceeded the $2,500 proposed cap on loans guaranteed between FY2013 and FY2017. By increasing the permissible fee from $2,500 to $3,000 on loans of $350,000 and less in the interim final rule, the number of loans where the Lender fee exceeded the cap was reduced to 1,731, resulting in lower economic impact to Lenders making small dollar loans.

Table 9 demonstrates the estimated reduction in the number of loans and dollars considered in excess of the Lender fee limitation as a result of increasing the proposed Lender fee limitation from $2,500 to $3,000 for loans of $350,000 or less.

TABLE 9—COMPARISON OF THE ESTIMATED IMPACT OF THE LIMITATION ON THE FEE PAID BY THE APPLICANT TO THE LENDER IN THE PROPOSED RULE VS. THE INTERIM FINAL RULE *

	Proposed rule	Interim final rule	Difference
Loans with Excessive Lender Fees	2,944	1,731	(1,213)
Dollars in Excess of Fee Limits	$5,813,734	$3,419,091	($2,394,653)
Average Amount in Excess of Fee Limit per Loan	$1,974.77	$1,975.21	

* As the fee limitation for loans over $350,000 did not change, this table only includes those loans where Lenders charged fees in excess of the fee limitations on loans of $350,000 or less.

SBA originally proposed limiting total fees that an Agent(s) can charge an Applicant to a maximum of 2.5 percent of the loan amount or $7,000, whichever is less, for loans up to and including $350,000; a maximum of 2 percent or $15,000, whichever is less, for loans over $350,000 up to and including $1,000,000; and a maximum of 1.5 percent or $30,000, whichever is less, for loans over $1,000,000. As a result of the comments received and to limit the impact of the interim final rule on small Agents, SBA increased the limitations and thresholds for total fees that an Agent(s) may charge an Applicant to a maximum of 3.5 percent or $10,000, whichever is less, for loans up to $500,000; a maximum of 2 percent or $15,000, whichever is less, for loans of $500,001 to $1,000,000; and 1.5 percent or $30,000, whichever is less, for loans over $1,000,000.

The changes in the interim final rule result in the total number of loans in excess of the fee limitations being reduced from 3,060 to 2,729 and the total dollars in excess of the fee limitations being reduced from $7,217,868 to $2,688,406. Table 10 demonstrates the estimated reduction in the number of loans and dollars considered in excess of the Agent fee limitation as a result of increasing the proposed fee limitation.

TABLE 10—COMPARISON OF THE ESTIMATED IMPACT OF THE LIMITATION ON THE FEE PAID BY THE APPLICANT OR THE LENDER TO AN AGENT(S) IN THE PROPOSED RULE VS. THE INTERIM FINAL RULE FOR LOANS OF $1,000,000 AND LESS **

	Proposed rule	Interim final rule	Difference
Loans with Excessive Agent Fees	3,060	2,729	(331)
Dollars in Excess of Fee Limits	$7,217,868	$2,688,406	($4,529,462)

TABLE 10—COMPARISON OF THE ESTIMATED IMPACT OF THE LIMITATION ON THE FEE PAID BY THE APPLICANT OR THE LENDER TO AN AGENT(S) IN THE PROPOSED RULE VS. THE INTERIM FINAL RULE FOR LOANS OF $1,000,000 AND LESS **—Continued

	Proposed rule	Interim final rule	Difference
Average Amount in Excess of the Fee Limit per Loan	$2,359	$985	

** As no changes were made to the Agent fee limitation for loans over $1,000,000 from the proposed rule to the interim final rule, the loans over $1,000,000 with excessive Agent fees were not included in this table.

The second, less stringent alternative considered was to make no regulatory change but strictly enforce existing SBA Loan Program Requirements. Of the major issues commented upon, SBA has existing mechanisms to enforce compliance with the credit elsewhere test, the fees Lenders and Agents are permitted to charge an Applicant, including when Lenders or Agents must refund amounts deemed unreasonable by SBA, and proper application of the affiliation principles applicable to the business loan programs. For example, with regard to fees charged to an Applicant, SBA has the authority to require fees deemed unreasonable by SBA to be refunded to a Borrower by a Lender or an Agent. In addition, SBA's OCRM can cite SBA Lenders during lender oversight reviews and take enforcement action against the SBA Lender, when appropriate. Further, SBA may suspend or revoke an Agent's privilege to conduct business with SBA. With regard to determining eligibility of an Applicant based on affiliation and credit available elsewhere, SBA may decline to approve applications that do not meet SBA Loan Program Requirements or, for loans made under a Lender's delegated authority, SBA may deny liability on the guaranty if the Lender did not make an acceptable determination for 7(a) loans or, for 504 loans, decline to close the loan, potentially at considerable expense to the small business Applicant. However, this option does not resolve the confusion that SBA Lenders and Agents have on current policy and procedure and would require an additional investment in Agency resources to rely on OCRM or the loan processing or guaranty purchase centers to rectify non-compliance after the fact. SBA has determined that it is more beneficial to all parties involved to provide clarity to these rules so that SBA Lenders and Agents can better understand and comply with SBA's Loan Program Requirements.

In consideration of the alternatives described above, SBA has determined that the most preferable option is to enact the rule with several modifications. The interim final rule will, among other things, provide bright-line tests and clear guidance for SBA Lenders to determine what fees SBA considers to be reasonable and permissible and how to properly analyze an Applicant's personal liquidity as part of the analysis on credit available elsewhere. The interim final rule also will clarify the principles of affiliation to ensure that SBA financial assistance is not being provided to businesses that are not actually small due to affiliation with larger corporations, while ensuring that certain industries are not adversely impacted. Finally, the interim final rule will make minor corrections and updates to Loan Program Requirements to enhance program use.

Executive Order 13563

A description of the need for this regulatory action and benefits and costs associated with this action, including possible distributional impacts that relate to Executive Order 13563, are included above in the Regulatory Impact Analysis under Executive Order 12866.

The Business Loan Programs operate through the Agency's lending partners, which are 7(a) Lenders for the 7(a) Loan Program, Intermediaries for the Microloan Program and ILP Program, and Third Party Lenders and CDCs for the 504 Loan Program. SBA's SBG Program operates through Surety Bond Companies. SBA's Business Disaster Loan Programs are delivered directly by SBA, without the use of any intermediaries. The Agency held two public forums in the summer of 2018 to engage with stakeholders related to poultry lending. With respect to the 7(a) and 504 Loan Programs generally, SBA also met with trade association board members and program participants at industry conferences in the Fall of 2018 through Spring of 2019, which allowed it to reach representatives of trade associations and hundreds of its lending partners, from which it gained valuable insight regarding the loan programs. The Agency's outreach efforts to engage stakeholders before proposing this rule was extensive and concluded with the extended comment period.

Executive Order 13771

This interim final rule is considered an E.O. 13771 deregulatory action. SBA is estimating $12,633,634 in annualized savings for this rule using a 7% discount rate in perpetuity in 2016 dollars. In addition, SBA estimates the present value of savings for this rule in perpetuity to be $180,480,486. Details on the breakdown of the estimated cost savings of this interim final rule can be found in the rule's economic analysis.

Executive Order 12988

This action meets applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

SBA has determined that this rule will not have substantial, direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, for the purposes of Executive Order 13132, SBA has determined that this rule has no federalism implications warranting preparation of a federalism assessment.

