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Federal Register

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

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

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 97

**[Docket No. 31296; Amdt. No. 3891]**

## Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective February 24, 2020. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 24, 2020.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

### For Examination

1. U.S. Department of Transportation, Docket Ops–M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html*.

### Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73169. Telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

### Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPS as identified in the amendatory language for part 97 of this final rule.

### The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as Amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under

5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C 553(d), good cause exists for making some SIAPs effective in less than 30 days.

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. 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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 97**

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on February 7, 2020.

**Rick Domingo,**

*Executive Director, Flight Standards Service.*

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

**Authority:** 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

**Effective 26 March 2020**

Huntsville, AL, Huntsville Intl-Carl T Jones Field, ILS OR LOC RWY 18L, Amdt 5B
Huntsville, AL, Huntsville Intl-Carl T Jones Field, ILS OR LOC RWY 36L, Amdt 11B
Harrison, AR, Boone County, ILS OR LOC RWY 36, Amdt 1
Harrison, AR, Boone County, NDB RWY 18, Amdt 6, CANCELLED
Mojave, CA, Mojave Air and Space Port, RNAV (GPS) RWY 4, Amdt 1
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Decorah, IA, Decorah Muni, RNAV (GPS) RWY 29, Amdt 1
Decorah, IA, Decorah Muni, VOR RWY 29, Amdt 3E, CANCELLED
Chicago, IL, Chicago O'Hare Intl, RNAV (GPS) RWY 9L, Amdt 3D
Chicago, IL, Chicago O'Hare Intl, RNAV (GPS) RWY 9R, Amdt 4B
Chicago, IL, Chicago O'Hare Intl, RNAV (GPS) RWY 10L, Amdt 5B
Preston, MN, Fillmore County, RNAV (GPS) RWY 11, Orig-D
Preston, MN, Fillmore County, RNAV (GPS) RWY 29, Amdt 1D
Sedalia, MO, Sedalia Memorial, NDB RWY 18, Amdt 8B, CANCELLED
Sedalia, MO, Sedalia Memorial, NDB RWY 36, Amdt 9A, CANCELLED
Beaufort, NC, Michael J Smith Field, RNAV (GPS) RWY 8, Amdt 2B
Roxboro, NC, Raleigh Rgnl at Person County, RNAV (GPS) RWY 6, Orig-B
Battle Mountain, NV, Battle Mountain, Takeoff Minimums and Obstacle DP, Amdt 5
Battle Mountain, NV, Battle Mountain, VOR RWY 4, Amdt 7A
Reno, NV, Reno/Tahoe Intl, RNAV (GPS) X RWY 16L, Amdt 2
Reno, NV, Reno/Tahoe Intl, RNAV (GPS) X RWY 34R, Amdt 2
Reno, NV, Reno/Tahoe Intl, RNAV (RNP) Y RWY 16L, Amdt 1B
Aurora, OR, Aurora State, RNAV (GPS) RWY 17, Amdt 1B
North Bend, OR, Southwest Oregon Rgnl, RNAV (GPS) Y RWY 5, Amdt 1A
North Bend, OR, Southwest Oregon Rgnl, RNAV (RNP) Z RWY 5, Amdt 1A
Pendleton, OR, Eastern Oregon Rgnl at Pendleton, RNAV (GPS) RWY 8, Amdt 1A
Pendleton, OR, Eastern Oregon Rgnl at Pendleton, RNAV (GPS) RWY 26, Orig-E
Portland, OR, Portland Intl, ILS OR LOC RWY 10R, ILS RWY 10R (SA CAT I), ILS RWY 10R (CAT II), ILS RWY 10R (CAT III), Amdt 35
Portland, OR, Portland-Hillsboro, ILS OR LOC RWY 13R, Amdt 11
Portland, OR, Portland-Hillsboro, NDB–B, Amdt 3A
Portland, OR, Portland-Hillsboro, RNAV (GPS) RWY 13R, Amdt 3
Portland, OR, Portland-Hillsboro, RNAV (GPS) RWY 31L, Amdt 1A
Portland, OR, Portland-Hillsboro, VOR–C, Amdt 1A
Luray, VA, Luray Caverns, Takeoff Minimums and Obstacle DP, Amdt 2A

Rescinded: On January 27, 2020 (85 FR 4580), the FAA published an Amendment in Docket No. 31292 Amdt No. 3887, to Part 97 of the Federal Aviation Regulations under sections 97.29. The following entry for Chicago, IL effective March 26, 2020, is hereby rescinded in its entirety:

Chicago, IL, Chicago O'Hare Intl, ILS OR LOC RWY 22L, ILS RWY 22L (SA CAT I), ILS RWY 22L (SA CAT II), Amdt 7

[FR Doc. 2020–03278 Filed 2–21–20; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 97

**[Docket No. 31297; Amdt. No. 3892]**

## Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** This rule is effective February 24, 2020. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 24, 2020.

**ADDRESSES:** Availability of matter incorporated by reference in the amendment is as follows:

**For Examination**

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001;

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Navigation Products, 6500 South

MacArthur Blvd., Oklahoma City, OK 73169 or,

4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fedreg.legal@nara.gov* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html*.

**Availability**

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73169. Telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This rule amends Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary. This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

**Availability and Summary of Material Incorporated by Reference**

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for part 97 of this final rule.

**The Rule**

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

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. 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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 97**

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on February 7, 2020.

**Rick Domingo,**

*Executive Director, Flight Standards Service.*

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal regulations, Part 97, (14 CFR part 97), is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

**Authority:** 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

**§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]**

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

| AIRAC date | State | City | Airport | FDC No. | FDC date | Subject |
|---|---|---|---|---|---|---|
| 26–Mar–20 | WI | Mosinee | Central Wisconsin | 0/0106 | 1/16/20 | RNAV (GPS) RWY 26, Amdt 1C. |
| 26–Mar–20 | IL | Peoria | General Downing-Peoria Intl | 0/1429 | 2/3/20 | RNAV (GPS) RWY 13, Amdt 1A. |
| 26–Mar–20 | IL | Peoria | General Downing-Peoria Intl | 0/1430 | 2/3/20 | RNAV (GPS) RWY 22, Amdt 1B. |

| AIRAC date | State | City | Airport | FDC No. | FDC date | Subject |
|---|---|---|---|---|---|---|
| 26–Mar–20 | IL | Peoria | General Downing-Peoria Intl | 0/1431 | 2/3/20 | RNAV (GPS) RWY 31, Amdt 1B. |
| 26–Mar–20 | IL | Peoria | General Downing-Peoria Intl | 0/1432 | 2/3/20 | VOR/DME OR TACAN RWY 31, Amdt 9. |
| 26–Mar–20 | IL | Peoria | General Downing-Peoria Intl | 0/1433 | 2/3/20 | VOR OR TACAN RWY 13, Amdt 23C. |
| 26–Mar–20 | IL | Peoria | General Downing-Peoria Intl | 0/1434 | 2/3/20 | ILS OR LOC RWY 13, Amdt 6G. |
| 26–Mar–20 | IL | Peoria | General Downing-Peoria Intl | 0/1435 | 2/3/20 | ILS OR LOC RWY 31, Amdt 7C. |
| 26–Mar–20 | IL | Peoria | General Downing-Peoria Intl | 0/1438 | 2/3/20 | NDB RWY 31, Amdt 15B. |
| 26–Mar–20 | IL | Peoria | General Downing-Peoria Intl | 0/1440 | 2/3/20 | ILS OR LOC RWY 4, Amdt 3. |
| 26–Mar–20 | IL | Peoria | General Downing-Peoria Intl | 0/1441 | 2/3/20 | RNAV (GPS) RWY 4, Amdt 2. |
| 26–Mar–20 | PA | East Stroudsburg | Stroudsburg-Pocono | 0/1824 | 1/17/20 | VOR/DME–A, Amdt 6. |
| 26–Mar–20 | MN | Albert Lea | Albert Lea Muni | 0/1832 | 2/3/20 | VOR RWY 17, Amdt 1A. |
| 26–Mar–20 | TX | Dallas-Fort Worth | Dallas-Fort Worth Intl | 0/2242 | 1/16/20 | ILS OR LOC RWY 17C, ILS RWY 17C (CAT II AND III), Amdt 11A. |
| 26–Mar–20 | IL | Olney-Noble | Olney-Noble | 0/2261 | 1/16/20 | LOC RWY 11, Amdt 6. |
| 26–Mar–20 | IL | Olney-Noble | Olney-Noble | 0/2262 | 1/16/20 | RNAV (GPS) RWY 11, Amdt 1B. |
| 26–Mar–20 | TX | Corsicana | C David Campbell Field-Corsicana Muni. | 0/2722 | 1/22/20 | NDB RWY 14, Amdt 4C. |
| 26–Mar–20 | TX | Corsicana | C David Campbell Field-Corsicana Muni. | 0/2723 | 1/22/20 | NDB RWY 32, Amdt 3C. |
| 26–Mar–20 | TX | Corsicana | C David Campbell Field-Corsicana Muni. | 0/2724 | 1/22/20 | VOR/DME–A, Amdt 1C. |
| 26–Mar–20 | VT | Barre/Montpelier | Edward F Knapp State | 0/2749 | 1/24/20 | VOR RWY 35, Amdt 4. |
| 26–Mar–20 | CA | Upland | Cable | 0/3513 | 1/21/20 | VOR–A, Orig-B. |
| 26–Mar–20 | ME | Princeton | Princeton Muni | 0/4293 | 1/17/20 | RNAV (GPS) RWY 15, Amdt 1C. |
| 26–Mar–20 | OR | Salem | Mcnary Fld | 0/4544 | 1/16/20 | RNAV (GPS) RWY 31, Amdt 3C. |
| 26–Mar–20 | VA | Richmond/Ashland | Hanover County Muni | 0/4867 | 1/22/20 | LOC RWY 16, Amdt 3D. |
| 26–Mar–20 | WI | Reedsburg | Reedsburg Muni | 0/4868 | 1/23/20 | RNAV (GPS) RWY 18, Orig-A. |
| 26–Mar–20 | IL | Pittsfield | Pittsfield Penstone Muni | 0/4872 | 1/22/20 | VOR RWY 13, Amdt 4A. |
| 26–Mar–20 | IL | Pittsfield | Pittsfield Penstone Muni | 0/4873 | 1/22/20 | RNAV (GPS) RWY 31, Orig-A. |
| 26–Mar–20 | TX | Dallas | Mckinney National | 0/5464 | 1/22/20 | VOR/DME–A, Amdt 2A. |
| 26–Mar–20 | TX | Dallas | Mckinney National | 0/5465 | 1/22/20 | RNAV (GPS) RWY 18, Amdt 2B. |
| 26–Mar–20 | TX | Dallas | Mckinney National | 0/5466 | 2/3/20 | ILS OR LOC RWY 18, Amdt 6. |
| 26–Mar–20 | MA | Worcester | Worcester Rgnl | 0/5468 | 1/22/20 | RNAV (GPS) RWY 33, Orig-B. |
| 26–Mar–20 | MA | Worcester | Worcester Rgnl | 0/5469 | 1/22/20 | ILS OR LOC RWY 29, Amdt 4C. |
| 26–Mar–20 | IN | Indianapolis | Eagle Creek Airpark | 0/5629 | 1/23/20 | VOR–A, Amdt 7. |
| 26–Mar–20 | IN | Indianapolis | Eagle Creek Airpark | 0/5641 | 1/23/20 | RNAV (GPS) RWY 21, Amdt 1A. |
| 26–Mar–20 | ND | Hazen | Mercer County Rgnl | 0/6297 | 1/29/20 | RNAV (GPS) RWY 14, Amdt 1. |
| 26–Mar–20 | ND | Hazen | Mercer County Rgnl | 0/6298 | 1/29/20 | RNAV (GPS) RWY 32, Amdt 1. |
| 26–Mar–20 | VT | Barre/Montpelier | Edward F Knapp State | 0/6355 | 1/24/20 | RNAV (GPS) RWY 35, Amdt 1A. |
| 26–Mar–20 | VT | Barre/Montpelier | Edward F Knapp State | 0/6358 | 1/24/20 | RNAV (GPS) RWY 17, Amdt 1. |
| 26–Mar–20 | VT | Barre/Montpelier | Edward F Knapp State | 0/6359 | 1/24/20 | ILS OR LOC RWY 17, Amdt 7. |
| 26–Mar–20 | WI | Milwaukee | General Mitchell Intl | 0/6531 | 1/24/20 | ILS OR LOC RWY 19R, Amdt 13. |
| 26–Mar–20 | WI | Milwaukee | General Mitchell Intl | 0/6534 | 1/24/20 | RNAV (GPS) Z RWY 7R, Amdt 1E. |
| 26–Mar–20 | WI | Milwaukee | General Mitchell Intl | 0/6535 | 1/24/20 | RNAV (GPS) Z RWY 25L, Amdt 1D. |
| 26–Mar–20 | WI | Milwaukee | General Mitchell Intl | 0/6537 | 1/24/20 | RNAV (GPS) RWY 19R, Amdt 2B. |
| 26–Mar–20 | GA | Augusta | Daniel Field | 0/6538 | 1/24/20 | NDB RWY 11, Amdt 4A. |
| 26–Mar–20 | GA | Augusta | Daniel Field | 0/6565 | 1/24/20 | VOR/DME–B, Amdt 1A. |

| AIRAC date | State | City | Airport | FDC No. | FDC date | Subject |
|---|---|---|---|---|---|---|
| 26–Mar–20 | WI | Ashland | John F Kennedy Memorial | 0/6649 | 2/3/20 | RNAV (GPS) RWY 2, Amdt 1A. |
| 26–Mar–20 | OH | Lebanon | Warren County/John Lane Field | 0/6666 | 1/24/20 | RNAV (GPS) RWY 19, Amdt 4. |
| 26–Mar–20 | VA | West Point | Middle Peninsula Rgnl | 0/6696 | 1/24/20 | RNAV (GPS) RWY 10, Amdt 1A. |
| 26–Mar–20 | GU | Guam | Guam Intl | 0/6701 | 1/24/20 | RNAV (GPS) Y RWY 6R, Amdt 1B. |
| 26–Mar–20 | GA | Dublin | W H 'Bud' Barron | 0/6702 | 1/24/20 | ILS OR LOC RWY 2, Amdt 2D. |
| 26–Mar–20 | IN | Indianapolis | Indianapolis Metropolitan | 0/6703 | 1/24/20 | NDB RWY 15, Amdt 2B. |
| 26–Mar–20 | IN | Indianapolis | Indianapolis Metropolitan | 0/6704 | 1/24/20 | RNAV (GPS) RWY 33, Amdt 1A. |
| 26–Mar–20 | IN | Indianapolis | Indianapolis Metropolitan | 0/6705 | 1/24/20 | VOR RWY 33, Amdt 10C. |
| 26–Mar–20 | CQ | Tinian Island | Tinian Intl | 0/6707 | 1/24/20 | RNAV (GPS) RWY 8, Amdt 1. |
| 26–Mar–20 | CQ | Tinian Island | Tinian Intl | 0/6709 | 1/24/20 | RNAV (GPS) RWY 26, Amdt 1. |
| 26–Mar–20 | NJ | Pittstown | Sky Manor | 0/6715 | 1/24/20 | VOR RWY 7, Amdt 3A. |
| 26–Mar–20 | WI | Madison | Dane County Rgnl-Truax Field | 0/6983 | 1/27/20 | VOR RWY 14, Orig-E. |
| 26–Mar–20 | WI | Madison | Dane County Rgnl-Truax Field | 0/6984 | 1/27/20 | VOR RWY 21, Orig. |
| 26–Mar–20 | WI | Madison | Dane County Rgnl-Truax Field | 0/6985 | 1/27/20 | VOR RWY 32, Amdt 1A. |
| 26–Mar–20 | WI | Madison | Dane County Rgnl-Truax Field | 0/6986 | 1/27/20 | VOR RWY 36, Orig-A. |
| 26–Mar–20 | WI | Madison | Dane County Rgnl-Truax Field | 0/6987 | 1/27/20 | VOR RWY 18, Amdt 1C. |
| 26–Mar–20 | IL | Effingham | Effingham County Memorial | 0/7667 | 1/29/20 | RNAV (GPS) RWY 11, Orig. |
| 26–Mar–20 | IL | Effingham | Effingham County Memorial | 0/7709 | 1/29/20 | VOR RWY 1, Amdt 10C. |
| 26–Mar–20 | IL | Effingham | Effingham County Memorial | 9/0619 | 1/16/20 | RNAV (GPS) RWY 1, Orig-C. |
| 26–Mar–20 | IL | Effingham | Effingham County Memorial | 9/0620 | 1/16/20 | RNAV (GPS) RWY 29, Orig-B. |
| 26–Mar–20 | KY | Hazard | Wendell H Ford | 9/1294 | 1/17/20 | RNAV (GPS) RWY 14, Amdt 1C. |
| 26–Mar–20 | KY | Hazard | Wendell H Ford | 9/1295 | 1/17/20 | RNAV (GPS) RWY 32, Orig-C. |
| 26–Mar–20 | TX | Odessa | Odessa-Schlemeyer Field | 9/1859 | 1/16/20 | RNAV (GPS) RWY 20, Orig. |
| 26–Mar–20 | TX | Odessa | Odessa-Schlemeyer Field | 9/1860 | 1/16/20 | RNAV (GPS) RWY 29, Orig. |
| 26–Mar–20 | TX | Odessa | Odessa-Schlemeyer Field | 9/1866 | 1/16/20 | VOR–A, Amdt 7. |
| 26–Mar–20 | NC | Greensboro | Piedmont Triad Intl | 9/2114 | 1/17/20 | ILS OR LOC RWY 23L, Amdt 9C. |
| 26–Mar–20 | NC | Greensboro | Piedmont Triad Intl | 9/2116 | 1/17/20 | ILS OR LOC RWY 23R, Orig-C. |
| 26–Mar–20 | NC | Greensboro | Piedmont Triad Intl | 9/2117 | 1/17/20 | RNAV (GPS) RWY 5L, Orig-C. |
| 26–Mar–20 | NC | Greensboro | Piedmont Triad Intl | 9/2118 | 1/17/20 | RNAV (GPS) RWY 5R, Amdt 2D. |
| 26–Mar–20 | NC | Greensboro | Piedmont Triad Intl | 9/2119 | 1/17/20 | RNAV (GPS) RWY 14, Amdt 2. |
| 26–Mar–20 | NC | Greensboro | Piedmont Triad Intl | 9/2120 | 1/17/20 | RNAV (GPS) RWY 23L, Amdt 2C. |
| 26–Mar–20 | NC | Greensboro | Piedmont Triad Intl | 9/2122 | 1/17/20 | RNAV (GPS) RWY 23R, Orig-C. |
| 26–Mar–20 | NC | Greensboro | Piedmont Triad Intl | 9/2124 | 1/17/20 | VOR/DME RWY 23L, Amdt 10A. |
| 26–Mar–20 | WI | Hayward | Sawyer County | 9/5774 | 1/17/20 | RNAV (GPS) RWY 3, Orig-E. |
| 26–Mar–20 | AZ | Colorado City | Colorado City Muni | 9/6540 | 1/16/20 | RNAV (GPS) RWY 29, Orig. |
| 26–Mar–20 | KS | Meade | Meade Muni | 9/7292 | 2/3/20 | RNAV (GPS) RWY 35, Orig-B. |
| 26–Mar–20 | MI | Dowagiac | Dowagiac Muni | 9/8465 | 1/17/20 | Takeoff Minimums and Obstacle DP, Amdt 5. |
| 26–Mar–20 | UT | Salt Lake City | South Valley Rgnl | 9/8595 | 1/16/20 | RNAV (GPS) RWY 34, Amdt 1. |
| 26–Mar–20 | NE | Central City | Central City Muni-Larry Reineke Field. | 9/9015 | 1/17/20 | RNAV (GPS) RWY 34, Orig-A. |
| 26–Mar–20 | VT | Burlington | Burlington Intl | 9/9113 | 1/17/20 | RNAV (GPS) Y RWY 33, Orig-B. |

[FR Doc. 2020–03279 Filed 2–21–20; 8:45 am]
**BILLING CODE 4910–13–P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

### 15 CFR Parts 738, 740, and 742

**[Docket No. 200204–0044]**

**RIN 0694–AH93**

## Amendments to Country Groups for Russia and Yemen Under the Export Administration Regulations

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Final rule.

**SUMMARY:** In this final rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to revise the Country Group designations for the Russian Federation (Russia) and Yemen based on national security and foreign policy concerns, including proliferation-related concerns. This action is intended to facilitate and support accountability in connection with exports and reexports of items to these destinations under the EAR, and is part of a larger effort to restructure and re-align the Country Groups based on the aforementioned interests.

**DATES:** This rule is effective February 24, 2020.

**FOR FURTHER INFORMATION CONTACT:** Jodi.Kouts, Director, Chemical and Biological Controls Division, at email *Jodi.Kouts@bis.doc.gov* or by phone at (202) 482–6109.

**SUPPLEMENTARY INFORMATION:**

### Background

The Bureau of Industry and Security (BIS) is currently undertaking a comprehensive review of all Country Groups in the Export Administration Regulations (EAR) to ensure that they appropriately reflect current U.S. national security and foreign policy, including nonproliferation interests.

The foundation of this rule derives from the structure and purposes of the Commerce Country Chart found in Supplement No. 1 to part 738 and the Country Groups found in Supplement No. 1 to part 740 of the EAR. The Country Chart contains licensing requirements based on the destination to which items listed on the Commerce Control List (CCL) (Supplement No. 1 to part 774) will be exported or reexported and their corresponding ''Reason for Control,'' which is found in the CCL entry. An ''X'' in the cell where the ''reason for control'' column intersects with the row of the destination indicates a license requirement. Licenses are required to export and reexport items under the EAR for multilateral reasons (*i.e.,* chemical and biological (CB), nuclear nonproliferation (NP), national security (NS), and missile technology (MT)); and for unilateral reasons (*i.e.,* region stability (RS), crime control (CC) and anti-terrorism (AT)), as well as to implement controls for firearms convention (FC) and United Nations Security Council purposes. Controls for United Nations Security Council purposes are identified by the abbreviation ''UN'' in the applicable CCL entries. The ''UN'' reason for control is described in § 746. 2(b) of the EAR.

In combination with the CCL—the list of items classified and set-out as Export Control Classification Numbers (ECCNs) and arranged by categories—the Country Chart allows an exporter to determine whether a license is required for the export or reexport of an item on the CCL to the destinations on the Chart, unless otherwise specified in the particular ECCN entry on the CCL. The lists of Country Groups (A, B, D and E) set out countries with respect to relative risk and record of like-minded export controls, and importantly, as a basis for the availability of exceptions from license requirements described in part 740 (License Exceptions) of the EAR, provided the conditions for the use of the License Exception are met. Country Groups may also be used when describing license review policy.

The two lists—the Commerce Country Chart and Country Groups—were developed for separate purposes and allow for systematic licensing determinations. Country Groups are not reviewed unless a license is required by the Country Chart for exports and reexports of items listed in the CCL, unless, as mentioned above, otherwise indicated in the ECCN entry on the CCL.

Continuing to apply the structure and purposes of the Country Chart and Country Groups in furtherance of U.S. national security and foreign policy, including nonproliferation interests, this rule is part of BIS's review of Country Groups. BIS has determined the current Country Group designations for Russia and Yemen should be changed to address U.S. national security, foreign policy, including proliferation concerns as further described below.

Specifically, this rule removes Russia from more favorable treatment under Country Groups A:2 and A:4 and adds it to Country Groups D:2 and D:4 based on nuclear and missile technology proliferation concerns, respectively. BIS also amends the licensing policy for related items to reflect a presumption of denial consistent with the Country Group changes. Separately, this rule removes Yemen from more favorable treatment under Country Group B and adds it to Country Group D:1 to reflect national security concerns.

As a result of these Country Group changes, certain license exceptions are no longer available for Russia and Yemen, and licenses are now required for those destinations in connection with exports, reexports, and transfers (in-country) of certain controlled items. In addition, certain transactions may be subject to more stringent licensing review policies or additional prohibitions as outlined in other parts of the EAR. With these actions, BIS seeks to ensure accountability for exports and reexports of items to these destinations. This rule is the first action related to the larger effort to re-structure and re-align the Country Groups set forth in Supplement No. 1 to Part 740 of the EAR.

*Specific Amendments*

*Russia: Country Groups A and D*

In this rule, BIS removes Russia from Country Groups A:2 (Missile Technology Control Regime) and A:4 (Nuclear Suppliers Group) to address U.S. concerns about diversion of U.S.-origin items to or from Russia for prohibited end uses and end users. This rule removes the ''X'' from Column ''[A:2]'' and the ''X'' from Column ''[A:4]'' in Supplement No. 1 to Part 740 for ''Russia.'' In relation to the changes to Country Groups A:2 and A:4 for Russia, this rule also adds Russia to Country Groups of concern D:2 (Nuclear) and D:4 (Missile Technology). This rule adds an ''X'' in Column ''[D:2]'' and an ''X'' in Column ''[D:4]'' in Supplement No. 1 to Part 740 for ''Russia.'' Consistent with adding ''Russia'' to Country Group ''[D:2],'' this rule adds an ''X'' in Column ''NP 1'' for ''Russia'' in Supplement No. 1 to Part 738—Commerce Country Chart. Finally, BIS revises the licensing policy for items to Russia to a policy of presumption of denial when the items are controlled for reasons described under § 742.2 (Proliferation of chemical and biological weapons), § 742.3 (Nuclear nonproliferation), or § 742.5 (Missile technology) of the EAR. However, with regard to NP and MT controls, applications for exports and reexports of items, which include commodities, software and technology, to Russia in support of U.S.-Russia civil space cooperation activities or commercial space launches will be reviewed on a case-by-case basis.

These amendments are consistent with the purpose of this rule to address U.S. concerns about Russia's lack of cooperation and accountability for U.S.-origin items and diversion to unauthorized or prohibited proliferation activities, end uses, and end users. Specifically, Russia has not been cooperative in allowing BIS to perform pre-license checks or post-shipment verifications related to U.S.-origin goods. The presumption of denial under § 742.2 further accentuates the seriousness with which the United States takes Russia's use of a ''novichok'' nerve agent in the attack against Sergei Skripal and his daughter Yulia Skripal in the United Kingdom on March 4, 2018.

*Yemen: Country Groups B and D:1*

In this rule, BIS removes Yemen from Country Group B and places Yemen in the country group of concern for national security reasons, Country Group D:1 (National Security). Specifically, this rule removes ''Yemen'' from Country Group B in Supplement No. 1 to part 740, and adds an ''X'' in Column ''[D:1]'' of that Supplement for ''Yemen.''

These changes are being made to address concerns about diversion of U.S.-origin items in Yemen for unauthorized purposes, including prohibited proliferation activities, end uses, and end users. In addition, there are concerns about the diversion to unauthorized and prohibited end uses and users of U.S.-origin items controlled for national security reasons. The ongoing conflict in Yemen has fostered international terrorism and instability in the Arabian Peninsula, including the proliferation of small arms, unmanned aerial systems, and missiles.

*Impact of Removing Russia From Country Groups A:2 and A:4 and Adding to Country Groups D:2 and D:4*

The removal of Russia from Country Groups A:2 and A:4 means a number of license exceptions are no longer available for Russia, and previously eligible items now require a license to Russia. Consistent with removing Russia from Country Groups A:2 and A:4 and adding it to Country Group D:2, a license is required for the export or reexport of items subject to NP 1 controls as identified in the applicable Export Control Classification Numbers (ECCNs) in Supplement No. 1 to part 774 (The Commerce Control List). Denoting this license requirement, this final rule adds an ''X'' in the NP 1 column of the nuclear nonproliferation column in Supplement No. 1 to part 738 of the EAR for Russia. License applications for these items will be reviewed with a presumption of denial. Consistent with adding Russia to Country Group D:2, the general prohibition in paragraph (a)(1)(i)(A) of § 744.6, Restrictions on certain activities of U.S. persons, will be applicable if the U.S. person exports, reexports, or transfers (in-country) with ''knowledge'' of a prohibited end use in or by Russia.

Consistent with adding Russia to Country Group D:4, the general prohibitions in paragraphs (a)(1) and (3) of § 744.3, Restrictions on certain rocket systems (including ballistic missiles, space launch vehicles and sounding rockets) and unmanned aerial vehicles (including cruise missiles, target drones and reconnaissance drones) end-uses, will be applicable if the exporter, reexporter, or transferor has ''knowledge'' the transaction involves one of those prohibited end uses in or by Russia. In addition, consistent with adding Russia to Country Group D:4, the general prohibitions in § 744.6 under paragraphs (a)(1)(i)(B) and (a)(2)(i) will be applicable if the U.S. person exports, reexports, or transfers (in country) with ''knowledge'' of one of those prohibited end uses in or by Russia, or engages in one of those prohibited activities with ''knowledge'' that it will directly assist such an end use.

*Impact of Removing Yemen From Country Group B and Adding to D:1*

The removal of Yemen from County Group B means that the following license exceptions will no longer be available: § 740.3, Shipments of limited value (LVS); § 740.4, Shipments to Country Group B countries (GBS); and § 740.6, Technology and software under restriction (TSR). As a corollary, Yemen's addition to Country Group D:1 means that the following license exceptions, or other portions thereof, which include limitations related to Country Group D, will no longer be available: § 740.9, Temporary imports, exports, reexports, and transfers (in-country) (TMP); § 740.10, Servicing and replacement of parts and equipment (RPL); § 740.12, Gift parcels and humanitarian donations (GFT); § 740.14, Baggage (BAG); § 740.15, Aircraft and vessels (AVS); § 740.16, Additional permissive reexports (APR); and § 740.17, Encryption, commodities, software, and technology (ENC).

Section 742.4(b)(2) of the EAR states the licensing policy for exports and reexports of national-security controlled items to destinations in Country Group D:1. That licensing policy is to approve applications when BIS determines, on a case-by-case basis, that the items are for civilian use or otherwise would not make a significant contribution to the military potential of the country of destination that would prove detrimental to the national security of the United States. License applications to export or reexport national security controlled items to Yemen will now be subject to this licensing policy.

In addition, Yemen's placement in Country Group D:1 will result in the imposition of restrictions on the export, reexport, and transfer (in-country) of certain microprocessors to military end uses and end users in Yemen, pursuant to § 744.17, Restrictions on certain exports, reexports, and transfers (in-country) of microprocessors and associated ''software'' and ''technology'' for 'military end uses' and to 'military end users.' Furthermore, restrictions on certain exports and reexports to vessels and aircraft located in Yemeni ports or registered in Yemen will become effective pursuant to § 744.7, Restrictions on certain exports to and for the use of certain foreign vessels or aircraft. Finally, the addition of Yemen to Country Group D:1 will expand the licensing requirements for reexports of the foreign-produced direct product of U.S.-origin technology and software to Yemen pursuant to § 736.2(b)(3), General Prohibition Three.

**Export Control Reform Act of 2018**

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (50 U.S.C. 4801–4852). ECRA provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule. As set forth in Section 1768 of ECRA, all delegations, rules, regulations, orders, determinations, licenses, or other forms of administrative action that were made, issued, conducted, or allowed to become effective under the Export Administration Act of 1979 (50 U.S.C. 4601 *et seq.*) (as in effect on August 12, 2018, and as continued in effect pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*)), or under the Export Administration Regulations, and were in effect as of August 13, 2018, shall continue in effect according to their terms until modified, superseded, set aside, or revoked under the authority of ECRA.

**Rulemaking Requirements**

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is

necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been designated a ''significant regulatory action,'' although not economically significant, under section 3(f) of Executive Order 12866. This final rule will support the national security and foreign policy objectives of the United States by broadening the U.S. Government's visibility into exports, reexports, and transfers (in-country), for a country of concern when the transactions involve national security controlled items and items controlled for proliferation reasons.

2. Notwithstanding any other provision of law, no person may be required to respond to or be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves a collection currently approved by OMB under control number 0694–0088, Simplified Network Application Processing System. This collection includes, among other things, license applications, and carries a burden estimate of 42.5 minutes for a manual or electronic submission for a total burden estimate of 31,878 hours. BIS expects the burden hours associated with this collection to increase slightly by 4 hours for an estimated cost increase of $120. This increase is not expected to exceed the existing estimates currently associated with OMB control number 0694–0088.

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

4. Pursuant to section 1762 of the Export Control Reform Act of 2018 (50 U.S.C. 4801–4852), which was included in the John S. McCain National Defense Authorization Act for Fiscal Year 2019, this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

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

6. This final rule is not subject to the requirements of Executive Order 13771 (82 FR 9339, February 3, 2017) because it is issued with respect to a national security function of the United States. The cost-benefit analysis required pursuant to Executive Orders 12866 and 13563 indicates that this rule is intended to improve national security as its primary direct benefit. Specifically, revising the status of the Country Group designations for Russia and Yemen in this rule protects the United States and allies by serving the priorities of reducing the risk that exports, reexports, and transfers (in-country) of items subject to the EAR could be diverted and contribute to weapons of mass destruction proliferation and the military capability of countries of concern, contrary to U.S. national security interests. Accordingly, this rule meets the requirements set forth in the April 5, 2017 OMB guidance implementing Executive Order 13771 (82 FR 9339, February 3, 2017), regarding what constitutes a regulation issued ''with respect to a national security function of the United States,'' and is, therefore, exempt from the requirements of Executive Order 13771.

**Savings Clause**

Shipments of items removed from license exception eligibility or eligibility for export, reexport or transfer (in country) without a license as a result of this regulatory action that were on dock for loading, on lighter, laden aboard and exporting carrier, or en route aboard a carrier to a port of export, on February 24, 2020, pursuant to actual orders for exports, reexports and transfers (in country) to a foreign destination, may proceed to that destination under the previous license exception eligibility or without a license so long as they have been exported, reexported or transferred (in-country) before 30 days from date of publication. Any such items not actually exported, reexported or transferred (in-country) before midnight on March 25, 2020 require a license in accordance with this final rule.

**List of Subjects**

*15 CFR Part 738*

Exports.

*15 CFR Part 740*

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

*15 CFR Part 742*

Exports, Terrorism.

Accordingly, parts 738, 740, and 742 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

## PART 738—COMMERCE CONTROL LIST OVERVIEW AND THE COUNTRY CHART

■ 1. The authority citation for part 738 is revised to read as follows:

**Authority:** 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 42 U.S.C. 2139a; 15 U.S.C. 1824a; 50 U.S.C. 4305; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

■ 2. Supplement No. 1 to part 738 is amended by revising the entry for ''Russia'' to read as follows:

SUPPLEMENT NO. 1 TO PART 738—COMMERCE COUNTRY CHART

[Reason for control]

| Countries | Chemical and biological weapons | | | Nuclear non-proliferation | | National security | | Missile tech | Regional stability | | Firearms convention | Crime control | | | Anti-terrorism | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | CB 1 | CB 2 | CB 3 | NP 1 | NP 2 | NS 1 | NS 2 | MT 1 | RS 1 | RS 2 | FC 1 | CC 1 | CC 2 | CC 3 | AT 1 | AT 2 |
| * | | | * | | * | | * | | * | | * | | * | | | |
| Russia [6] | X | X | X | X | ..... | X | X | X | X | X | ..... | X | X | ..... | ..... | ..... |
| * | | | * | | * | | * | | * | | * | | * | | | |

* * * * * * *

[6] See § 746.5 for additional license requirements under the Russian Industry Sector Sanctions for ECCNs 0A998, 1C992, 3A229, 3A231, 3A232, 6A991, 8A992, and 8D999.