Paperwork Reduction Act, 44 U.S.C. Ch. 35

SBA has determined that this interim final rule will impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act (PRA). Applicants for SBA Express and Export Express loans, as well as SBA Express and Export Express Lenders, use the same forms as all other 7(a) loans in order to apply for an SBA-guaranteed loan. These forms include: SBA Form 1919, Borrower Information Form; SBA Form 1920, Lender's Application for Guaranty; SBA Form 1971, Religious Eligibility Worksheet (for those businesses that may have a religious aspect); and SBA Form 2237 (to request modifications to an approved loan). These forms are all OMB-approved forms under OMB Control

number 3245–0348 and, as discussed below, some of the forms will need to be revised based on the changes in this interim final rule.

SBA Form 1920, Lender's Application for Guaranty; SBA Form 2450, Eligibility Information Required for 504 Submission (Non-PCLP) (OMB Control number 3245–0071); and SBA Form 2234 (Part C), Eligibility Information Required for 504 Submission (PCLP) (OMB Control number 3245–0346) will need to be revised due to the new regulation at § 120.102, which will require SBA Lenders to analyze the personal resources of certain owners of the Applicant business to determine if they have liquid assets that can provide some or all of the desired financing. The change will have a de minimis impact on SBA Lenders since reviewing the personal resources of the applicant business and its owners is already part of the analysis SBA Lenders currently conduct in determining an Applicant's eligibility for SBA financial assistance under the requirement to ensure that the Applicant does not have access to credit elsewhere on reasonable terms from non-Federal sources.

The interim final rule also makes changes that require revisions to SBA Form 159, Fee Disclosure and Compensation Agreement (OMB Control number 3245–0201), which is used to collect information from SBA Lenders and Agents on the fees that they charge to Applicants for assistance with obtaining an SBA-guaranteed loan. SBA Form 159 is also used to collect information from SBA Lenders on referral fees that it pays to Loan Brokers (also known as Referral Agents) in connection with an SBA-guaranteed loan. The specific revisions to SBA Form 159 would implement the changes to §§ 120.221, 103.4(g), and 103.5 that limit the amount and types of fees that may be charged to an Applicant. The revisions to SBA Form 159 will reduce the estimated hour burden for 7(a) Lenders because, under the interim final rule, they will only be required to disclose the amount charged up to the permissible limit on SBA Form 159, but will no longer have to itemize fees charged to Applicants, which is currently required for fees over $2,500. The revisions will have no material effect on the reporting burden for Agents. They will continue to report on all fees imposed on Applicants and provide supporting documentation for fees over $2,500 as they do now.

The changes to SBA Forms 1920, 2450, 2234 (Part C), and 159 will be submitted to OMB as part of a broader, comprehensive revision of the forms that is not affected by this interim final rule but is part of the Agency's efforts to streamline and simplify the information collected from Applicants and SBA Lenders.

Finally, this rule puts into the regulations the existing requirement for SBLCs to submit to SBA for review and approval on an annual basis the validation of any credit scoring model they are using in connection with SBA Express and Export Express loans. This reporting requirement is included in OMB-approved collection, SBA Lender Reporting Requirements (OMB Approval Number 3245–0365). This information collection was submitted to OMB for renewal in September 2018 and the renewal was approved by OMB in April 2019. The new expiration date is April 30, 2022. The regulatory change does not impact that requirement; it merely codifies the requirement in the regulation instead of the SOP.

Regulatory Flexibility Act, 5 U.S.C. 601–612

When an agency issues a rulemaking, the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, requires the agency to ''prepare and make available for public comment a final regulatory analysis'' which will ''describe the impact of the proposed rule on small entities.'' Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

Small entities likely to be affected by this rule include small SBA Lenders and small Agents who assist small business Applicants with obtaining SBA-guaranteed financing. SBA Lenders are comprised of 7(a) Lenders, CDCs, Microloan Intermediaries, ILP Intermediaries, and Sureties that participate in the SBG Program. Based on SBA's size standards, SBA has determined that approximately 2,000 of the approximately 4,500 7(a) Lenders are small, all of the approximately 213 CDCs are small, all of the approximately 135 Microloan Intermediaries are small, all of the approximately 33 ILP Intermediaries are small, and 12 of the approximately 32 Sureties that participate in the SBG Program are small.

SBA does not track or collect information on entities or individuals serving as Agents, Packagers, or Lender Service Providers with regard to the NAICS codes or classification of those entities. Services provided to assist an Applicant in obtaining SBA-guaranteed financing may be performed by several different types of entities ranging from individuals who may assist with packaging a loan application or assisting the Applicant with finding an SBA Lender, to entities formed for the purpose of providing such assistance, to attorneys or Certified Public Accountants. All of these different types of individuals or entities providing assistance to Applicants in connection with obtaining an SBA-guaranteed loan may be classified under numerous different NAICS codes. SBA considered NAICS codes that may apply to these entities for the purpose of estimating the number of small entities affected by this interim final rule. One possible classification includes 522310 for ''Mortgage and Nonmortgage Loan Brokers,'' which is described as being comprised of ''establishments primarily engaged in arranging loans by bringing borrowers and lenders together on a commission or fee basis.'' The size standard for this classification is $7.5 million in annual receipts and according to the U.S. Census Bureau's 2012 Statistics of U.S. Businesses (SUSB),[3] 6,817 entities classified by this NAICS code are considered small by SBA's size standards. SBA also considered 522390 for ''Other Activities Related to Credit Intermediation,'' which is described as being comprised of ''establishments primarily engaged in facilitating credit intermediation (except mortgage and loan brokerage; and financial transactions processing, reserve, and clearinghouse activities)'' because ''loan servicing'' is included as an illustrative example of this NAICS code. However, based upon the other examples provided, which include check cashing services, money order issuance services, and payday lending services, SBA does not believe that NAICS code 522390 is applicable to the Agents affected by this rule. Because there are no limitations as to what type of entity may be engaged by an Applicant for assistance with obtaining SBA financing, it is not reasonable to estimate the number of affected entities based on NAICS codes, as the number of entities included in these classifications would far exceed the number of entities that actually conduct business with SBA and would not provide a realistic portrayal of the population of small entities affected by this rule.

As an alternative to estimating the number of entities affected based on NAICS codes, SBA reviewed the Lender-reported data and other

[3] Because SBA's size standard for most NAICS codes is based on annual receipts and U.S. Census Bureau SUSB data by enterprise receipt size is only collected every five years, 2012 is the most recent Census data available for use.

information gathered by OCRM during lender oversight reviews in fiscal years 2013 through 2017, which also was used to develop the fee limits in this interim final rulemaking. Within the 8,025 loans reported to have used an Agent (other than the participating Lender) to provide assistance to the Applicant in securing the loan during that time period, SBA identified 753 unique Agents based on their DUNS Number or street address. Since SBA has no means of knowing the average annual receipts of these entities, SBA will conservatively estimate that the majority or 80 percent of the 753 entities are small. SBA has also identified approximately 265 entities who have submitted LSP Agreements for review by SBA. Like the Agents, including Packagers, SBA does not capture the NAICS classification of these LSPs and therefore is unable to estimate their annual receipts and the number of which that would be considered small. Therefore, as indicated above with Agents, SBA will conservatively estimate that the majority or 80 percent of LSPs are small. For purposes of the RFA, SBA estimates that approximately 814 (80 percent of 1,018) small entities serving as Agents and LSPs will be affected by this interim final rule for a total of approximately 3,207 small entities including all small SBA Lenders, Agents, and LSPs.

As described more fully in the RIA above, SBA has determined that the only costs to program participants and relevant stakeholders necessary to comply with the interim final rule are administrative costs. Administrative costs considered include estimations on reading and interpreting the regulation, developing and revising internal policies and procedures, and training. To reiterate, although these costs are estimated here for the purposes of the Regulatory Flexibility Act, it is important to note that, regardless of new rulemaking, program participants are presumed to incur administrative costs related to reading and interpreting SBA Loan Program Requirements, revising and updating internal policies, and training staff continuously in order to maintain familiarity with SBA Loan Program Requirements, as required by 13 CFR 120.180, and to remain in good standing with SBA as defined in 13 CFR 120.420(f).

The RIA also identifies an estimated transfer of costs due to the limits on permissible fees charged to an Applicant by Agents and Lenders, as well as the prohibition against an Agent providing services to both an Applicant and an SBA Lender in connection with the same SBA loan application, which was previously permitted under limited circumstances. These limitations have been put in place in order to protect small business Applicants from fees deemed unreasonable by SBA and will provide a cost savings to small business Applicants. However, the Agency acknowledges that this savings to the Applicant will result in a potential loss of revenue to the small number of Agents and Lenders that reported charging fees in excess of the limits imposed by this interim final rule that are considered to be small entities. As noted previously in Section III.C. above, approximately one percent of the loans guaranteed during fiscal years 2013–2017 reported fees charged to the Applicant by Lenders and Agents in excess of the revised maximum fees permitted in this interim final rule. Based on SBA's analysis of the fees reported on loans guaranteed during that time frame, SBA estimates that 213 small entities (83 small Lenders and 130 small Agents) [4] reported charging fees in excess of the limits imposed in this interim final rule. This represents only 8 percent of the 7(a) Lenders and Agents that SBA has identified as small (2,000 7(a) Lenders and 602 Agents). Thus, only 8 percent of small Lenders and small Agents may experience reduced revenue as a result of this interim final rule. It is important to note that, while some small entities may experience reduced revenue, the fees that were being charged by these small entities were not in compliance with current SBA policy. Additionally, the reduced revenue will be offset at least in part by the estimated savings the small entities will experience due to increased efficiency in determining the permissibility and reasonableness of the fees charged.

To estimate the average annualized cost per small entity, SBA annualized the sum of all administrative costs plus the estimated potential loss of revenue (*e.g.,* the total transfer amount of $1,776,042.63) identified in the RIA over a 10-year period. (See Table 6 in the RIA.) The estimated total annualized costs over 10 years at a 7 percent discount rate range from a low estimate of $2,773,295.70 to a high estimate of $4,331,035. Dividing the total estimated annualized costs by the 3,207 estimated small entities affected, the annualized cost per entity is estimated to be between approximately $864.76 and $1,350.49. Although SBA is unable to ascertain the NAICS codes of all types of entities considered to be Agents, SBA used data from the 2012 U.S. Census Bureau's SUSB for NAICS code 522310 for Mortgage and Nonmortgage Loan Brokers as an example to examine the annualized compliance cost as a percentage of annual receipts for small entities classified by this NAICS code. For the purposes of this estimation, SBA has averaged the high and low estimates of the annualized cost for a mid-point total of $388 per entity.

MORTGAGE AND NONMORTGAGE LOAN BROKERS (NAICS 522310)

[$7.5 Million Size Standard]

Firm size (by receipts)	Average annual receipts	Annualized cost per firm	Number of firms	Percent of small firms	Revenue test * (percent)
All Firms	$1,005,967	$388	7,007	N/A	0.0
Small Firms	549,802	388	6,817	100	0.1
<100K	48,038	388	1,533	22	0.8
100K–$499,999	250,730	388	3,233	47	0.2
500,000–$999,999	693,276	388	1,042	15	0.1
$1,000,000–$2,499,999	1,482,997	388	721	12	0.0
$2,500,000–$4,999,999	3,244,231	388	216	3	0.0

[4] Based on SBA's analysis of the loans guaranteed during FY2013–FY2017, 83 Lenders and 162 Agents reported charging the Applicant a fee in excess of the limits imposed in this interim final rule. Although SBA recognizes that more than 50 percent of 7(a) Lenders are not small, for purposes of the RFA, SBA is assuming that all 83 Lenders are small. As noted above, SBA estimates that 80 percent of Agents are small; therefore, SBA is estimating that 130 of the 162 Agents that reported charging fees in excess of the limits in this interim final rule are small.

MORTGAGE AND NONMORTGAGE LOAN BROKERS (NAICS 522310)—Continued

[$7.5 Million Size Standard]

Firm size (by receipts)	Average annual receipts	Annualized cost per firm	Number of firms	Percent of small firms	Revenue test * (percent)
$5,000,000–$7,499,999	5,157,764	388	72	1	0.0

* Annualized compliance costs as a percentage of annual receipts.

SBA has determined that the annualized cost of this rule per entity will not have a significant economic impact on a substantial number of small entities. First, the average annualized cost in the example above is not a significant percentage of each entity's average annual revenue for any size firm considered to be small. It is also noted that these annualized costs will be offset by annualized benefits ranging from a low estimate of $9,806,754 to a high estimate of $19,613,433 (or approximately $3,056–$6,116 per entity). See the RIA above for more information on the net annualized costs and benefits. Second, the number of small entities affected is not substantial. As stated above, SBA estimates that from FY2013 through FY2017 213 small entities (83 small Lenders and 130 small Agents) reported charging fees in excess of the limits imposed in this interim final rule. This represents only 8 percent of the 7(a) Lenders and Agents that SBA has estimated are small. SBA does not consider 83 small Lenders to be a substantial number when compared to the overall number of small Lenders, which is approximately 2,000. With respect to small Agents, SBA does not consider 130 Agents to be a substantial number when compared to the overall number of small Agents. While SBA used 602 as an estimate of the number of small Agents, SBA believes the actual number of small entities acting as Agents in connection with the SBA loan programs is most likely much larger when taking into consideration the attorneys, accountants, business consultants and others that act as Agents. As SBA noted above, the NAICS Code for Mortgage and Nonmortgage Loan Brokers used in the above example is only one of numerous NAICS codes under which Agents may be classified. Many different types of individuals and entities, including attorneys, accountants, and business consultants, act as Agents and assist Applicants in obtaining SBA-guaranteed loans. Thus, SBA believes that the actual universe of small Agents may be considerably larger than 602. When all of the potentially relevant NAICS codes are considered, SBA believes that the number of small entities affected by this rule would be even smaller than the 8% noted above.