* * * * *

## PART 740—LICENSE EXCEPTIONS

■ 3. The authority citation for part 740 continues to read as follows:

**Authority:** 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783.

■ 4. Supplement No. 1 to part 740 is amended by:

■ a. In the Country Group A table:

■ i. Revising the table headings for [A:2] and [A:4], the entries for Russia and Ukraine, and footnote 2; and

■ ii. Redesignating footnote 3 as footnote 4, adding a new footnote 3, and revising newly redesignated footnote 4; and

■ b. In the Country Group D table, revising the entries for Russia and Yemen and footnote 1.

The revisions read as follows:

### SUPPLEMENT NO. 1 TO PART 740—COUNTRY GROUPS

[Country Group A]

| Country | [A:1] Wassenaar participating states [1] | [A:2] Missile technology control regime [2] | [A:3] Australia group | [A:4] Nuclear suppliers group [3] | [A:5] | [A:6] |
|---|---|---|---|---|---|---|
| * * * | * | * | * | * | | |
| Russia [1 2 3] | | | | | | |
| * * * | * | * | * | * | | |
| Ukraine [4] | | X | X | X | | |
| * * * | * | * | * | * | | |

[1] Country Group A:1 is a list of the Wassenaar Arrangement Participating States, except for Malta, Russia and Ukraine.
[2] Country Group A:2 is a list of the Missile Technology Control Regime countries, except for Russia.
[3] Country Group A:4 is a list of the Nuclear Suppliers Group countries, except for the People's Republic of China (PRC) and Russia.
[4] For purposes of this supplement, as well as any other EAR provision that references the Country Groups, the designations for Ukraine also apply to the Crimea region of Ukraine. See § 746.6(c) of the EAR for an exhaustive listing of license exceptions that are available for the Crimea region of Ukraine. No other EAR license exceptions are available for the Crimea region of Ukraine. The Crimea region of Ukraine includes the land territory in that region as well as any maritime area over which sovereignty, sovereign rights, or jurisdiction is claimed based on purported annexation of that land territory.

* * * * * * *

[Country Group D]

| Country | [D: 1] National security | [D: 2] Nuclear | [D: 3] Chemical & biological | [D: 4] Missile technology | [D: 5] U.S. arms embargoed countries [1] |
|---|---|---|---|---|---|
| * * * | * | * | * | | |
| * * * | * | * | * | | |
| Russia | X | X | X | X | |
| * * * | * | * | * | | |
| Yemen | X | | X | X | |
| * * * | * | * | * | | |

[1] *Note to Country Group D:5:* Countries subject to U.S. arms embargoes are identified by the State Department through notices published in the **Federal Register**. The list of arms embargoed destinations in this table is drawn from 22 CFR 126.1 and State Department **Federal Register** notices related to arms embargoes (compiled at *http://www.pmddtc.state.gov/embargoed_countries/index.html)* and will be amended when the State Department publishes subsequent notices. If there are any discrepancies between the list of countries in this table and the countries identified by the State Department as subject to a U.S. arms embargo (in the **Federal Register**), the State Department's list of countries subject to U.S. arms embargoes shall be controlling.

* * * * *

## PART 742—CONTROL POLICY—CCL BASED CONTROLS

■ 5. The authority citation for part 742 is revised to read as follows:

**Authority:** 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Notice of November 12, 2019, 84 FR 61817 (November 13, 2018).

■ 6. Section 742.2 is amended by revising paragraph (b)(4) to read as follows:

**§ 742.2 Proliferation of chemical and biological weapons.**

* * * * *

(b) * * *

(4) License applications for items described in paragraph (a) of this section, when destined for the People's Republic of China will be reviewed in accordance with the licensing policies in both paragraph (b) of this section and § 742.4(b)(7). When such items are destined to Russia, license applications will be reviewed under a presumption of denial.

* * * * *

■ 7. Section 742.3 is amended by revising paragraph (b)(4) to read as follows:

**§ 742.3 Nuclear nonproliferation.**

* * * * *

(b) * * *

(4) License applications for items described in paragraph (a) of this section, when destined for the People's Republic of China will be reviewed in accordance with the licensing policies in both paragraph (b) of this section and § 742.4(b)(7). When such items are destined to Russia, license applications will be reviewed under a presumption of denial. However, exports and reexports of items to Russia in support of U.S.-Russia civil space cooperation activities or commercial space launches will be reviewed on a case-by-case basis.

* * * * *

■ 8. Section 742.5 is amended by adding two sentences at the end of paragraph (b)(5) to read as follows:

**§ 742.5 Missile technology.**

* * * * *

(b) * * *

(5) * * * When such items are destined to Russia, license applications will be reviewed under a presumption of denial. However, exports and reexports of items to Russia in support of U.S.-Russia civil space cooperation activities or commercial space launches will be reviewed on a case-by-case basis.

* * * * *

Dated: February 10, 2020.

**Richard E. Ashooh,**

*Assistant Secretary for Export Administration.*

[FR Doc. 2020–02941 Filed 2–21–20; 8:45 am]

**BILLING CODE 3510–33–P**

## SOCIAL SECURITY ADMINISTRATION

## 20 CFR Part 404

**[Docket No. SSA–2020–0001]**

**RIN 0960–AI46**

## Extension of Expiration Dates for Three Body System Listings

**AGENCY:** Social Security Administration.

**ACTION:** Final rule.

**SUMMARY:** We are extending the expiration dates of the following body systems in the Listing of Impairments (listings) in our regulations: Special Senses and Speech, Hematological Disorders, and Congenital Disorders That Affect Multiple Body Systems. We are making no other revisions to these body systems in this final rule. This extension ensures that we will continue to have the criteria we need to evaluate impairments in the affected body systems at step three of the sequential evaluation processes for initial claims and continuing disability reviews.

**DATES:** This final rule is effective on February 24, 2020.

**FOR FURTHER INFORMATION CONTACT:** Cheryl A. Williams, Director, Office of Medical Policy, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1020.

For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213, or TTY 1–800–325–0778, or visit our internet site, Social Security Online, at *http://www.socialsecurity.gov.*

**SUPPLEMENTARY INFORMATION:**

### Background

We use the listings in appendix 1 to subpart P of part 404 of 20 CFR at the third step of the sequential evaluation process to evaluate claims filed by adults and children for benefits based on disability under the title II and title XVI programs.[1] 20 CFR 404.1520(d), 416.920(d), 416.924(d). The listings are in two parts: Part A has listings criteria for adults and Part B has listings criteria for children. If you are age 18 or over, we apply the listings criteria in part A when we assess your impairment or combination of impairments. If you are under age 18, we first use the criteria in part B of the listings when we assess your impairment(s). If the criteria in part B do not apply, we may use the criteria in part A when those criteria consider the effects of your impairment(s). 20 CFR 404.1525(b), 416.925(b).

### Explanation of Changes

In this final rule, we are extending the dates on which the listings for the following three body systems will no longer be effective as set out in the following chart:

| Listing | Current expiration date | Extended expiration date |
|---|---|---|
| Special Senses and Speech 2.00 and 102.00 | April 24, 2020 | June 3, 2022. |
| Hematological Disorders 7.00 and 107.00 | May 18, 2020 | June 3, 2022. |
| Congenital Disorders That Affect Multiple Body Systems 10.00 and 110.00. | April 3, 2020 | June 3, 2022. |

We continue to revise and update the listings on a regular basis, including those body systems not affected by this final rule.[2] We intend to update the three listings affected by this final rule as necessary based on medical advances as quickly as possible, but may not be able to publish final rules revising these listings by the current expiration dates. Therefore, we are extending the expiration dates listed above.

### Regulatory Procedures

*Justification for Final Rule*

We follow the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in promulgating regulations. Section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5). Generally, the APA requires that an agency provide prior notice and opportunity for public comment before issuing a final regulation. The APA provides exceptions to the notice-and-comment requirements when an agency finds there is good cause for dispensing with such procedures because they are impracticable, unnecessary, or contrary to the public interest.

We determined that good cause exists for dispensing with the notice and public comment procedures. 5 U.S.C. 553(b)(B). This final rule only extends the date on which the three body system listings will no longer be effective. It makes no substantive changes to our rules. Our current regulations[3] provide that we may extend, revise, or promulgate the body system listings again. Therefore, we determined that opportunity for prior comment is unnecessary, and we are issuing this regulation as a final rule.

In addition, for the reasons cited above, we find good cause for dispensing with the 30-day delay in the effective date of this final rule. 5 U.S.C. 553(d)(3). We are not making any substantive changes to the listings in these body systems. Without an extension of the expiration dates for these listings, we will not have the criteria we need to assess medical impairments in the three body systems at step three of the sequential evaluation processes. We therefore find it is in the public interest to make this final rule effective on the publication date.

*Executive Order 12866, as Supplemented by Executive Order 13563*

We consulted with the Office of Management and Budget (OMB) and determined that this final rule does not meet the requirements for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, OMB did not review it. We also determined that this

[1] We also use the listings in the sequential evaluation processes we use to determine whether a beneficiary's disability continues. See 20 CFR 404.1594, 416.994, and 416.994a.

[2] We last extended the expiration dates of the Special Senses and Speech and Congenital Disorders that Affect Multiple Body Systems body system listings on April 2, 2018 (83 FR 13862) and we last updated the Hematological Disorders body system listings on April 17, 2015 (80 FR 21159).

[3] See the first sentence of appendix 1 to subpart P of part 404 of 20 CFR.

final rule meets the plain language requirement of Executive Order 12866.

*Regulatory Flexibility Act*

We certify that this final rule does not have a significant economic impact on a substantial number of small entities because it affects only individuals. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

*Executive Order 13771*

This regulation does not impose novel costs on the public and as such is considered an exempt regulatory action under E.O. 13771.

*Paperwork Reduction Act*

This final rule only extends the date for the medical listings cited above, but does not create any new or affect any existing collections, or otherwise change any content of the currently published rules. Accordingly, it does not impose any burdens under the Paperwork Reduction Act, and does not require further OMB approval.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income)

**List of Subjects in 20 CFR Part 404**

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

**Andrew Saul,**

*Commissioner of Social Security.*

For the reasons set out in the preamble, we are amending appendix 1 to subpart P of part 404 of chapter III of title 20 of the Code of Federal Regulations as set forth below.

## PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE

(1950—)

### Subpart P—[Amended]

■ 1. The authority citation for subpart P of part 404 continues to read as follows:

**Authority:** Secs. 202, 205(a)–(b) and (d)–(h), 216(i), 221(a) and (h)–(j), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a)–(b) and (d)–(h), 416(i), 421(a) and (h)–(j), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189; sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. Amend appendix 1 to subpart P of part 404 by revising items 3, 8, and 11 of the introductory text to read as follows:

**Appendix 1 to Subpart P of Part 404—Listing of Impairments**

* * * * *

Special Senses and Speech (2.00 and 102.00): June 3, 2022.

* * * * *

8. Hematological Disorders (7.00 and 107.00): June 3, 2022.

* * * * *

11. Congenital Disorders That Affect Multiple Body Systems (10.00 and 110.00): June 3, 2022.

* * * * *

[FR Doc. 2020–03243 Filed 2–21–20; 8:45 am]

BILLING CODE 4191–02–P

## PENSION BENEFIT GUARANTY CORPORATION

### 29 CFR Part 4003

**RIN 1212–AB35**

### Administrative Review of Agency Decisions

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends PBGC's regulation on Rules for Administrative Review of Agency Decisions. It clarifies and changes the review process for certain agency determinations and the procedures for requesting administrative review.

**DATES:**

*Effective Date:* This rule is effective March 25, 2020.

*Applicability date:* The amendments subjecting all coverage determinations to the appeals process under § 4003.1(e)(1) of this final rule apply to initial determinations that are subject to this part and issued on or after March 25, 2020.

**FOR FURTHER INFORMATION CONTACT:** Karen B. Levin (*levin.karen@pbgc.gov*), Attorney, Regulatory Affairs Division, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005–4026; 202–229–3559. (TTY users may call the Federal Relay Service toll-free at 800–877–8339 and ask to be connected to 202–229–3559.)

**SUPPLEMENTARY INFORMATION:**

### Executive Summary

*Purpose and Authority*

This final rule amends PBGC's regulation on rules for administrative review of agency decisions to clarify, simplify, and make other editorial changes to the language, and codify PBGC practices.

Legal authority for this action comes from section 4002(b)(3) of the Employee Retirement Income Security Act of 1974 (ERISA), which authorizes PBGC to issue regulations to carry out the purposes of title IV of ERISA.

*Major Provisions*

This final rule:

- Subjects all coverage determinations to appeal.
- Subjects all determinations concerning the allocation of a trusteed plan's assets upon plan termination to appeal, except for determinations concerning the distribution of residual assets, which remain subject to reconsideration.
- Clarifies that, consistent with PBGC's long-standing practice, when PBGC makes an initial determination effective on the date of issuance, a person aggrieved by the initial determination has no right to request reconsideration or appeal of the determination.
- Clarifies where to send requests for extensions on appeals and extensions for reconsideration.
- Clarifies that persons seeking administrative review may request information in PBGC's possession by using PBGC's procedures for requests under the Freedom of Information Act and the Privacy Act.

### Background

The Pension Benefit Guaranty Corporation (PBGC) administers two insurance programs for private-sector defined benefit pension plans under title IV of the Employee Retirement Income Security Act of 1974 (ERISA): A single-employer plan termination insurance program and a multiemployer plan insolvency insurance program. This final rule applies only to plans covered by the single-employer plan termination insurance program.

PBGC is committed to the ongoing retrospective review of its regulations. This practice ensures that PBGC provides clear and helpful guidance, minimizes burdens and maximizes benefits, and addresses ineffective and outdated rules. In the course of PBGC's regulatory review, PBGC identified opportunities to improve its regulation on Rules for Administrative Review of Agency Decisions (29 CFR part 4003) by making it more transparent, simplifying language, and codifying policies.

On October 4, 2019 (at 84 FR 53084), PBGC published a proposed rule to amend PBGC's administrative review regulation. PBGC received no comments

on the proposed rule. The final rule is the same as the proposed rule.

**Final Regulatory Changes**

PBGC's administrative review regulation provides procedures so that persons who are aggrieved by PBGC determinations have an opportunity to present their positions to PBGC before a final decision is made by the agency. When PBGC first promulgated its rules on administrative review of agency decisions in 1979 (the ''1979 rule''), it emphasized the competing interests of providing ''fair and effective administrative review'' and ''keep[ing] to a minimum the time and cost entailed in obtaining PBGC review of its decisions.'' [1] To balance these interests, PBGC developed an administrative review system with two separate processes: Reconsideration and appeal.

Under reconsideration, aggrieved persons generally raise their concerns and make their cases directly to a higher-level official within the same department that issued the initial determination. Most requests for reconsideration are filed by the designated payor [2] under § 4003.1(b)(2) and relate to premiums, interest, and late payment penalties.

Under the appeals process, the decisionmaker reviewing the initial determination is not within the same department that issued the initial determination. Rather, the PBGC Appeals Board, which is located within the Office of the General Counsel, provides an independent review of the initial determination. Decisions by the Appeals Board may be made either by a three-member panel or by an individual member. Originally, a decision on appeal was always decided by a three-member panel. The appeals process changed in 2002 when the administrative review regulation was amended to expedite the appeals process, authorizing a single member of the PBGC Appeals Board to decide routine appeals instead of the three-member panel.[3] All non-routine appeals are decided by a three-member panel. Most appeals are filed by individuals (participants, beneficiaries, and alternate payees) in connection with benefit entitlement or amounts, although sponsors have filed appeals of termination liability assessments and non-coverage determinations.

Subpart A of the regulation provides a list of initial determinations made by PBGC, with each determination subject to either the reconsideration procedures described in subpart C or the appeals procedures described in subpart D. The final rule reorganizes the list in § 4003.1(b) into two new paragraphs by moving and reorganizing the list of initial determinations subject to reconsideration to § 4003.1(d) and the list of initial determinations subject to appeal to § 4003.1(e). These changes simplify references to the types of determinations subject to each type of administrative review and improve the readability of this section.

Subpart B of the regulation provides rules for the form and contents of initial determinations and specifies that initial determinations will not become effective until the time for filing a request for reconsideration under subpart C or an appeal under subpart D has elapsed.

Under an exception in § 4003.22(b), PBGC may in its discretion order that an initial determination is effective on the date of issuance. As an example, when PBGC makes an initial determination under section 4042 of ERISA that the statutory criteria for termination are met, the initial determination states that it is effective on the date of issuance. When PBGC makes an order that an initial determination is effective on the date of issuance, any person aggrieved by the initial determination has exhausted all available administrative remedies and may seek judicial review of PBGC's determination in an appropriate court under section 4003(f)(2) of ERISA.

The final rule amends § 4003.22(b) to clarify that the exception under it does not apply to initial determinations related to a participant's or beneficiary's benefit entitlement and the amount of benefit payable under a covered plan, to whether a domestic relations order is or is not qualified, and to whether benefits are payable under section 4050 of ERISA and part 4050, as listed respectively in the new § 4003.1(e)(2), (3), and (6). The final rule further amends § 4003.22(b) to clarify that when PBGC issues an order making an initial determination effective on the date of issuance, a person aggrieved by the initial determination has no right to request review under subparts C and D, consistent with PBGC's long-standing practice, and has exhausted all administrative remedies.

*Coverage Determinations*

PBGC insures plans described in section 4021(a) of ERISA that do not fall within one of the exemptions from coverage listed in section 4021(b)(1)–(13) of ERISA. If a question arises about whether a plan is covered under title IV, PBGC may make a coverage determination.

As discussed in the proposed rule, the administrative review regulation provides that coverage determinations under section 4021 of ERISA are subject to different review procedures. An initial determination that a plan is covered under section 4021 is subject to reconsideration by the PBGC department that issued the original determination. An initial determination that a plan is not covered is subject to appeal to the PBGC Appeals Board. Based on internal data gathered by PBGC from fiscal years 2013 through 2017, there were few requests for reconsideration of coverage determinations (a total of 18) and even fewer requests for appeal of coverage determinations (one in 2017). The data indicates that the total amount of time and agency resources used to close requests for reconsideration and appeals of coverage determinations are similar.

As originally designed, case resolution under the appeals process generally took longer and put a greater burden on PBGC's administrative resources than the reconsideration process. The movement to single member decisions for routine cases and other process improvements have largely mitigated these issues. In light of these improvements, for the sake of consistency, the final rule makes all coverage determinations subject to appeal to the PBGC Appeals Board. In cases in which the Appeals Board is considering granting a plan sponsor's appeal by finding that a plan is not covered, the Appeals Board will make reasonable efforts to notify plan participants of the decision under consideration and permit them an opportunity to present matters as a potential aggrieved party to the appeal under § 4003.57(a). The final rule removes § 4003.1(b)(1) and adds language in new § 4003.1(e)(1), to subject all coverage determinations to the appeals process.

*Asset Allocation Determinations*

Section 4044 of ERISA requires that when an underfunded pension plan terminates, PBGC must assign benefits payable to each participant to one or more of six priority categories and allocate the plan's assets to the benefits in each category in a prescribed sequential order (*i.e.,* priority categories 1 through 6). To accomplish the allocation process in a terminated plan, PBGC first values the benefits in each of a terminated plan's six priority categories and the terminated plan's assets as of the plan's termination date.

[1] *See* 44 FR 42181, 42181 (July 19, 1979).

[2] *See* section 4007 of ERISA (designated payor is defined as a contributing sponsor or plan administrator in the case of a single-employer plan).

[3] *See* 67 FR 47694, 47694 (July 22, 2002).

After valuing the benefits and assets, PBGC allocates the assets available to pay benefits to the benefits assigned to each priority category, beginning with the highest priority category, *i.e.,* priority category 1, and continuing in sequential order until the assets satisfy all benefits in all priority categories or until the assets are insufficient to pay all benefits within a particular category.

In substantially all plans that terminate in a distress or involuntary (PBGC-initiated) termination, the plan's assets do not satisfy all benefits assigned to the six priority categories and the assets will be insufficient to satisfy all benefit liabilities, as defined under section 4001(a)(16) of ERISA. PBGC typically becomes the statutory trustee of these plans and pays guaranteed benefits to participants and beneficiaries up to statutory limits. Some participants may receive more than their statutorily guaranteed benefit depending upon the priority category to which their benefit is assigned and the extent to which (if any) assets are sufficient to pay all benefits in that category. PBGC-trusteed plans rarely have residual assets.

In an employer-initiated standard termination of a sufficient plan, a plan's assets must satisfy and may exceed all benefit liabilities under the plan. Section 4044(d) of ERISA describes the circumstances under which any residual assets of a single-employer plan may be distributed to the employer or participants and beneficiaries.

As discussed in the proposed rule, the administrative review regulation provides that PBGC's asset allocation determinations are subject to the reconsideration process, describing them in § 4003.1(b)(4) as ''determinations with respect to allocation of assets under section 4044 of ERISA, including distribution of excess assets under section 4044(d).'' [4] This language could be read to imply that PBGC issues standalone determinations with respect to asset allocations. Although PBGC's processing of a trusteed plan includes an allocation of the plan's assets available to pay benefits under section 4044 of ERISA, determinations on allocating assets to benefits in the six priority categories depend on the value of benefits in each priority category and the plan assets available to pay benefits in a particular priority category in the prescribed sequence. Such determinations are incorporated into other benefit-specific determinations that PBGC regularly issues that are subject to the appeals process, such as those issued under § 4003.1(b)(7) (determinations under section 4022(a) or (c) of ERISA with respect to benefit entitlement of participants and beneficiaries under covered plans) and § 4003.1(b)(8) (determinations under section 4022(b) or (c) or section 4022B of ERISA of the amount of benefits payable to participants and beneficiaries under covered plans).

Participants and their beneficiaries may appeal the initial determinations of their benefit entitlements and amounts of benefits payable, as provided in their individual benefit determinations. Determinations of benefit entitlements and amounts of benefits payable depend on PBGC's assignment and valuation of benefits and the allocation of assets available to pay benefits to the priority categories to which those benefits are assigned and the extent to which assets are allocated to non-guaranteed benefits in certain priority categories pursuant to section 4044(a) of ERISA and PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044).

Consistent with PBGC's long-standing practice, the final rule clarifies in new § 4003.1(e)(2) that the right to appeal an individual benefit determination necessarily includes the right to appeal a participant's or beneficiary's benefit entitlement and the amount of benefit payable based on the value of the benefits assigned to specific priority categories and PBGC's allocation of assets available to pay benefits to those categories under the method prescribed by section 4044(a) of ERISA. The final rule removes § 4003.1(b)(4) and creates a new § 4003.1(d)(2)(iv), to continue to subject determinations involving the distribution of residual assets under section 4044(d) of ERISA to the reconsideration process. The final rule also revises the description of individual benefit determinations subject to appeal in § 4003.1(b)(7) and (8) and reorganizes these provisions in new § 4003.1(e)(2) and (3).

*Assistance With Obtaining Information*

As discussed in the proposed rule, § 4003.3 of the administrative review regulation provides that a person may request PBGC's assistance in obtaining relevant information in the possession of a third party. The regulation is silent about obtaining information in PBGC's possession. The preamble to the 1979 rule explains that this omission was intentional because ''a party to an appeal who wishes to examine PBGC documents need only file a request pursuant to [PBGC's FOIA regulation].'' [5]

It came to PBGC's attention through the Office of the PBGC Participant and Plan Sponsor Advocate that participants seeking administrative review are often unaware of their ability to request relevant information under the FOIA and the Privacy Act by using PBGC procedures at 29 CFR parts 4901 and 4902, respectively. While parts 4901 and 4902 provide straightforward processes for requesting and obtaining such materials from PBGC's Disclosure Division, some participants learn of them only after contacting another PBGC office and ultimately being referred to the Disclosure Division and instructed to follow such procedures. PBGC aims to avoid confusing participants in their efforts to identify the appropriate point of contact and steps to obtain relevant information.

To make the information gathering process more efficient and transparent for persons seeking administrative review, the final rule reorganizes § 4003.3 to clarify that persons may request information using PBGC's procedures for FOIA and Privacy Act requests. Paragraph (a) contains the section's scope, paragraph (b) provides a description concerning information not in the possession of PBGC, and paragraph (c) provides a description concerning information in the possession of PBGC including a cross-reference to PBGC's FOIA and Privacy Act regulations.

The final rule amends § 4003.3(b) to include additional language concerning a request for PBGC's assistance in obtaining materials not in the possession of PBGC to clarify that such a request must be submitted to the Appeals Board or the department responsible for reviewing the initial determination. The section refers persons requesting PBGC's assistance with a reconsideration to § 4003.33 and with an appeal to § 4003.54.

*Extension of Time*

The final rule deletes § 4003.4(b) concerning requests for extensions of time related to disaster relief and reorganizes the section to contain a single paragraph concerning a request for an extension of time when a document is required to be filed within a certain period. PBGC published a notice describing how it changed its announcement of relief from filing deadlines and penalties when a disaster occurs and explaining that PBGC's disaster relief will be available at the

[4] Note, section 4044(d) of ERISA uses the word ''residual'' instead of ''excess.''

[5] *See* 44 FR 42181, 42185 (July 19, 1979) and 29 CFR part 4901.

same time the Internal Revenue Service issues disaster relief to taxpayers.[6]

The final rule amends § 4003.4 to include language providing that requests for extension of time for the submission of appeals should be sent to the Appeals Board while requests for extension of the submission of requests for reconsideration should be sent to the department that issued the initial determination.

*Form and Contents of Request for Reconsideration*

The final rule amends § 4003.34 to clarify the form and content requirements that a request for reconsideration must include.

*Decision on Request for Reconsideration*

The final rule adds new § 4003.35(c) to clarify that a decision on a request for reconsideration constitutes a final PBGC action, which is binding on all persons who participated in the request. This language is consistent with the language in § 4003.59(b) that a decision of the Appeals Board constitutes final agency action by PBGC.

The final rule also makes clarifications and other editorial changes to part 4003.

## Compliance With Rulemaking Guidelines

*Executive Orders 12866, 13563, and 13771*

The Office of Management and Budget (OMB) has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866. Accordingly, this final rule is exempt from Executive Order 13771, and OMB has not reviewed the final rule under Executive Order 12866.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

Although this is not a significant regulatory action under Executive Order 12866, PBGC has examined the economic and policy implications of this final rule and has concluded that there will be no significant economic impact as a result of the final amendments to PBGC's regulation. Most of the amendments merely clarify existing PBGC practices and neither the public nor PBGC is likely to assume any additional costs due to these amendments and revisions.

Section 6 of Executive Order 13563 requires agencies to rethink existing regulations by periodically reviewing their regulatory program for rules that ''may be outmoded, ineffective, insufficient, or excessively burdensome.'' These rules should be modified, streamlined, expanded, or repealed as appropriate. PBGC has identified the amendments to the administrative review regulation and the clarifications and improvements to this regulation as consistent with the principles for review under Executive Order 13563. PBGC believes this provides clearer guidance to the public.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act[7] imposes certain requirements with respect to rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a final rule is not likely to have a significant economic impact on a substantial number of small entities, section 604 of the Regulatory Flexibility Act requires that the agency present a final regulatory flexibility analysis at the time of the publication of the final rule describing the impact of the rule on small entities and steps taken to minimize the impact. Small entities include small businesses, organizations, and governmental jurisdictions.

*Small Entities*

For purposes of the Regulatory Flexibility Act requirements with respect to this final rule, PBGC considers a small entity to be a plan with fewer than 100 participants. This is substantially the same criterion PBGC uses in other regulations[8] and is consistent with certain requirements in title I of ERISA[9] and the Internal Revenue Code (Code),[10] as well as the definition of a small entity that the Department of Labor has used for purposes of the Regulatory Flexibility Act.[11]

Thus, PBGC believes that assessing the impact of the final rule on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business based on size standards promulgated by the Small Business Administration[12] under the Small Business Act. PBGC therefore requested comments on the appropriateness of the size standard used in evaluating the impact of the amendments in the proposed rule on small entities. PBGC received no comments on this point.

On the basis of its definition of small entity, PBGC certifies under section 605(b) of the Regulatory Flexibility Act that the amendments in this final rule will not have a significant economic impact on a substantial number of small entities. The amendments clarify existing PBGC practices and will have a neutral cost impact. Accordingly, as provided in section 605 of the Regulatory Flexibility Act, sections 603 and 604 do not apply.

## Paperwork Reduction Act

PBGC's Form 723, Request for Additional time to file an Appeal of a PBGC Benefit Termination and Form 724, Appeal of a PBGC Benefit Determination, are used by aggrieved persons to assist them with filing an appeal. The collection of information with respect to administrative appeals is approved under control number 1212–0061 (expires July 31, 2022).

The final rule does not require changes to the forms used for appeals. The final rule eliminates the requirement for an appellant to provide the names and addresses of persons who the appellant believes may be aggrieved if PBGC provides the relief sought. As few, if any, appellants provide this information, PBGC does not expect that this final change impacts the hour burden and cost burden for the information collection with respect to appeals.

The administrative review regulation requires that a request for reconsideration include specified information. The collection of information with respect to filings for reconsideration is approved under control number 1212–0063 (expires August 31, 2022).

The final rule clarifies the information required to be submitted for a request for reconsideration, including copies of any documentation that supports the requestor's claim or assertions concerning the request. PBGC expects

[6] *See* 83 FR 30991, 30991 (July 2, 2018).

[7] 5 U.S.C. 601 *et seq.*

[8] *See, e.g.,* special rules for small plans under part 4007 (Payment of Premiums).

[9] *See., e.g.,* ERISA section 104(a)(2), which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover few than 100 participants.

[10] *See, e.g.,* Code section 430(g)(2)(B), which permits plans with 100 or fewer participants to use valuation dates other than the first day of the plan year.

[11] *See., e.g.,* DOL's final rule on Prohibited Transaction Exemption Procedures, 76 FR 66,644 (Oct. 27, 2011).

[12] *See,* 13 CFR 121.201.

that this clarification will make the process more efficient and will not impact the hour burden and cost burden for the information collection with respect to reconsideration.

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.

**List of Subjects in 29 CFR Part 4003**

Administrative practice and procedure, Organization and functions (Government agencies), Pension insurance.

For the reasons given above, PBGC amends 29 CFR part 4003 as follows.

## PART 4003—RULES FOR ADMINISTRATIVE REVIEW OF AGENCY DECISIONS

■ 1. The authority citation for part 4003 continues to read as follows:

**Authority:** 29 U.S.C. 1302(b)(3).

■ 2. Amend § 4003.1 by:
■ a. In paragraph (a):
■ i. Removing the phrase ''paragraph (b)'' and adding in its place ''paragraphs (d) and (e)'' in the first sentence;
■ ii. Removing the phrase ''paragraphs (b)(1) through (b)(5)'' and adding in its place ''paragraph (d)'' in the fourth sentence; and
■ iii. Removing the phrase ''paragraphs (b)(6) through (b)(11)'' and adding in its place ''paragraph (e)'' in the fifth sentence;
■ b. Revising paragraph (b); and
■ c. Adding paragraphs (d) and (e).

The revision and additions read as follows:

### § 4003.1 Purpose and scope.

* * * * *

(b) *Scope.* This part applies to the initial determinations made by PBGC that are listed in paragraphs (d) and (e) of this section.

* * * * *

(d) *Determinations subject to reconsideration.* Any person aggrieved by an initial determination of PBGC listed in this paragraph (d) may request reconsideration, subject to the terms of this part.

(1) Determinations with respect to premiums, interest and late payment penalties pursuant to section 4007 of ERISA;

(2) Determinations with respect to voluntary terminations under section 4041 of ERISA, including any of the following:

(i) A determination that a notice requirement or a certification requirement under section 4041 of ERISA has not been met;

(ii) A determination that the requirements for demonstrating distress under section 4041(c)(2)(B) of ERISA have not been met;

(iii) A determination with respect to the sufficiency of plan assets for benefit liabilities or for guaranteed benefits; and

(iv) A determination with respect to a plan terminating under section 4041(b) of ERISA or with respect to the distribution of residual assets under section 4044(d) of ERISA; and

(3) Determinations with respect to penalties under section 4071 of ERISA.

(e) *Determinations subject to appeal.* Any person aggrieved by an initial determination of PBGC listed in this paragraph (e) may file an appeal, subject to the terms of this part.

(1) Determinations that a plan is or is not covered under section 4021 of ERISA;

(2) Determinations of a participant's or beneficiary's benefit entitlement and the amount of benefit payable under a covered plan under sections 4022, 4022B, and 4044 of ERISA (other than a determination described in paragraph (d)(2)(iv) of this section);

(3) Determinations that a domestic relations order is or is not a qualified domestic relations order under section 206(d)(3) of ERISA and section 414(p) of the Code;

(4) Determinations of the amount of money subject to recapture pursuant to section 4045 of ERISA;

(5) Determinations of the amount of liability under sections 4062(b)(1), 4063, or 4064 of ERISA; and

(6) Determinations with respect to benefits payable by PBGC under section 4050 of ERISA and part 4050 of this chapter.

■ 3. Revise § 4003.3 to read as follows:

### § 4003.3 PBGC assistance in obtaining information.

(a) *General.* A person may request PBGC's assistance in obtaining information if the person lacks information necessary—

(1) To file a request for review pursuant to subpart C or D of this part, or to decide whether to seek review; or

(2) To participate in an appeal pursuant to § 4003.57, or to decide whether to participate in an appeal.

(b) *Information not in PBGC's possession.* A person may request PBGC's assistance in obtaining information in the possession of a party other than PBGC. The request must—

(1) Be in writing;

(2) State or describe the missing information, the reason why the person needs the information, and the reason why the person needs the assistance of PBGC in obtaining the information; and

(3) Be submitted to the Appeals Board or the department that is responsible for reviewing the initial determination under this part. If the determination is subject to reconsideration, see § 4003.33 for information on where to submit the request for assistance. If the determination is subject to review by appeal, see § 4003.53 for information on where to submit the request.

(c) *Information in the possession of PBGC.* A person may request information in the possession of PBGC pursuant to the Freedom of Information Act and part 4901 of this chapter or the Privacy Act and part 4902 of this chapter, as applicable. See parts 4901 and 4902 of this chapter for additional information. Nothing in this paragraph (c) limits or amends the requirements under part 4901 or 4902 of this chapter.

■ 4. Revise § 4003.4 to read as follows:

### § 4003.4 Extension of time.

When a document is required under this part to be filed within a prescribed period of time, an extension of time to file will be granted only upon good cause shown and only when the request for an extension is made before the expiration of the time prescribed. The request for an extension must be in writing and state why additional time is needed and the amount of additional time requested. The filing of a request for an extension will stop the running of the prescribed period of time. Requests for extension of the time to submit an appeal should be sent to the Appeals Board; requests for extension of the time to submit a request for reconsideration should be sent to the department that issued the initial determination. When a request for an extension is granted, PBGC will notify the person requesting the extension, in writing, of the amount of additional time granted. When a request for an extension is denied, PBGC will notify the person requesting the extension in writing, and the prescribed period of time will resume running from the date of denial.