Despite the fact that SBA determined that the proposed rulemaking would not have a significant economic impact on a substantial number of small entities, SBA made modifications to certain elements of this interim final rule based on comments received during the proposed rule's public comment period. These modifications aimed to relieve a perceived disparity for small SBA loans of $350,000 or less, which according to public commenters, most frequently require the assistance of an Agent. For example, SBA originally proposed certain limitations to fees that Agents could charge to an Applicant for assistance in obtaining an SBA loan. Public commenters asserted that these fee limitations would force Agents out of the market and reduce access to capital for small businesses. Although SBA disagrees with the assertion that the proposed limits on fees would have disproportionately impacted access to these smaller loans, in the interim final rule, SBA increased the permitted fee an Agent or Agents may charge an Applicant for assistance with obtaining a loan of $350,000 or less from 2.5 percent of the loan amount or $7,000, whichever is less, to 3.5 percent of the loan amount or $10,000, whichever is less. That revision represents an increase of approximately 40 percent in the permitted fees for smaller loans when compared to the proposed rule, and a significant increase in the fees permitted under SBA's current Loan Program Requirements. In addition, SBA adjusted the lower two loan amount ranges, to ensure that the maximum fee permitted on loans over $350,000 up to and including $500,000 would not be lower than the maximum fee permitted for loans of $350,000 or less. Also, in the interim final rule, SBA increased the fee a Lender may charge an Applicant for assistance with obtaining a loan of $350,000 or less from $2,500 to $3,000, an increase of 20 percent over the proposed limit. By having a bright-line test for what SBA considers reasonable compensation for services provided to an Applicant by an Agent and a Lender, Lenders and Agents will, in fact, save time and costs in analyzing and documenting that fees charged to the Applicant are reasonable.

In an effort to minimize any potential costs or revenue losses that may be experienced by the 213 small Lenders and Agents that reported charging fees in excess of the revised limits in this interim final rule, SBA is giving all SBA Lenders and Agents additional time—until October 1, 2020—to comply with revised §§ 103.5(b) and 120.221(a). Thus, these entities will have had two years from the date of publication of the proposed rule in September 2018 to prepare for changes to the fee structure. Additionally, SBA is allowing a period of 120 days for Agents to make any adjustments to conform to the clarified definitions of the types of Agents in § 103.1 (*e.g.,* Agents that may need to enter into LSP agreements with Lenders they provide services to).

Similarly, in accordance with SBA Loan Program Requirements, SBA Lenders must analyze the ability of the small business Applicant to obtain credit from non-Federal sources, including the personal resources of individuals and entities that own 20 percent or more of the Applicant business. SBA proposed thresholds, based on the size of the total financing package, to assist the SBA Lender in determining the amount of excess personal liquid assets of 20 percent or more owners of the small business Applicant. Personal liquid assets exceeding the stated thresholds must be injected into the project to reduce the SBA loan amount. Public commenters recommended that the personal liquidity thresholds be modified, especially for smaller loans. SBA reevaluated the personal liquidity threshold for smaller loans and agreed to modify the limits to ensure that Applicants applying for smaller loans are not adversely affected. The interim final rule reinstates a bright-line test for SBA Lenders to appropriately consider the personal resources of the owners of the Applicant, which will save SBA Lenders time in their analysis.

SBA believes that this interim final rule encompasses best practice guidance that aligns with the Agency's mission to increase access to capital for small businesses and facilitate American job

preservation and creation by providing bright-line tests to assist program participants in understanding the Loan Program Requirements and by removing unnecessary regulatory requirements. For the aforementioned reasons, SBA has determined that this interim final rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects

13 CFR Part 103

Administrative practice and procedure.

13 CFR Part 120

Community development, Environmental protection, Equal employment opportunity, Exports, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 121

Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble, SBA is amending 13 CFR parts 103, 120, and 121 as follows:

PART 103—STANDARDS FOR CONDUCTING BUSINESS WITH SBA

■ 1. The authority citation for part 103 is revised to read as follows:

Authority: 15 U.S.C. 634, 642.

■ 2. Amend § 103.1 by:
■ a. Revising paragraph (a); and
■ b. Removing paragraphs (d), (e), and (f) and redesignating paragraph (g) as paragraph (d).

The revision reads as follows:

§ 103.1 Key definitions.

(a) *Agent* means an authorized representative, including an attorney, accountant, consultant, packager, lender service provider, or any other individual or entity representing an Applicant or Participant by conducting business with SBA. For purposes of SBA's business loan programs, the term Agent includes but is not limited to:

(1) *Lender Service Provider:* an Agent who assists the Lender with originating, disbursing, servicing, liquidating, or litigating SBA loans. The Lender bears full responsibility for all aspects of its SBA loan operation, including, but not limited to, approvals, closings, disbursements, servicing actions, and due diligence. Lender Service Providers may only receive compensation from the Lender and such compensation may not be passed on to the Applicant or paid out of SBA-guaranteed loan proceeds.

(2) *Packager:* An Agent who prepares the Applicant's application for financial assistance and is employed and compensated by the Applicant.

(3) *Loan Broker (also known as Referral Agent):* an Agent who, on a specific transaction, either assists the Applicant in finding an SBA Lender that will be willing to make a loan to the Applicant or assists the SBA Lender in finding an Applicant. A Loan Broker may be employed and compensated by either the Applicant or the SBA Lender (but not both). Compensation paid to a Loan Broker by an SBA Lender may not be passed on to the Applicant and may not be paid out of SBA-guaranteed loan or debenture proceeds.

* * * * *

■ 3. Amend § 103.4 by revising paragraph (g) to read as follows:

§ 103.4 What is "good cause" for suspension or revocation?

* * * * *

(g) Acting as an Agent (including a Lender Service Provider) for an SBA Lender and an Applicant on the same SBA business loan and receiving compensation from both the Applicant and SBA Lender. For purposes of this paragraph (g), the actions of an Agent include the actions of the Agent's Affiliates, as defined in § 121.103 of this chapter.

* * * * *

■ 4. Amend § 103.5 by revising paragraph (b) and the last sentence of paragraph (c) to read as follows:

§ 103.5 How does SBA regulate an Agent's fees and provision of service?

* * * * *

(b) Total compensation charged by an Agent or Agents to an Applicant for services rendered in connection with obtaining an SBA-guaranteed loan must be reasonable. In cases where an Agent or Agents charge any fee to an Applicant in excess of those specified in this part, the Agent(s) must reduce the charge and refund to the Applicant any amount in excess of the fee permitted by SBA. SBA considers the following amounts to be reasonable for the total compensation that an Applicant can be charged by one or more Agents:

(1) *For loans up to and including $500,000:* A maximum of 3.5 percent of the loan amount, or $10,000, whichever is less;

(2) *For loans $500,001–$1,000,000:* A maximum of 2 percent of the loan amount, or $15,000, whichever is less; and

(3) *For loans over $1,000,000:* A maximum of 1.5 percent of the loan amount, or $30,000, whichever is less.

(c) * * * However, such compensation may not be charged to an Applicant or Borrower.

PART 120—BUSINESS LOANS

■ 5. The authority citation for part 120 is revised to read as follows:

Authority: 15 U.S.C. 634(b) (6), (b) (7), (b) (14), (h), and note, 636(a), (h) and (m), and note, 650, 657t, and note, 657u, and note, 687(f), 696(3) and (7), and note, and 697(a) and (e), and note.

■ 6. Amend § 120.10 by revising paragraph (1)(i) of the defined term ''Associate'' to read as follows:

§ 120.10 Definitions.

* * * * *

Associate. (1) * * *

(i) An officer, director, key employee, or holder of 20 percent or more of the value of the Lender's or CDC's stock or debt instruments, or an Agent (as defined in § 103.1 of this chapter) involved in the loan process; or

* * * * *

■ 7. Add § 120.102 to read as follows:

§ 120.102 Funds not available from alternative sources, including the personal resources of owners.

(a) An Applicant for a business loan must show that the desired funds are not available from the resources of any individual or entity owning 20 percent or more of the Applicant. SBA will require the use of liquid assets from any such owner as an injection to reduce the SBA loan amount when that owner's liquid assets exceed the amounts specified in paragraphs (a)(1) through (3) of this section. SBA will reexamine the thresholds periodically and, if adjustments are necessary based on nationally-recognized economic indicators, SBA may modify the thresholds from time to time through rulemaking. When the total financing package (*i.e.,* any SBA loans and any other financing, including loans from any other source, requested by the Applicant business at or about the same time, as defined in Loan Program Requirements (see *§ 120.10)*):

(1) Is $350,000 or less, each 20 percent owner of the Applicant must inject any liquid assets that are in excess of two times the total financing package, or $500,000, whichever is greater;

(2) Is between $350,001 and $1,000,000, each 20 percent owner of the Applicant must inject any liquid assets that are in excess of one and one-half times the total financing package, or $1,000,000, whichever is greater; or

(3) Exceeds $1,000,000, each 20 percent owner of the Applicant must inject any liquid assets that are in excess

of one times the total financing package, or $2,500,000, whichever is greater.

(b) Any liquid assets in excess of the applicable amount set forth in paragraph (a) of this section must be used to reduce the SBA loan amount. These funds must be injected prior to the disbursement of the proceeds of any SBA financing. In extraordinary circumstances, SBA may, in its sole discretion, permit exceptions to the required injection of an owner's excess liquid assets.

(c) For purposes of this section, ''liquid assets'' means cash or cash equivalents, including savings accounts, CDs, stocks, bonds, or other similar assets. Equity in real estate holdings, the cash value of life insurance policies, and other fixed assets are not to be considered liquid assets. In addition, the liquid assets of any 20 percent owner who is an individual include the liquid assets of the owner's spouse and any minor children.

(d) SBA Lenders must document their analysis and determination in the loan file.

■ 8. Amend § 120.130 by revising paragraph (c) to read as follows:

§ 120.130 Restrictions on uses of proceeds.

* * * * *

(c) Floor plan financing or other revolving line of credit, except under § 120.340, § 120.390, or § 120.444;

* * * * *

■ 9. Amend § 120.221 by:

■ a. Revising the section heading and paragraph (a); and

■ b. Adding a sentence at the end of paragraph (b).

The revisions and addition read as follows:

§ 120.221 Fees and expenses that the Lender may collect from an Applicant or Borrower.

* * * * *

(a) *Fees that can be collected from the Applicant for assistance in obtaining a loan.* The Lender may collect a fee from an Applicant (as defined in § 103.1 of this chapter) for assistance with obtaining an SBA-guaranteed loan. The fee may not exceed $3,000 for a loan up to and including $350,000 and may not exceed $5,000 for a loan over $350,000. The Lender must advise the Applicant in writing that the Applicant is not required to obtain or pay for unwanted services. In cases where the Lender charges any fees to the Applicant in excess of those specified in this part, the Lender must reduce the charge and refund to the Applicant any amount in excess of the permitted fee. If the Lender charges the Applicant a fee for assistance with obtaining an SBA-guaranteed loan, the fee must be disclosed to SBA in accordance with § 103.5 of this chapter and documented in accordance with Loan Program Requirements.

(b) * * * For certain revolving lines of credit made under § 120.390 and on Export Working Capital Program loans (as allowed under § 120.344(b)), subject to SBA's prior written approval, the Lender may charge extraordinary servicing fees in excess of 2 percent per year on the outstanding balance of the part requiring special servicing, provided the fees are reasonable and prudent.

* * * * *

§ 120.222 [Amended]

■ 10. Amend § 120.222 by removing the word ''in'' before the words ''any premium received''.

§ 120.344 [Amended]

■ 11. Amend § 120.344(b) by removing the period at the end of the paragraph and adding in its place '', provided the fees are reasonable and prudent.''

■ 12. Revise § 120.350 to read as follows:

§ 120.350 Policy.

Section 7(a)(15) of the Act authorizes SBA to guarantee a loan to a:

(a) Qualified employee trust (''ESOP'') to:

(1) Help finance the growth of its employer's small business; or

(2) Purchase ownership or voting control of the employer; and a

(b) Small business concern, if the proceeds from the loan are only used to make a loan to a qualified employee trust that results in the qualified employee trust owning at least 51 percent of the small business concern.

■ 13. Revise § 120.352 to read as follows:

§ 120.352 Use of proceeds.

Loan proceeds may be used for:

(a) *Qualified employee trust.* A qualified employee trust may use loan proceeds for two purposes:

(1) *Qualified employer securities.* A qualified employee trust may relend loan proceeds to the employer by purchasing qualified employer securities. The small business concern may use these funds for any general 7(a) purpose.

(2) *Control of employer.* A qualified employee trust may use loan proceeds to purchase a controlling interest (51 percent) in the employer. Ownership and control must vest in the trust by the time the loan is repaid.

(b) *Small business concern.* A small business concern may only use loan proceeds to make a loan to a qualified employee trust that results in the qualified employee trust owning at least 51 percent of the small business concern.

■ 14. Amend § 120.432 by adding a sentence at the end of paragraph (a) to read as follows:

§ 120.432 Under what circumstances does this subpart permit sales of, or sales of participating interests in, 7(a) loans?

(a) * * * This paragraph (a) applies to all 7(a) loans purchased from any Federal or state banking regulator, any receiver, or any conservator, unless SBA agrees otherwise in writing.

* * * * *

■ 15. Amend § 120.440 by revising paragraph (c) to read as follows:

§ 120.440 How does a 7(a) Lender obtain delegated authority?

* * * * *

(c) If delegated authority is approved or renewed, Lender must execute a supplemental guarantee agreement, which will specify a term not to exceed two years. As provided in § 120.442(c)(2)(i), when SBA renews a Lender's authority to participate in SBA Express, SBA may grant a longer term, but not to exceed three years. For approval or renewal of any delegated authority, SBA may grant shortened approvals or renewals based on risk or any of the other delegated authority criteria. Lenders with less than three years of SBA lending experience will be limited to an initial term of one year or less.

■ 16. Add an undesignated center heading and §§ 120.441 through 120.447 to read as follows:

SBA Express and Export Express Loan Programs

Sec.

120.441 SBA Express and Export Express Loan Programs.
120.442 Process to obtain or renew SBA Express or Export Express authority.
120.443 SBA Express and Export Express loan processing requirements.
120.444 Eligible uses of SBA Express and Export Express loan proceeds.
120.445 Terms and conditions of SBA Express and Export Express loans.
120.446 SBA Express and Export Express loan closing, servicing, liquidation, and litigation requirements.
120.447 Oversight of SBA Express and Export Express Lenders.

§ 120.441 SBA Express and Export Express Loan Programs.