### § 4003.7 [Amended]

■ 5. Amend § 4003.7 by removing ''a determination'' and adding in its place ''an initial determination''.

### § 4003.21 [Amended]

■ 6. Amend § 4003.21 by:
■ a. Removing ''All determinations'' and adding in its place ''All initial determinations'';
■ b. Removing ''of the determination'' and adding in its place ''of the initial determination''; and

■ c. Removing ''subpart C or subpart D'' and adding in its place ''subpart C or D''.

■ 7. Amend § 4003.22 by removing ''a determination'' and adding in its place ''an initial determination'' in the second sentence of paragraph (a) and revising paragraph (b) to read as follows:

**§ 4003.22 Effective date of determinations.**

* * * * *

(b) *Exception.* Except for initial determinations listed in § 4003.1(e)(2), (3), and (6), PBGC may, in its discretion, order that the initial determination in a case is effective on the date it is issued. When PBGC makes such an order, the initial determination will state that it constitutes the final agency action effective on the date of issuance, there is no right to request review under subparts C and D of this part, and any person aggrieved by the initial determination has exhausted all administrative remedies.

**§ 4003.31 [Amended]**

■ 8. Amend § 4003.31 by removing ''the determination'' and adding in its place ''the initial determination''.

**§ 4003.33 [Amended]**

■ 9. Amend § 4003.33 by removing ''reconsideration of a determination described in § 4003.1(b)(3)(ii)'' and adding in its place ''reconsideration of an initial determination described in § 4003.1(d)(2)(ii)''.

■ 10. Revise § 4003.34 to read as follows:

**§ 4003.34 Contents of request for reconsideration.**

A request for reconsideration must—

(a) Be in writing;

(b) Be clearly designated as a request for reconsideration;

(c) Specifically explain why PBGC's determination is wrong and the result the requestor is seeking;

(d) Describe the relevant information the requestor believes is known by PBGC and summarize any other information that is relevant to the request for reconsideration; and

(e) Include copies of any documentation that supports the requestor's claim or assertions.

■ 11. Amend § 4003.35 by:

■ a. Revising the section heading;

■ b. Removing ''Department Director'' wherever it appears and adding in its place ''Director of a department'', removing ''final'' before ''decision'', and removing ''a determination other than one described in § 4003.1(b)(3)(ii)'' and adding in its place ''an initial determination other than one described in § 4003.1(d)(2)(ii)'' in paragraph (a)(1);

■ c. Removing ''final decision'' and adding in its place ''decision'' and removing ''a determination described in § 4003.1(b)(3)(ii)'' and adding in its place ''an initial determination described in § 4003.1(d)(2)(ii)'' in paragraph (a)(2);

■ d. Removing ''final decision'' and adding in its place ''decision'' in paragraph (b); and

■ e. Adding paragraph (c).

The revision and addition read as follows:

**§ 4003.35 Decision on request for reconsideration.**

* * * * *

(c) The decision on a request for reconsideration constitutes the final agency action by PBGC with respect to the initial determination that was the subject of the request for reconsideration and is binding on all persons who participated in the request for reconsideration.

**§ 4003.55 [Amended]**

■ 12. Amend § 4003.55(c) by removing ''1200 K Street NW, Washington, DC 20005–4026'' and adding in its place ''as listed on PBGC's website, *www.pbgc.gov*''.

**§ 4003.57 [Amended]**

■ 13. Amend § 4003.57(a)(6) by adding ''initial'' before ''determination''.

**§ 4003.58 [Amended]**

■ 14. Amend § 4003.58 by adding ''initial'' before ''determination'' in the last sentence of paragraph (b) introductory text and paragraph (b)(1)(ii).

**§ 4003.59 [Amended]**

■ 15. Amend § 4003.59(b) by adding ''initial'' before ''determination''.

**§ § 4003.1, 4003.2, 4003.5, 4003.6, 4003.7, 4003.8, 4003.9, 4003.10, 4003.22, 4003.31, 4003.33, 4003.35, 4003.54, 4003.55, 4003.57, 4003.59, and 4003.60 [Amended]**

■ 16. Remove the words ''the PBGC'' and ''The PBGC'' and add in their places the word ''PBGC'' in the following sections:

■ a. Section 4003.1(a) and (c);

■ b. Section 4003.2;

■ c. Section 4003.5;

■ d. Section 4003.6;

■ e. Section 4003.7;

■ f. Section 4003.8;

■ g. Section 4003.9;

■ h. Section 4003.10;

■ i. Section 4003.22(a);

■ j. Section 4003.31;

■ k. Section 4003.33;

■ l. Section 4003.35(a);

■ m. Section 4003.54(b);

■ n. Section 4003.55(c);

■ o. Section 4003.57(a)(6);

■ p. Section 4003.59(b); and

■ q. Section 4003.60.

**§ § 4003.32 and 4003.52 [Amended]**

■ 17. Remove the words ''the PBGC's'' and add in their place the word ''PBGC's'' wherever they occur in §§ 4003.32 and 4003.52.

**§ § 4003.2, 4003.21, 4003.22, 4003.56, 4003.57, 4003.58, 4003.59, and 4003.60 [Amended]**

■ 18. Remove the word ''shall'' and add in its place the word ''will'' wherever it occurs in the following sections:

■ a. Section 4003.2;

■ b. Section 4003.21;

■ c. Section 4003.22(a);

■ d. Section 4003.56(c);

■ e. Section 4003.57(a);

■ f. Section 4003.58(b);

■ g. Section 4003.59(a) and (c); and

■ h. Section 4003.60.

**§ § 4003.6, 4003.8, 4003.33, 4003.53, and 4003.54 [Amended]**

■ 19. Remove the word ''shall'' and add in its place the word ''must'' wherever it occurs in the following sections:

■ a. Section 4003.6;

■ b. Section 4003.8;

■ c. Section 4003.33;

■ d. Section 4003.53; and

■ e. Section 4003.54(a) and (b).

Issued in Washington, DC.

**Gordon Hartogensis,**

*Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 2020–02742 Filed 2–21–20; 8:45 am]

BILLING CODE 7709–02–P

## DEPARTMENT OF DEFENSE

## Department of the Air Force

## 32 CFR Part 903

**[Docket ID: USAF–2019–HQ–0007]**

**RIN 0701–AA92**

## Air Force Academy Preparatory School

**AGENCY:** Department of the Air Force, DoD.

**ACTION:** Final rule.

**SUMMARY:** This final rule removes the regulation concerning how the Department of the Air Force accesses individuals into the Air Force Academy Preparatory School. This part is outdated, contains internal guidance, reiterates statutory law, and is otherwise subject to the military function exemption to rulemaking. Candidates to the preparatory school are individually

provided with any relevant entrance information and the current policy is publically available on the department's website. Therefore, this part is unnecessary and can be removed from the CFR.

**DATES:** This rule is effective on February 24, 2020.

**FOR FURTHER INFORMATION CONTACT:** Dawn M.K. Zoldi at 719–333–7279.

**SUPPLEMENTARY INFORMATION:** This final rule removes 32 CFR part 903, ''Air Force Academy Preparatory School,'' which was originally published on March 8, 2007 (72 FR 10436) and most recently updated on February 21, 2008 (73 FR 9456). Part 903 part is outdated, contains internal guidance, reiterates statutory law, and is otherwise subject to the military function exemption to rulemaking. Current policy is provided individually to applicants and is contained in Air Force Manual 36–2032, Military Recruiting and Accessions, September 27, 2019, *https://static.e-publishing.af.mil/production/1/af_a1/publication/afman36-2032/afman36-2032.pdf.* Accordingly, this part is unnecessary and can be removed from the CFR.

It has been determined that publication of this CFR part removal for public comment is impracticable and contrary to the public interest because it is based on removing outdated and unnecessary content. This rule is not significant under Executive Order (E.O.) 12866, Sec 3, ''Regulatory Planning and Review.'' Therefore; E.O. 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' does not apply.

**List of Subjects in 32 CFR Part 903**

Military academies, Military personnel.

## PART 903—[REMOVED]

■ Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 903 is removed.

**Adriane Paris,**

*Acting Air Force Federal Register Liaison Officer.*

[FR Doc. 2020–02975 Filed 2–21–20; 8:45 am]

BILLING CODE 5001–10–P

## POSTAL REGULATORY COMMISSION

## 39 CFR Part 3020

**[Docket Nos. MC2010–21 and CP2010–36]**

## Update to Product List

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is updating the competitive product list. This action reflects a publication policy adopted by Commission order. The referenced policy assumes periodic updates. The updates are identified in the body of this document. The competitive product list, which is re-published in its entirety, includes these updates.

**DATES:** *Effective Date:* February 24, 2020. For applicability dates, *see* **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6800.

**SUPPLEMENTARY INFORMATION:** *Applicability Dates:* October 2, 2019, First-Class Package Service Contract 103 (MC2019–202 and CP2019–225); October 4, 2019, Priority Mail Express & Priority Mail Contract 99 (MC2019–204 and CP2019–226); October 4, 2019, Priority Mail Contract 552 (MC2019–205 and CP2019–227); October 7, 2019, First-Class Package Service Contract 104 (MC2019–206 and CP2019–228); October 16, 2019, Priority Mail & First-Class Package Service Contract 120 (MC2020–3 and CP2020–3); October 16, 2019, Priority Mail & First-Class Package Service Contract 119 (MC2020–2 and CP2020–2); October 16, 2019, Priority Mail & First-Class Package Service Contract 121 (MC2020–4 and CP2020–4); October 21, 2019, Priority Mail Contract 553 (MC2020–5 and CP2020–6); October 22, 2019, Priority Mail & First-Class Package Service Contract 122 (MC2020–6 and CP2020–7); October 22, 2019, Priority Mail & First-Class Package Service Contract 123 (MC2020–9 and CP2020–8); October 23, 2019, Priority Mail Express & Priority Mail Contract 100 (MC2020–1 and CP2020–1); October 24, 2019, First-Class Package Service Contract 105 (MC2020–10 and CP2020–9); November 1, 2019, Priority Mail Express & Priority Mail Contract 101 (MC2020–11 and CP2020–10); November 1, 2019, Priority Mail & First-Class Package Service Contract 124 (MC2020–12 and CP2020–11); November 4, 2019, Priority Mail Contract 554 (MC2020–13 and CP2020–12); November 4, 2019, Priority Mail Contract 556 (MC2020–15 and CP2020–14); November 4, 2019, Priority Mail Contract 555 (MC2020–14 and CP2020–13); November 6, 2019, Priority Mail Express, Priority Mail & First-Class Package Service Contract 67 (MC2020–16 and CP2020–15); November 12, 2019, Priority Mail Express & Priority Mail Contract 102 (MC2020–17 and CP2020–16); November 12, 2019, Priority Mail Contract 557 (MC2020–18 and CP2020–17); November 13, 2019, Priority Mail Express & Priority Mail Contract 103 (MC2020–19 and CP2020–18); November 18, 2019, Priority Mail & First-Class Package Service Contract 125 (MC2020–21 and CP2020–20); November 18, 2019, Priority Mail Contract 559 (MC2020–22 and CP2020–21); November 19, 2019, Priority Mail Contract 558 (MC2020–20 and CP2020–19); November 19, 2019, Priority Mail & First-Class Package Service Contract 126 (MC2020–23 and CP2020–22); November 19, 2019, Priority Mail & First-Class Package Service Contract 127 (MC2020–24 and CP2020–23); November 22, 2019, Priority Mail Express & Priority Mail Contract 104 (MC2020–25 and CP2020–24); November 22, 2019, Priority Mail Contract 560 (MC2020–26 and CP2020–25); November 26, 2019, Priority Mail Contract 561 (MC2020–28 and CP2020–26); November 27, 2019, Priority Mail & First-Class Package Service Contract 128 (MC2020–29 and CP2020–27); November 27, 2019, Parcel Select Contract 35 (MC2020–30 and CP2020–28); November 27, 2019, Priority Mail Contract 562 (MC2020–31 and CP2020–29); December 2, 2019, Priority Mail Contract 563 (MC2020–32 and CP2020–30); December 2, 2019, Priority Mail Express & Priority Mail Contract 105 (MC2020–33 and CP2020–31); December 3, 2019, Priority Mail Contract 564 (MC2020–34 and CP2020–32); December 4, 2019, Priority Mail Contract 565 (MC2020–35 and CP2020–33); December 4, 2019, Priority Mail Express & Priority Mail Contract 106 (MC2020–36 and CP2020–34); December 6, 2019, Priority Mail & First-Class Package Service Contract 129 (MC2020–37 and CP2020–35); December 6, 2019, Priority Mail Contract 566 (MC2020–39 and CP2020–37); December 10, 2019, Priority Mail & First-Class Package Service Contract 131 (MC2020–40 and CP2020–38); December 10, 2019, Priority Mail & First-Class Package Service Contract 132 (MC2020–41 and CP2020–39); December 11, 2019, Priority Mail Contract 567 (MC2020–43 and CP2020–41); December 12, 2019, Priority Mail Express Contract 79 (MC2020–44 and CP2020–42); December 12, 2019, Priority Mail & First-Class Package Service Contract 130 (MC2020–38 and CP2020–36); December 13, 2019, Priority Mail Contract 568 (MC2020–45 and CP2020–43); December 13, 2019, Priority Mail & First-Class Package Service Contract 133 (MC2020–42 and CP2020–40); December 13, 2019, Priority Mail Contract 569 (MC2020–46 and CP2020–44); December 17, 2019, Priority Mail & First-Class Package Service Contract 134 (MC2020–47 and CP2020–45); December 17, 2019, Priority Mail & First-Class Package

Service Contract 135 (MC2020–48 and CP2020–46); December 17, 2019, Priority Mail Contract 571 (MC2020–50 and CP2020–48); December 17, 2019, Priority Mail & First-Class Package Service Contract 136 (MC2020–51 and CP2020–49); December 17, 2019, Priority Mail Contract 572 (MC2020–52 and CP2020–50); December 18, 2019, Priority Mail Contract 570 (MC2020–49 and CP2020–47); December 18, 2019, Priority Mail Contract 573 (MC2020–53 and CP2020–51); December 18, 2019, Priority Mail & First-Class Package Service Contract 137 (MC2020–54 and CP2020–52); December 18, 2019, Priority Mail Express & Priority Mail Contract 108 (MC2020–56 and CP2020–54); December 18, 2019, Priority Mail Contract 574 (MC2020–57 and CP2020–55); December 18, 2019, Priority Mail & First-Class Package Service Contract 138 (MC2020–58 and CP2020–56); December 19, 2019, Priority Mail Contract 576 (MC2020–60 and CP2020–58); December 19, 2019, Priority Mail Express & Priority Mail Contract 109 (MC2020–61 and CP2020–59); December 19, 2019, Priority Mail Contract 577 (MC2020–62 and CP2020–60); December 19, 2019, Priority Mail Contract 578 (MC2020–63 and CP2020–62); December 19, 2019, Priority Mail Contract 579 (MC2020–64 and CP2020–63); December 19, 2019, Priority Mail Contract 580 (MC2020–65 and CP2020–64); December 23, 2019, Priority Mail Express & Priority Mail Contract 107 (MC2020–55 and CP2020–53); December 23, 2019, Priority Mail Contract 575 (MC2020–59 and CP2020–57); December 23, 2019, Priority Mail Contract 581 (MC2020–66 and CP2020–65); December 23, 2019, Priority Mail Express Contract 80 (MC2020–67 and CP2020–66); December 23, 2019, Parcel Select Contract 36 (MC2020–68 and CP2020–67); December 23, 2019, Priority Mail Contract 582 (MC2020–69 and CP2020–68); December 30, 2019, Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 1 (MC2020–74 and CP2020–73); December 30, 2019, Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 2 (MC2020–75 and CP2020–74); December 30, 2019, Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 3 (MC2020–76 and CP2020–75).

This document identifies updates to the competitive product list, which appears as 39 CFR Appendix B to Subpart A of Part 3020—Competitive Product List. Publication of the updated product lists in the **Federal Register** is addressed in the Postal Accountability and Enhancement Act (PAEA) of 2006.

*Authorization.* The Commission process for periodic publication of updates was established in Docket Nos. MC2010–21 and CP2010–36, Order No. 445, April 22, 2010, at 8.

*Changes.* The competitive product list is being updated by publishing a replacement in its entirety of 39 CFR Appendix B to Subpart A of Part 3020—Competitive Product List. The following products are being added, removed, or moved within the competitive product list:

**Competitive Product List**

1. First-Class Package Service Contract 103 (MC2019–202 and CP2019–225) (Order No. 5263), added October 2, 2019.
2. Priority Mail Express & Priority Mail Contract 99 (MC2019–204 and CP2019–226) (Order No. 5265), added October 4, 2019.
3. Priority Mail Contract 552 (MC2019–205 and CP2019–227) (Order No. 5267), added October 4, 2019.
4. First-Class Package Service Contract 104 (MC2019–206 and CP2019–228) (Order No. 5268), added October 7, 2019.
5. Priority Mail & First-Class Package Service Contract 120 (MC2020–3 and CP2020–3) (Order No. 5275), added October 16, 2019.
6. Priority Mail & First-Class Package Service Contract 119 (MC2020–2 and CP2020–2) (Order No. 5276), added October 16, 2019.
7. Priority Mail & First-Class Package Service Contract 121 (MC2020–4 and CP2020–4) (Order No. 5277), added October 16, 2019.
8. Priority Mail Contract 553 (MC2020–5 and CP2020–6) (Order No. 5279), added October 21, 2019.
9. Priority Mail & First-Class Package Service Contract 122 (MC2020–6 and CP2020–7) (Order No. 5281), added October 22, 2019.
10. Priority Mail & First-Class Package Service Contract 123 (MC2020–9 and CP2020–8) (Order No. 5282), added October 22, 2019.
11. Priority Mail Express & Priority Mail Contract 100 (MC2020–1 and CP2020–1) (Order No. 5284), added October 23, 2019.
12. First-Class Package Service Contract 105 (MC2020–10 and CP2020–9) (Order No. 5286), added October 24, 2019.
13. Priority Mail Express & Priority Mail Contract 101 (MC2020–11 and CP2020–10) (Order No. 5289), added November 1, 2019.
14. Priority Mail & First-Class Package Service Contract 124 (MC2020–12 and CP2020–11) (Order No. 5290), added November 1, 2019.
15. Priority Mail Contract 554 (MC2020–13 and CP2020–12) (Order No. 5292), added November 4, 2019.
16. Priority Mail Contract 556 (MC2020–15 and CP2020–14) (Order No. 5293), added November 4, 2019.
17. Priority Mail Contract 555 (MC2020–14 and CP2020–13) (Order No. 5294), added November 4, 2019.
18. Priority Mail Express, Priority Mail & First-Class Package Service Contract 67 (MC2020–16 and CP2020–15) (Order No. 5296), added November 6, 2019.
19. Priority Mail Express & Priority Mail Contract 102 (MC2020–17 and CP2020–16) (Order No. 5300), added November 12, 2019.
20. Priority Mail Contract 557 (MC2020–18 and CP2020–17) (Order No. 5301), added November 12, 2019.
21. Priority Mail Express & Priority Mail Contract 103 (MC2020–19 and CP2020–18) (Order No. 5304), added November 13, 2019.
22. Priority Mail & First-Class Package Service Contract 125 (MC2020–21 and CP2020–20) (Order No. 5310), added November 18, 2019.
23. Priority Mail Contract 559 (MC2020–22 and CP2020–21) (Order No. 5311), added November 18, 2019.
24. Priority Mail Contract 558 (MC2020–20 and CP2020–19) (Order No. 5315), added November 19, 2019.
25. Priority Mail & First-Class Package Service Contract 126 (MC2020–23 and CP2020–22) (Order No. 5316), added November 19, 2019.
26. Priority Mail & First-Class Package Service Contract 127 (MC2020–24 and CP2020–23) (Order No. 5317), added November 19, 2019.
27. Priority Mail Express & Priority Mail Contract 104 (MC2020–25 and CP2020–24) (Order No. 5319), added November 22, 2019.
28. Priority Mail Contract 560 (MC2020–26 and CP2020–25) (Order No. 5320), added November 22, 2019.
29. Priority Mail Contract 561 (MC2020–28 and CP2020–26) (Order No. 5322), added November 26, 2019.
30. Priority Mail & First-Class Package Service Contract 128 (MC2020–29 and CP2020–27) (Order No. 5324), added November 27, 2019.
31. Parcel Select Contract 35 (MC2020–30 and CP2020–28) (Order No. 5325), added November 27, 2019.
32. Priority Mail Contract 562 (MC2020–21 and CP2020–29) (Order No. 5326), added November 27, 2019.
33. Priority Mail Contract 563 (MC2020–32 and CP2020–30) (Order No. 5328), added December 2, 2019.
34. Priority Mail Express & Priority Mail Contract 105 (MC2020–33 and CP2020–31) (Order No. 5329), added December 2, 2019.
35. Priority Mail Contract 564 (MC2020–34 and CP2020–32) (Order No. 5330), added December 3, 2019.
36. Priority Mail Contract 565 (MC2020–35 and CP2020–33) (Order No. 5333), added December 4, 2019.
37. Priority Mail Express & Priority Mail Contract 106 (MC2020–36 and CP2020–34) (Order No. 5334), added December 4, 2019.
38. Priority Mail & First-Class Package Service Contract 129 (MC2020–37 and CP2020–35) (Order No. 5338), added December 6, 2019.
39. Priority Mail Contract 566 (MC2020–39 and CP2020–37) (Order No. 5339), added December 6, 2019.
40. Priority Mail & First-Class Package Service Contract 131 (MC2020–40 and CP2020–38) (Order No. 5341), added December 10, 2019.

41. Priority Mail & First-Class Package Service Contract 132 (MC2020–41 and CP2020–39) (Order No. 5342), added December 10, 2019.
42. Priority Mail Contract 567 (MC2020–43 and CP2020–41) (Order No. 5345), added December 11, 2019.
43. Priority Mail Express Contract 79 (MC2020–44 and CP2020–42) (Order No. 5346), added December 12, 2019.
44. Priority Mail & First-Class Package Service Contract 130 (MC2020–38 and CP2020–36) (Order No. 5347), added December 12, 2019.
45. Priority Mail Contract 568 (MC2020–45 and CP2020–43) (Order No. 5349), added December 13, 2019.
46. Priority Mail & First-Class Package Service Contract 133 (MC2020–42 and CP2020–40) (Order No. 5350), added December 13, 2019.
47. Priority Mail Contract 569 (MC2020–46 and CP2020–44) (Order No. 5352), added December 13, 2019.
48. Priority Mail & First-Class Package Service Contract 134 (MC2020–47 and CP2020–45) (Order No. 5355), added December 17, 2019.
49. Priority Mail & First-Class Package Service Contract 135 (MC2020–48 and CP2020–46) (Order No. 5356), added December 17, 2019.
50. Priority Mail Contract 571 (MC2020–50 and CP2020–48) (Order No. 5357), added December 17, 2019.
51. Priority Mail & First-Class Package Service Contract 136 (MC2020–51 and CP2020–49) (Order No. 5358), added December 17, 2019.
52. Priority Mail Contract 572 (MC2020–52 and CP2020–50) (Order No. 5359), added December 17, 2019.
53. Priority Mail Contract 570 (MC2020–49 and CP2020–47) (Order No. 5360), added December 18, 2019.
54. Priority Mail Contract 573 (MC2020–53 and CP2020–51) (Order No. 5361), added December 18, 2019.
55. Priority Mail & First-Class Package Service Contract 137 (MC2020–54 and CP2020–52) (Order No. 5362), added December 18, 2019.
56. Priority Mail Express & Priority Mail Contract 108 (MC2020–56 and CP2020–54) (Order No. 5363), added December 18, 2019.
57. Priority Mail Contract 574 (MC2020–57 and CP2020–55) (Order No. 5364), added December 18, 2019.
58. Priority Mail & First-Class Package Service Contract 138 (MC2020–58 and CP2020–56) (Order No. 5365), added December 18, 2019.
59. Priority Mail Contract 576 (MC2020–60 and CP2020–58) (Order No. 5366), added December 19, 2019.
60. Priority Mail Express & Priority Mail Contract 109 (MC2020–61 and CP2020–59) (Order No. 5367), added December 19, 2019.
61. Priority Mail Contract 577 (MC2020–62 and CP2020–60) (Order No. 5368), added December 19, 2019.
62. Priority Mail Contract 578 (MC2020–63 and CP2020–62) (Order No. 5369), added December 19, 2019.
63. Priority Mail Contract 579 (MC2020–64 and CP2020–63) (Order No. 5370), added December 19, 2019.
64. Priority Mail Contract 580 (MC2020–65 and CP2020–64) (Order No. 5371), added December 19, 2019.
65. Priority Mail Express & Priority Mail Contract 107 (MC2020–55 and CP2020–53) (Order No. 5375), added December 23, 2019.
66. Priority Mail Contract 575 (MC2020–59 and CP2020–57) (Order No. 5376), added December 23, 2019.
67. Priority Mail Contract 581 (MC2020–66 and CP2020–65) (Order No. 5377), added December 23, 2019.
68. Priority Mail Express Contract 80 (MC2020–67 and CP2020–66) (Order No. 5378), added December 23, 2019.
69. Parcel Select Contract 36 (MC2020–68 and CP2020–67) (Order No. 5379), added December 23, 2019.
70. Priority Mail Contract 582 (MC2020–69 and CP2020–68) (Order No. 5380), added December 23, 2019.
71. Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 1 (MC2020–74 and CP2020–73) (Order No. 5382), added December 30, 2019.
72. Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 2 (MC2020–75 and CP2020–74) (Order No. 5383), added December 30, 2019.
73. Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 3 (MC2020–76 and CP2020–75) (Order No. 5384), added December 30, 2019.

The following negotiated service agreements have expired, or have been terminated early, and are being deleted from the Competitive Product List:

1. Priority Mail Express & Priority Mail Contract 18 (MC2015–49 and CP2015–61) (Order No. 2480).
2. Parcel Select Contract 11 (MC2016–28 and CP2016–34) (Order No. 2883).
3. First-Class Package Service Contract 38 (MC2016–33 and CP2016–39) (Order No. 2910).
4. Priority Mail Express, Priority Mail & First-Class Package Service Contract 7 (MC2016–55 and CP2016–70) (Order No. 2983).
5. Priority Mail Express & Priority Mail Contract 27 (MC2016–59 and CP2016–74) (Order No. 2995).
6. Priority Mail & First-Class Package Service Contract 17 (MC2016–112 and CP2016–140) (Order No. 3219).
7. Priority Mail Express & Priority Mail Contract 29 (MC2016–120 and CP2016–150) (Order No. 3252).
8. Priority Mail Contract 207 (MC2016–122 and CP2016–155) (Order No. 3265).
9. Priority Mail Contract 208 (MC2016–123 and CP2016–156) (Order No. 3267).
10. Priority Mail Contract 210 (MC2016–125 and CP2016–159) (Order No. 3286).
11. Priority Mail & First-Class Package Service Contract 19 (MC2016–142 and CP2016–179) (Order No. 3342).
12. Priority Mail Contract 222 (MC2016–145 and CP2016–182) (Order No. 3351).
13. Priority Mail & First-Class Package Service Contract 20 (MC2016–158 and CP2016–229) (Order No. 3414).
14. Priority Mail & First-Class Package Service Contract 23 (MC2016–167 and CP2016–241) (Order No. 3440).
15. Priority Mail Contract 242 (MC2016–203 and CP2016–292) (Order No. 3549).
16. Priority Mail Express & Priority Mail Contract 35 (MC2016–205 and CP2016–294) (Order No. 3550).
17. Priority Mail Contract 243 (MC2016–204 and CP2016–293) (Order No. 3552).
18. First-Class Package Service Contract 64 (MC2016–206 and CP2016–295) (Order No. 3553).
19. Priority Mail & First-Class Package Service Contract 32 (MC2016–209 and CP2016–298) (Order No. 3555).
20. Priority Mail Express & Priority Mail Contract 36 (MC2016–207 and CP2016–296) (Order No. 3557).
21. Priority Mail & First-Class Package Service Contract 34 (MC2016–211 and CP2016–300) (Order No. 3562).
22. Priority Mail Contract 244 (MC2016–212 and CP2016–301) (Order No. 3563).
23. Priority Mail Contract 246 (MC2017–2 and CP2017–2) (Order No. 3570).
24. Priority Mail Contract 247 (MC2017–3 and CP2017–3) (Order No. 3571).
25. Priority Mail Express, Priority Mail & First-Class Package Service Contract 11 (MC2017–4 and CP2017–4) (Order No. 3572).
26. Priority Mail Express & Priority Mail Contract 37 (MC2017–6 and CP2017–12) (Order No. 3583).
27. Priority Mail Contract 248 (MC2017–5 and CP2017–11) (Order No. 3584).
28. Parcel Select Contract 17 (MC2016–200 and CP2016–284) (Order No. 3592).
29. Priority Mail Contract 252 (MC2017–10 and CP2017–25) (Order No. 3599).
30. Priority Mail Contract 253 (MC2017–11 and CP2017–26) (Order No. 3600).
31. Priority Mail Contract 251 (MC2017–9 and CP2017–24) (Order No. 3603).
32. Priority Mail Contract 250 (MC2017–8 and CP2017–23) (Order No. 3605).
33. Priority Mail & Parcel Select Contract 2 (MC2017–13 and CP2017–29) (Order No. 3607).
34. Priority Mail Express Contract 42 (MC2016–208 and CP2016–297) (Order No. 3608).
35. First-Class Package Service Contract 65 (MC2017–14 and CP2017–30) (Order No. 3611).
36. Priority Mail Contract 255 (MC2017–16 and CP2017–32) (Order No. 3613).
37. Priority Mail Contract 254 (MC2017–15 and CP2017–31) (Order No. 3614).
38. First-Class Package Service Contract 66 (MC2017–20 and CP2017–39) (Order No. 3633).
39. Priority Mail Express, Priority Mail & First-Class Package Service Contract 12 (MC2017–21 and CP2017–41) (Order No. 3637).
40. Priority Mail & First-Class Package Service Contract 36 (MC2017–24 and CP2017–44) (Order No. 3644).
41. Priority Mail & First-Class Package Service Contract 37 (MC2017–25 and CP2017–45) (Order No. 3645).
42. Priority Mail Express, Priority Mail & First-Class Package Service Contract 13 (MC2017–22 and CP2017–42) (Order No. 3646).
43. Priority Mail Contract 261 (MC2017–28 and CP2017–53) (Order No. 3658).
44. Priority Mail Contract 259 (MC2017–26 and CP2017–51) (Order No. 3659).

45. Priority Mail Contract 264 (MC2017–31 and CP2017–56) (Order No. 3663).
46. Priority Mail Contract 265 (MC2017–32 and CP2017–57) (Order No. 3667).
47. Priority Mail Express, Priority Mail & First-Class Package Service Contract 14 (MC2017–33 and CP2017–58) (Order No. 3668).
48. First-Class Package Service Contract 67 (MC2017–34 and CP2017–59) (Order No. 3669).
49. Priority Mail & First-Class Package Service Contract 39 (MC2017–36 and CP2017–61) (Order No. 3675).
50. Priority Mail & First-Class Package Service Contract 40 (MC2017–37 and CP2017–62) (Order No. 3678).
51. Priority Mail Express & Priority Mail Contract 38 (MC2017–38 and CP2017–63) (Order No. 3679).
52. First-Class Package Service Contract 69 (MC2017–40 and CP2017–65) (Order No. 3686).
53. Priority Mail Contract 266 (MC2017–41 and CP2017–66) (Order No. 3688).
54. Priority Mail Contract 267 (MC2017–42 and CP2017–67) (Order No. 3689).
55. First-Class Package Service Contract 68 (MC2017–39 and CP2017–64) (Order No. 3691).
56. Priority Mail Contract 269 (MC2017–44 and CP2017–69) (Order No. 3692).
57. Priority Mail Express Contract 44 (MC2017–49 and CP2017–75) (Order No. 3699).
58. Priority Mail & First-Class Package Service Contract 42 (MC2017–56 and CP2017–82) (Order No. 3703).
59. Priority Mail Contract 278 (MC2017–57 and CP2017–83) (Order No. 3708).
60. Priority Mail Contract 280 (MC2017–60 and CP2017–88) (Order No. 3719).
61. Priority Mail Contract 279 (MC2017–59 and CP2017–87) (Order No. 3722).
62. Priority Mail Contract 285 (MC2017–75 and CP2017–102) (Order No. 3739).
63. Priority Mail Express & Priority Mail Contract 43 (MC2017–83 and CP2017–112) (Order No. 3779).
64. First-Class Package Service Contract 77 (MC2017–135 and CP2017–192) (Order No. 3922).
65. Priority Mail Contract 331 (MC2017–152 and CP2017–215) (Order No. 3986).
66. Priority Mail & First-Class Package Service Contract 52 (MC2017–174 and CP2017–275) (Order No. 4083).
67. Priority Mail Contract 363 (MC2017–209 and CP2017–317) (Order No. 4146).
68. Priority Mail & First-Class Package Service Contract 60 (MC2018–12 and CP2018–19) (Order No. 4183).
69. Priority Mail Contract 373 (MC2018–22 and CP2018–44) (Order No. 4229).
70. Priority Mail Contract 380 (MC2018–38 and CP2018–68) (Order No. 4271).
71. First-Class Package Service Contract 90 (MC2018–79 and CP2018–121) (Order No. 4339).
72. Priority Mail Express & First-Class Package Service Contract 2 (MC2018–120 and CP2018–163) (Order No. 4387).
73. Priority Mail Express & Priority Mail Contract 68 (MC2018–169 and CP2018–241) (Order No. 4664).
74. Priority Mail & First-Class Package Service Contract 84 (MC2018–194 and CP2018–272) (Order No. 4733).
75. Priority Mail Contract 468 (MC2019–5 and CP2019–4) (Order No. 4860).
76. Priority Mail Contract 470 (MC2019–7 and CP2019–6) (Order No. 4861).
77. Priority Mail Express & Priority Mail Contract 78 (MC2019–48 and CP2019–52) (Order No. 4914).
78. Priority Mail & First-Class Package Service Contract 91 (MC2019–46 and CP2019–49) (Order No. 4942).
79. Priority Mail Express & Priority Mail Contract 80 (MC2019–50 and CP2019–54) (Order No. 4947).
80. Priority Mail Contract 496 (MC2019–53 and CP2019–57) (Order No. 4952).
81. Priority Mail Contract 501 (MC2019–60 and CP2019–65) (Order No. 4961).
82. Priority Mail Express Contract 69 (MC2019–61 and CP2019–66) (Order No. 4962).
83. Parcel Return Service Contract 12 (MC2019–63 and CP2019–68) (Order No. 4965).
84. Priority Mail Express & Priority Mail Contract 81 (MC2019–66 and CP2019–73) (Order No. 4969).
85. Priority Mail Express & Priority Mail Contract 82 (MC2019–69 and CP2019–74) (Order No. 4970).
86. Priority Mail Contract 508 (MC2019–82 and CP2019–88) (Order No. 5008).
87. Priority Mail Express & Priority Mail Contract 87 (MC2019–90 and CP2019–96) (Order No. 5018).
88. First-Class Package Service Contract 98 (MC2019–92 and CP2019–98) (Order No. 5020).
89. Priority Mail & First-Class Package Service Contract 96 (MC2019–101 and CP2019–109) (Order No. 5029).
90. Priority Mail Express, Priority Mail & First-Class Package Service Contract 54 (MC2019–100 and CP2019–108) (Order No. 5037).
91. Priority Mail Express Contract 73 (MC2019–121 and CP2019–130) (Order No. 5066).