(a) *SBA Express.* Under the SBA Express Loan Program (SBA Express),

designated Lenders (SBA Express Lenders) process, close, service, and liquidate SBA-guaranteed 7(a) loans using their own loan analyses, procedures, and documentation to the maximum extent practicable, with reduced requirements for submitting documentation to, and prior approval by, SBA. These loan analyses, procedures, and documentation must meet prudent lending standards; be consistent with those an SBA Express Lender uses for its similarly-sized, non-SBA guaranteed commercial loans; and conform to all requirements imposed upon Lenders generally and SBA Express Lenders in particular by Loan Program Requirements, as such requirements are issued and revised by SBA from time to time, unless specifically identified by SBA as inapplicable to SBA Express loans. In return for the expanded authority and autonomy provided by the program, SBA Express Lenders agree to accept a maximum SBA guaranty of 50 percent of the SBA Express loan amount.

(b) *Export Express.* The Export Express Loan Program (Export Express) is designed to help current and prospective small exporters. It is subject to the same loan processing, making, closing, servicing, and liquidation requirements, as well as the same interest rates and applicable fees, as SBA Express, except as otherwise provided in Loan Program Requirements.

§ 120.442 Process to obtain or renew SBA Express or Export Express authority.

The decision to grant or renew SBA Express or Export Express authority will be made by the appropriate SBA official in accordance with Delegations of Authority and is final. If SBA Express or Export Express authority is approved or renewed, the Lender must execute a supplemental guarantee agreement before the Lender's SBA Express or Export Express authority will become effective.

(a) *Criteria and process for initial approval of SBA Express or Export Express authority.* A Lender that wishes to participate in SBA Express or Export Express must submit a written request to SBA.

(1) *Existing 7(a) Lenders.* In evaluating an existing 7(a) Lender's application for SBA Express or Export Express authority, SBA will consider the criteria and follow the procedures set forth in § 120.440.

(2) *Lending institutions that do not currently participate with SBA.* Lending institutions that do not currently participate with SBA must become 7(a) Lenders to participate in SBA Express and/or Export Express. Such institutions may request SBA 7(a) lending and SBA Express and/or Export Express authority simultaneously. In evaluating such institutions, in addition to the criteria set forth in §§ 120.410 and 120.440, SBA will consider whether the institution:

(i) Has acceptable experience with small commercial loans, including an acceptable number of performing small commercial loans outstanding at its most recent fiscal year end; and

(ii) Has received appropriate training on SBA's policies and procedures.

(b) *Criteria and process for renewal of SBA Express or Export Express authority.* In renewing a Lender's SBA Express or Export Express authority and determining the term of the renewal, SBA will consider the criteria and follow the process set forth in § 120.440 and also will consider whether the Lender:

(1) Can effectively process, make, close, service, and liquidate SBA Express or Export Express loans, as applicable;

(2) Has received a major substantive objection regarding renewal from the Field Office(s) covering the territory where the Lender generates significant numbers of SBA Express or Export Express loans, as applicable; and

(3) Has received acceptable review results on the SBA Express or Export Express portion, as applicable, of any SBA-administered Lender reviews.

(c) *Term*—(1) *Initial approval.* SBA may approve a Lender's authority to participate in SBA Express or Export Express for a maximum term of two years. SBA may approve a shorter term or limit a Lender's maximum SBA Express or Export Express loan volume if, in SBA's sole discretion, a Lender's qualifications, performance, experience with SBA lending, or other factors so warrant.

(2) *Renewal*—(i) *SBA Express.* SBA may renew a Lender's authority to participate in SBA Express for two years or, in SBA's sole discretion, a maximum of three years if a Lender's qualifications, performance, experience with SBA lending, or other factors so warrant.

(ii) *Export Express.* SBA may renew a Lender's authority to participate in Export Express for a maximum term of two years.

(iii) *Shorter term or loan volume limit.* SBA may renew a Lender's authority to participate in SBA Express or Export Express for a shorter term or limit a Lender's maximum SBA Express or Export Express loan volume if, in SBA's sole discretion, a Lender's qualifications, performance, experience with SBA lending, or other factors so warrant.

§ 120.443 SBA Express and Export Express loan processing requirements.

(a) SBA Express and Export Express loans are subject to all of the requirements set forth in subparts A and B of this part, unless such requirements are specifically identified by SBA as inapplicable.

(b) In addition to the eligibility criteria applicable to all 7(a) loans, an Export Express Applicant must have been in business for at least 12 full months at the time of application, but not necessarily in the exporting business, unless the Lender determines that the Applicant's key personnel have clearly demonstrated export expertise and substantial previous successful business experience and the Lender processes the Export Express loan using conventional commercial loan underwriting procedures and does not rely solely on credit scoring or credit matrices to approve the loan.

(c) Certain types of loans and loan programs are not eligible for SBA Express or Export Express, as detailed in official SBA policy and procedures, including but not limited to:

(1) A loan that would reduce the Lender's existing credit exposure to a single Borrower, including its affiliates as defined in § 121.301(f) of this chapter;

(2) A loan to a business that has an outstanding 7(a) loan where the Applicant is unable to certify that the loan is current at the time of approval of the SBA Express or Export Express loan;

(3) A loan that would have as its primary collateral real estate or personal property that does not meet SBA's environmental requirements; and

(4) Complex loan structures or eligibility situations.

(d) SBA has authorized SBA Express and Export Express Lenders to make the credit decision without prior SBA review. Lenders must not make an SBA-guaranteed loan that would be available on reasonable terms from either the Lender itself or another source without an SBA guaranty in accordance with § 120.101. The credit analysis must demonstrate that there is reasonable assurance of repayment. SBA Express and Export Express Lenders must use appropriate and prudent credit analysis processes and procedures that are generally accepted in the commercial lending industry and are consistent with those used for their similarly-sized, non-SBA guaranteed commercial loans. As part of their prudent credit analysis, SBA Express and Export Express

Lenders may use a business credit scoring model (such a model cannot rely solely on consumer credit scores) to assess the credit history of the Applicant and/or repayment ability if they do so for their similarly-sized, non-SBA guaranteed commercial loans. SBA Express and Export Express Lenders must validate (and document) with appropriate statistical methodologies that their credit analysis procedures are predictive of loan performance, and they must provide that documentation to SBA upon request. SBLCs must provide such credit scoring model validation and documentation to SBA for review and approval on an annual basis.

(e) SBA Express and Export Express Lenders are responsible for all loan decisions, including eligibility for 7(a) loans (including size), creditworthiness, and compliance with Loan Program Requirements. SBA Express and Export Express Lenders also are responsible for confirming that all loan closing decisions are correct and that they have complied with all requirements of law and Loan Program Requirements.

(f) SBA Express and Export Express Lenders must ensure all required forms are obtained and are complete and properly executed. Appropriate documentation must be maintained in the Lender's loan file, including adequate information to support the eligibility of the Applicant and the loan.

§ 120.444 Eligible uses of SBA Express and Export Express loan proceeds.

(a) *SBA Express.* (1) SBA Express loan proceeds must be used exclusively for eligible business-related purposes, as described in §§ 120.120 and 120.130.

(2) Revolving lines of credit are eligible for SBA Express, provided they comply with official SBA policy and procedures.