*Updated product list.* The referenced changes to the competitive product list are incorporated into 39 CFR Appendix B to Subpart A of Part 3020—Competitive Product List.

### List of Subjects in 39 CFR Part 3020

Administrative practice and procedure, Postal Service.

For the reasons discussed in the preamble, the Postal Regulatory Commission amends chapter III of title 39 of the Code of Federal Regulations as follows:

## PART 3020—PRODUCT LISTS

■ 1. The authority citation for part 3020 continues to read as follows:

**Authority:** 39 U.S.C. 503; 3622; 3631; 3642; 3682.

■ 2. Revise appendix B to subpart A of part 3020 to read as follows:

### Appendix B to Subpart A of Part 3020—Competitive Product List

(An asterisk (*) indicates an organizational class or group, not a Postal Service product.)

**Part B—Competitive Products**

**2000 Competitive Product List**

**Domestic Products ***

Priority Mail Express
Priority Mail
Parcel Select
Parcel Return Service
First-Class Package Service
USPS Retail Ground

**International Products ***

Outbound International Expedited Services
Inbound Parcel Post (at UPU rates)
Outbound Priority Mail International
International Priority Airmail (IPA)
International Surface Air List (ISAL)
International Direct Sacks—M-Bags
Outbound Single-Piece First-Class Package International Service

**Negotiated Service Agreements ***

Domestic *
Priority Mail Express Contract 43
Priority Mail Express Contract 46
Priority Mail Express Contract 47
Priority Mail Express Contract 48
Priority Mail Express Contract 51
Priority Mail Express Contract 52
Priority Mail Express Contract 53
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Priority Mail Express Contract 59
Priority Mail Express Contract 60
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Priority Mail Express Contract 64
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Priority Mail Express Contract 76
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Parcel Return Service Contract 11
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Priority Mail Express & First-Class Package Service Contract 1
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Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 1
Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 2
Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 3

**Outbound International ***

Global Expedited Package Services (GEPS) Contracts
GEPS 3
GEPS 5
GEPS 6
GEPS 7
GEPS 8
GEPS 9
GEPS 10
GEPS 11
Global Bulk Economy (GBE) Contracts
Global Plus Contracts
Global Plus 1C
Global Plus 1D
Global Plus 1E
Global Plus 2C
Global Plus 3
Global Plus 4
Global Plus 5
Global Plus 6
Global Reseller Expedited Package Contracts
Global Reseller Expedited Package Services 1
Global Reseller Expedited Package Services 2
Global Reseller Expedited Package Services 3
Global Reseller Expedited Package Services 4
Global Expedited Package Services (GEPS)—Non-Published Rates
Global Expedited Package Services (GEPS)—Non-Published Rates 2
Global Expedited Package Services (GEPS)—Non-Published Rates 3
Global Expedited Package Services (GEPS)—Non-Published Rates 4
Global Expedited Package Services (GEPS)—Non-Published Rates 5
Global Expedited Package Services (GEPS)—Non-Published Rates 6
Global Expedited Package Services (GEPS)—Non-Published Rates 7
Global Expedited Package Services (GEPS)—Non-Published Rates 8
Global Expedited Package Services (GEPS)—Non-Published Rates 9
Global Expedited Package Services (GEPS)—Non-Published Rates 10
Global Expedited Package Services (GEPS)—Non-Published Rates 11
Global Expedited Package Services (GEPS)—Non-Published Rates 12
Global Expedited Package Services (GEPS)—Non-Published Rates 13
Global Expedited Package Services (GEPS)—Non-Published Rates 14
Priority Mail International Regional Rate Boxes—Non-Published Rates
Outbound Competitive International Merchandise Return Service Agreement with Royal Mail Group, Ltd.
Priority Mail International Regional Rate Boxes Contracts
Priority Mail International Regional Rate Boxes Contracts 1
Competitive International Merchandise Return Service Agreements with Foreign Postal Operators
Competitive International Merchandise Return Service Agreements with Foreign Postal Operators 1
Competitive International Merchandise Return Service Agreements with Foreign Postal Operators 2
Alternative Delivery Provider (ADP) Contracts ADP 1
Alternative Delivery Provider Reseller (ADPR) Contracts ADPR 1

**Inbound International ***

International Business Reply Service (IBRS) Competitive Contracts
International Business Reply Service Competitive Contract 1
International Business Reply Service Competitive Contract 3
Inbound Direct Entry Contracts with Customers
Inbound Direct Entry Contracts with Foreign Postal Administrations
Inbound Direct Entry Contracts with Foreign Postal Administrations
Inbound Direct Entry Contracts with Foreign Postal Administrations 1
Inbound EMS
Inbound EMS 2
Inbound Air Parcel Post (at non-UPU rates)
Royal Mail Group Inbound Air Parcel Post Agreement
Inbound Competitive Multi-Service Agreements with Foreign Postal Operators
Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1

**Special Services ***

Address Enhancement Services
Greeting Cards, Gift Cards, and Stationery
International Ancillary Services
International Money Transfer Service—Outbound
International Money Transfer Service—Inbound
Premium Forwarding Service
Shipping and Mailing Supplies
Post Office Box Service
Competitive Ancillary Services

**Nonpostal Services ***

Advertising
Licensing of Intellectual Property other than Officially Licensed Retail Products (OLRP)
Mail Service Promotion
Officially Licensed Retail Products (OLRP)
Passport Photo Service
Photocopying Service
Rental, Leasing, Licensing or other Non-Sale Disposition of Tangible Property
Training Facilities and Related Services
USPS Electronic Postmark (EPM) Program

**Market Tests ***

**Erica A. Barker,**

*Secretary.*

[FR Doc. 2020–03014 Filed 2–21–20; 8:45 am]

BILLING CODE 7710–FW–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R07–OAR–2019–0477; FRL–10005–35–Region 7]**

## Air Plan Approval; Iowa; Linn County; State Implementation Plan

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving revisions to the Iowa State Implementation Plan (SIP) to include recent changes to the Linn County Code of Ordinances. The revisions include updating definitions and references to the effective dates the Federal rules were approved into the State's SIP, revising methods and procedures for performance test/stack test and continuous monitoring systems, and updating the Linn County permits program. These revisions will not adversely impact air quality and will ensure consistency between the state and federally approved rules.

**DATES:** This final rule is effective on March 25, 2020.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2019–0477. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Doolan, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number (913) 551–7719; email address *doolan.stephanie@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document ''we,'' ''us,'' and ''our'' refer to EPA. This section provides additional information by addressing the following:

### Table of Contents

I. Background
II. What is being addressed in this document?

III. Have the requirements for approval of the SIP revisions been met?
IV. The EPA's Response to Comments
V. What action is the EPA taking?
VI. Incorporation by Reference
VII. Statutory and Executive Order Reviews

## I. Background

On July 3, 2018, the Iowa Department of Natural Resources (IDNR) submitted to EPA a revision to its SIP requesting incorporation of recent changes to the Linn County, Iowa, Code of Ordinances. The Clean Air Act (CAA) allows authorized states to delegate portions of the Act's implementation and enforcement to local governments such as Linn County.

The EPA published a proposal to approve Iowa's SIP revision request in the **Federal Register** on November 25, 2019 (84 FR 227). No comments were received. The purpose of this action is to grant final approval of Iowa's SIP revision request to incorporate the Linn County Code of Ordinance revisions into Iowa's SIP.

## II. What is being addressed in this document?

The EPA is granting final approval of a submission from the State of Iowa to revise its SIP to incorporate recent updates to Chapter 10, Environment, Article III, Air Quality (hereafter referred to as ''Chapter 10'') pertaining to air quality. The revisions to the Iowa SIP are incorporating Linn County's updated definitions and references to the effective dates of Federal rules approved into the state's SIP, renumbering, revising methods and procedures for performance test/stack test and continuous monitoring systems, and revising the public notice and participation requirements to allow permit modifications to be published online rather than in area newspapers which is consistent with recent revisions to Iowa's SIP (83 FR 191, October 2, 2018). The EPA is also approving provisions into the Iowa SIP to codify its existing policy and procedures for appealing permits.

As stated in the proposed rulemaking, the EPA is not acting on portions of Linn County Chapter 10–58, Permits for New and Existing Stationary Sources, and Chapter 10–59, Permit Fees, that pertain to Prevention of Significant Deterioration (PSD) regulations because Iowa has not delegated the PSD program authority to Linn County. The EPA is also not acting on the revisions to Chapter 10–67, Excess Emissions at this time.

## III. Have the requirements for approval of the SIP revisions been met?

The State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. Linn County held a public comment period from April 24, 2018, to May 23, 2018. No comments were received. The submission satisfies the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained in more detail in the proposed rulemaking published in the **Federal Register** on November 25, 2019, these revisions meet the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

## IV. The EPA's Response to Comments

The public comment period for the EPA's proposed rule opened November 25, 2019, the date of its publication in the **Federal Register**, and closed on December 26, 2019. During this period, the EPA received no comments.

## V. What action is the EPA taking?

The EPA is approving revisions to the Iowa SIP to incorporate the revisions to Chapter 10 of the Linn County Code of Ordinances. The revisions clarify rules, make revisions and corrections, and rescind rules no longer relevant to the air program. The EPA has determined that approval of these revisions will not adversely impact air quality and will ensure consistency between the local, state and federally-approved rules, and ensure Federal enforceability of the state's revised air program rules.

## VI. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Iowa Regulations described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 7 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 the 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 the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[1]

## VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, 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 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 the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; 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).

[1] 62 FR 27968 (May 22, 1997).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 24, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 7, 2020.

**James Gulliford,**

*Regional Administrator, Region 7.*

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as set forth below:

## 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 Q—Iowa

■ 2. In § 52.820, the table in paragraph (c) is amended by revising the entry ''Chapter 10'' to read as follows:

**§ 52.820 Identification of plan.**

* * * * *

(c) * * *

EPA-APPROVED IOWA REGULATIONS

| Iowa citation | Title | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| **Iowa Department of Natural Resources Environmental Protection Commission [567]** | | | | |
| * | * | * | * | * * * |
| **Linn County** | | | | |
| Chapter 10 ..... | Linn County Air Quality Ordinance, Chapter 10. | 6/5/2018 | 2/24/2020, [insert **Federal Register** citation]. | The following definitions are not SIP-approved in Chapter 10–55; Anaerobic lagoon, Biomass, Chemical processing plants (ethanol production facilities that produce ethanol by natural fermentation included in NAICS code 325193 or 312140 are not included in this definition); Federally Enforceable; Greenhouse gases;<br>The following sections are not SIP approved: 10–57(a), Title V Permits; 10–59(c), Fees Associated with PSD Applications; 10–61, Emissions From Fuel-Burning Equipment, (c) Exemptions for Residential Heaters Burning Solid Fuels; 10–61, Emissions from Fuel-Burning Equipment, (d) Nuisance Conditions for Fuel Burning Equipment; 10–62, Emission Standards, (b) NSPS; 10–62(c), Emission Standards for HAPs; 10–62(d), Emission Standards for HAPs for Source Categories; 10–64, Emission of Objectionable Odors; 10–70, Testing and Sampling of New and Existing Equipment, (k) Continuous Emissions Monitoring from Acid Rain Program; and 10–77, Penalty. |
| * | * | * | * | * * * |

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[FR Doc. 2020–02893 Filed 2–21–20; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA–R03–OAR–2019–0207; FRL–10004–84–Region 3]**

# Approval and Promulgation of Air Quality Implementation Plans; District of Columbia; Reasonably Available Control Technology State Implementation Plan for Nitrogen Oxides Under the 2008 Ozone National Ambient Air Quality Standard

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the District of Columbia. This revision satisfies the nitrogen oxides ($NO_X$) reasonably available control technology (RACT) requirements under the 2008 8-hour ozone national ambient air quality standard (2008 ozone NAAQS). The District of Columbia's $NO_X$ RACT submittal for the 2008 ozone NAAQS: Amends existing regulatory provisions to add new or more stringent regulations or controls that represent RACT control levels for combustion turbines and associated heat recovery steam generators and duct burners, amends the applicability provisions of these regulations to include all combustion turbines and associated heat recovery steam generators and duct burners, and adds conforming definitions; includes a source specific $NO_X$ RACT determination for four specific emissions units at one major stationary source of $NO_X$; includes a certification that, for other categories of sources, controls already approved by EPA into the District of Columbia's SIP to meet $NO_X$ RACT for previous ozone NAAQS are based on technically and economically feasible controls and continue to represent $NO_X$ RACT for 2008 8-hour ozone NAAQS implementation purposes; and in an effort to clean-up its SIP, removes carbon monoxide (CO) emissions limits for combustion turbines that no longer exist in the District of Columbia. This action is being taken under the Clean Air Act (CAA).

**DATES:** This final rule is effective on March 25, 2020.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2019–0207. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gregory Becoat, 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) 814–2036. Mr. Becoat can also be reached via electronic mail at *becoat.gregory@epa.gov.*

**SUPPLEMENTARY INFORMATION:** On August 29, 2018, and as supplemented on December 19, 2018, the District of Columbia's Department of Energy and Environment (DOEE) submitted a SIP revision to address all of the RACT requirements for $NO_X$ set forth by the CAA under the 2008 ozone NAAQS. The SIP revision also included amendments to its $NO_X$ control regulations and an operating permit setting RACT for certain specific emissions units at one major stationary source of $NO_X$ (hereafter 2008 $NO_X$ RACT Submission).[1]

## I. Background

On August 29, 2018 and supplemented on December 19, 2018, DOEE submitted a SIP revision to address all the requirements of $NO_X$ RACT set forth by the CAA under the 2008 ozone NAAQS (the 2008 $NO_X$ RACT Submission). On September 11, 2019, EPA published a notice of proposed rulemaking (NPRM) for the District of Columbia's SIP revision. (84 FR 47914). Detailed information on the District's 2008 $NO_X$ RACT Submission and EPA's review of the submission, can be found in the NPRM, which is also available on line at *www.regulations.gov,* Docket number EPA–R03–OAR–2019–0207.

[1] Also, on August 29, 2018 the District of Columbia submitted a separate SIP revision to address all the volatile organic compound (VOC) RACT requirements under the 2008 ozone NAAQS both for VOC sources covered by a control techniques guideline (CTG) and for other major stationary sources of VOC. This VOC RACT SIP revision is the subject of a separate rulemaking action. See 84 FR 54507, October 10, 2019.

## II. Summary of the District of Columbia's SIP Revision and EPA's Proposed Actions

### *A. New Emissions Limits for Combustion Turbines and Conforming Amendments*

The District of Columbia's $NO_X$ RACT SIP revision contained a final rule amending Title 20 of the District of Columbia Municipal Regulations (20 DCMR), Chapter 8, section 805.4 to amend the District of Columbia's $NO_X$ emission limits for combustion turbines and for any duct burners or associated heat recovery steam generators.

The amendments also included the addition of conforming definitions and abbreviations to the applicability provisions of section 805.1 to clarify that any associated heat recovery steam generators and duct burners were subject to section 805. Further, the amendments amend section 199 ''Definitions And Abbreviations'' to add definitions for new terms found in section 805.4.

After evaluating the SIP revision submittal, EPA proposed finding that the District's SIP revision satisfied the 2008 8-hour ozone NAAQS RACT requirements for $NO_X$. EPA found that the RACT determination provided by the District of Columbia is reasonable and appropriately considered technically and economically feasible controls while setting lowest achievable limits to adequately meet RACT under the 2008 8-hour ozone NAAQS for the categories of combustion turbines. EPA found that the District of Columbia has set presumptive RACT emissions limits for stationary combustion turbines for existing major stationary sources of $NO_X$ in the District of Columbia. EPA found that revising section 805.4 with the regulatory changes of the 2008 $NO_X$ RACT Submission strengthens the SIP with respect to oil-fired stationary combustion turbines of greater than 100 million British Thermal Units per hour (mmBTU per hour) heat input capacity and can be approved.

### *B. District of Columbia Water Blue Plains Advanced Wastewater Treatment Plant Source Specific $NO_X$ RACT*

The District of Columbia's $NO_X$ RACT SIP Submission included an evaluation of a permit issued by the DOEE to District of Columbia Water and Sewer Authority (DC Water) to construct and operate new biosolids handling facilities located at the Blue Plains Advanced Wastewater Treatment Plant (BPAWTP), which included four sources that are subject to the $NO_X$ RACT source specific determination requirements.

After evaluating the SIP revision submittal, EPA proposed finding that the RACT determination provided by the District of Columbia is reasonable and appropriately considered technically and economically feasible controls while setting lowest achievable limits to adequately meet RACT on a source specific basis under the 2008 8-hour ozone NAAQS for the BPAWTP emissions units. EPA concluded that source specific limits for the digester gas-fired auxiliary boiler and three flares are appropriate because the source category, related to municipal wastewater treatment, is unique within the District of Columbia. These limits were set on technology consistent with lowest achievable emission rate (LAER) which essentially reflects the lowest rate in any SIP or achieved in practice and are based upon the actual performance of the emissions units.

*C. Certification of Other Provisions in Section 805*

The District of Columbia's $NO_X$ RACT SIP Submission included a certification that the $NO_X$ RACT controls as amended in 2004 for implementation and approval into the District of Columbia SIP under the 1-hour and the 1997 ozone NAAQS are still RACT for purposes of meeting requirements for the 2008 8-hour ozone NAAQS, except for those sources for which the District of Columbia submitted new $NO_X$ RACT emissions limits in the 2008 $NO_X$ RACT Submission. These sources are: (1) Combustion turbines; and (2) the digester gas equipment at one major $NO_X$ source regarding the BPAWTP.

After evaluating the SIP revision submittal, EPA proposed finding that the previously adopted RACT controls continue to represent $NO_X$ RACT for the 2008 ozone NAAQS as required under sections 184(b)(2) and 182(f) except for the combustion turbine source-category and the source-specific limits at the BPAWTP.

*D. Setting Stricter $NO_X$ Emissions Limits for Combustion Turbines and Removing CO Emissions Limits for Combustion Turbines Over 100 mmBTU per Hour*

As explained in more detail in the NPRM, since 1990, the District of Columbia implemented numerous RACT requirements under the 1-hour and the 1997 ozone standards. Many of those requirements are contained in section 805 of Title 20 of the DCMR. The District of Columbia's current $NO_X$ RACT SIP Submission included an amendment to section 805.4 to remove a $NO_X$ emissions limit for oil-fired, combustion turbines with a heat input over 100 mmBTU per hour and replace it with a lower $NO_X$ limit for any combustion turbine with heat input rating greater than 50 mmBTU per hour burning any combination of liquid fuels. As detailed in the NPRM, the revised section 805.4 sets a lower $NO_X$ emissions limits for a greater universe of combustion turbines by lowering the capacity threshold of eligible units and expanding coverage of the types of fuel burned by those units. The revised section 805.4 also removes the exemption for low utilization turbines—those operated for less than 500 hours per year. Thus, the $NO_X$ limits set in section 805.4 now apply to these sources.

The NPRM also explained that the revised section 805.4, in an effort to clean-up its SIP, removed CO emissions limits for combustion turbines of over 100 mmBTU heat input burning fuel oil because there are no longer any units over 100 mmBTU per hour heat input in the District of Columbia. The subject CO limits were initially included in the ozone RACT to ensure optimum combustion to reduce $NO_X$ emissions. See 64 FR 9272 (February 25, 1999) and 65 FR 81369 (December 26, 2000). As there are no longer any sources in the District of Columbia subject to the CO limits at issue, the revised section 805.4 will not result in relaxing an existing emissions limitation applicable to any existing emissions unit at a major stationary source.

On the potential impact on $NO_X$ emissions due to the removal of the subject CO limits and the siting of any new combustion turbines of over 100 mmBTU heat input burning fuel oil in the District of Columbia, the NPRM went on to note that for any such combustion turbines with a potential to emit increase over 25 tons per year (tpy) of $NO_X$, the District of Colombia's SIP major source permitting program would require LAER and offsetting $NO_X$ emissions at a ratio of 1.3:1. See 20 DCMR Chapter 2, section 204 (Permit Requirements for Sources Affecting Non-attainment Areas), which is approved into the SIP at 40 CFR 52.470(c).

For the reasons detailed in the NPRM, EPA proposed finding that the lower $NO_X$ limits applicable to stationary combustion turbines burning any combination of liquid fuels along with the lower regulatory threshold and the removal of the CO limits for combustion turbines of over 100 mmBTU heat input burning fuel oil will be as protective of the ozone and $NO_X$ NAAQS and not hinder or impede attainment or maintenance of the those NAAQS in the District of Columbia as required by section 110(l) of the CAA.

Finally, the NPRM addressed the removal of the CO limits for combustion turbines of over 100 mmBTU heat input burning fuel oil in relationship to the CO NAAQS. The NPRM detailed that there are no longer any such units in the District of Columbia and that the CO levels in the Washington-Arlington-Alexandria (DC–VA–MD) area are well below the CO NAAQS. Further, in the event that any new stationary combustion turbine or turbines are located within the District of Columbia in the future that are a major stationary source of CO or would constitute a significant net emissions increase at an existing major stationary source of CO (or nitrogen dioxide), the new major stationary combustion turbine would be required to obtain a prevention of significant deterioration (PSD) permit under 40 CFR 52.21 and 52.499. The PSD permit would require best available control technology.

For the reasons detailed in the NPRM, EPA proposed finding that removal of the CO limits will not hinder or impede attainment or maintenance of the CO NAAQS in the District of Columbia as required by section 110(l) of the CAA.

*E. Conclusion*

In the NPRM, EPA proposed finding that the District of Columbia's 2008 $NO_X$ RACT Submission was reasonable and demonstrated that the District had adopted air pollution control strategies that represent RACT for the purposes of compliance with the 2008 8-hour ozone standard for all major stationary sources of $NO_X$ in the District in accordance with CAA requirements and the 2008 Ozone SIP Requirements Rule (80 FR 12264), and the latest available information. EPA proposed finding that the District of Columbia's SIP implements RACT for purposes of the 2008 ozone NAAQS with respect to all existing major stationary sources of $NO_X$.

EPA also proposed finding that the revisions to previously SIP approved RACT requirements would result in equivalent or additional reductions in $NO_X$ emissions and should not interfere with any applicable requirement or reasonable further progress with the NAAQS or interfere with other applicable CAA requirements as required by section 110(l) of the CAA. EPA received comments which are addressed in Section III of this rulemaking action.

## III. Response to Comments

EPA received comments from two anonymous commenters during the comment period for the proposed rulemaking action.

*Comment 1:* A commenter stated: ''No! We do not want weakening of air control standards, which are detrimental to human health and survival of the human race. EPA's job is ENVIRONMENTAL PROTECTION, as your name says. Why are you commenting on COSTS TO THE PUBLIC? Your name is not ECONOMIC PROTECTION AGENCY. We do not care what your organization thinks about SAVING PEOPLE MONEY. Your job is to do what is best for our ENVIRONMENT. We are tired of hearing about how you are involved in protecting our pocketbooks. I am demanding that you do your job, and protect our air, water and land. I am demanding that you stop letting our President damage our country. Do your duty to live up to the NAME ON YOUR DOOR.''

*Response 1:* Portions of this comment are not relevant to EPA's rulemaking action regarding the District of Columbia's 2008 $NO_X$ RACT Submission and need not be addressed. The Administrative Procedures Act requires that ''that the agency . . . respond to 'relevant' and 'significant' public comments.'' *City of Portland* v. *E.P.A.,* 507 F.3d 706 (D.C. Cir. 2007). While we recognize the commenter's concern for environmental protection, it is important to note that EPA's approval of the District of Columbia's 2008 $NO_X$ RACT Submission is controlled by statutory and regulatory requirements. Among those requirements is the definition of RACT that requires an analysis of technical and economic feasibility. 40 CFR 51.100(o). It is also important to note that the approved 2008 $NO_X$ RACT SIP Revision does not weaken any existing environmental standard. By approving this SIP submittal, the required pollution controls for $NO_X$ from certain sources in the District of Columbia will remain the same or become more stringent, and consequently, approval of this SIP submittal should not interfere with any applicable requirement or reasonable further progress with the NAAQS or interfere with other applicable CAA requirements.

*Comment 2:* A commenter stated: ''While DC has successfully, through its state implementation plan (SIP), achieved marginal attainment of Nitrogen Oxides ($NO_X$) under the 2008 8-hour Ozone standard in 2019, the issue being raised is that with the implementation of Reasonably Available Control Technology (RACT), Washington DC was only just now able to achieve a standard of Ozone levels that was set eleven years ago. According to the EPA, in November of 2017, 2,646 counties across the United States were in attainment of the 70 parts per billion ozone level specified in the 2015 NAAQS (Govinfo 2018). This provides proof that attainment is achievable through available means and any other course of action knowingly puts American citizens health at risk. Though the U.S. has made great strides in reducing gasses to blame for ground level ozone such as nitrogen oxides, the health effects will remain a detriment to American citizens as long as it remains in the air. By not holding Washington DC to the 2015 8-hour ozone NAAQS standards, the government, in specific, the EPA is allowing at least 75 parts per billion of ground level ozone to damage the lungs of children resulting in aggravated asthma, which leads to a lower attendance in schools, and even premature deaths, which occur [more] in infants and the elderly (EPA 2018). RACT is available that will allow less Nitrogen Oxides to be emitted into the air, resulting in lower levels of ground level Ozone. Retrofitting the largest emitters of $NO_X$ will cost money, but the result would be clearer skies and healthier citizens who can then contribute to American society and its economy.''

*Response 2:* While EPA agrees that the District of Columbia must continue to take efforts in attaining and maintaining all ozone NAAQS (including the 2015 ozone NAAQS), it is important to note that District of Columbia is addressing only requirements related to the 2008 ozone NAAQS in this SIP revision, and that EPA has concluded that the District is currently meeting all requirements for $NO_X$ RACT set forth by the CAA under the 2008 ozone NAAQS. As previously discussed, the District of Columbia's 2008 $NO_X$ RACT Submission demonstrated that the District has adopted air pollution control strategies that represent RACT for the purposes of compliance with the 2008 8-hour ozone standard for all major stationary sources of $NO_X$ in the District in accordance with the CAA, the 2008 Ozone SIP Requirements Rule, and the latest available information.

*Comment 3:* A commenter stated: ''Although emissions limits are tied to power plant combustion turbines that are no longer in use and relevant, that should not end the EPA's push to lower CO emissions. The combustion turbines that the CO emission limits in this amendment refer to are ones that burn fuel oil at 100mmBTU per hour or more, compared to those in use which burn at 50mmBTU (**Federal Register** 2019). Turbine combustion and cogeneration technology has advanced to the point where we have reached previous emission limit goals. While this accomplishment is promising, halting CO limits because the emission output is lower should not be an option. CO emission limits should be seriously considered for stationary sources with turbine combustion and cogeneration technology that utilizes turbines burning 50mmBTU of oil fuel per hour. The emissions may be less than what 100mmBTU turbines produce, but the lowest achievable emission rate (LAER) should be considered and emission limits implemented once more (EPA 2007). By not striving for the lowest available emission rates for both Nitrogen Oxides and Carbon Monoxide the EPA is allowing citizens to be exposed to an invisible threat that leads to higher rates of asthma, upper respiratory infections, cardiovascular diseases, and weighs heavily on the economic output of a plethora of Americans The cons far outweigh the pros in regards to the two issues presented above, and should be amended in a new rendition of Washington DCs State Implementation Plan.''

*Response 3:* As noted in the comment, there are no longer any combustion turbine units over 100 mmBTU per hour heat input in the District of Columbia, thus the deletion of CO emissions limits for such sources will not result in relaxing an existing emissions limitation applicable to any existing emissions unit at a major stationary source. As explained in the NPRM, the current CO levels in the Washington-Arlington-Alexandria, DC–VA–MD area are well below the CO NAAQS specified in 40 CFR 50.8. The maximum value recorded at any ambient air quality monitor in the Washington-Arlington-Alexandria, DC–VA–MD core based statistical area is only 27 percent (2.6 ppm CO) of the 9.5 ppm (8-hour average) CO NAAQS and less than 8 percent of the 35 ppm (1-hour average) CO NAAQS. It is, however, important to note that although there are no longer any units over 100 mmBTU per hour heat input in the District of Columbia, the CO NAAQS must continue to be met even with the removal of CO limits from section 805. In the event that the District of Columbia is found to be no longer attaining the CO NAAQS, a process would begin such that the District would implement SIP-approved contingency measures outlined in the Carbon Monoxide Maintenance Plan for the Metropolitan Washington, DC Area. See 70 FR 16958 (April 4, 2005).

Additionally, in the event that any new stationary combustion turbine or turbines are located within the District in the future that are a major stationary

source of CO or would constitute a significant net emissions increase at an existing major stationary source of CO (or nitrogen dioxide), the new major stationary combustion turbine would be required to obtain a prevention of significant deterioration (PSD) permit under 40 CFR 52.21 and 52.499. The PSD permit would require best available control technology. EPA finds that removal of the CO limits will not hinder or impede attainment or maintenance of the CO NAAQS in the District of Columbia.

In response to the commenter's concern that the area is not striving for the lowest available emission rates for nitrogen oxides, we note that as a nonattainment area for ozone, the District of Columbia is required to follow nonattainment new source review requirements for new major stationary sources of $NO_X$ or volatile organic compounds, which includes a LAER requirement.

## IV. Final Action

EPA is approving the District of Columbia's 2008 RACT Submission on the basis that the District of Columbia has met the $NO_X$ RACT requirements for the 2008 8-hour ozone NAAQS per CAA sections 182(f) and 184(b)(2). EPA is also approving source-specific $NO_X$ RACT determinations for the BPAWTP and the amendments to sections 199.1, 199.2, 805.1 and 805.4 of 20 DCMR.

The District of Columbia's SIP revision is based on: (1) Certification that for certain categories of sources, previously adopted RACT controls in the District of Columbia's SIP that were approved by EPA under the 1-hour ozone NAAQS and 1997 ozone NAAQS continue to be technically and economically feasible controls, and continue to represent RACT for the 2008 ozone NAAQS implementation purposes; (2) the adoption of new or more stringent regulations or controls into the District of Columbia's SIP that represent presumptive RACT control levels for certain categories of sources; (3) source specific emissions limits set for flares and an auxiliary boiler serving the BPAWTP and (4) the removal of CO emission limits for combustion turbines of over 100 mmBTU heat input burning fuel oil. EPA is approving the removal, in accordance with section 110 of the CAA, of provisions setting carbon monoxide emission limits for a category of stationary combustion turbines.

## V. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing for certain categories of $NO_X$ emissions at major stationary sources of $NO_X$ emissions to incorporate by reference both regulations adopted by the District of Columbia and source-specific RACT determinations under the 2008 8-hour ozone NAAQS found within a preconstruction permit. The amendments to and revision of 20 DCMR Chapters 1 and 8 are specified in Section V.A. of this preamble; the source specific information is provided in Section V.B. of this preamble.

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).

### *A. Amendments to 20 District of Columbia Municipal Regulations (20 DCMR)*

1. Specifically, EPA is incorporating by reference into 40 CFR 52.470(c): Amendments to 20 District of Columbia Municipal Regulations, Chapter 1, sections 199.1 and 199.2. These amendments include adding definitions in section 199.1 for ''Duct burner,'' ''Gaseous fuel,'' Heat recovery steam generator,'' ''Liquid fuel,'' ''Natural gas,'' and ''Stationary combustion turbine,'' and include an amendment to section 199.2 to define the abbreviation ''ppmvd.''

2. Amendments to 20 District of Columbia Municipal Regulations, Chapter 8, sections 805.1 and 805.4. These amendments would include:

a. Revising sections 805.1(a) and (a)(1);

b. Revising section 805.1(a)(1) to remove $NO_X$ emissions limits for stationary combustion turbines which have an energy input capacity of one hundred million (100,000,000) BTU and adding $NO_X$ emissions limitations for any stationary combustion turbine which commenced construction, modification, or reconstruction after February 18, 2005 and has a heat input rating greater than fifty million (50,000,000) BTU per hour;

c. Revising Section 805.1(a)(2) to remove CO emissions limits for stationary combustion turbines which have an energy input capacity of one hundred million (100,000,000) BTU per hour and adding $NO_X$ emissions limitations for any stationary combustion turbine which commenced construction, modification, or reconstruction on or before February 18, 2005 and has a heat input rating greater than fifty million (50,000,000) BTU per hour;

d. Adding a new section 805.1(a)(3) to set $NO_X$ emission limitations for any stationary combustion turbines with a heat input rating less than or equal to fifty million (50,000,000) BTU per hour;

e. Adding a new section 805.1(a)(4) to set $NO_X$ emission limitations for certain stationary combustion turbines with a heat input rating less than or equal to ten million (10,000,000) BTU per hour;

f. Adding new sections 805.1(a)(5) through (7) to add new restrictions on stationary combustion turbines;

g. Amending section 805.4(b) to replace requirements for stationary combustion turbines with an energy input capacity of one hundred million (100,000,000) BTU per hour or greater which is operated for less than five hundred (500) hours per year with testing and continuous monitoring requirements for any person required to comply with section 805.4.

These regulatory changes to sections 199 and 805 were adopted on November 27, 2018 and effective on the date of publication, December 14, 2018, in the District of Columbia Register (Vol. 65, Number 51, page 013499, December 14, 2018).

### *B. Source Specific Provisions for the BPAWTP*

Specifically, EPA is incorporating by reference into 40 CFR 52.470(d) certain portions of Permit (No. 6372–C2/O) to Construct and Operate New Biosolids Handling Facilities issued to District of Columbia Water and Sewer Authority as redacted by the District of Columbia:

1. The first paragraph citing the pertinent permitting regulations and listing (redacted) the following significant components: One (1) Auxiliary Boiler (AB) rated at 62.52 mmBTU per hour (HHV) heat input, firing DG, One (1) Siloxane Destruction Flare (SF) rated at 6.14 MMBTU per hour heal input, firing DG; and Two (2) Emergency Flares rated at 126 mmBTU per hour heat input each, firing DG.

2. The $NO_X$ emissions limits listed in the table found in permit condition ''j.'' for the Auxiliary Boiler (AB), Siloxane Destruction Flare (SF) and Two (2) Emergency Flares. The hourly $NO_X$ emission limits for the Auxiliary Boiler (AB), Siloxane Destruction Flare (SF) and Two (2) Emergency Flares listed in Table 2 (as redacted) found under Condition III.

3. Conditions III.b.1.A.; III.b.3. A. and B.; III.b.3. C.i., iii and iv.; III.b.3.D.; III.b.3.E. except that relating to carbon monoxide/CO; III.b.3.F. except ''and CO''; III.b.3.G, iv. and v. except the provision ''Failure to demonstrate

compliance through the testing may result in enforcement action.''; III.b.4.A.; III.b.4.B. iv. and v.; III.b.5. as redacted to strike ''in addition to complying with Condition II(f)''; III.d., III.d.1.A; III.d.2.D; III.d.3.A. only the portion ''Within 60 days of initial startup and once every five years thereafter, the Permittee shall conduct a Department-approved compliance source test at multiple loads of EF-l, EF–2, and SF in accordance with 40 CFR 60.8 or a similar protocol acceptable to the Department, to demonstrate compliance with the emissions limitations contained in Condition III(d)(1) of this permit;'' III.d.3.B as redacted to exclude ''though additional testing may be required at other times pursuant to Condition II(d)(2)''; III.d.3.C. (i), (iii) and (iv); III.d.3.D.; III.d.3.H.(iv); III.d.3.H.(v) except ''Failure to demonstrate compliance through the test may result in enforcement action.''; III.d.4.A. except ''including records of visual inspections,''; III.d.4.B. (ii) except ''and CO''; III.d.4.B. (iv); and, III.d.5.A. as redacted to exclude ''in addition to complying with Condition II(f).''

4. This permit was issued April 20, 2018.

## VI. Statutory and Executive Order Reviews

### *A. General Requirements*

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 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 it is not a significant action 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 rule 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.

### *B. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

### *C. Petitions for Judicial Review*

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 24, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action, regarding the $NO_X$ RACT SIP for the District of Columbia under the 2008 ozone NAAQS, 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, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: January 21, 2020.

**Cosmo Servidio,**

*Regional Administrator, Region III.*

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 J—District of Columbia

■ 2. Amend § 52.470 by:

■ a. In paragraph (c) table, revising the entries ''Section 199'' and ''Section 805''; and

■ b. In paragraph (d), adding an entry for ''Blue Plains Advanced Wastewater Treatment'' at the end of the table.

The revisions and addition read as follows:

### § 52.470 Identification of plan.

* * * * *

(c)* * *

EPA-APPROVED REGULATIONS AND STATUTES IN THE DISTRICT OF COLUMBIA SIP

| State citation | Title/subject | State effective date | EPA approval date | Additional explanation |
|---|---|---|---|---|
| **District of Columbia Municipal Regulations (DCMR), Title 20—Environment** | | | | |
| **Chapter 1 General** | | | | |
| * | * | * | * | * |
| Section 199 | Definitions and Abbreviations. | 12/14/18 | 2/24/20 [*Insert **Federal Register** citation*]. | Revised Sections 199.1 and 199.2. Added six definitions to Section 199.1 and an abbreviation for ''ppmvd'' to read ''(Parts Per Million by Volume Dry Basis)'' to Section 199.2. Prior Approval was 5/1/17. |
| * | * | * | * | * |
| **Chapter 8 Asbestos, Sulfur and Nitrogen Oxides** | | | | |
| * | * | * | * | * |
| Section 805 | Reasonably Available Control Technology for Major Stationary Sources of Oxides of Nitrogen. | 12/14/18 | 2/24/20 [*Insert **Federal Register** citation*]. | Revised paragraphs 805.1(a), 805.1(a)(1), 805.1(a)(2) and 805.4(b). Added paragraphs 805.1(a)(3) through (7). |
| * | * | * | * | * |

(d) * * *

EPA-APPROVED DISTRICT OF COLUMBIA SOURCE-SPECIFIC REQUIREMENTS

| Name of source | Permit No. | State effective date | EPA approval date | Additional explanation |
|---|---|---|---|---|
| * | * | * | * | * |
| Blue Plains Advanced Wastewater Treatment Plant. | No. 6372–C2/O | 04/20/18 | 2/24/20 [*Insert **Federal Register** citation*]. | See § 52.479(a) for further explanation. |

* * * * *

■ 3. Add § 52.479 to read as follows:

**§ 52.479 Source-specific requirements.**

(a) Approval of source-specific requirements for the Blue Plains Advanced Wastewater Treatment Plant includes EPA incorporating by reference into § 52.470(d) certain redacted portions of Permit No. 6372–C2/0 approved by the District of Columbia on April 20, 2018 to Construct and Operate New Biosolids Handling Facilities issued to the District of Columbia Water and Sewer Authority and as approved on March 25, 2020.

(1) Specifically, EPA is incorporating by reference into § 52.470(d) certain portions of Permit No. 6372–C2/O to Construct and Operate New Biosolids Handling Facilities issued to District of Columbia Water and Sewer Authority as redacted by the District of Columbia:

(i) The first paragraph citing the pertinent permitting regulations and listing (redacted) the following significant components: One (1) Auxiliary Boiler (AB) rated at 62.52 mmBTU per hour (HHV) heat input, firing DG, One (1) Siloxane Destruction Flare (SF) rated at 6.14 MMBTU per hour heal input, firing DG; and Two (2) Emergency Flares rated at 126 mmBTU per hour heat input each, firing DG.

(ii) The $NO_X$ emissions limits listed in the table found in permit condition ''j.'' for the Auxiliary Boiler (AB), Siloxane Destruction Flare (SF) and Two (2) Emergency Flares. The hourly $NO_X$ emission limits for the Auxiliary Boiler (AB), Siloxane Destruction Flare (SF) and Two (2) Emergency Flares listed in Table 2 (as redacted) found under Condition III.

(iii) Conditions III.b.1.A.; III.b.3. A. and B.; III.b.3. C.i., iii and iv.; III.b.3.D.; III.b.3.E. except that relating to carbon monoxide/CO; III.b.3.F. except ''and CO''; III.b.3.G, iv. and v. except the provision ''Failure to demonstrate compliance through the testing may result in enforcement action.''; III.b.4.A.; III.b.4.B. iv. and v.; III.b.5. as redacted to strike ''in addition to complying with Condition II(f)''; III.d., III.d.1.A; III.d.2.D; III.d.3.A. only the portion ''Within 60 days of initial startup and once every five years thereafter, the Permittee shall conduct a Department-approved compliance source test at multiple loads of EF-l, EF–2, and SF in accordance with 40 CFR 60.8 or a similar protocol acceptable to the Department, to demonstrate compliance with the emissions limitations contained in Condition III(d)(1) of this permit;'' III.d.3.B as redacted to exclude ''though additional testing may be required at other times pursuant to Condition II(d)(2)''; III.d.3.C. (i), (iii) and (iv); III.d.3.D.; III.d.3.H.(iv); III.d.3.H.(v)

except ''Failure to demonstrate compliance through the test may result in enforcement action.''; III.d.4.A. except ''including records of visual inspections,''; III.d.4.B. (ii) except ''and CO''; III.d.4.B. (iv); and, III.d.5.A. as redacted to exclude ''in addition to complying with Condition II(f)''.

(2) This permit was issued April 20, 2018.

(b) [Reserved]

[FR Doc. 2020–02006 Filed 2–21–20; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R10–OAR–2019–0635, FRL–10005–18–Region 10]**

## Air Plan Approval; Washington; Revised Public Notice Provisions and Other Miscellaneous Revisions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving revisions to the general air quality regulations submitted by the Washington Department of Ecology (Ecology). The four categories of revisions to the State Implementation Plan (SIP) approved in this action are: revising the adoption by reference date for Federal regulations cross referenced in the State regulations; revising the definition of volatile organic compounds (VOC) to match changes to the Federal definition; updating public involvement procedures for the new source review air permitting program to reflect changes to the Federal requirements, allowing greater use of electronic notice and electronic access to information; and correcting typographical errors and minor wording changes for clarity.

**DATES:** This final rule is effective March 25, 2020.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–R10–OAR–2019–0635. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information the disclosure of which 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 at *https://www.regulations.gov,* or please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Jeff Hunt, EPA Region 10, 1200 Sixth Avenue—Suite 155, Seattle, WA 98101, at (206) 553–0256, or *hunt.jeff@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document, wherever ''we,'' ''us,'' or ''our'' is used, it means the EPA.

### I. Background

On December 4, 2019, we proposed to approve updates to Ecology's general air quality regulations, submitted on November 5, 2019, as they applied to Ecology's direct jurisdiction and the jurisdiction of the Benton Clean Air Agency (84 FR 66363). We note that not all the updated general air quality regulations contained in Chapter 173–400 Washington Administrative Code (WAC) were submitted for approval as part of the November 5, 2019 SIP revision. Specifically, subsections WAC 173–400–030(30) [subsequently renumbered to (32)], WAC 173–400–030(36) [subsequently renumbered to (38)], and WAC 173–400–040(2) were not submitted by Ecology as part of this action. For those subsections, the versions previously approved by the EPA remain in the SIP. The comment period for the proposal ended January 3, 2020, and we received no comments.

### II. Final Action

We are approving and incorporating by reference in the Washington SIP at 40 CFR 52.2470(c) certain revisions to the following Chapter 173–400 WAC sections submitted on November 5, 2019:

- WAC 173–400–025, 173–400–030, 173–400–040, 173–400–050, 173–400–171, and 173–400–740, State effective September 16, 2018; and
- WAC 173–400–060 and 173–400–105, State effective November 25, 2018.

This approval is consistent with the exceptions requested by the State in the November 5, 2019 submittal as described in the proposal for this action and set forth in the amendments to 40 CFR part 52 below. We are also correcting a typographical error from a previous approval. In our November 17, 2015 final approval of changes to the Washington SIP, we approved WAC 173–400–081 (State effective April 1, 2011) to apply in Benton Clean Air Agency's jurisdiction. In a subsequent final action published October 6, 2016 (81 FR 69389), our prior approval of WAC 173–400–081 was inadvertently deleted from 40 CFR 52.2470(c), Table 4—Additional Regulations Approved for Benton Clean Air Agency (BCAA) Jurisdiction. We are amending 40 CFR 52.2470 to correct this error.

### III. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, we are finalizing the incorporation by reference as described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials generally available through *https://www.regulations.gov* and at the EPA Region 10 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 the EPA for inclusion in the SIP, have been incorporated by reference by the 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 the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[1]

### IV. Statutory and Executive Order Review

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, the 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 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.*);

[1] 62 FR 27968 (May 22, 1997).

• 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 it does not address technical standards; and

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

The SIP is not approved to apply on any Indian reservation land in Washington except as specifically noted below and is also not approved to apply in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Washington's SIP is approved to apply on non-trust land within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the Puyallup Tribe of Indians Settlement Act of 1989, 25 U.S.C. 1773, Congress explicitly provided State and local agencies in Washington authority over activities on non-trust lands within the 1873 Survey Area. Consistent with EPA policy, the EPA provided a consultation opportunity to the Puyallup Tribe in a letter dated March 21, 2018.

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 24, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: January 28, 2020.

**Chris Hladick,**

*Regional Administrator, Region 10.*

For the reasons set forth in the preamble, 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 WW—Washington

■ 2. Amend § 52.2470(c):

■ a. In Table 2 by:

■ i. Revising the entries ''173–400–025'' and ''173–400–030'';

■ ii. Adding the entry ''173–400–030(30) and (36)'' in numerical order;

■ iii. Revising the entry ''173–400–040'';

■ iv. Adding the entry ''173–400–040(2)'' in numerical order; and

■ v. Revising the entries ''173–400–050'', ''173–400–060'', ''173–400–105'', ''173–400–171'', and ''173–400–740''; and

■ b. In Table 4 under the heading ''Washington Administrative Code, Chapter 173–400—General Regulations for Air Pollution Sources'' by:

■ i. Revising the entries ''173–400–025'' and ''173–400–030'';

■ ii. Adding the entry ''173–400–030(30) and (36)'', in numerical order;

■ iii. Revising the entry ''173–400–040'';

■ iv. Adding the entry ''173–400–040(2)'' in numerical order;

■ v. Revising the entries ''173–400–050'' and ''173–400–060'';

■ vi. Adding the entry ''173–400–081'' in numerical order; and

■ vii. Revising the entries ''173–400–105'' and ''173–400–171''.

The revisions and additions read as follows:

**§ 52.2470 Identification of plan.**

* * * * *

(c) * * *

TABLE 2—ADDITIONAL REGULATIONS APPROVED FOR WASHINGTON DEPARTMENT OF ECOLOGY (ECOLOGY) DIRECT JURISDICTION

[Applicable in Adams, Asotin, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, San Juan, Stevens, Walla Walla, and Whitman counties, excluding facilities subject to Energy Facilities Site Evaluation Council (EFSEC) jurisdiction, Indian reservations (excluding non-trust land within the exterior boundaries of the Puyallup Indian Reservation), and any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. These regulations also apply statewide for facilities subject to the applicability sections of WAC 173–400–700, 173–405–012, 173–410–012, and 173–415–012]

| State citation | Title/subject | State effective date | EPA approval date | Explanations |
|---|---|---|---|---|
| **Washington Administrative Code, Chapter 173–400—General Regulations for Air Pollution Sources** | | | | |

TABLE 2—ADDITIONAL REGULATIONS APPROVED FOR WASHINGTON DEPARTMENT OF ECOLOGY (ECOLOGY) DIRECT JURISDICTION—Continued

[Applicable in Adams, Asotin, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, San Juan, Stevens, Walla Walla, and Whitman counties, excluding facilities subject to Energy Facilities Site Evaluation Council (EFSEC) jurisdiction, Indian reservations (excluding non-trust land within the exterior boundaries of the Puyallup Indian Reservation), and any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. These regulations also apply statewide for facilities subject to the applicability sections of WAC 173–400–700, 173–405–012, 173–410–012, and 173–415–012]

| State citation | Title/subject | State effective date | EPA approval date | Explanations |
|---|---|---|---|---|
| * | * * | | * * | * * |
| 173–400–025 | Adoption of Federal Rules. | 9/16/18 | 2/24/20, [Insert **Federal Register** citation]. | |
| 173–400–030 | Definitions | 9/16/18 | 2/24/20, [Insert **Federal Register** citation]. | Except: 173–400–030(6); 173–400–030(32); 173–400–030(38); 173–400–030(45); 173–400–030(83); 173–400–030(89); 173–400–030(96); 173–400–030(97); 173–400–030(100); 173–400–030(103); 173–400–030(104). |
| 173–400–030 (30) and (36). | Definitions | 12/29/12 | 10/3/14, 79 FR 59653. | |
| * | * * | | * * | * * |
| 173–400–040 | General Standards for Maximum Emissions. | 9/16/18 | 2/24/20, [Insert **Federal Register** citation]. | Except: 173–400–040(2); 173–400–040(3); 173–400–040(5). |
| 173–400–040(2) | General Standards for Maximum Emissions. | 07/01/16 | 10/6/16, 81 FR 69385 | Except: 173–400–040(2)(c); 173–400–040(2)(d). |
| 173–400–050 | Emission Standards for Combustion and Incineration Units. | 9/16/18 | 2/24/20, [Insert **Federal Register** citation]. | Except: 173–400–050(2); 173–400–050(4); 173–400–050(5); 173–400–050(6). |
| 173–400–060 | Emission Standards for General Process Units. | 11/25/18 | February 24, 2020, [Insert **Federal Register** citation]. | |
| * | * * | | * * | * * |
| 173–400–105 | Records, Monitoring, and Reporting. | 11/25/18 | 2/24/20, [Insert **Federal Register** citation]. | |
| * | * * | | * * | * * |
| 173–400–171 | Public Notice and Opportunity for Public Comment. | 9/16/18 | 2/24/20, [Insert **Federal Register** citation]. | Except: The part of 173–400–171(3)(b) that says,<br>• "or any increase in emissions of a toxic air pollutant above the acceptable source impact level for that toxic air pollutant as regulated under chapter 173–460 WAC"; 173–400–171(3)(o); 173–400–171(12). |
| * | * * | | * * | * * |
| 173–400–740 | PSD Permitting Public Involvement Requirements. | 9/16/18 | 2/24/20, [Insert **Federal Register** citation]. | |
| * | * * | | * * | * * |

* * * * *

TABLE 4—ADDITIONAL REGULATIONS APPROVED FOR THE BENTON CLEAN AIR AGENCY (BCAA) JURISDICTION

[Applicable in Benton County, excluding facilities subject to Energy Facilities Site Evaluation Council (EFSEC) jurisdiction, Indian reservations and any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and facilities subject to the applicability sections of WAC 173–400–700, 173–405–012, 173–410–012, and 173–415–012]

| State/local citation | Title/subject | State/local effective date | EPA approval date | Explanations |
|---|---|---|---|---|
| * | * | * | * | * |
| **Washington Department of Ecology Regulations** | | | | |
| **Washington Administrative Code, Chapter 173–400—General Regulations for Air Pollution Sources** | | | | |
| 173–400–025 | Adoption of Federal Rules. | 9/16/18 | 2/24/20, [Insert **Federal Register** citation]. | |
| 173–400–030 | Definitions | 9/16/18 | 2/24/20, [Insert **Federal Register** citation]. | Except: 173–400–030(6); 173–400–030(32); 173–400–030(38); 173–400–030(40); 173–400–030(41); 173–400–030(45); 173–400–030(83); 173–400–030(89); 173–400–030(96); 173–400–030(97); 173–400–030(100); 173–400–030(103); 173–400–030(104). |
| 173–400–030 (30) and (36). | Definitions | 12/29/12 | 10/3/14, 79 FR 59653. | |
| * | * | * | * | * |
| 173–400–040 | General Standards for Maximum Emissions. | 9/16/18 | 2/24/20, [Insert **Federal Register** citation]. | Except: 173–400–040(2); 173–400–040(3); 173–400–040(4); 173–400–040(5); 173–400–040(9). |
| 173–400–040(2) | General Standards for Maximum Emissions. | 07/01/16 | 10/6/16, 81 FR 69385 | Except: 173–400–040(2)(c); 173–400–040(2)(d). |
| 173–400–050 | Emission Standards for Combustion and Incineration Units. | 9/16/18 | 2/24/20, [Insert **Federal Register** citation]. | Except: 173–400–050(2); 173–400–050(4); 173–400–050(5); 173–400–050(6). |
| 173–400–060 | Emission Standards for General Process Units. | 11/25/18 | 2/24/20, [Insert **Federal Register** citation]. | |
| * | * | * | * | * |
| 173–400–081 | Startup and Shutdown | 4/1/11 | 11/17/15, 80 FR 71695 | |
| * | * | * | * | * |
| 173–400–105 | Records, Monitoring and Reporting. | 11/25/18 | 2/24/20, [Insert **Federal Register** citation]. | |
| * | * | * | * | * |
| 173–400–171 | Public Notice and Opportunity for Public Comment. | 9/16/18 | 2/24/20, [Insert **Federal Register** citation]. | Except: The part of 173–400–171(3)(b) that says,<br>• "or any increase in emissions of a toxic air pollutant above the acceptable source impact level for that toxic air pollutant as regulated under chapter 173–460 WAC"; 173–400–171(3)(o); 173–400–171(12). |
| * | * | * | * | * |

* * * * *

[FR Doc. 2020–02890 Filed 2–21–20; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R08–OAR–2019–0419; FRL–10004–97–Region 8]**

## Approval and Promulgation of Implementation Plans; Infrastructure Requirements for the 2015 Ozone National Ambient Air Quality Standards; Wyoming

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is acting on multiple elements of State Implementation Plan (SIP) revisions from the State of Wyoming to demonstrate that the State meets infrastructure requirements of Clean Air Act (CAA) section 110(a) for the 2015 ozone National Ambient Air Quality Standard (NAAQS). Section 110(a) of the CAA requires that each state submit a SIP for the implementation, maintenance and

enforcement of each NAAQS promulgated by the EPA.

**DATES:** This rule is effective on March 25, 2020.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2019–0419. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *http://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Clayton Bean, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD–IO, 1595 Wynkoop Street, Denver, Colorado, 80202–1129, (303) 312–6143, *bean.clayton@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document ''we,'' ''us,'' and ''our'' means the EPA.

## I. Background

On March 12, 2008, the EPA promulgated a new NAAQS for ozone, revising the levels of primary and secondary 8-hour ozone standards from 0.08 parts per million (ppm) to 0.075 ppm (73 FR 16436). More recently, on October 1, 2015, the EPA promulgated and revised the NAAQS for ozone, further strengthening the primary and secondary 8-hour standards to 0.070 ppm (80 FR 65292). The October 1, 2015 standards are known as the 2015 ozone NAAQS.

Section 110(a)(1) of the CAA directs each state to make an infrastructure SIP submission to the EPA within 3 years of promulgation of a new or revised NAAQS. Infrastructure requirements for SIPs are provided in section 110(a)(1) and (2) of the CAA. Section 110(a)(2) lists the specific infrastructure elements that a SIP must contain or satisfy. The elements that are the subject of this action are described in detail in our notice of proposed rulemaking (NPRM) published on December 4, 2019 (84 FR 66352) for the State of Wyoming's infrastructure SIP revision, submitted to the EPA on January 3, 2019.

## II. Response to Comments

Comments on our December 4, 2019 NPRM were due on or before January 3, 2020. The EPA received two comments. The first comment was supportive of the proposed action. The second comment is discussed below.

*Comment:* The commenter appears to oppose approval of Wyoming's infrastructure SIP submission on the basis that it ''would mean that Wyoming could build three new state dams,'' and that the EPA cannot confirm ''whether Wyoming has adequate regulations or authority or enforcement power in its SIP.'' The commenter also requests that the EPA ''check whether Wyoming has adequate funding to enforce its rules against powerful coal companies and the coal lobby of Wyoming'' and that EPA, ''disavow this SIP until all dams and hydroelectric power is rerouted to solar and wind power.''

*Response:* The commenter largely discusses subjects outside the scope of an infrastructure SIP action, and does not explain, nor provide a legal basis for disapproval. Although the commenter states that a determination of whether Wyoming has adequate regulations, authority, or enforcement power in its SIP should be based upon ''rerouting of power,'' the EPA notes that Wyoming's 2015 ozone NAAQS submittal was reviewed and found adequate to provide for the implementation, maintenance and enforcement of the subject NAAQS. Specifically, as thoroughly discussed in our analysis of the NPRM, Wyoming's SIP-approved Legal Authority Document (37 FR 10832, May 31, 1972) (*see also* 40 CFR 52.2620(e), Rule No. (02) II; 41 FR 36652, Aug. 31, 1976) confirms that the State has adequate legal authority to enforce applicable laws, regulations and standards; to seek injunctive relief; and to prevent construction, modification, or operation of any stationary source at any location where emissions from such source will prevent the attainment or maintenance of a national standard or interfere with PSD requirements. Commenter has not identified any specific deficiencies in that finding or identified specific ways in which dams, hydroelectric, solar, or wind power would change that assessment.

Lastly, as to the commenter's request that the EPA check ''whether Wyoming has adequate funding to enforce its rules against powerful coal companies and the coal lobby of Wyoming,'' we note again that during our review of the State's submittal, we found that Wyoming does have adequate funding to carry out its SIP obligations and requirements. Specifically, and reiterating our analysis of Wyoming's submittal, the State receives CAA sections 103 and 105 grant funds through its Performance Partnership Agreement (PPA) along with required state matching funds to provide the funding necessary to carry out Wyoming's SIP requirements. Wyoming's PPA with the EPA (available for review in the docket) documents resources needed to carry out agreed upon environmental program goals, measures, and commitments, including developing and implementing appropriate SIPs for all areas of the State. The EPA and Wyoming annually update these grant commitments based on current SIP requirements, air quality planning, and applicable requirements related to the NAAQS. Furthermore, Wyoming Air Quality Standards and Regulations (WAQSR) Chapter 6, section 2(a)(v), Permit for construction, modification, operation, requires the owner and operator of each new major source or major modification to pay a fee sufficient to cover the cost of reviewing and acting on permit applications. Collectively, these WAQSR rules and PPA commitments provide satisfactory evidence that the State has adequate funding and legal authority to carry out the SIP and related issues. This funding and legal authority extends to all regulated emission sources, independent of any specific industry—be it the coal industry or any other CAA regulated industry.

## III. Final Action

The EPA is approving the following CAA section 110(a)(2) infrastructure elements of Wyoming's January 3, 2019 infrastructure SIP submission for the 2015 ozone NAAQS: (A), (B), (C), (D)(i)(II) Prong 3 Interstate transport—prevention of significant deterioration, (D)(ii), (E), (F), (G), (H), (J), (K), (L) and (M). The EPA is not taking action at this time on (D)(i)(I) Prong 1 Interstate transport—significant contribution, and (D)(i)(I) Prong 2 Interstate transport—interference with maintenance; we intend to address (D)(i)(I) Prongs 1 and 2 in a separate, future action.

Finally, the EPA is also disapproving element (D)(i)(II) Prong 4 Interstate transport—visibility. CAA section 110(c)(1) provides that the EPA must promulgate a Federal Implementation Plan (FIP) within two years after finding that a state has failed to make a required submission or disapproving a state's SIP submission in whole or in part, unless the EPA approves a SIP revision correcting the deficiencies within that two-year period. As explained in our December 4, 2019 NPRM, this disapproval of prong 4 will not incur additional practical consequences for the State or the EPA because the

existing FIP [1] already in place, due to preexisting deficiencies, satisfies the prong 4 requirements for this NAAQS. The aforementioned actions are tabulated by section 110(a)(2) elements in Table 1 below.

TABLE 1—ACTION TAKEN ON WY INFRASTRUCTURE SIP SUBMITTAL

| 2015 Ozone NAAQS infrastructure SIP elements | Wyoming |
|---|---|
| (A): Emission Limits and Other Control Measures | A |
| (B): Ambient Air Quality Monitoring/Data System | A |
| (C): Program for Enforcement of Control Measures | A |
| (D)(i)(I): Prong 1 Interstate Transport—significant contribution | NA |
| (D)(i)(I): Prong 2 Interstate Transport—interference with maintenance | NA |
| (D)(i)(II): Prong 3 Interstate Transport—prevention of significant deterioration | A |
| (D)(i)(II): Prong 4 Interstate Transport—visibility | D |
| (D)(ii): Interstate and International Pollution Abatement | A |
| (E): Adequate Resources | A |
| (F): Stationary Source Monitoring System | A |
| (G): Emergency Episodes | A |
| (H): Future SIP revisions | A |
| (J): Consultation with Government Officials, Public Notification, PSD and Visibility Protection | A |
| (K): Air Quality and Modeling/Data | A |
| (L): Permitting Fees | A |
| (M): Consultation/Participation by Affected Local Entities | A |

In the table above, the key is as follows:
A—*Approve.*
D—*Disapprove.*
NA—*No Action.* We intend to address the element in a separate rulemaking action.

## IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, 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 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);
- This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the 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 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).

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by April 24, 2020. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: February 10, 2020.

**Gregory Sopkin,**

*Regional Administrator, Region 8.*

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 ZZ—Wyoming

■ 2. In § 52.2620, the table in paragraph (e) is amended by adding the entry ''(34) XXXIV'' in numerical order to read as follows:

**§ 52.2620 Identification of plan.**

* * * * *

(e) * * *

[1] *See* 79 FR 5032, January 30, 2014.

| Rule No. | Rule title | State effective date | EPA effective date | Final rule citation/date | Comments |
|---|---|---|---|---|---|
| * | * * | * | * | * * | * |
| (34) XXXIV | Infrastructure SIP for section 110(a)(2)—2015 Ozone NAAQS. | 1/3/2019 | 3/25/2020 | [insert **Federal Register** citation], 2/24/2020. | The EPA is not acting on (D)(i)(I) Prong 1, and (D)(i)(I) Prong 2. The EPA is disapproving (D)(i)(II) Prong 4. |

[FR Doc. 2020–03026 Filed 2–21–20; 8:45 a.m.]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

### 49 CFR Part 385

**[Docket No. FMCSA–2019–0068]**

**RIN 2126–AC28**

## Incorporation by Reference; North American Standard Out-of-Service Criteria; Hazardous Materials Safety Permits

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** FMCSA amends its Hazardous Materials Safety Permit regulations to incorporate by reference the April 1, 2019, edition of the Commercial Vehicle Safety Alliance's (CVSA) ''North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403.'' The Out-of-Service Criteria provide uniform enforcement tolerances for roadside inspections to enforcement personnel nationwide, including FMCSA's State partners.

**DATES:** This final rule is effective March 25, 2020. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of March 25, 2020.

Petitions for Reconsideration of this final rule must be submitted to the FMCSA Administrator no later than March 25, 2020.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Huntley, Chief, Vehicle and Roadside Operations Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, (202) 366–9209. If you have questions on viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

**SUPPLEMENTARY INFORMATION:**

### Rulemaking Documents

For access to docket FMCSA–2019–0068 to read background documents and comments received, go to *http://www.regulations.gov* at any time, or to Docket Operations at U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

### II. Executive Summary

This rulemaking updates an incorporation by reference found at 49 CFR 385.4(b)(1) and referenced at 49 CFR 385.415(b). Section 385.4(b)(1) currently references the April 1, 2018, edition of CVSA's ''North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403.'' The Out-of-Service Criteria, while not regulations, provide uniform enforcement tolerances for roadside inspections to enforcement personnel nationwide, including FMCSA's State partners. In this final rule, FMCSA incorporates by reference the April 1, 2019, edition.

Thirteen updates distinguish the April 1, 2019, handbook edition from the 2018 edition. The updates are all described in detail in the October 2, 2019 notice of proposed rulemaking (NPRM) for this rule (85 FR at 52434–36). The incorporation by reference of the 2019 edition does not impose new regulatory requirements.

### III. Legal Basis for the Rulemaking

Congress has enacted several statutory provisions to ensure the safe transportation of hazardous materials in interstate commerce. Specifically, in provisions codified at 49 U.S.C. 5105(d), relating to inspections of motor vehicles carrying certain hazardous material, and 49 U.S.C. 5109, relating to motor carrier safety permits, the Secretary of Transportation is required to promulgate regulations as part of a comprehensive safety program on hazardous materials safety permits. The FMCSA Administrator has been delegated authority under 49 CFR 1.87(d)(2) to carry out the rulemaking functions vested in the Secretary of Transportation. Consistent with that authority, FMCSA has promulgated regulations to address the congressional mandate on hazardous materials. Those regulations on hazardous materials are the underlying provisions to which the material incorporated by reference discussed in this final rule is applicable.

### IV. Background

In 1986, the U.S. Department of Energy and CVSA entered into a cooperative agreement to develop a higher level of inspection procedures, out-of-service conditions and/or criteria, an inspection decal, and a training and certification program for inspectors to conduct inspections on shipments of transuranic waste and highway route controlled quantities of radioactive material. CVSA developed the North American Standard Level VI Inspection Program for Transuranic Waste and Highway Route Controlled Quantities of Radioactive Material. This inspection program for select radiological shipments includes inspection procedures, enhancements to the North American Standard Level I Inspection, radiological surveys, CVSA Level VI decal requirements, and the ''North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403.'' As of January 1, 2005, all vehicles and carriers transporting highway route controlled quantities of radioactive material are regulated by the U.S. Department of

Transportation. All highway route controlled quantities of radioactive material must pass the North American Standard Level VI Inspection prior to the shipment being allowed to travel in the U.S. All highway route controlled quantities of radioactive material shipments entering the U.S. must also pass the North American Standard Level VI Inspection either at the shipment's point of origin or when the shipment enters the U.S.

Section 385.415 of title 49, Code of Federal Regulations, prescribes operational requirements for motor carriers transporting hazardous materials for which a hazardous materials safety permit is required. Section 385.415(b) requires that motor carriers must ensure a pre-trip inspection is performed on each motor vehicle to be used to transport a highway route controlled quantity of a Class 7 (radioactive) material, in accordance with the requirements of CVSA's ''North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403.''

According to 2012–2017 data from FMCSA's Motor Carrier Management Information System (MCMIS), approximately 3.5 million Level I—Level VI roadside inspections were performed annually. Nearly 97 percent of these were Level I,[1] Level II,[2] and Level III[3] inspections. During the same period, an average of 842 Level VI inspections were performed annually, comprising only 0.024 percent of all roadside inspections. On average, out-of-service violations were cited in only 10 Level VI inspections annually (1.19 percent), whereas on average, out-of-service violations were cited in 269,024 Level I inspections (25.3 percent), 266,122 Level II inspections (22.2 percent), and 66,489 Level III inspections (6.2 percent) annually. Based on these statistics, CMVs transporting transuranics and highway route controlled quantities of radioactive materials are clearly among the best maintained and safest CMVs on the highways today, due largely to the enhanced oversight and inspection of these vehicles because of the sensitive nature of the cargo being transported.

## V. Notice of Proposed Rulemaking

FMCSA published an NPRM on October 2, 2019 (84 FR 52432). Whereas the incorporation by reference found at 49 CFR 385.4(b)(1) and referenced at 49 CFR 385.415(b) concerns the April 1, 2018, edition of CVSA's ''North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403,'' the NPRM proposed to incorporate by reference the April 1, 2019, edition.

The 2019 edition identifies (1) driver-related violations of the FMCSRs that are so severe as to warrant placing the CMV driver out of service, (2) vehicle equipment-related violations of the FMCSRs that are so severe as to warrant placing the CMV out of service, and (3) unsafe conditions in the transportation of hazardous materials. The purpose of the publication is to provide inspection criteria for Federal and State motor carrier safety enforcement personnel to promote uniform and consistent inspection procedures of CMVs operated in commerce.

Thirteen updates distinguish the April 1, 2019, handbook edition from the 2018 edition. The updates are all described in detail in the NPRM (85 FR at 52434–36). The incorporation by reference of the 2019 edition does not impose new regulatory requirements.

## VI. Discussion of Comments Received on the Proposed Rule

FMCSA received one comment to the NPRM. CVSA commended FMCSA for publishing the NPRM, and encouraged FMCSA to finalize the rule and update the incorporation by reference because ''the current reference of the April 1, 2018 edition is outdated and does not reflect the most up to date standard which was published on April 1, 2019.'' In addition, CVSA stated that the handbook is reviewed and updated annually, and noted ''that a new edition will be published on April 1, 2020, and encourages the agency to take the necessary actions to update the regulations accordingly at that time.''

## VII. Section-by-Section Analysis

FMCSA revises 385.4(b)(1) to update the reference from the April 1, 2018, edition to the April 1, 2019, edition of the ''North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403.''

## VIII. International Impacts

The FMCSRs, and any exceptions to the FMCSRs, apply only within the United States (and, in some cases, United States territories). Motor carriers and drivers are subject to the laws and regulations of the countries in which they operate, unless an international agreement states otherwise. Drivers and carriers should be aware of the regulatory differences among nations.

The CVSA is an organization representing Federal, State, and Provincial motor carrier safety enforcement agencies in United States, Canada, and Mexico. The Out-of-Service Criteria provide uniform enforcement tolerances for roadside inspections conducted in all three countries.

## IX. Regulatory Analyses

### *A. E.O. 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures*

FMCSA has determined that this action is not a significant regulatory action under section 3(f) of E.O. 12866, Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011), Improving Regulation and Regulatory Review. In addition, this rule is not significant within the meaning of DOT regulations (84 FR 71714, December 27, 2019).The Office of Management and Budget (OMB) did not, therefore, review this document.

### *B. E.O. 13771 Reducing Regulation and Controlling Regulatory Costs*

E.O. 13771, ''Reducing Regulation and Controlling Regulatory Costs,'' does not apply to this action because it is a nonsignificant regulatory action, as defined in section 3(f) of E.O. 12866, and has zero costs; therefore, it is not subject to the ''2 for 1'' and budgeting requirements.

### *C. Congressional Review Act*

Pursuant to the Congressional Review Act (5 U.S.C. 801, *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a ''major rule,'' as defined by 5 U.S.C. 804(2).[4]

[1] Level I is a 37-step inspection procedure that involves examination of the motor carrier's and driver's credentials, record of duty status, the mechanical condition of the vehicle, and any hazardous materials/dangerous goods that may be present.