(b) *Export Express.* (1) Export Express loans must be used for an export development activity, which includes the following:

(i) Obtaining a Standby Letter of Credit when required as a bid bond, performance bond, or advance payment guarantee;

(ii) Participation in a trade show that takes place outside the United States;

(iii) Translation of product brochures or catalogues for use in markets outside the United States;

(iv) Obtaining a general line of credit for export purposes;

(v) Performing a service contract for buyers located outside the United States;

(vi) Obtaining transaction-specific financing associated with completing export orders;

(vii) Purchasing real estate or equipment to be used in the production of goods or services for export;

(viii) Providing term loans and other financing to enable a small business concern, including an export trading company and an export management company, to develop a market outside the United States; and

(ix) Acquiring, constructing, renovating, modernizing, improving or expanding a production facility or equipment to be used in the United States in the production of goods or services for export.

(2) Revolving lines of credit for export purposes are eligible for Export Express, provided they comply with official SBA policy and procedures.

(3) Export Express loans may not be used to finance operations outside of the United States, except for the marketing and/or distribution of products/services exported from the United States.

(4) Export Express Lenders are responsible for ensuring that U.S. companies are authorized to conduct business with the Persons and countries to which the Borrower will be exporting.

(c) *Debt refinancing.* An SBA Express or Export Express Lender may use loan proceeds to refinance certain outstanding debts, subject to official SBA policy and procedures. However, an SBA Express or Export Express Lender may not refinance its own existing SBA-guaranteed debt under SBA Express or Export Express.

§ 120.445 Terms and conditions of SBA Express and Export Express loans.

SBA Express and Export Express loans are subject to the same terms and conditions as other 7(a) loans except as set forth in this section:

(a) *Maximum loan amount and maximum aggregate loan amount*—(1) *SBA Express.* The maximum loan amount for an SBA Express loan is set forth in section 7(a)(31) of the Small Business Act. The aggregate amount of all outstanding SBA Express loans to a single Borrower, including the Borrower's affiliates as defined in § 121.301(f) of this chapter, must not exceed the statutory maximum.

(2) *Export Express.* The maximum loan amount for an Export Express loan is set forth in section 7(a)(34) of the Small Business Act. The aggregate amount of all outstanding Export Express loans to a single Borrower, including the Borrower's affiliates as defined in § 121.301(f) of this chapter, must not exceed the statutory maximum.

(b) *Maximum SBA guarantee*—(1) *SBA Express.* The maximum SBA guarantee on an SBA Express loan is 50 percent of the SBA Express loan amount. In addition, the guaranteed amount of all SBA Express loans to a single Borrower, including the Borrower's affiliates, counts toward the maximum guaranty amount as described in § 120.151.

(2) *Export Express.* The maximum SBA guarantee on an Export Express loan of $350,000 or less is 90 percent, and for a loan over $350,000 is 75 percent, of the Export Express loan amount. In addition, the guaranteed amount of all Export Express loans to a single Borrower, including the Borrower's affiliates, counts toward the maximum guaranty amount as described in § 120.151.

(c) *Maturity*—(1) *SBA Express.* SBA Express loans must have a stated maturity and the maximum maturities are the same as any other 7(a) loan, except that revolving SBA Express loans are limited to a maximum of 10 years, as described more fully in official SBA policy and procedures.

(2) *Export Express.* Export Express loans must have a stated maturity and the maximum maturities are the same as any other 7(a) loan, except that revolving Export Express loans are limited to a maximum maturity of 7 years, as described more fully in official SBA policy and procedures.

(d) *Interest rates.* (1) For fixed interest rate loans, SBA Express and Export Express Lenders may charge a reasonable fixed interest rate in accordance with § 120.213.

(2) For variable interest rate loans:

(i) SBA Express and Export Express Lenders may charge up to 4.5 percent over the prime rate on loans over $50,000 and up to 6.5 percent over the prime rate for loans of $50,000 or less, regardless of the maturity of the loan. The prime rate will be that which is in effect on the first business day of the month, as printed in a national financial newspaper published each business day.

(ii) SBA Express and Export Express Lenders are not required to use the base rate identified in § 120.214(c). SBA Express and Export Express Lenders may use the same base rate of interest they use on their similarly-sized, non-SBA guaranteed commercial loans, as well as their established change intervals, payment accruals, and other interest rate terms. However, the interest rate must never exceed the maximum allowable interest rate stated in paragraph (d)(2)(i) of this section. Additionally, the loan may be sold on the Secondary Market only if the base rate is one of the base rates allowed in § 120.214(c).

(3) The amount of interest SBA will pay to a Lender following default of an SBA Express or Export Express loan is capped at the maximum interest rates for the standard 7(a) loan program set forth in §§ 120.213 through 120.215.

(e) *Collateral.* (1) With the exception of paragraphs (e)(2) and (3) of this section, to the maximum extent practicable, SBA Express and Export Express Lenders must follow the same collateral policies and procedures that they have established and implemented for their similarly-sized, non-SBA guaranteed commercial loans, including those concerning identification of collateral. Such policies and procedures must be commercially reasonable and prudent.

(2) SBA may establish a threshold below which SBA Express and Export Express Lenders will not be required to take collateral to secure an SBA Express or Export Express loan. If established, such a threshold will be described more fully in official SBA policy and procedures.

(3) Export Express lines of credit over $25,000 used to support the issuance of a standby letter of credit must have collateral (cash, cash equivalent, or project) that will provide coverage for at least 25 percent of the issued standby letter of credit amount.

(f) *Insurance.* SBA Express and Export Express Lenders must follow the same insurance policies they have established and implemented for their similarly-sized, non-SBA guaranteed commercial loans.

(g) *Sale on the Secondary Market.* SBA Express and Export Express Lenders may sell the guaranteed portion of an SBA Express or Export Express term loan on the Secondary Market under the policies and procedures described in subpart F of this part. SBA Express or Export Express Lenders may not sell the guaranteed portion of an SBA Express or Export Express revolving line of credit on the Secondary Market.

(h) *Loan increases.* With SBA's prior written consent, an SBA Express or Export Express Lender may increase an SBA Express or Export Express loan based on the needs of the Borrower and its credit situation, as further specified in Loan Program Requirements.

§ 120.446 SBA Express and Export Express loan closing, servicing, liquidation, and litigation requirements.

(a) *Closing.* Except as set forth in this paragraph (a), SBA Express and Export Express Lenders must close their SBA Express and Export Express loans using the same documentation and procedures that they use for their similarly-sized, non-SBA guaranteed commercial loans. Such documentation and procedures must comply with law, prudent lending practices, and Loan Program Requirements. When closing an SBA Express or Export Express loan, the Lender must require the Borrower to execute a promissory note that is legally enforceable and assignable. Before the first disbursement of any SBA Express or Export Express loan proceeds, the Lender must obtain all required collateral, including obtaining valid and enforceable security interests in such collateral, and also must meet all other required pre-closing loan conditions as set forth in official SBA policy and procedures.

(b) *Servicing, liquidation, and litigation.* Servicing, liquidation, and litigation responsibilities for SBA Express and Export Express Lenders are set forth in subpart E of this part.

(c) *SBA's purchase of the guaranteed portion of an SBA Express or Export Express loan*—(1) *When SBA will purchase.* SBA will purchase the guaranteed portion of an SBA Express or Export Express loan in accordance with § 120.520 and official SBA policy and procedures. An SBA Express or Export Express Lender may not request purchase of the guaranty based solely on a violation of a non-financial default provision.