[2] Level II is a driver and walk-around vehicle inspection, involving the inspection of items that can be checked without physically getting under the vehicle.

[3] Level III is a driver-only inspection that includes examination of the driver's credentials and documents.

[4] A ''major rule'' means any rule that the Administrator of the Office of Information and

*D. Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 (RFA), Public Law 96–354, 94 Stat. 864 (1980), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (5 U.S.C. 601 *et seq.*), requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term ''small entities'' comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.[5] In compliance with the RFA, FMCSA evaluated the effects of the rule on small entities. The rule incorporates by reference the April 1, 2019, edition of CVSA's ''North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403.'' DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these entities.

When an Agency issues a rulemaking proposal, the RFA requires the Agency to ''prepare and make available an initial regulatory flexibility analysis'' that will describe the impact of the proposed rule on small entities (5 U.S.C 603(a)). Section 605 of the RFA allows an agency to certify a rule, instead of preparing an analysis, if the final rule is not expected to impact a substantial number of small entities. The final rule is largely editorial and provides guidance to inspectors and motor carriers transporting transuranics in interstate commerce. Accordingly, I hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities.

*E. Assistance for Small Entities*

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this rule so that they can better evaluate its effects. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions, please consult the FMCSA point of contact, Michael Huntley, listed in the **FOR FURTHER INFORMATION CONTACT** section of this rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.[6]

*F. Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. The Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector, of $165 million (which is the value equivalent to $100,000,000 in 1995, adjusted for inflation to 2018 levels) or more in any one year. This final rule will not result in such an expenditure.

*G. Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the OMB for each collection of information they conduct, sponsor, or require through regulations. FMCSA determined that no new information collection requirements are associated with this final rule.

*H. E.O. 13132 (Federalism)*

A rule has implications for federalism under section 1(a) of Executive Order 13132 if it has ''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.'' FMCSA has determined that this rule will not have substantial direct costs on or for States, nor will it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

*I. Privacy Impact Assessment*

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108–447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. This rule does not require the collection of personally identifiable information (PII) and will not affect the privacy of individuals.

*J. E.O. 13175 (Indian Tribal Governments)*

This final rule does not have Tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

*K. National Technology Transfer and Advancement Act (Technical Standards) and 1 CFR Part 51*

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (*e.g.,* specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies. FMCSA does not intend to adopt its own technical standard, thus there is no need to submit a separate statement to OMB on this matter. The standard being incorporated in this final rule is discussed in sections IV, V, and VII

Regulatory Affairs at the Office of Management and Budget finds has resulted in or is likely to result in (a) an annual effect on the economy of $100 million or more; (b) a major increase in costs or prices for consumers, individual industries, Federal agencies, State agencies, local government agencies, or geographic regions; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (5 U.S.C. 804(2)).

[5] 5 U.S.C. 601.

[6] U.S. Department of Transportation (DOT). ''The Rights of Small Entities to Enforcement Fairness and Policy Against Retaliation.'' Available at: *https://www.transportation.gov/sites/dot.gov/files/docs/SBREFAnotice2.pdf* (accessed April 20, 2018).

above, and is reasonably available at FMCSA and through the CVSA website.

*L. Environment (NEPA)*

FMCSA analyzed this rule consistent with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680, March 1, 2004), Appendix 2, paragraphs (6)(b) and (6)(t)(2). The Categorical Exclusion (CE) in paragraph (6)(b) covers regulations which are editorial or procedural, including technical or other minor amendments to existing FMCSA regulations, while the CE in paragraph (6)(t)(2) includes regulations to ensure that the States comply with the provisions of the Commercial Motor Vehicle Safety Act of 1986. The content in this rule is covered by these CEs, there are no extraordinary circumstances present, and the final action does not have any effect on the quality of the environment.

*M. E.O. 13783 (Promoting Energy Independence and Economic Growth)*

E.O. 13783 directs executive departments and agencies to review existing regulations that potentially burden the development or use of domestically produced energy resources, and to appropriately suspend, revise, or rescind those that unduly burden the development of domestic energy resources. In accordance with E.O. 13783, DOT prepared and submitted a report to the Director of OMB that provides specific recommendations that, to the extent permitted by law, could alleviate or eliminate aspects of agency action that burden domestic energy production. This rule has not been identified by DOT under E.O. 13783 as potentially alleviating unnecessary burdens on domestic energy production.

**List of Subjects in 49 CFR Part 385**

Administrative practice and procedure, Highway safety, Incorporation by reference, Mexico, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, FMCSA amends 49 CFR part 385 as set forth below:

## PART 385—SAFETY FITNESS PROCEDURES

■ 1. The authority citation for part 385 is revised to read as follows:

**Authority:** 49 U.S.C. 113, 504, 521(b), 5105(d), 5109, 5113 13901–13905, 13908, 31135, 31136, 31144, 31148, and 31502; Sec. 113(a), Pub. L. 103–311; Sec. 408, Pub. L. 104–88, 109 Stat. 803, 958; Sec. 350 of Pub. L. 107–87, 115 Stat. 833, 864; and 49 CFR 1.87.

■ 2. Amend § 385.4:

■ a. In paragraph (a), by removing the words ''call (202) 741–6030'' and adding in their place ''email fedreg.legal@nara.gov''; and

■ b. By revising paragraph (b)(1).

The revision reads as follows:

**§ 385.4 Matter incorporated by reference.**

* * * * *

(b) * * *

(1) ''North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR part 173.403,'' April 1, 2019, incorporation by reference approved for § 385.415(b).

* * * * *

Issued under authority delegated in 49 CFR 1.87.

Dated: February 11, 2020.

**Jim Mullen,**

*Acting Administrator.*

[FR Doc. 2020–03129 Filed 2–21–20; 8:45 am]

**BILLING CODE 4910–EX–P**

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## DEPARTMENT OF THE INTERIOR

## Fish and Wildlife Service

## 50 CFR Part 11

**[Docket No. FWS–HQ–LE–2019–0114; FF09L00200–FX–LE12200900000]**

**RIN 1018–BE45**

## Civil Penalties; 2020 Inflation Adjustments for Civil Monetary Penalties

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service or we) is issuing this final rule, in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Inflation Adjustment Act) and Office of Management and Budget (OMB) guidance, to adjust for inflation the statutory civil monetary penalties that may be assessed for violations of Service-administered statutes and their implementing regulations. We are required to adjust civil monetary penalties annually for inflation according to a formula specified in the Inflation Adjustment Act. This rule replaces the previously issued amounts with the updated amounts after using the 2020 inflation adjustment multiplier provided in the OMB guidance.

**DATES:** This rule is effective February 24, 2020.

**ADDRESSES:** This rule may be found on the internet at *http://www.regulations.gov* in Docket No. FWS–HQ–LE–2019–0114.

**FOR FURTHER INFORMATION CONTACT:** Dan Coil, Special Agent in Charge, Branch of Investigations, U.S. Fish and Wildlife Service, Office of Law Enforcement, (703) 358–1949.

**SUPPLEMENTARY INFORMATION:**

### Background

The regulations in title 50 of the Code of Federal Regulations at 50 CFR part 11 provide uniform rules and procedures for the assessment of civil penalties resulting from violations of certain laws and regulations enforced by the Service.

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (sec. 701 of Pub. L. 114–74) (Inflation Adjustment Act) requires Federal agencies to adjust the level of civil monetary penalties with an initial ''catch up'' adjustment through rulemaking and then make subsequent annual adjustments for inflation. The purpose of these adjustments is to maintain the deterrent effect of civil penalties and to further the policy goals of the underlying statutes.

Under section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as amended by the Inflation Adjustment Act, each Federal agency is required to issue regulations adjusting for inflation the statutory civil monetary penalties (civil penalties) that can be imposed under the laws administered by that agency. The Inflation Adjustment Act provided that the initial ''catch up adjustment'' take effect no later than August 1, 2016, followed by subsequent adjustments to be made no later than January 15 every year thereafter. This final rule adjusts the civil penalty amounts that may be imposed pursuant to each statutory provision beginning on the date specified above in **DATES**.

On June 28, 2016, the Service published in the **Federal Register** an interim rule that revised 50 CFR part 11 (81 FR 41862) to carry out the Inflation Adjustment Act. The Service subsequently published a final rule to that interim rule on December 23, 2016 (81 FR 94274). The Service published final rules in 2017 and 2018 further

adjusting the civil penalty amounts in 50 CFR 11.33 per OMB guidance. Most recently, we published a final rule on April 16, 2019, updating the civil penalty amounts with the 2019 inflation multiplier (84 FR 15525). This final rule adjusts the civil monetary penalty amounts that were listed in the 2019 final rule and subsequently codified at 50 CFR 11.33 by using the 2020 inflation multiplier provided to all Federal agencies by OMB (see below).

OMB issued a memorandum, M–20–05, entitled ''Implementation of Penalty Inflation Adjustments for 2020, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015,'' which provides the cost-of-living adjustment multiplier for 2020: 1.01764. Therefore, we multiplied each penalty in the table in 50 CFR 11.33 by 1.01764 to obtain the 2020 annual adjustment. The new amounts are reflected in the table in the rule portion of this document and replace the current amounts in 50 CFR 11.33.

**Required Determinations**

*Executive Order 13771, Reducing Regulation and Controlling Regulatory Costs*

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

In addition, in this final rule, we affirm the required determinations we made in the June 28, 2016, interim rule (81 FR 41862); for descriptions of our actions to ensure compliance with the following statutes and Executive Orders, see that rule:

- National Environmental Policy Act (42 U.S.C. 4321 *et seq.*);
- Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2));
- Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*);
- Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*);
- Executive Orders 12630, 12866, 12988, 13132, 13175, 13211, and 13563.

**Administrative Procedure Act**

As stated above, under section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as amended by the Inflation Adjustment Act, Public Law 114–74, 129 Stat. 584 (2015), each Federal agency is required to issue regulations adjusting for inflation the statutory civil monetary penalties that can be imposed under the laws administered by that agency. The Inflation Adjustment Act provided for an initial ''catch up adjustment'' to take effect no later than August 1, 2016, followed by subsequent adjustments to be made no later than January 15 every year thereafter. This final rule adjusts the civil penalty amounts that may be imposed pursuant to each statutory provision beginning on the effective date of this rule. To comply with the Inflation Adjustment Act, we are issuing these regulations as a final rule.

Section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for prior public comment. The Service finds that providing for public comment before issuing this rule is unnecessary as this rulemaking is a nondiscretionary action. The Service is required to publish this rule in order to update the civil penalty amounts by the specified formula described above. The Service has no discretion to vary the amount of the adjustment to reflect any views or suggestions provided by commenters. Since this update to the April 16, 2019, final rule (84 FR 15525) is merely ministerial, we find that pre-publication notice and public comment with respect to the revisions set forth in this rule is unnecessary. We also believe that we have good cause under 5 U.S.C. 553(d) to make this rule effective upon publication to meet the statutory deadline imposed by the Inflation Adjustment Act.

**List of Subjects in 50 CFR Part 11**

Administrative practice and procedure, Exports, Fish, Imports, Penalties, Plants, Transportation, Wildlife.

**Regulation Promulgation**

For the reasons described above, we amend part 11, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below.

## PART 11—CIVIL PROCEDURES

■ 1. The authority citation for part 11 continues to read as follows:

**Authority:** 16 U.S.C. 470aa–470mm, 470aaa–470aaa-11, 668–668d, 1361–1384, 1401–1407, 1531–1544, 3371–3378, 4201–4245, 4901–4916, 5201–5207, 5301–5306; 18 U.S.C. 42–43; 25 U.S.C. 3001–3013; and Sec. 107, Pub. L. 114–74, 129 Stat. 599, unless otherwise noted.

■ 2. In § 11.33, revise the table to read as follows:

**§ 11.33 Adjustments to penalties.**

* * * * *

| Law | Citation | Type of violation | Maximum civil monetary penalty |
|---|---|---|---|
| (a) African Elephant Conservation Act | 16 U.S.C. 4224(b) | Any violation | $10,705 |
| (b) Bald and Golden Eagle Protection Act. | 16 U.S.C. 668(b) | Any violation | 13,525 |
| (c) Endangered Species Act of 1973 | 16 U.S.C. 1540(a)(1) | (1) Knowing violation of section 1538 | 53,524 |
| | | (2) Other knowing violation | 25,691 |
| | | (3) Any other violation | 1,352 |
| (d) Lacey Act Amendments of 1981 | 16 U.S.C. 3373(a) | (1) Violations referred to in 16 U.S.C. 3373(a)(1). | 27,051 |
| | | (2) Violations referred to in 16 U.S.C. 3373(a)(2). | 676 |
| (e) Marine Mammal Protection Act of 1972. | 16 U.S.C. 1375 | Any violation | 27,051 |
| (f) Recreational Hunting Safety Act of 1994. | 16 U.S.C. 5202(b) | (1) Violation involving use of force or violence or threatened use of force or violence. | 17,213 |
| | | (2) Any other violation | 8,606 |
| (g) Rhinoceros and Tiger Conservation Act of 1998. | 16 U.S.C. 5305a(b)(2) | Any violation | 18,830 |

| Law | Citation | Type of violation | Maximum civil monetary penalty |
|---|---|---|---|
| (h) Wild Bird Conservation Act | 16 U.S.C. 4912(a)(1) | (1) Violation of section 4910(a)(1), section 4910(a)(2), or any permit issued under section 4911. | 45,371 |
| | | (2) Violation of section 4910(a)(3) | 21,777 |
| | | (3) Any other violation | 908 |

Dated: January 21, 2020.

**Rob Wallace,**

*Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2020–03232 Filed 2–21–20; 8:45 am]

**BILLING CODE 4333–15–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 218

**[Docket No. 200212–0055]**

**RIN 0648–BH28**

## Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to U.S. Navy Construction Activities at Naval Weapons Station Seal Beach, California

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

**ACTION:** Final rule.

**SUMMARY:** NMFS, upon request of the U.S. Navy (Navy), hereby issues regulations to govern the unintentional taking of marine mammals incidental to conducting construction activities related to development of a new ammunition pier at Seal Beach, California, over the course of five years. These regulations, which allow for the issuance of Letters of Authorization (LOA) for the incidental take of marine mammals during the described activities and specified timeframes, prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, as well as requirements pertaining to the monitoring and reporting of such taking.

**DATES:** Effective from March 25, 2020, through March 25, 2025.

**ADDRESSES:** A copy of the Navy's application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-us-navy-construction-ammunition-pier-and-turning-basin-naval*. In case of problems accessing these documents, please call the contact listed below.

**FOR FURTHER INFORMATION CONTACT:** Ben Laws, Office of Protected Resources, NMFS, (301) 427–8401.

**SUPPLEMENTARY INFORMATION:**

### Purpose and Need for Regulatory Action

We received an application from the Navy requesting five-year regulations and authorization to take multiple species of marine mammals. This rule establishes a framework under the authority of the MMPA (16 U.S.C. 1361 *et seq.*) to allow for the authorization of take by Level B harassment of marine mammals incidental to the Navy's construction activities related to development of a new ammunition pier at Seal Beach, California, including impact and vibratory pile driving. Please see ''Background'' below for definitions of harassment.

*Legal Authority for the Proposed Action*

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1371(a)(5)(A)) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region for up to five years if, after notice and public comment, the agency makes certain findings and issues regulations that set forth permissible methods of taking pursuant to that activity and other means of effecting the ''least practicable adverse impact'' on the affected species or stocks and their habitat (see the discussion below in the ''Mitigation'' section), as well as monitoring and reporting requirements. Section 101(a)(5)(A) of the MMPA and the implementing regulations at 50 CFR part 216, subpart I provide the legal basis for issuing this final rule containing five-year regulations, and for any subsequent LOAs. As directed by this legal authority, this rule contains mitigation, monitoring, and reporting requirements.

*Summary of Major Provisions Within the Final Rule*

Following is a summary of the major provisions of this rule regarding Navy construction activities. These measures include:

- Required monitoring of the construction areas to detect the presence of marine mammals before beginning construction activities;
- Shutdown of construction activities under certain circumstances to avoid injury of marine mammals; and
- Soft start for impact pile driving to allow marine mammals the opportunity to leave the area prior to beginning impact pile driving at full power.

### Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth.

The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

**Summary of Request**

On September 10, 2019, we received an adequate and complete request from the Navy requesting authorization for take of marine mammals incidental to construction activities related to development of a new ammunition pier at Seal Beach, California. On September 17, 2019 (84 FR 48914), we published a notice of receipt of the Navy's application in the **Federal Register**, requesting comments and information related to the request for 30 days. Our consideration of the Navy's request was informed by review by the Marine Mammal Commission, and the Navy submitted a revised, final version of the application on November 26, 2019. No formal comments were received during the public review period. We subsequently published a Notice of Proposed Rulemaking in the **Federal Register** on December 10, 2019 (84 FR 67404). Comments received during the public comment period on the proposed regulations are addressed in ''Comments and Responses.''

The Navy plans to conduct construction necessary for development of a new ammunition pier at Naval Weapons Station (NWS) Seal Beach, California. Construction activities include construction of a new pile-supported pier, construction of a new breakwater and causeway, dredging of the turning basin and creation of a new navigation channel for public access, installation of new moorings and pile-supported mooring dolphins, and demolition of existing facilities. Among other activities, construction would include use of impact and vibratory pile driving, including installation and removal of steel, concrete, and timber piles. Hereafter (unless otherwise specified or detailed) we use the term ''pile driving'' to refer to both pile installation and pile removal. The use of both vibratory and impact pile driving is expected to produce underwater sound at levels that have the potential to result in harassment of marine mammals. The Navy requests authorization to take individuals of five species by Level B harassment. These regulations are valid for five years (2020–2025).

**Description of the Specified Activity**

*Overview*

NWS Seal Beach is the U.S. Pacific Fleet's primary weapons station on the West Coast of the United States. As such, NWS Seal Beach has three primary missions: Storage of Navy and Marine Corps ammunition, missile systems maintenance, and loading and unloading of Navy warships and larger Coast Guard vessels. The existing wharf at NWS Seal Beach is past its design life—over 65 years old—and was constructed prior to the introduction of modern seismic codes. Seismic design deficiencies are of significant concern due to the proximity to active faults and high liquefaction potential of underlying soils. The current condition and configuration of the existing pier and turning basin limits the size and number of ships that can be loaded and unloaded with ammunition at the same time and presents safety and security concerns due to the proximity of naval munitions operations to civilian small boat traffic and the Pacific Coast Highway. Therefore, the planned construction activities are necessary to sustain and enhance mission capability by eliminating deficiencies associated with the condition, configuration, and capacity of the existing pier and turning basin.

In-water pile driving work is expected to require approximately three years, but could occur at any time during the five-year period of validity of these regulations. The Navy estimates installing approximately 900 primarily concrete piles in total in order to construct the new pier. Construction will include use of impact and vibratory pile driving. Aspects of construction activities other than pile driving are not anticipated to have the potential to result in incidental take of marine mammals because they are either above water or do not produce levels of underwater sound with likely potential to result in marine mammal disturbance.

*Dates and Duration*

These regulations are valid for a period of five years (2020–2025). The specified activities may occur at any time during the five-year period of validity of the regulations. Pile driving activity would be completed over an approximately three-year period that is not necessarily consecutive during the five-year period of validity of these regulations.

Pile driving would typically occur only from Monday through Friday during typical working hours (*i.e.,* during daylight hours). Estimated days of pile driving are based on a conservative production rate of approximately three piles per day for installation of 922 piles, *i.e.,* 308 days. An additional 28 days is assumed for removal of piles. Therefore, the estimated number of total pile driving days is approximately 336 over the 5-year period. These totals include both extraction and installation of piles, and represent a conservative estimate of pile driving days. In a real construction situation, pile driving production rates would be maximized when possible and actual daily production rates may be higher, resulting in fewer actual pile driving days.

*Specified Geographical Region*

Construction activities at NWS Seal Beach will be located within Orange County, California, adjacent to the Port of Long Beach. The City of Seal Beach is situated between the Cities of Long Beach to the west and Huntington Beach to the east (see Figure 1–1 in the Navy's application). The specific site of the proposed construction activities is within Anaheim Bay, a small harbor that is completely enclosed by two jetties and land, aside from a narrow entrance channel (see Figure 1–2 of the Navy's application). For additional detail regarding the specified geographical region, please see our Notice of Proposed Rulemaking (84 FR 67404; December 10, 2019) and Section 2 of the Navy's application.

*Detailed Description of Activities*

As described above, the Navy requested incidental take regulations for construction activities associated with development of a new ammunition pier at NWS Seal Beach, California. The entire project would include potential upgrades to the existing wharf to remain operational while the new pier is being built, the construction of a breakwater to reduce wave heights at the pier, a causeway, pile-supported mooring dolphins, a navigation channel for public boat access into and out of Huntington Harbor, dredging for the pier and Navy ship turning basin, and operational support buildings on and near the pier. Aspects of construction activities other than pile driving are not anticipated to have the potential to result in incidental take of marine mammals because they are either above water or do not produce levels of underwater sound with likely potential to result in marine mammal disturbance. A detailed description of the Navy's planned activities was provided in our Notice of Proposed Rulemaking (84 FR 67404; December 10, 2019) and is not repeated here. No changes have been made to the specified activities described therein.

In-water pile driving activities with the potential to cause take of marine mammals include removal of existing navigation piles, installation of mooring anchors, and installation of piles required for the new ammunition pier. Only pile extraction and installation using vibratory and impact pile drivers is expected to have the potential to

result in incidental take of marine mammals. Therefore, only vibratory and impact pile driving are carried forward for further analysis. Please see Table 1–1 of the Navy's application for a summary of piles to be installed and/or removed. The navigation piles that currently guide public vessel traffic, consisting of two timber pile clusters (dolphins) of approximately 8 to 10 piles each plus three additional single steel pipe piles, would be removed. All piles are approximately 24-inch (in) (61-centimeter (cm)) diameter. Timber piles are likely to be removed by cutting at the mudline, while the three steel piles would be extracted using the vibratory driver. However, it is possible that some timber piles may need to be removed using vibratory extraction. Therefore, we assume for purposes of analysis that all piles will be removed using vibratory extraction.

The planned indicator pile program would involve impact driving 17 24-in octagonal concrete piles in order to verify the driving conditions and establish the final driving lengths prior to fabrication of the final production piles that would be used to construct the new pier.

The new pier itself would be pile-supported with a total of approximately 900 piles (concrete and concrete-filled fiberglass) of various sizes connected to a cast-in-place concrete deck and beams. The majority of these production piles are expected to be jetted to within 1.5–3 meters (m) of tip elevation and then completed via impact driving. Piles are expected to largely be 24-in octagonal or square.

There will be a total of five new moorings installed, with two of those moorings outside of the new breakwater. Use of a vibratory hammer is required to install ''plate anchors'' that provide permanent secure holdings for planned mooring buoys. Plate anchors consist of a steel plate that is driven to project depth (9–12 m) beneath the seafloor. The anchor is driven by use of a 12-in (30-cm) steel beam called a ''follower.'' The follower is slotted on the bottom, fits into the plate anchor, and together the assembly consisting of the plate anchor and follower are driven into the substrate. Once the assembly has been driven to the required depth using a combination of impact and vibratory driving, the follower is removed using vibratory extraction, leaving the plate anchor at the required depth. First, the plate anchor is driven with a vibratory hammer to within several feet of final depth (maximum driving time approximately 45 minutes). An impact hammer is then used to drive the plate anchor to final elevation (potentially requiring up to an additional 45 minutes). Finally, the follower is extracted using a vibratory hammer (up to a maximum of 30 minutes).

**Comments and Responses**

We published a Notice of Proposed Rulemaking in the **Federal Register** on December 10, 2019 (84 FR 67404). During the 30-day comment period, we received a letter from the Marine Mammal Commission (Commission). The comments and our responses are described below. For full detail of the comments and recommendations, please see the comment letter, which is available online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-us-navy-construction-ammunition-pier-and-turning-basin-naval*.

*Comment:* To better account for the number of cetaceans that have the potential to occur within the Level B harassment zones and to minimize unnecessary delays in completing the activities should the authorized takes be met, the Commission recommends that NMFS increase the numbers of cetacean takes in the final rule.

*Response:* We concur with the recommendation and have increased the take numbers for authorization as suggested by the Commission. Please see ''Changes from Proposed to Final Regulations'' below for a description of the change and Table 6 for revised take numbers.

*Comment:* The Commission recommends that NMFS include in the final rule certain requirements that the Commission deems ''standard.'' Specifically, the Commission recommends that we include requirements that the Navy (1) conduct pile-driving and -removal activities during daylight hours only and (2) if the entire shut-down zone(s) is not visible due to darkness, fog, or heavy rain, delay or cease pile-driving and -removal activities until the zone(s) is visible and, separately, a requirement to delay or cease pile-driving and -removal activities, if a species for which take has not been authorized or for which the authorized number of takes has been met is observed approaching or within the Level B harassment zone.

*Response:* We do not fully concur with the Commission's recommendations, or with their underlying justification, and do not adopt them as stated. However, we do clarify in the final regulatory text that the required shutdown zones must remain visible during impact pile driving, though this need not preclude pile driving at night with sufficient illumination. While the Navy has no intention of conducting pile driving activities at night, it is unnecessary to preclude such activity should the need arise (*e.g.,* on an emergency basis or to complete driving of a pile begun during daylight hours, should the construction operator deem it necessary to do so). Further, while acknowledging that prescribed mitigation measures for any specific action (and an associated determination that the prescribed measures are sufficient to achieve the least practicable adverse impact on the affected species or stocks and their habitat) are subject to review by the Commission and the public, any determination of what measures constitute ''standard'' mitigation requirements is NMFS' alone to make. Even in the context of measures that NMFS considers to be ''standard'' we reserve the flexibility to deviate from such measures, depending on the circumstances of the action. We disagree with the statement that a prohibition on pile driving activity outside of daylight hours is necessary to meet the MMPA's least practicable adverse impact standard, and with the apparent premise that such a prohibition is necessary to preclude unauthorized taking by Level A harassment. As the Commission is aware, the mere appearance of an animal within a shutdown zone does not indicate that onset of auditory injury (*i.e.,* Level A harassment) has occurred, as the calculation of Level A harassment zones for pile driving activity (generally dictated by cumulative sound exposure level rather than peak pressure level) assumes that an animal has accumulated energy over some assumed duration (or been exposed at a given distance to some assumed number of pile strikes).

We similarly disagree with the need to explicitly articulate a requirement to delay or cease activities if a species for which take has not been authorized or for which the authorized number of takes has been met is observed approaching or within the Level B harassment zone. All authorizations state explicitly the species authorized for taking and the numbers, by type (*e.g.,* Level A or B harassment), of take incidents authorized, while also explicitly stating that the authorization is limited to those species and numbers. Separately, all authorizations already contain the redundant admonition that any taking of a type more severe than authorized or exceeding the stated numbers is prohibited. Therefore, the Commission's recommended language is doubly redundant.

*Comment:* The Commission recommends that NMFS (1) include in the preamble and any issued LOA the

modeled extents of the Level B harassment zones for impact installation of 12-in piles and vibratory removal of the 12-in piles and 24-in steel pipe piles based on Table 6–4 in the application and (2) include in the preamble and regulatory text of the final rule a reporting requirement to extrapolate the numbers of Level B harassment takes, not only to those portions of the Level B harassment zones that the PSOs are unable to monitor within Anaheim Bay during the various activities but also those portions outside the bay when the 12-in I-beams are removed.

*Response:* We concur with and adopt the recommendation to include the referenced modeled Level B harassment zones. Please see Table 5. We do not adopt the recommended reporting requirement. The Navy has committed to monitoring the extent of waters within Anaheim Bay (or the extent of the Level B harassment zone, when encompassing a smaller area within Anaheim Bay), so no extrapolation is necessary within that area. Regarding the suggestion that take is expected to occur within waters outside of Anaheim Bay and, therefore, extrapolation is necessary in order to estimate total take, we described in detail in the preamble to the proposed rule the basis for our assumption that no take would occur beyond the waters of Anaheim Bay. The Commission does not address this assumption in their letter.

As noted by the Commission, the modeled distance to the Level B harassment isopleths for vibratory driving of 12-in steel beams outside of the planned breakwater is approximately 1.5 kilometers (km), meaning that, depending on location within the outer waters of Anaheim Bay, such isopleths could extend as much as approximately 1 km outside of the Bay. However, this assumption ignores the realistic environmental context of this location. As we described in the preamble to the proposed rule, the Anaheim Bay entrance is located approximately 8 km from the Ports of Los Angeles/Long Beach, which together form one of the busiest container ports in the world, and is situated between the entrances to the Huntington Beach and Alamitos/Long Beach marinas, which together have more than 2,000 boat slips. Additionally, an offshore petroleum extraction platform is located approximately 1.4 km offshore from the Anaheim Bay entrance. Although appropriate background noise measurements are not available for the immediate vicinity of the Anaheim Bay entrance, it is likely that, at times, the noise from this vibratory driving activity may not exceed the level of extant background noise. Moreover, given the narrow entrance to jetty-enclosed Anaheim Bay, only a narrow strip of ensonified area could potentially extend beyond that entrance. When coupled with the short duration of this specific activity component (less than two hours per day for two days), there is a very low likelihood that any animal could be exposed to this noise. Finally, and most importantly, considering the thousands of ship transits passing nearby per year, near-constant activity of pilot vessels, tug boats, and recreational vessels, and noise from moored vessels and the production platform, we reasonably assume the noise environment in waters immediately adjacent to the Anaheim Bay entrance to be sufficiently loud that the addition of another, similar low-level industrial continuous noise source is not reasonably likely to cause an exposed animal to respond in a manner appropriately equated to ''take,'' as defined under the MMPA.

In summary, there is a very low likelihood that any animal could be exposed to noise exceeding the harassment threshold outside of Anaheim Bay and, in the event that such exposure occurred, we have determined it not reasonably likely that the exposed animal would respond in a way equivalent to harassment under the MMPA. Therefore, there is no need to estimate take that may occur outside of Anaheim Bay.

*Comment:* The Commission recommends that NMFS ensure that the Navy keeps a running tally of the total takes for each species to comply with the regulations.

*Response:* We agree that the Navy must ensure they do not exceed authorized takes. However, NMFS is not responsible for ensuring that the Navy does not operate in violation of an issued Letter of Authorization.

*Comment:* The Commission recommends that NMFS include in the final rule reporting requirements consistent with certain specific authorizations cited in their letter.

*Response:* We have revised the specific reporting language referenced by the Commission as recommended. Please see ''Changes from Proposed to Final Regulations'' below for a description of the change and ''Monitoring and Reporting'' for additional detail regarding these requirements.

**Changes From Proposed to Final Regulations**

The only changes from the proposed to final regulations are those described in the responses to comments, including increases to certain authorized take numbers, clarification that impact pile driving must cease or be delayed if shutdown zone visibility is impaired, and minor revisions to descriptions of information that must be included in required reporting.

As recommended by the Commission, we have increased the annual numbers of cetacean takes from 220 to 336 for bottlenose dolphins, 336 to 454 for common dolphins, and 7 to 11 takes for gray whales in the final rule.

As recommended by the Commission, we have revised descriptions of information that must be included in required reporting. These requirements were described as follows in the proposed rule:

- Date and time that monitored activity begins or ends;
- Construction activities occurring during each observation period;
- Weather parameters (*e.g.,* wind speed, percent cloud cover, visibility);
- Water conditions (*e.g.,* sea state, tide state);
- Species, numbers, and, if possible, sex and age class of marine mammals;
- Description of any observable marine mammal behavior patterns, including bearing and direction of travel and distance from pile driving activity;
- Distance from pile driving activities to marine mammals and distance from the marine mammals to the observation point;
- Description of implementation of mitigation measures (*e.g.,* shutdown or delay);
- Locations of all marine mammal observations; and
- Other human activity in the area.

Descriptions of these requirements have been revised as follows:

- Dates and times (begin and end) of all marine mammal monitoring;
- Construction activities occurring during each daily observation period, including how many and what type of piles were driven or removed and by what method (*i.e.,* impact or vibratory);
- Weather parameters and water conditions during each monitoring period (*e.g.,* wind speed, percent cover, visibility, sea state);
- The number of marine mammals observed, by species, relative to the pile location and if pile driving or removal was occurring at time of sighting;
- Age and sex class, if possible, of all marine mammals observed;
- PSO locations during marine mammal monitoring;
- Distances and bearings of each marine mammal observed to the pile being driven or removed for each sighting (if pile driving or removal was occurring at time of sighting);

- Description of any marine mammal behavior patterns during observation, including direction of travel;
- Number of individuals of each species (differentiated by month as appropriate) detected within the monitoring zone, and estimates of number of marine mammals taken, by species (a correction factor may be applied to total take numbers, as appropriate);
- Detailed information about any implementation of any mitigation triggered (*e.g.,* shutdowns and delays), a description of specific actions that ensued, and resulting behavior of the animal, if any;
- Description of attempts to distinguish between the number of individual animals taken and the number of incidences of take, such as ability to track groups or individuals; and
- An extrapolation of the estimated takes by Level B harassment based on the number of observed exposures within the Level B harassment zone and the percentage of the Level B harassment zone that was not visible, when applicable.

**Description of Marine Mammals in the Area of the Specified Activity**

We have reviewed the Navy's species descriptions—which summarize available information regarding status and trends, distribution and habitat preferences, behavior and life history, and auditory capabilities of the potentially affected species—for accuracy and completeness and refer the reader to Sections 3 and 4 of the Navy's application, instead of reprinting the information here. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SAR; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*www.fisheries.noaa.gov/find-species*).

Table 1 lists all species with expected potential for occurrence in the specified geographical region where the Navy proposes to conduct the specified activities and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. For taxonomy, we follow Committee on Taxonomy (2019). PBR, defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population, is considered in concert with known sources of ongoing anthropogenic mortality (as described in NMFS's SARs).

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS's stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. All managed stocks in the specified geographical regions are assessed in NMFS's U.S. Pacific SARs. All values presented in Table 1 are the most recent available at the time of writing and are available in the 2018 SARs.

Five species (with six managed stocks) are considered to have the potential to be affected by Navy activities. A significantly more diverse marine mammal fauna occurs in deeper offshore waters of the specified geographical region. However, these additional species have not been observed in the vicinity of the action area and, for reasons described previously, are not anticipated to potentially be affected by the specified activity. For additional detail, please see section 3 of the Navy's application. We note that one additional species—the Pacific white-sided dolphin (*Lagenorhynchus obliquidens*)—has been observed in the vicinity of the entrance to Anaheim Bay. However, authorization of take for this species was not requested by the Navy due to their seasonal and generally rare occurrence in the area. In addition, the sea otter (*Enhydra lutris*) is found in California coastal waters. However, sea otters are managed by the U.S. Fish and Wildlife Service and are not considered further in this document.