(2) *Amount that SBA will pay upon purchase*—(i) *SBA Express.* SBA will pay a maximum of 50 percent of the total principal balance of the SBA Express loan outstanding after liquidation, plus up to 120 days of accrued interest at the rate in effect at the time of the earliest uncured default (if liquidation proceeds collected by the SBA Express Lender were insufficient for the Lender to recover a full 120 days of interest).

(ii) *Export Express.* SBA will pay a maximum of 75 or 90 percent (as applicable) of the total principal balance of the Export Express loan outstanding after liquidation, plus up to 120 days of interest at the rate in effect at the time of the earliest uncured default (if liquidation proceeds collected by the Export Express Lender were insufficient for the Lender to recover a full 120 days of interest).

(3) *Release of SBA liability under its guarantee.* SBA will be released from its liability to purchase the guaranteed portion of an SBA Express or Export Express loan, either in whole or in part, in SBA's sole discretion, under any of the circumstances described in § 120.524.

§ 120.447 Oversight of SBA Express and Export Express Lenders.

SBA Express and Export Express Lenders are subject to the same risk-based lender oversight as other 7(a) Lenders, including the supervision and enforcement provisions, in accordance with subpart I of this part.

§ 120.707 [Amended]

■ 17. Amend the last sentence of § 120.707(b) by removing the word ''six'' and adding in its place the word ''seven''.

■ 18. Amend § 120.712 by:

■ a. Revising paragraph (b)(1); and

■ b. In paragraph (d), removing the number ''25'' and adding in its place the number ''50''.

The revision reads as follows:

§ 120.712 How does an Intermediary get a grant to assist Microloan borrowers?

* * * * *

(b) * * *

(1) Up to 50 percent of the grant funds may be used to provide information and technical assistance to prospective Microloan borrowers; provided, however, that no more than 5 percent of the grant funds may be used to market or advertise the products and services of the Microloan Intermediary directly related to the Microloan Program; and

* * * * *

■ 19. Amend § 120.840 by revising paragraph (b) to read as follows:

§ 120.840 Accredited Lenders Program (ALP).

* * * * *

(b) *Application.* A CDC must apply for ALP status by submitting an application in accordance with SBA's Standard Operating Procedure 50 10, available at *http://www.sba.gov.* A final decision will be made by the appropriate SBA official in accordance with Delegations of Authority.

* * * * *

PART 121—SMALL BUSINESS SIZE REGULATIONS

■ 20. The authority citation for part 121 continues to read as follows:

Authority: 15 U.S.C. 632, 634(b)(6), 662, and 649a(9).

■ 21. Amend § 121.301 by:

■ a. Revising paragraph (f)(4);

■ b. Redesignating paragraphs (f)(5) through (7) as paragraphs (f)(7) through (9), respectively;

■ c. Adding new paragraphs (f)(5) and (6) and revising newly redesignated paragraph (f)(7).

The revisions and additions to read as follows:

§ 121.301 What size standards and affiliation principles are applicable to financial assistance programs?

* * * * *

(f) * * *

(4) *Affiliation based on identity of interest*—(i) *General.* Affiliation may arise among two or more individuals or firms with an identity of interest. Individuals or firms that have identical or substantially identical business or economic interests (such as close relatives, individuals or firms with common investments, or firms that are economically dependent through contractual or other relationships) may be treated as one party with such interests aggregated. Where SBA determines that such interests should be aggregated, an individual or firm may rebut that determination with evidence showing that the interests deemed to be one are in fact separate.

(ii) *Close relatives.* Affiliation arises when there is an identity of interest between close relatives, as defined in § 120.10 of this chapter, with identical or substantially identical business or economic interests (such as where the close relatives operate concerns in the same or similar industry in the same geographic area).

(iii) *Common investments.* Affiliation arises through common investments where the same individuals or firms together own a substantial portion of multiple concerns in the same or related industry, and such concerns conduct business with each other, or share resources, equipment, locations, or employees with one another, or provide loan guaranties or other financial or managerial support to each other. However, where an SBA Lender has made a determination of no affiliation under this ground, SBA will not overturn that determination as long as it was reasonable when made given the information available to the SBA Lender at the time.

(iv) *Economic dependence.* Affiliation based upon economic dependence may arise when a concern derived more than 85 percent of its receipts over the previous three fiscal years from a contractual relationship with another concern, unless:

(A) The contract (or contracts) does not restrict the concern in question from selling the same type of products or services to another purchaser; or

(B) SBA agrees that the terms of the contract (or contracts) do not provide the purchaser with control or the power to control the seller.

(5) *Affiliation based on the newly organized concern rule in this paragraph (f)(5).* Affiliation may arise where current or former officers, directors, owners of a 20 percent interest or greater, managing members, or persons hired to manage day-to-day operations of one concern organize a new concern in the same or related industry or field of operation, and serve as the new concern's officers, directors, owners of a 20 percent interest or greater, or managing members, and there are direct monetary benefits flowing from the new concern to the original concern. A concern may rebut such an affiliation determination by demonstrating a clear line of fracture between the two concerns. A concern will be considered ''new'' for the purpose of this paragraph (f)(5) if it has been actively operating for two years or less. However, where an SBA Lender has made a determination of no affiliation under this ground, SBA will not overturn that determination as long as it was reasonable when made given the information available to the SBA Lender at the time.

(6) *Affiliation based on totality of the circumstances.* In determining whether affiliation exists, SBA may consider all connections between the concern and a possible affiliate. Even though no single factor is sufficient to constitute affiliation, SBA may find affiliation on a case-by-case basis where there is clear and convincing evidence based on the totality of the circumstances. However, where an SBA Lender has made a determination of no affiliation, SBA will not overturn that determination as long as it was reasonable when made given the information available to the SBA Lender at the time.

(7) *Affiliation based on franchise agreements.* (i) The restraints imposed on a franchisee by its franchise agreement generally will not be considered in determining whether the franchisor is affiliated with an applicant franchisee provided the applicant franchisee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. SBA will only consider the franchise agreements of the applicant concern. SBA will maintain a centralized list of franchise and other similar agreements that are eligible for SBA financial assistance, which will identify any additional documentation necessary to resolve any eligibility or affiliation issues between the franchisor and the small business applicant.

(ii) For purposes of this section, ''franchise'' means any continuing commercial relationship or arrangement, whatever it may be called, that meets the Federal Trade Commission definition of ''franchise'' in 16 CFR part 436.

* * * * *

■ 22. Amend § 121.302 by revising paragraphs (a) and (b) to read as follows:

§ 121.302 When does SBA determine the size status of an applicant?

(a) The size status of an applicant for SBA financial assistance is determined as of the date the application for financial assistance is accepted for processing by SBA, except for applications under the Preferred Lenders Program (PLP), the SBA Express Loan Program (SBA Express), the Export Express Loan Program (Export Express), the Disaster Loan Program, the SBIC Program, and the New Markets Venture Capital (NMVC) Program.

(b) For PLP, SBA Express, and Export Express, size is determined as of the date of approval of the loan by the Lender.

* * * * *

Dated: January 29, 2020.

Jovita Carranza,

Administrator.

[FR Doc. 2020–02128 Filed 2–7–20; 8:45 am]

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