TABLE 1—MARINE MAMMALS POTENTIALLY AFFECTED BY NAVY CONSTRUCTION ACTIVITIES

| Common name | Scientific name | Stock | ESA/MMPA status; Strategic (Y/N) [1] | Stock abundance (CV, $N_{min}$, most recent abundance survey) [2] | PBR | Annual M/SI [3] |
|---|---|---|---|---|---|---|
| **Order Cetartiodactyla—Cetacea—Superfamily Mysticeti (baleen whales)** | | | | | | |
| Family Eschrichtiidae: | | | | | | |
| Gray whale | *Eschrichtius robustus* | Eastern North Pacific | -; N | 26,960 (0.05; 25,849; 2016). | 801 | 139 |
| **Superfamily Odontoceti (toothed whales, dolphins, and porpoises)** | | | | | | |
| Family Delphinidae: | | | | | | |
| Common bottlenose dolphin. | *Tursiops truncatus truncatus.* | California Coastal | -; N | 453 (0.06; 346; 2011) | 2.7 | ≥2.0 |
| ENP long-beaked common dolphin. | *Delphinus delphis bairdii* | California | -; N | 101,305 (0.49; 68,432; 2014). | 657 | ≥35.4 |
| Common dolphin | *D. d. delphis* | CA/OR/WA | -; N | 969,861 (0.17; 839,325; 2014). | 8,393 | ≥40 |
| **Order Carnivora—Superfamily Pinnipedia** | | | | | | |
| Family Otariidae (eared seals and sea lions): | | | | | | |
| California sea lion | *Zalophus californianus* | United States | -; N | 257,606 (n/a; 233,515; 2014). | 14,011 | ≥321 |
| Family Phocidae (earless seals): | | | | | | |

TABLE 1—MARINE MAMMALS POTENTIALLY AFFECTED BY NAVY CONSTRUCTION ACTIVITIES—Continued

| Common name | Scientific name | Stock | ESA/MMPA status; Strategic (Y/N) [1] | Stock abundance (CV, $N_{min}$, most recent abundance survey) [2] | PBR | Annual M/SI [3] |
|---|---|---|---|---|---|---|
| Harbor seal ..... | *Phoca vitulina richardii* .. | California ..... | -; N | 30,968 (n/a; 27,348; 2012). | 1,641 | 43 |

[1] Endangered Species Act (ESA) status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (−) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] NMFS marine mammal stock assessment reports at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; $N_{min}$ is the minimum estimate of stock abundance. In some cases, CV is not applicable. For certain stocks of pinnipeds, abundance estimates are based upon observations of animals (often pups) ashore multiplied by some correction factor derived from knowledge of the species' (or similar species') life history to arrive at a best abundance estimate; therefore, there is no associated CV. In these cases, the minimum abundance may represent actual counts of all animals ashore.

[3] These values, found in NMFS' SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, subsistence hunting, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value. All M/SI values are as presented in the 2018 SARs.

Marine mammals do not regularly use Anaheim Bay for any purpose, and there is no known habitat of any importance (including pinniped haul-outs) located within Anaheim Bay. The Navy has conducted a semi-regular monitoring effort within Anaheim Bay over the past several years. This monitoring effort is the primary source of information regarding marine mammal occurrence therein. Additional detail regarding the affected species and stocks, including local occurrence data, was provided in our Notice of Proposed Rulemaking (84 FR 67404; December 10, 2019) and is not repeated here.

*Marine Mammal Hearing*

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). NMFS (2018) describes generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 dB threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. The functional groups and the associated frequencies are indicated below (note that these frequency ranges correspond to the range for the composite group, with the entire range not necessarily reflecting the capabilities of every species within that group):

- Low-frequency cetaceans (mysticetes): Generalized hearing is estimated to occur between approximately 7 hertz (Hz) and 35 kilohertz (kHz);
- Mid-frequency cetaceans (larger toothed whales, beaked whales, and most delphinids): Generalized hearing is estimated to occur between approximately 150 Hz and 160 kHz;
- High-frequency cetaceans (porpoises, river dolphins, and members of the genera *Kogia* and *Cephalorhynchus;* including two members of the genus *Lagenorhynchus,* on the basis of recent echolocation data and genetic data): Generalized hearing is estimated to occur between approximately 275 Hz and 160 kHz;
- Pinnipeds in water; Phocidae (true seals): Functional hearing is estimated to occur between approximately 50 Hz to 86 kHz; and
- Pinnipeds in water; Otariidae (eared seals): Functional hearing is estimated to occur between 60 Hz and 39 kHz.

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Five marine mammal species (three cetacean and two pinniped (one otariid and one phocid) species) have the potential to co-occur with Navy construction activities. Please refer to Table 1. Of the three cetacean species that may be present, one is classified as a low-frequency cetacean (gray whale) and two are classified as mid-frequency cetaceans (dolphins).

**Potential Effects of the Specified Activity on Marine Mammals and Their Habitat**

Sections 6 and 9 of the Navy's application include a comprehensive summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat, including specific discussion of potential effects to marine mammals from noise produced through pile driving. We have reviewed the Navy's discussion of potential effects for accuracy and completeness in its application and refer to that information rather than repeating it here. Alternatively, NMFS has included a lengthy discussion of the potential effects of noise on marine mammals, including specifically from pile driving, in numerous other **Federal Register** notices. Please see, *e.g.,* 83 FR 9366 (March 5, 2018); 84 FR 54867 (October 11, 2019); 82 FR 36360 (August 4, 2017), or view documents available online at *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.*

The ''Estimated Take'' section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by the specified activity. The ''Negligible Impact Analysis and Determination'' section includes an analysis of how these activities will impact marine mammals and considers the content of this section, the ''Estimated Take'' section, and the ''Mitigation'' section, to draw conclusions regarding the likely impacts of these activities on the

reproductive success or survivorship of individuals and from that on the affected marine mammal populations. We also provided additional description of sound sources in our Notice of Proposed Rulemaking (84 FR 67404; December 10, 2019).

**Estimated Take**

This section provides an estimate of the number of incidental takes for authorization, which will inform both NMFS's consideration of whether the number of takes is ''small'' and the negligible impact determination.

Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Take of marine mammals incidental to Navy construction activities could occur as a result of Level B harassment only. Below we describe how the potential take is estimated.

*Acoustic Thresholds*

We provided discussion of relevant sound thresholds in our Notice of Proposed Rulemaking (84 FR 67404; December 10, 2019) and do not repeat the information here. Generalized acoustic thresholds based on received level are used to estimate the onset of Level B harassment. These thresholds are 160 dB rms (intermittent sources) and 120 dB rms (continuous sources). Please see Table 2 for Level A harassment (auditory injury) criteria.

TABLE 2—EXPOSURE CRITERIA FOR AUDITORY INJURY

| Hearing group | Peak pressure [1] (dB) | Cumulative sound exposure level [2] | |
|---|---|---|---|
| | | Impulsive (dB) | Non-impulsive (dB) |
| Low-frequency cetaceans | 219 | 183 | 199 |
| Mid-frequency cetaceans | 230 | 185 | 198 |
| Phocid pinnipeds | 218 | 185 | 201 |
| Otariid pinnipeds | 232 | 203 | 219 |

[1] Referenced to 1 μPa; unweighted within generalized hearing range.
[2] Referenced to 1 μPa$^2$-s; weighted according to appropriate auditory weighting function.

*Zones of Ensonification*

*Sound Propagation*—We provided discussion of relevant propagation considerations in our Notice of Proposed Rulemaking (84 FR 67404; December 10, 2019) and do not repeat the information here. As discussed in the proposed rule, site-specific propagation modeling was performed on behalf of the Navy by Dr. Peter Dahl (see ''Modeling of Sound Propagation from Pile Driving Marine Construction at Seal Beach,'' available online at *www.fisheries.noaa.gov/action/incidental-take-authorization-us-navy-construction-ammunition-pier-and-turning-basin-naval*). This modeling approach accounts for factors such as depth, substrate, and frequency-dependency, and was performed for propagation associated with impact driving of 24-in concrete piles and 12-in steel beams, and for vibratory driving of 30-in steel piles (as proxy for vibratory installation of 12-in steel beams and removal of 24-in steel piles). Propagation loss associated with vibratory removal of 24-in timber piles was not modeled, but rather represented through an assumption of practical spreading loss (4.5 dB reduction in sound level for each doubling of distance).

The above-referenced propagation analysis is provided for a more realistic understanding of actual ensonification effects at multiple specific locations within Anaheim Bay due to impact driving of concrete piles, impact and vibratory driving of steel beams, and vibratory driving of steel pipe piles. These actual zones are depicted in Figures 6–4 through 6–7 of the Navy's application. This analysis indicates that, for vibratory installation of piles seaward of the intended breakwater, maximum Level B harassment isopleth distances would be less than 1.5 km. However, when accounting for the expected noise environment outside of Anaheim Bay, we assume that any sound above harassment thresholds that could propagate outside of the confines of Anaheim Bay would either not generally be discernible to marine mammals, or would not present a sufficiently great signal to noise ratio such that behavioral harassment would be the likely outcome. Therefore, we assume that potential incidental take of marine mammals resulting from the specified activity may occur only within Anaheim Bay. Assumed isopleth distances are given in Table 5.

*Sound Source Levels*—We provided discussion of source level considerations in our Notice of Proposed Rulemaking (84 FR 67404; December 10, 2019) and do not repeat the information here. No changes have been made to the source level selections described in the proposed rule and shown in Table 3.

TABLE 3—ASSUMED SOURCE LEVELS

| Method | Type | Size (in) | SPL (rms) [1] | SPL (peak) [1] | SEL [1] |
|---|---|---|---|---|---|
| Impact | Concrete | 24 | 175 | 193 | 160 |
| | Steel I-beam | 12 | 181 | 194 | 171 |
| Vibratory | Timber | 24 | 152 | n/a | n/a |
| | Steel I-beam | 12 | 170 | n/a | n/a |

TABLE 3—ASSUMED SOURCE LEVELS—Continued

| Method | Type | Size (in) | SPL (rms) [1] | SPL (peak) [1] | SEL [1] |
|---|---|---|---|---|---|
| | Steel pipe | 24 | 170 | n/a | n/a |

[1] Source levels presented at standard distance of 10 m from the driven pile. Peak source levels are not typically evaluated for vibratory pile driving, as they are lower than the relevant thresholds for auditory injury. SEL source levels for vibratory driving are equivalent to SPL (rms) source levels.

*Level A Harassment*—In order to assess the potential for injury on the basis of the cumulative SEL metric, one must estimate the total strikes (impact driving) or the total driving duration (vibratory driving) over which energy is assumed to accumulate. Table 4 presents an estimate of average strikes per day; average strikes per day and average daily duration values are used in the exposure analyses. Values given in Table 4 are engineering assumptions provided by the Navy.

TABLE 4—ESTIMATED DAILY STRIKES AND DRIVING DURATION

| Pile type and method | Installation rate per day | Estimated duration | |
|---|---|---|---|
| | | Average strikes/pile | Average daily duration (min) |
| 12-in steel; impact | 1 | 390 | n/a |
| 24-in concrete; impact | 3 | 667 | n/a |
| 12-in steel; vibratory | 1 | n/a | 75 |
| 24-in timber; vibratory | 1 | n/a | 60 |
| 24-in steel; vibratory | 1 | n/a | 60 |

Delineation of potential injury zones on the basis of the peak pressure metric was performed using the SPL(peak) values provided in Table 3 above. Source levels for peak pressure are unweighted within the generalized hearing range, while SEL source levels are weighted according to the appropriate auditory weighting function. As discussed in detail in the Notice of Proposed Rulemaking (84 FR 67404; December 10, 2019), delineation of potential injury zones on the basis of the cumulative SEL metric for vibratory driving was performed using the NMFS User Spreadsheet. This relatively simple approach will typically result in higher predicted exposures for broadband sounds, since only one frequency is being considered, compared to exposures associated with the ability to fully incorporate the Technical Guidance's weighting functions. Note that, for use in delineating assumed Level A harassment zones through use of the User Spreadsheet, practical spreading was assumed, which is an additional conservative assumption.

In consideration of the assumptions relating to sound source levels, propagation, and pile driving rates, notional radial distances to relevant thresholds were calculated (Table 5). Please note that Table 5 in the proposed rule included calculated rather than modeled distances for certain piles. As recommended by the Commission, Table 5 is revised to include only the relevant modeled distances. However, these distances are sometimes constrained by topography. Actual notional ensonified zones, calculated using site-specific propagation modeling (Dahl, 2018) are shown in Figures 6–4 to 6–7 of the Navy's application. For production piles, these zones are modeled on the basis of a centrally-located, notional pile. Note that these figures assume the presence of the breakwater that will be constructed prior to pile driving activity.

TABLE 5—ASSUMED DISTANCES TO LEVEL A AND LEVEL B HARASSMENT ZONES

| Pile | Driver | PW | | OW | | LF | | MF | | Level B [1] |
|---|---|---|---|---|---|---|---|---|---|---|
| | | pk | cSEL | pk | cSEL | pk | cSEL | pk | cSEL | |
| 24-in concrete | Impact | n/a | 25 | n/a | <10 | n/a | 46 | n/a | <10 | 100 |
| 12-in steel | Impact | n/a | 45 | n/a | <10 | n/a | 85 | n/a | <10 | [2] 424–430 |
| 24-in steel | Vibratory | n/a | 17 | n/a | <10 | n/a | 27 | n/a | <10 | 770 |
| 12-in steel | Vibratory | n/a | 19 | n/a | <10 | n/a | 32 | n/a | <10 | [2] 821–1,498 |
| 24-in timber | Vibratory | n/a | <10 | n/a | <10 | n/a | <10 | n/a | <10 | 1,359 |

**Note:** PW=Phocid; OW=Otariid; LF=low frequency; MF=mid frequency; HF=high frequency; pk=peak pressure; cSEL=cumulative SEL.
[1] Calculated free-field values only; topography constrains actual zones and all zones are assumed restricted to Anaheim Bay.
[2] Modeled distances are provided for specific notional pile locations. Therefore, a range is presented.

*Exposure Estimates*

Available information regarding marine mammal occurrence at NWS Seal Beach, based on local observational effort, was summarized in the Notice of Proposed Rulemaking (84 FR 67404; December 10, 2019). Given the small area of Anaheim Bay, infrequent occurrence of marine mammals, and limited observational data available, we do not use these data to support calculation of density values, but rather use the maximum observed group size in conjunction with the expected days of pile driving to develop take estimates. The Navy assumes a total of 336 days of pile driving activity over the 5-year period of effectiveness of this proposed rule. However, the total days are assumed to occur over a three-year period during the five years. Therefore,

the Navy assumes 112 pile driving days per year for 3 years.

To quantitatively assess exposure of marine mammals to noise from pile driving activities, the Navy used two methods. For pinniped species, which are assumed to have the potential to occur on any day of pile driving, the maximum group size is multiplied by the total annual pile driving days to generate the annual take estimate. For cetacean species, whose occurrence is assumed to be more sporadic in nature, the assumed group size is multiplied by an assumed proportion of total annual pile driving days. The assumed proportion reasonably reflects the observational data available for Anaheim Bay. This calculation is performed as: 112 Annual pile driving days/5 days per week/4 weeks per month × assumed number of monthly days present. Given the small calculated Level A harassment zone sizes, we assume that no Level A harassment is likely to occur, for any species. The required mitigation measures further reduce the low likelihood that any incidents of Level A harassment would occur, and none may be authorized under these regulations.

*California Sea Lion*—California sea lions are regularly observed, typically as individuals or in pairs. However, a maximum group of six sea lions was observed in Anaheim Bay. Therefore, the Navy estimates take as six sea lions per day for 112 days annually, yielding an estimate of 672 incidents of take annually and 2,016 incidents over the duration of the rule.

*Harbor Seal*—Individual harbor seals are infrequently observed in Anaheim Bay. However, as a relatively common coastal pinniped, the Navy assumes that one harbor seal could be present on each day of pile driving. Therefore, the Navy estimates take as 1 seal per day for 112 days annually, yielding an estimate of 112 incidents of take annually and 336 incidents over the duration of the rule.

*Bottlenose Dolphin*—The Navy assumes that groups of up to ten bottlenose dolphins may occur in Anaheim Bay on six occasions per month, yielding an annual estimate of 336 incidents of take, and 1,008 over the duration of the rule. Here we present an example calculation: 112 days of annual pile driving/5 days pile driving per week/4 weeks per month × 10 animals present on 6 days per month = 336 incidents of take per year. These dolphins are assumed to be from the California coastal stock of bottlenose dolphin.

*Common Dolphin*—The Navy assumes that groups of up to nine common dolphins may occur in Anaheim Bay on ten occasions per month, yielding an annual estimate of 454 incidents of take, and 1,361 over the duration of the rule. These dolphins could be from either the California/Oregon/Washington stock of common dolphin or from a subspecies stock, the eastern North Pacific long-beaked common dolphin.

*Gray Whale*—Individual gray whales have rarely been observed in the vicinity of the entrance to Anaheim Bay. The Navy assumes that a single gray whale may occur in Anaheim Bay on two occasions per month, yielding an annual estimate of eleven incidents of take, and 34 over the duration of the rule.

The total numbers of take for authorization for all species is summarized in Table 6 below. These numbers were revised on the basis of comment from the Commission, as discussed in ''Comments and Responses.'' No authorization of take by Level A harassment is expected, nor may take by Level A harassment be authorized under the rule.

TABLE 6—PROPOSED TAKE AUTHORIZATION BY LEVEL B HARASSMENT

| Species | Annual | Total | Percent [1] |
|---|---|---|---|
| California sea lion | 672 | 2,016 | 0.3 |
| Harbor seal | 112 | 336 | 0.4 |
| Bottlenose dolphin | 336 | 1,008 | 74.2 |
| Common dolphin | 454 | 1,361 | <0.1/0.4 |
| Gray whale | 11 | 34 | <0.1 |

[1] Reflects annual take number.

**Mitigation**

Under Section 101(a)(5)(A) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (''least practicable adverse impact''). NMFS does not have a regulatory definition for ''least practicable adverse impact.'' However, NMFS's implementing regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, we carefully consider two primary factors:

(1) The manner in which, and the degree to which, implementation of the measure(s) is expected to reduce impacts to marine mammal species or stocks, their habitat, and their availability for subsistence uses. This analysis will consider such things as the nature of the potential adverse impact (such as likelihood, scope, and range), the likelihood that the measure will be effective if implemented, and the likelihood of successful implementation.

(2) The practicability of the measure for applicant implementation. Practicability of implementation may consider such things as cost, impact on operations, personnel safety, and practicality of implementation.

The mitigation strategies described below largely follow those required and successfully implemented under previous incidental take authorizations issued in association with similar construction activities. Estimated zones of influence (ZOI; see ''Estimated Take'') were used to develop mitigation measures for pile driving activities. Background discussion related to underwater sound concepts and terminology is provided in the section on ''Description of Sound Sources,'' earlier in this preamble. The ZOIs were used to inform mitigation zones that would be established to prevent Level A

harassment and to monitor Level B harassment.

In addition to the specific measures described later in this section, the Navy will conduct briefings for construction supervisors and crews, the marine mammal monitoring team, and Navy staff prior to the start of all pile driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, the marine mammal monitoring protocol, and operational procedures.

*Timing*

As described previously, the Navy will conduct construction activities only during daylight hours. This is a voluntary description by the Navy of expected construction scheduling that we do not treat as an absolute requirement. Therefore, this commitment is not considered in making our determinations and is not included in the regulatory text found at the end of this preamble.

*Monitoring and Shutdown for Pile Driving*

The following measures would apply to the Navy's mitigation through shutdown and disturbance zones:

*Shutdown Zone*—The purpose of a shutdown zone is to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area), thus preventing some undesirable outcome, such as auditory injury or behavioral disturbance of sensitive species (serious injury or death are unlikely outcomes even in the absence of mitigation measures). For all pile driving activities, the Navy will establish a minimum shutdown zone with a radial distance of 10 m. This minimum zone is intended to prevent the already unlikely possibility of physical interaction with construction equipment and to establish a precautionary minimum zone with regard to acoustic effects.

In most cases, the minimum shutdown zone of 10 m is expected to contain the area in which auditory injury could occur. In all circumstances where the predicted Level A harassment zone exceeds the minimum zone, the Navy will implement a shutdown zone equal to the predicted Level A harassment zone (see Table 5). In all cases, predicted injury zones are calculated on the basis of cumulative sound exposure, as peak pressure source levels produce smaller predicted zones.

Injury zone predictions generated using the optional user spreadsheet are precautionary due to a number of simplifying assumptions. For example, the spreadsheet tool assumes that marine mammals remain stationary during the activity and does not account for potential recovery between intermittent sounds. In addition, the tool incorporates the acoustic guidance's weighting functions through use of a single-frequency weighting factor adjustment intended to represent the signal's 95 percent frequency contour percentile (*i.e.,* upper frequency below which 95 percent of total cumulative energy is contained; Charif *et al.,* 2010). This will typically result in higher predicted exposures for broadband sounds, because only one frequency is being considered, compared to exposures associated with the ability to fully incorporate the guidance's weighting functions.

*Disturbance Zone*—Disturbance zones are the areas in which sound pressure levels equal or exceed 160 and 120 dB rms (for impact and vibratory pile driving, respectively). Regarding vibratory driving occurring outside the breakwater, we assume that the disturbance zone is truncated at the entrance to Anaheim Bay. Disturbance zones provide utility for monitoring conducted for mitigation purposes (*i.e.,* shutdown zone monitoring) by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring of disturbance zones enables observers to be aware of and communicate the presence of marine mammals in the project area but outside the shutdown zone, and thus prepare for potential shutdowns of activity. The primary purpose of disturbance zone monitoring is for documenting incidents of Level B harassment. Disturbance zone monitoring is discussed in greater detail later (see ''Monitoring and Reporting''). Nominal radial distances for disturbance zones are shown in Table 5.

In order to document observed incidents of harassment, monitors record all marine mammal observations, regardless of location. The observer's location and the location of the pile being driven are known, and the location of the animal may be estimated as a distance from the observer and then compared to the location from the pile. It may then be estimated whether the animal was exposed to sound levels constituting incidental harassment on the basis of predicted distances to relevant thresholds in post-processing of observational data, and a precise accounting of observed incidents of harassment created.

*Monitoring Protocols*—Monitoring will be conducted before, during, and after pile driving activities. In addition, observers will record all incidents of marine mammal occurrence, regardless of distance from activity, and monitors will document any behavioral reactions in concert with distance from piles being driven. Observations made outside the shutdown zone will not result in shutdown; that pile segment will be completed without cessation, unless the animal approaches or enters the shutdown zone, at which point all pile driving activities will be halted. Monitoring will take place from 30 minutes prior to initiation through 30 minutes post-completion of pile driving activities. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

The following additional measures apply to visual monitoring:

(1) Monitoring will be conducted by qualified, trained protected species observers, who will be placed at the best vantage point(s) practicable (*i.e.,* construction barges, on shore, or any other suitable location) to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator. Observers will have no other construction-related tasks while conducting monitoring. Observers should have the following minimum qualifications:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;
- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to document observations including, but not limited to: The number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury of marine mammals from construction noise within a defined shutdown zone; and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time

information on marine mammals observed in the area as necessary.

Observer teams employed by the Navy in satisfaction of the mitigation and monitoring requirements described herein must meet the following additional requirements:

- Independent observers (*i.e.,* not construction personnel) are required.
- At least one observer must have prior experience working as an observer.
- Other observers may substitute education (degree in biological science or related field) or training for experience.
- Where a team of three or more observers are required, one observer should be designated as lead observer or monitoring coordinator. The lead observer must have prior experience working as an observer.
- We will require submission and approval of observer CVs.

(2) Prior to the start of pile driving activity, the shutdown zone will be monitored for 30 minutes to ensure that it is clear of marine mammals. Pile driving will only commence once observers have declared the shutdown zone clear of marine mammals; animals will be allowed to remain in the shutdown zone (*i.e.,* must leave of their own volition), and their behavior will be monitored and documented. The shutdown zone may only be declared clear, and pile driving started, when the entire shutdown zone is visible (*i.e.,* when not obscured by dark, rain, fog, *etc.*). In addition, if such conditions should arise during impact pile driving that is already underway, the activity would be halted, *i.e.,* the entire shutdown zone must remain visible during impact pile driving.

(3) If a marine mammal approaches or enters the shutdown zone during the course of pile driving operations, activity will be halted and delayed until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or fifteen minutes have passed without re-detection of the animal. Monitoring will be conducted throughout the time required to drive a pile and for thirty minutes following the conclusion of pile driving.

*Soft Start*

The use of a soft start procedure is believed to provide additional protection to marine mammals by warning marine mammals or providing them with a chance to leave the area prior to the hammer operating at full capacity, and typically involves a requirement to initiate sound from the hammer at reduced energy followed by a waiting period. This procedure is repeated two additional times. It is difficult to specify the reduction in energy for any given hammer because of variation across drivers and, for impact hammers, the actual number of strikes at reduced energy will vary because operating the hammer at less than full power results in ''bouncing'' of the hammer as it strikes the pile, resulting in multiple ''strikes.'' The Navy will utilize soft start techniques for impact pile driving. We require an initial set of three strikes from the impact hammer at reduced energy, followed by a 30-second waiting period, then two subsequent 3-strike sets. Soft start will be required at the beginning of each day's impact pile driving work and at any time following a cessation of impact pile driving of thirty minutes or longer; the requirement to implement soft start for impact driving is independent of whether vibratory driving has occurred within the prior 30 minutes.

We have carefully evaluated the Navy's mitigation measures and considered a range of other measures in the context of ensuring that we prescribed the means of effecting the least practicable adverse impact on the affected marine mammal species and stocks and their habitat. Based on our evaluation of these measures, we have determined that the mitigation measures provide the means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for subsistence uses.

**Monitoring and Reporting**

In order to issue an LOA for an activity, Section 101(a)(5)(A) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of the authorized taking. NMFS's MMPA implementing regulations further describe the information that an applicant should provide when requesting an authorization (50 CFR 216.104(a)(13)), including the means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and the level of taking or impacts on populations of marine mammals.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of significant interactions with marine mammal species in action area (*e.g.,* animals that came close to the vessel, contacted the gear, or are otherwise rare or displaying unusual behavior);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

*Visual Marine Mammal Observations*

The Navy will collect sighting data and behavioral responses to pile driving activity for marine mammal species observed in the region of activity during the period of activity. The Navy will employ a minimum of two qualified observers at all times to monitor shutdown zones and the surrounding waters of Anaheim Bay. In order to accomplish visual coverage of the entirety of Anaheim Bay, it is possible that additional observers will be used. All observers will be trained in marine mammal identification and behaviors and are required to have no other construction-related tasks while conducting monitoring. The Navy will monitor all shutdown zones at all times, and would monitor disturbance zones as conditions allow. The Navy will conduct monitoring before, during, and after pile driving, with observers located at the best practicable vantage points.

As described in ''Mitigation'' and based on our requirements, the Navy will implement the following procedures for pile driving:

- Marine mammal observers will be located at the best vantage point(s) in order to properly see the entire shutdown zone and as much of the disturbance zone as possible;
- During all observation periods, observers will use binoculars and the

naked eye to search continuously for marine mammals;

• If the shutdown zones are obscured by fog or poor lighting conditions, pile driving at that location will not be initiated until that zone is visible. Should such conditions arise while impact driving is underway, the activity will be halted; and

• The shutdown zone around the pile will be monitored for the presence of marine mammals before, during, and after all pile driving activity.

Individuals implementing the monitoring protocol will assess its effectiveness using an adaptive approach. Monitoring biologists will use their best professional judgment throughout implementation and seek improvements to these methods when deemed appropriate. Any modifications to the protocol will be coordinated between NMFS and the Navy.

*Data Collection*

We require that observers use standardized data forms. Among other pieces of information, the Navy will record detailed information about any implementation of shutdowns, including the distance of animals to the pile and a description of specific actions that ensued and resulting behavior of the animal, if any. We require that, at a minimum, the following information be collected on the sighting forms:

• Dates and times (begin and end) of all marine mammal monitoring;

• Construction activities occurring during each daily observation period, including how many and what type of piles were driven or removed and by what method (*i.e.,* impact or vibratory);

• Weather parameters and water conditions during each monitoring period (*e.g.,* wind speed, percent cover, visibility, sea state);

• The number of marine mammals observed, by species, relative to the pile location and if pile driving or removal was occurring at time of sighting;

• Age and sex class, if possible, of all marine mammals observed;

• PSO locations during marine mammal monitoring;

• Distances and bearings of each marine mammal observed to the pile being driven or removed for each sighting (if pile driving or removal was occurring at time of sighting);

• Description of any marine mammal behavior patterns during observation, including direction of travel;

• Number of individuals of each species (differentiated by month as appropriate) detected within the monitoring zone, and estimates of number of marine mammals taken, by species (a correction factor may be applied to total take numbers, as appropriate);

• Detailed information about any implementation of any mitigation triggered (*e.g.,* shutdowns and delays), a description of specific actions that ensued, and resulting behavior of the animal, if any;

• Description of attempts to distinguish between the number of individual animals taken and the number of incidences of take, such as ability to track groups or individuals; and

• An extrapolation of the estimated takes by Level B harassment based on the number of observed exposures within the Level B harassment zone and the percentage of the Level B harassment zone that was not visible, when applicable.

*Reporting*

A draft report must be submitted to NMFS within 90 days of the completion of each calendar year. The report will include marine mammal observations pre-activity, during-activity, and post-activity during pile driving days, and will also provide descriptions of any behavioral responses to construction activities by marine mammals and a complete description of all mitigation shutdowns and the results of those actions and a total take estimate based on the number of marine mammals observed during the course of construction. A final report must be submitted within 30 days following resolution of comments on the draft report. The Navy will also submit a comprehensive summary report covering all activities conducted under the incidental take regulations.

*Reporting Injured or Dead Marine Mammals*

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the Navy shall report the incident to the Office of Protected Resources (OPR), NMFS and to the regional stranding coordinator as soon as feasible. The report must include the following information:

• Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

• Species identification (if known) or description of the animal(s) involved;

• Condition of the animal(s) (including carcass condition if the animal is dead);

• Observed behaviors of the animal(s), if alive;

• If available, photographs or video footage of the animal(s); and

• General circumstances under which the animal was discovered.

**Negligible Impact Analysis and Determination**

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' by mortality, serious injury, and Level A or Level B harassment, we consider other factors, such as the likely nature of any behavioral responses (*e.g.,* intensity, duration), the context of any such responses (*e.g.,* critical reproductive time or location, migration), as well as effects on habitat, and the likely effectiveness of mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS's implementing regulations (54 FR 40338; September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the environmental baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality).

Pile driving activities associated with this construction action, as described previously, have the potential to disturb marine mammals. Specifically, the specified activities may result in take, in the form of Level B harassment (behavioral disturbance) only from underwater sounds generated from pile driving. Potential takes could occur if individual marine mammals are present in the ensonified zone when pile driving is happening.

No serious injury or mortality would be expected even in the absence of the required mitigation measures. No Level A harassment is anticipated given the nature of the activities, *i.e.,* much of the anticipated activity would involve vibratory driving and/or brief impact installation of primarily non-steel piles, and measures designed to minimize the possibility of injury. The limited potential for injury is expected to be

essentially eliminated through implementation of the planned mitigation measures—soft start (for impact driving) and shutdown zones. Impact driving, as compared with vibratory driving, has source characteristics (short, sharp pulses with higher peak levels and much sharper rise time to reach those peaks) that are potentially injurious or more likely to produce severe behavioral reactions. Given sufficient notice through use of soft start, marine mammals are expected to move away from a sound source that is annoying prior to its becoming potentially injurious or resulting in more severe behavioral reactions. Environmental conditions are expected to generally be good, with calm sea states, and we expect conditions would allow a high marine mammal detection capability, enabling a high rate of success in implementation of shutdowns to avoid injury.

Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring). Most likely, individuals will simply move away from the sound source and be temporarily displaced from the areas of pile driving, although even this reaction has been observed primarily only in association with impact pile driving. The pile driving activities analyzed here are similar to, or less impactful than, numerous other construction activities conducted in San Diego Bay, San Francisco Bay, and in the Puget Sound region, which have taken place with no known long-term adverse consequences from behavioral harassment.

The Navy has conducted multi-year activities potentially affecting marine mammals, and typically involving greater levels of activity and/or more impactful activities (*e.g.,* impact driving of steel piles) than is contemplated here, in various locations such as San Diego Bay as well as locations in Washington inland waters. Reporting from these activities has similarly reported no apparently consequential behavioral reactions or long-term effects on marine mammal populations. Repeated exposures of individuals to relatively low levels of sound outside of preferred habitat areas are unlikely to significantly disrupt critical behaviors. Thus, even repeated Level B harassment of some small subset of the overall stock is unlikely to result in any significant realized decrease in viability for the affected individuals, and thus would not result in any adverse impact to the stock as a whole. Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein and, if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activity is occurring. Effects of the specified activity are expected to be limited to the enclosed waters of Anaheim Bay, which provides relatively low-quality habitat and no known habitat areas of any importance. Therefore, we expect that animals annoyed by project sound would simply avoid the area and use more-preferred habitats.

In summary, this negligible impact analysis is founded on the following factors: (1) The possibility of serious injury or mortality may reasonably be considered discountable; (2) as a result of the nature of the activity in concert with the planned mitigation requirements, injury is not anticipated; (3) the anticipated incidents of Level B harassment consist of, at worst, temporary modifications in behavior; (4) the absence of any significant habitat within the project area, including known areas or features of special significance for foraging or reproduction; and (5) the presumed efficacy of the required mitigation measures in reducing the effects of the specified activity to the level of least practicable adverse impact.

In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activities will have only minor, short-term effects on individuals. The specified activities are not expected to impact rates of recruitment or survival and will therefore not result in population-level impacts.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the required monitoring and mitigation measures, we find that the total marine mammal take from the Navy's construction activities will have a negligible impact on the affected marine mammal species or stocks.

## Small Numbers

As noted above, only small numbers of incidental take may be authorized under Section 101(a)(5)(A) of the MMPA for specified activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Please see Table 6 for information relating to this small numbers analysis. We expect to authorize incidental take of five marine mammal species (with take of one species potentially occurring for two stocks). The total annual amount of taking for authorization is less than one percent for all stocks other than the California coastal bottlenose dolphin, for which the annual take represents greater than one-third of the best available population abundance, if we were to assume that all takes occurred to distinct individuals. However, these numbers represent the estimated incidents of take, not the number of individuals taken. That is, it is likely that a relatively small subset of California coastal bottlenose dolphins would be incidentally harassed by project activities. California coastal bottlenose dolphins range from San Francisco Bay to San Diego (and south into Mexico) and the specified activity would be stationary within an enclosed water body that is not recognized as an area of any special significance for coastal bottlenose dolphins (and is therefore not an area of dolphin aggregation, as evident in Navy observational records). We therefore believe that the estimated numbers of takes likely represent repeated exposures of a much smaller number of bottlenose dolphins and that, based on the limited region of exposure in comparison with the known distribution of the coastal bottlenose dolphin, these estimated incidents of take represent small numbers of bottlenose dolphins. Therefore, the annual take levels would be of small numbers for all stocks.

Based on the analysis contained herein of the specified activity (including the required mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the population sizes of the affected species or stocks.

## Impact on Availability of Affected Species for Taking for Subsistence Uses

There are no relevant subsistence uses of marine mammals implicated by these actions. Therefore, we have determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of

such species or stocks for taking for subsistence purposes.

**Adaptive Management**

The regulations governing the take of marine mammals incidental to Navy construction activities contain an adaptive management component.

The reporting requirements associated with this rule are designed to provide NMFS with monitoring data from the previous year to allow consideration of whether any changes are appropriate. The use of adaptive management allows NMFS to consider new information from different sources to determine (with input from the Navy regarding practicability) on an annual or biennial basis if mitigation or monitoring measures should be modified (including additions or deletions). Mitigation measures could be modified if new data suggests that such modifications would have a reasonable likelihood of reducing adverse effects to marine mammals and if the measures are practicable.

The following are some of the possible sources of applicable data to be considered through the adaptive management process: (1) Results from monitoring reports, as required by MMPA authorizations; (2) results from general marine mammal and sound research; and (3) any information which reveals that marine mammals may have been taken in a manner, extent, or number not authorized by these regulations or subsequent LOAs.

**Endangered Species Act (ESA)**

No marine mammal species listed under the ESA are expected to be affected by these activities. Therefore, we have determined that section 7 consultation under the ESA is not required.

**National Environmental Policy Act**

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must evaluate our proposed action (*i.e.,* the promulgation of regulations and subsequent issuance of incidental take authorization) and alternatives with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 of the Companion Manual for NAO 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the action qualifies to be categorically excluded from further NEPA review.

**Classification**

Pursuant to the procedures established to implement Executive Order 12866, the Office of Management and Budget has determined that this rule is not significant.

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration at the proposed rule stage that this action will not have a significant economic impact on a substantial number of small entities. Navy is the sole entity that would be subject to the requirements of these regulations, and the U.S. Navy is not a small governmental jurisdiction, small organization, or small business, as defined by the RFA. No comments were received regarding this certification. As a result, a regulatory flexibility analysis is not required and none has been prepared.

This rule does not contain a collection-of-information requirement subject to the provisions of the Paperwork Reduction Act (PRA) because the applicant is a Federal agency.

**List of Subjects in 50 CFR Part 218**

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: February 13, 2020.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For reasons set forth in the preamble, 50 CFR part 218 is amended as follows:

## PART 218—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 218 continues to read as follows:

**Authority:** 16 U.S.C. 1361 *et seq.*

■ 2. Add subpart D to read as follows:

### Subpart D—Taking Marine Mammals Incidental to U.S. Navy Construction Activities at Naval Weapons Station Seal Beach, California

Sec.
218.30 Specified activity and specified geographical region.
218.31 Effective dates.
218.32 Permissible methods of taking.
218.33 Prohibitions.
218.34 Mitigation requirements.
218.35 Requirements for monitoring and reporting.
218.36 Letters of Authorization.
218.37 Renewals and modifications of Letters of Authorization.
218.38–218.39 [Reserved]

### Subpart D—Taking Marine Mammals Incidental to U.S. Navy Construction Activities at Naval Weapons Station Seal Beach, California

#### § 218.30 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the U.S. Navy (Navy) and those persons it authorizes or funds to conduct activities on its behalf for the taking of marine mammals that occurs in the areas outlined in paragraph (b) of this section and that occurs incidental to maintenance construction activities.

(b) The taking of marine mammals by the Navy may be authorized in a Letter of Authorization (LOA) only if it occurs within California coastal waters in the vicinity of Naval Weapons Station Seal Beach.

#### § 218.31 Effective dates.

Regulations in this subpart are effective from March 25, 2020, through March 25, 2025.

#### § 218.32 Permissible methods of taking.

Under LOAs issued pursuant to §§ 216.106 of this chapter and 218.36, the Holder of the LOA (hereinafter ''Navy'') may incidentally, but not intentionally, take marine mammals within the area described in § 218.30(b) by Level B harassment associated with construction activities, provided the activity is in compliance with all terms, conditions, and requirements of the regulations in this subpart and the appropriate LOA.

#### § 218.33 Prohibitions.

Notwithstanding takings contemplated in § 218.32 and authorized by an LOA issued under §§ 216.106 of this chapter and 218.36, no person in connection with the activities described in § 218.30 may:

(a) Violate, or fail to comply with, the terms, conditions, and requirements of this subpart or an LOA issued under §§ 216.106 of this chapter and 218.36;

(b) Take any marine mammal not specified in such LOAs;

(c) Take any marine mammal specified in such LOAs in any manner other than as specified;

(d) Take a marine mammal specified in such LOAs if NMFS determines such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(e) Take a marine mammal specified in such LOAs if NMFS determines such taking results in an unmitigable adverse impact on the species or stock of such marine mammal for taking for subsistence uses.

**§ 218.34 Mitigation requirements.**

When conducting the activities identified in § 218.30(a), the mitigation measures contained in any LOA issued under §§ 216.106 of this chapter and 218.36 must be implemented. These mitigation measures shall include but are not limited to:

(a) *General conditions.* (1) A copy of any issued LOA must be in the possession of the Navy, its designees, and work crew personnel operating under the authority of the issued LOA.

(2) The Navy shall conduct briefings for construction supervisors and crews, the monitoring team, and Navy staff prior to the start of all pile driving activity, and when new personnel join the work, in order to explain responsibilities, communication procedures, the marine mammal monitoring protocol, and operational procedures.

(b) *Shutdown zones.* (1) For all pile driving activity, the Navy shall implement a minimum shutdown zone of a 10 m radius around the pile. If a marine mammal comes within or approaches the shutdown zone, such operations shall cease.

(2) For all pile driving activity, the Navy shall implement shutdown zones with radial distances as identified in any LOA issued under §§ 216.106 of this chapter and 218.36. If a marine mammal comes within or approaches the shutdown zone, such operations shall cease.

(3) For all pile driving activity, the Navy shall designate monitoring zones with radial distances as identified in any LOA issued under §§ 216.106 of this chapter and 218.36.

(c) *Shutdown protocols.* (1) The Navy shall deploy marine mammal observers as described in § 218.35.

(2) For all pile driving activities, a minimum of one observer shall be stationed at the active pile driving rig or in reasonable proximity in order to monitor the shutdown zone.

(3) Monitoring shall take place from 30 minutes prior to initiation of pile driving activity through 30 minutes post-completion of pile driving activity. Pre-activity monitoring shall be conducted for 30 minutes to ensure that the shutdown zone is clear of marine mammals, and pile driving may commence when observers have declared the shutdown zone clear of marine mammals. In the event of a delay or shutdown of activity resulting from marine mammals in the shutdown zone, animals shall be allowed to remain in the shutdown zone (*i.e.,* must leave of their own volition) and their behavior shall be monitored and documented. Monitoring shall occur throughout the time required to drive a pile. A determination that the shutdown zone is clear must be made during a period of good visibility (*i.e.,* the entire shutdown zone and surrounding waters must be visible to the naked eye).

(4) If a marine mammal approaches or enters the shutdown zone, all pile driving activities at that location shall be halted. If pile driving is halted or delayed due to the presence of a marine mammal, the activity may not commence or resume until either the animal has voluntarily left and been visually confirmed beyond the shutdown zone or 15 minutes have passed without re-detection of the animal.

(5) During conditions where the entire shutdown zone is not visible (*e.g.,* dark, fog, heavy rain), impact pile driving must be delayed until the PSO is confident marine mammals within the shutdown zone could be detected.

(6) Monitoring shall be conducted by trained observers, who shall have no other assigned tasks during monitoring periods. Trained observers shall be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown or delay procedures when applicable through communication with the equipment operator. The Navy shall adhere to the following additional observer qualifications:

(i) Independent observers (*i.e.,* not construction personnel) are required.

(ii) At least one observer must have prior experience working as an observer.

(iii) Other observers may substitute education (degree in biological science or related field) or training for experience.

(iv) Where a team of three or more observers are required, one observer shall be designated as lead observer or monitoring coordinator. The lead observer must have prior experience working as an observer.

(v) The Navy shall submit observer CVs for approval by NMFS.

(d) *Soft start.* The Navy shall use soft start techniques for impact pile driving. Soft start for impact drivers requires contractors to provide an initial set of three strikes at reduced energy, followed by a thirty-second waiting period, then two subsequent reduced energy three-strike sets. Soft start shall be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of thirty minutes or longer.

**§ 218.35 Requirements for monitoring and reporting.**

(a) Trained observers shall receive a general environmental awareness briefing conducted by Navy staff. At minimum, training shall include identification of marine mammals that may occur in the project vicinity and relevant mitigation and monitoring requirements. All observers shall have no other construction-related tasks while conducting monitoring.

(b) For shutdown zone monitoring, the Navy shall report on implementation of shutdown or delay procedures, including whether the procedures were not implemented and why (when relevant).

(c) The Navy shall deploy a minimum of one additional observer to aid in monitoring disturbance zones. This observer shall collect sighting data and behavioral responses to pile driving for marine mammal species observed in the region of activity during the period of activity, and shall communicate with the shutdown zone observer as appropriate with regard to the presence of marine mammals. All observers shall be trained in identification and reporting of marine mammal behaviors.

(d) The Navy must submit annual and summary reports.

(1) Navy shall submit an annual summary report to NMFS not later than 90 days following the end of each calendar year. Navy shall provide a final report within 30 days following resolution of comments on the draft report. These reports shall contain, at minimum, the following:

(i) Dates and times (begin and end) of all marine mammal monitoring;

(ii) Construction activities occurring during each daily observation period, including how many and what type of piles were driven or removed and by what method (*i.e.,* impact or vibratory);

(iii) Weather parameters and water conditions during each monitoring period (*e.g.,* wind speed, percent cover, visibility, sea state);

(iv) The number of marine mammals observed, by species, relative to the pile location and if pile driving or removal was occurring at time of sighting;

(v) Age and sex class, if possible, of all marine mammals observed;

(vi) PSO locations during marine mammal monitoring;

(vii) Distances and bearings of each marine mammal observed to the pile being driven or removed for each sighting (if pile driving or removal was occurring at time of sighting);

(viii) Description of any marine mammal behavior patterns during observation, including direction of travel;

(ix) Number of individuals of each species (differentiated by month as appropriate) detected within the monitoring zone, and estimates of number of marine mammals taken, by species (a correction factor may be applied to total take numbers, as appropriate);

(x) Detailed information about any implementation of any mitigation triggered (*e.g.,* shutdowns and delays), a description of specific actions that ensued, and resulting behavior of the animal, if any;

(xi) Description of attempts to distinguish between the number of individual animals taken and the number of incidences of take, such as ability to track groups or individuals; and,

(xii) An extrapolation of the estimated takes by Level B harassment based on the number of observed exposures within the Level B harassment zone and the percentage of the Level B harassment zone that was not visible, when applicable.

(2) Navy shall submit a comprehensive summary report to NMFS not later than ninety days following the conclusion of marine mammal monitoring efforts described in this subpart.

(e) Reporting of injured or dead marine mammals: In the event that personnel involved in the survey activities discover an injured or dead marine mammal, the LOA-holder must report the incident to the Office of Protected Resources (OPR), NMFS and to the West Coast Regional Stranding Network as soon as feasible. The report must include the following information:

(1) Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);

(2) Species identification (if known) or description of the animal(s) involved;

(3) Condition of the animal(s) (including carcass condition if the animal is dead);

(4) Observed behaviors of the animal(s), if alive;

(5) If available, photographs or video footage of the animal(s); and

(6) General circumstances under which the animal was discovered.

**§ 218.36 Letters of Authorization.**

(a) To incidentally take marine mammals pursuant to these regulations, the Navy must apply for and obtain an LOA.

(b) An LOA, unless suspended or revoked, may be effective for a period of time not to exceed the expiration date of these regulations.

(c) If an LOA expires prior to the expiration date of these regulations, the Navy may apply for and obtain a renewal of the LOA.

(d) In the event of projected changes to the activity or to mitigation and monitoring measures required by an LOA, the Navy must apply for and obtain a modification of the LOA as described in § 218.37.

(e) The LOA shall set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact (*i.e.,* mitigation) on the species, its habitat, and on the availability of the species for subsistence uses; and

(3) Requirements for monitoring and reporting.

(f) Issuance of the LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(g) Notice of issuance or denial of an LOA shall be published in the **Federal Register** within thirty days of a determination.

**§ 218.37 Renewals and modifications of Letters of Authorization.**

(a) An LOA issued under §§ 216.106 of this chapter and 218.36 for the activity identified in § 218.30(a) shall be renewed or modified upon request by the applicant, provided that:

(1) The proposed specified activity and mitigation, monitoring, and reporting measures, as well as the anticipated impacts, are the same as those described and analyzed for these regulations (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section), and

(2) NMFS determines that the mitigation, monitoring, and reporting measures required by the previous LOA under these regulations were implemented.

(b) For LOA modification or renewal requests by the applicant that include changes to the activity or the mitigation, monitoring, or reporting (excluding changes made pursuant to the adaptive management provision in paragraph (c)(1) of this section) that do not change the findings made for the regulations or result in no more than a minor change in the total estimated number of takes (or distribution by species or years), NMFS may publish a notice of proposed LOA in the **Federal Register**, including the associated analysis of the change, and solicit public comment before issuing the LOA.

(c) An LOA issued under §§ 216.106 of this chapter and 218.36 for the activity identified in § 218.30(a) may be modified by NMFS under the following circumstances:

(1) *Adaptive management*—NMFS may modify (including augment) the existing mitigation, monitoring, or reporting measures (after consulting with the Navy regarding the practicability of the modifications) if doing so creates a reasonable likelihood of more effectively accomplishing the goals of the mitigation and monitoring set forth in the preamble for these regulations.

(i) Possible sources of data that could contribute to the decision to modify the mitigation, monitoring, or reporting measures in an LOA:

(A) Results from the Navy's monitoring from the previous year(s).

(B) Results from other marine mammal and/or sound research or studies.

(C) Any information that reveals marine mammals may have been taken in a manner, extent or number not authorized by these regulations or subsequent LOAs.

(ii) If, through adaptive management, the modifications to the mitigation, monitoring, or reporting measures are substantial, NMFS will publish a notice of proposed LOA in the **Federal Register** and solicit public comment.

(2) *Emergencies.* If NMFS determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in LOAs issued pursuant to §§ 216.106 of this chapter and 218.36, an LOA may be modified without prior notice or opportunity for public comment. Notice would be published in the **Federal Register** within thirty days of the action.

**§ § 218.38–218.39 [Reserved]**

[FR Doc. 2020–03291 Filed 2–21–20; 8:45 am]

BILLING CODE 3510–22–P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

**[Docket No. 200211–0052]**

**RIN 0648–BI83**

# Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region; Framework Amendment 7

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

**ACTION:** Final rule.

**SUMMARY:** NMFS issues regulations to implement management measures described in Framework Amendment 7 to the Fishery Management Plan (FMP) for Coastal Migratory Pelagic (CMP) Resources of the Gulf of Mexico (Gulf) and Atlantic Region (FMP)(Framework Amendment 7), as prepared by the Gulf of Mexico Fishery Management Council (Gulf Council). This final rule revises the commercial and recreational minimum size limit for the Gulf zone of the Gulf migratory group of cobia (Gulf cobia). The purpose of this final rule is to reduce harvest of Gulf cobia in the Gulf zone in response to concerns about the status of the stock until additional stock information becomes available.

**DATES:** This final rule is effective March 25, 2020.

**ADDRESSES:** Electronic copies of Framework Amendment 7 that contain an environmental assessment and a Regulatory Flexibility Act (RFA) analysis may be obtained from the Southeast Regional Office website at *https://www.fisheries.noaa.gov/action/modifications-gulf-mexico-migratory-group-cobia-size-and-possession-limits.*

**FOR FURTHER INFORMATION CONTACT:** Rich Malinowski, NMFS Southeast Regional Office, telephone: 727–824–5305, or email: *rich.malinowski@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** The CMP fishery in the Gulf and Atlantic region is jointly managed by the Gulf Council and the South Atlantic Fishery Management Council (South Atlantic Council) (Councils) under the FMP, and includes king mackerel, Spanish mackerel, and Gulf cobia. The FMP was prepared by the Councils and is implemented by NMFS through regulations at 50 CFR part 622 under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Under the FMP, each Council can develop individual framework amendments to the FMP for actions that are specific to that Council's jurisdiction.

On October 3, 2019, NMFS published a proposed rule for Framework Amendment 7 and requested public comment (84 FR 52864). The proposed rule and the Framework Amendment 7 outline the rationale for the actions contained in this final rule. A summary of the management measures described in the Framework Amendment 7 and implemented by this final rule is described below.

## Background

Two migratory groups of cobia exist in the southeastern US: The Atlantic migratory group and the Gulf migratory group. The Atlantic migratory group is a genetically distinct stock that ranges from Georgia through New York and is managed by the Atlantic States Marine Fisheries Commission (84 FR 4736, February 19, 2019). The Gulf migratory group ranges in the Gulf from Texas through Florida and in the Atlantic off the east coast of Florida. The Gulf migratory group is further divided into the Gulf zone and the Florida east coast zone. The Gulf zone is defined as encompassing an area of the exclusive economic zone (EEZ) north of a line extending east of the United States/Mexico border, and north and west of the line of demarcation between the Atlantic Ocean and the Gulf (the Councils' boundary)(50 CFR 622.369(c)(1)(i)). The Florida east coast zone encompasses an area of the EEZ south and east of the line of demarcation between the Atlantic Ocean and the Gulf, and south of a line extending due east from the Florida/Georgia border (50 CFR 622.369(c)(1)(ii)).

Within the Gulf migratory group, the Gulf Council is responsible for management in the Gulf zone, and the South Atlantic Council is responsible for management in the Florida east coast zone. Framework Amendment 7 is only applicable to the Gulf zone for Gulf cobia. The South Atlantic Council was informed of the proposed changes for cobia harvested in the Gulf zone but decided not to consider changes to the cobia management measures for the Florida east coast zone.

Within the Gulf zone, among other measures, Gulf cobia is managed using a stock annual catch target (quota) and annual catch limit with no sector-specific allocations for the commercial and recreational sectors. Landings of Gulf cobia from the Gulf zone remained relatively consistent from 2012 through 2016. However, a decrease in landings was observed in 2017. During the 2018 April, June, and August Gulf Council meetings, fishers provided public testimony that they were witnessing a decrease in the presence of Gulf cobia in the Gulf zone, and requested that the Gulf Council address concerns about the potential health of the Gulf cobia stock in the Gulf zone. Landings of Gulf zone cobia from 2018, which became available following the Gulf Council's transmittal of Framework Amendment 7, revealed that 2018 landings continued to decline from previous years. The public comments were primarily from charter vessel and headboat operators, and private angling stakeholders. Recreational landings account for greater than 90 percent of all Gulf zone cobia landings.

The minimum size limit for Gulf cobia in both the Gulf and South Atlantic is 33 inches (83.8 cm), fork length, and has been in effect since the implementation of the original CMP FMP in 1983 (48 FR 5270, February 4, 1983). This minimum size limit applies to both sectors, and corresponds with the length at which life history information indicates that 50 percent of cobia are sexually mature (sexes combined) and capable of reproduction (SEDAR 28 2013). The daily Federal possession limit of two Gulf migratory group cobia per person per day applies to both sectors and has been in effect since Amendment 5 to the FMP was implemented in 1990 (55 FR 29370, July 19, 1990).

Although the 2013 stock assessment (SEDAR 28 2013) did not indicate that Gulf cobia are overfished or undergoing overfishing, the Gulf Council decided to take a precautionary approach and reduce fishing mortality in case the observed decrease in landings indicates an unknown issue with the health of the stock. An update to the stock assessment began in late 2019, and is expected to be available to the Gulf Council and its scientific and statistical committee in the summer of 2020.

Framework Amendment 7 includes alternatives to revise the Gulf zone minimum size limit, as well as the possession limit. However, the Gulf Council chose not to make any modifications to the possession limit at this time.

## Management Measure Contained in This Final Rule

This final rule implements an increase in the commercial and recreational minimum size limit for Gulf cobia in the Gulf zone from 33 inches (83.8 cm), fork length, to 36 inches (91.4 cm), fork length. The Gulf Council

determined that increasing the minimum size limit will increase the probability of a sexually mature Gulf zone cobia being able to spawn before being harvested, resulting in positive biological effects for the stock in the form of additional recruitment to the spawning stock over time. Harvest is expected to be reduced by 10.3 percent for the commercial sector, and 26.1 percent for the recreational sector, as a result of increasing the minimum size limit.

**Comments and Responses**

NMFS received eight comments from individuals on the proposed rule for Framework Amendment 7, one of which was not related to Gulf cobia. All of the other comments supported the action to increase the Gulf cobia commercial and recreational minimum size limit. Some of the comments in support of the size limit change also suggested a 2-year cobia harvest closure and a no gaffing rule for landed cobia. These comments are outside the scope of the actions considered by the Council and the proposed rule. One comment did not agree with retaining the current possession limit. This comment is summarized below, followed by NMFS' response. There are no changes to this final rule from the proposed rule.

*Comment 1:* The daily possession limit should be reduced from two fish per person per day to one fish per person per day until the stock size increases.

*Response:* NMFS disagrees that the possession limit should be reduced. The Council considered reducing the possession limit to one fish per person per day along with vessel trip limits of two, four, and six fish per vessel. However, the Council decided not to change the possession limit, or implement a vessel limit because there was public comment in opposition to the action, and a reduction in the possession limit to one fish would have minimal benefit to the stock given that most trips (greater than 95 percent) do not catch more than one cobia per person.

**Classification**

The Regional Administrator for the NMFS Southeast Region has determined that this final rule is consistent with Framework Amendment 7, the FMP, the Magnuson-Stevens Act, and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866. This final rule is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

The Magnuson-Stevens Act provides the statutory basis for this final rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this final rule. Accordingly, the Paperwork Reduction Act does not apply to this final rule. A description of this final rule, why it is being implemented, and the purpose of this final rule are contained in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of this final rule.

In compliance with section 604 of the RFA, NMFS prepared a final regulatory flexibility analysis (FRFA) for this final rule. The FRFA follows.

No public comments received by NMFS were in opposition to the action in the Framework Amendment 7 and no changes to this final rule are made as a result of public comment. No comments were received from the Office of Advocacy for the Small Business Administration.

NMFS agrees that the Gulf Council's choice of preferred alternative will best achieve the objectives of Framework Amendment 7 while minimizing, to the extent practicable, the adverse effects on fishermen, support industries, and associated communities.

NMFS expects this final rule to directly affect all commercial vessels, charter vessels and headboats (for-hire vessels), and recreational anglers that fish for or harvest cobia in the Gulf zone. Because no Federal permit is required for the commercial harvest or sale of Gulf cobia, the distinction between commercial and recreational fishing activity for the purposes of this final rule is whether the fish are sold. Individuals that harvest Gulf cobia under the recreational possession limit in Federal waters and who do not subsequently sell these fish are considered to be recreational anglers. The RFA does not consider recreational anglers to be small entities, so they are outside the scope of this analysis and only the impacts on businesses that engage in commercial fishing (*i.e.,* those that sell their harvests of Gulf cobia) will be discussed.

For-hire vessels sell fishing services to recreational anglers. This final rule will not directly alter the services sold by these for-hire vessels. Any change in anglers' demand for these fishing services (and associated economic effects) as a result of this final rule would be secondary to any direct effect on anglers and, therefore, would be an indirect effect of this final rule. Indirect effects are not relevant to the RFA. However, because for-hire captains and crew are allowed to harvest and sell Gulf cobia under the possession limit when the commercial season is open, for-hire businesses, or employees thereof, could be directly affected by this final rule as well.

Although no Federal permit is required for the commercial harvest and sale of Gulf cobia, vessels with other Federal commercial permits are required to report their catches for all species harvested, including Gulf cobia. On average from 2013 through 2017, there were 277 federally permitted commercial vessels with reported landings of cobia in the Gulf zone. Their average annual vessel-level revenue from all species for 2013 through 2017 was approximately $188,000 (2018 dollars) and cobia harvested from the Gulf zone accounted for less than one percent of this revenue. The maximum annual revenue from all species reported by a single one of these vessels from 2013 through 2017 was approximately $2.33 million (2018 dollars). Finally, it is unknown how many non-federally permitted vessels may have fished commercially for Gulf cobia in Federal waters during this time.

For-hire vessels in the Gulf are required to have a limited access Gulf Charter Vessel/Headboat for Coastal Migratory Pelagics permit (Gulf CMP for-hire permit) to fish for or possess CMP species in or from the Gulf. As of November 8, 2019, there were 1,286 valid (non-expired) or renewable Gulf CMP for-hire permits and 34 valid or renewable Gulf CMP historical captain for-hire permits. Although the for-hire permit application collects information on the primary method of operation, the permit itself does not identify the permitted vessel as either a headboat or a charter vessel and vessels may operate in both capacities. However, only federally permitted headboats are currently required to submit harvest and effort information to the NMFS Southeast Region Headboat Survey (SRHS). Participation in the SRHS is based on determination by the Southeast Fisheries Science Center that the vessel primarily operates as a headboat. As of August 20, 2019, 68 Gulf headboats were registered in the SRHS. As a result, of the 1,320 vessels with Gulf CMP for-hire permits (including historical captain permits), up to 68 may primarily operate as headboats and the remainder as charter vessels. The average charter vessel is estimated to receive approximately $88,000 (2018 dollars) in annual revenue. The average headboat is estimated to receive approximately

$267,000 (2018 dollars) in annual revenue.

For RFA purposes only, NMFS has established a small business size standard for businesses, 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. All of the commercial fishing businesses that would be directly regulated by this final rule are believed to be small entities based on the NMFS size standard.

On July 18, 2019, the Small Business Administration (SBA) issued an interim final rule (84 FR 34261) effective August 19, 2019, that adjusted the monetary-based industry size standards (*i.e.,* receipts- and assets-based) for inflation for many industries. For fisheries for-hire businesses and marinas, the rule changes the small business size standard from $7.5 million in annual gross receipts to $8 million (as discussed in the July 18, 2019, issue of the **Federal Register** on pages 34273 and 34279 that adjusts NAICS 487210 (Scenic and Sightseeing Transportation, Water) and 713930 (Marinas)).

Pursuant to the RFA, and prior to SBA's July 18, 2019 interim final rule, an initial regulatory flexibility analysis was developed for this action using SBA's former size standards. NMFS has reviewed the analyses prepared for this action in light of the new size standards. Under the former SBA size standards, all entities subject to this action were considered small entities, and they all would continue to be considered small under the new standards. As a result, NMFS has determined that the new size standards do not affect the analyses prepared for this action.

NMFS has not identified any other small entities that would be directly affected by this final rule. This final rule will increase the commercial and recreational minimum size limit for cobia in the Gulf zone from 33 inches (83.8 cm), fork length, to 36 inches (91.4 cm), fork length. This increase in the minimum size limit is expected to reduce aggregate annual cobia landings by 10.3 percent or 7,319 lb (3,320 kg) and decrease aggregate annual ex-vessel revenue by approximately $25,000 (2018 dollars). If this $25,000 decrease in ex-vessel revenue is divided by the average number of federally permitted commercial vessels that harvested and sold cobia from 2013 through 2017, it results in an average loss of $90 per vessel per year. If it is divided by the average number of federally permitted commercial vessels that harvested and sold cobia from 2013 through 2017, plus the number of vessels with a Federal CMP for-hire permit, it results in an average loss of $16 per vessel per year. The economic costs to each vessel would be expected to vary based on individual fishing practices and location. However, such distributional effects cannot be quantified with available data.

Framework Amendment 7 also contains an action to consider modification of the possession limit for cobia in the Gulf zone. However, the Gulf Council decided to retain the current possession limit. Because this final rule would not make any changes to the current possession limit, no additional direct economic effects would be expected.

The following discussion describes the alternatives that were not selected as preferred by the Gulf Council.

Four alternatives were considered for the action to increase the commercial and recreational minimum size limit for cobia in the Gulf zone. The first alternative, the no action alternative, would retain the current minimum size limit of 33 inches (83.8 cm), fork length, for both sectors. This would not be expected to alter commercial harvest rates relative to the *status quo,* so no direct economic effects to small entities would be expected to occur. This alternative was not selected by the Council because it would fail to address concerns about the status of the Gulf cobia in the Gulf zone.

The second alternative, which was selected as preferred, will increase the commercial and recreational minimum size limit for cobia to 36 inches (91.4 cm), fork length, in the Gulf zone.

The third alternative would increase the recreational and commercial minimum size limit for cobia to 39 inches (99.1 cm), fork length, in the Gulf zone. This alternative would be expected to reduce aggregate annual ex-vessel revenue by approximately $72,000 (2018 dollars). This alternative was not selected by the Gulf Council because they decided a smaller increase in the minimum size limit was appropriate given the uncertainty surrounding potential overfishing and the potential for negative economic effects.

The fourth alternative would increase the recreational and commercial minimum size limit for cobia to 42 inches (106.7 cm), fork length, in the Gulf zone. This alternative would be expected to reduce aggregate annual ex-vessel revenue by approximately $138,000 (2018 dollars). This alternative was not selected by the Gulf Council because they decided a smaller increase in the minimum size limit was appropriate given the uncertainty surrounding potential overfishing and the potential for negative economic effects.

Three alternatives were considered by the Gulf Council for the action to modify the possession limit for cobia in the Gulf zone. The first alternative, the no action alternative, was selected as preferred and will maintain the current possession limit.

The second alternative would decrease the per person recreational and commercial possession limit for cobia in the Gulf zone to one fish per day. This alternative would be expected to result in an estimated 6 percent reduction in Gulf cobia commercial landings and an estimated loss in annual ex-vessel revenue of approximately $15,000 (2018 dollars). This alternative was not selected by the Council, because they determined that the increase in the minimum size limit would be sufficient to address the concerns of potential overfishing of Gulf cobia prior to the next planned stock assessment. In accordance with that determination, and in consideration of potential negative economic effects, the Council decided to maintain the current possession limit for cobia in the Gulf zone.

The third alternative would create a recreational and commercial vessel trip limit for cobia in the Gulf zone. Under this vessel limit, anglers would not be allowed to exceed the per person possession limit. The third alternative contained three options. The first option would set the recreational and commercial vessel trip limit for cobia in the Gulf zone at two fish, which would be expected to result in an estimated 5 percent reduction in commercial landings and an estimated loss in annual ex-vessel revenue of approximately $12,000 (2018 dollars). The second option would set the recreational and commercial vessel trip limit for cobia in the Gulf zone at four fish, which would be expected to result in an estimated 1.6 percent reduction in commercial landings and an estimated loss in annual ex-vessel revenue of approximately $4,000 (2018 dollars). The third option would set the recreational and commercial vessel trip limit for cobia in the Gulf zone at six fish, which would be expected to result in an estimated 0.7 percent reduction in commercial landings and an estimated loss in annual ex-vessel revenue of approximately $2,000 (2018 dollars). This alternative was not selected by the

Council, because they determined that the increase in the minimum size limit would be sufficient to address the concerns of potential overfishing of Gulf cobia prior to the next planned stock assessment. In accordance with that determination, and in consideration of potential negative economic effects, the Council decided not to implement a vessel trip limit.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as 'small entity compliance guides.' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, NMFS prepared a fishery bulletin, which also serves as a small entity compliance guide. The fishery bulletin will be sent to all interested parties.

**List of Subjects in 50 CFR Part 622**

Cobia, Fisheries, Fishing, Gulf of Mexico, Size Limits.

Dated: February 12, 2020.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

## PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

■ 2. In § 622.380, revise paragraph (a)(1) to read as follows:

**§ 622.380 Size limits.**

* * * * *

(a) * * *

(1) *Gulf migratory group* (i) *Gulf zone*—36 inches (91.4 cm), fork length.

(ii) *Florida east coast zone*—33 inches (83.8 cm), fork length.

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[FR Doc. 2020–03164 Filed 2–21–20; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 622

**[Docket No. 200127–0032]**

**RIN 0648–BG75**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Electronic Reporting for Federally Permitted Charter Vessels and Headboats in Atlantic Fisheries

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

**ACTION:** Final rule.

**SUMMARY:** NMFS implements management measures described in the For-hire Reporting Amendment, as prepared and submitted by the South Atlantic Fishery Management Council (South Atlantic Council) and Gulf of Mexico (Gulf) Fishery Management Council (Gulf Council). This final rule establishes new, and revises existing, electronic reporting requirements for federally permitted charter vessels and headboats (for-hire vessels), respectively, in certain Atlantic fisheries. The purpose of this final rule is to increase and improve fisheries information collected from federally permitted for-hire vessels in the Atlantic. The information is expected to improve recreational fisheries management of the for-hire component in the Atlantic.

**DATES:** This final rule is effective on September 1, 2020.

**ADDRESSES:** Electronic copies of the For-hire Reporting Amendment may be obtained from *www.regulations.gov* or the Southeast Regional Office website at *https://www.fisheries.noaa.gov/southeast/southeast-electronic-reporting-technologies.* The For-hire Reporting Amendment includes an environmental assessment, regulatory impact review, Regulatory Flexibility Act analysis, and fishery impact statement.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to Adam Bailey, NMFS Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701, or to the Office of Management and Budget (OMB) by email to *OIRA_Submission@omb.eop.gov* or by fax to 202–395–5806.

**FOR FURTHER INFORMATION CONTACT:** Karla Gore, NMFS Southeast Regional Office, telephone: 727–824–5305, or email: *karla.gore@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** The For-hire Reporting Amendment amends 3 fishery management plans, and includes Amendment 27 to the Fishery Management Plan (FMP) for Coastal Migratory Pelagic (CMP) Resources of the Gulf and Atlantic Region (CMP FMP), Amendment 9 to the FMP for the Dolphin and Wahoo Fishery off the Atlantic States (Dolphin Wahoo FMP), and Amendment 39 to the FMP for the Snapper-Grouper Fishery of the South Atlantic Region (Snapper-Grouper FMP).

The CMP fishery in the Atlantic region is managed under the CMP FMP, an FMP jointly managed by the Gulf Council and South Atlantic Council. The South Atlantic Council manages the dolphin and wahoo fishery under the Dolphin Wahoo FMP in the Atlantic and the snapper-grouper fishery under the Snapper-Grouper FMP in the South Atlantic. All of these FMPs are implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On March 14, 2018, NMFS published a notice of availability (NOA) for the For-hire Reporting Amendment and requested public comment (83 FR 11164). On April 4, 2018, NMFS published a proposed rule for the For-hire Reporting Amendment and requested public comment (83 FR 14400). On June 12, 2018, the Secretary of Commerce (Secretary) approved the For-hire Reporting Amendment under section 304(a)(3) of the Magnuson-Stevens Act. The proposed rule and the For-hire Reporting Amendment outline the rationale for the actions contained in this final rule. A summary of the management measures described in the For-hire Reporting Amendment and implemented by this final rule is provided below.

### Management Measures Contained in This Final Rule

This final rule establishes weekly electronic reporting for owners or operators of federally permitted charter vessels and changes the electronic reporting deadline for owners and operators of federally permitted headboats in the previously described Atlantic fisheries managed by the Gulf Council and South Atlantic Council. Further in this preamble, for ease of comprehension an owner or operator of a charter vessel with a Federal permit for Atlantic CMP species, Atlantic

dolphin and wahoo, or South Atlantic snapper-grouper is referred to as a ''South Atlantic charter vessel permittee.''

*Electronic Reporting by Federally Permitted Charter Vessels*

The South Atlantic Council identified the need for increased data collection from federally permitted charter vessels, such as reporting landings and discards more frequently, compared to information that the Marine Recreational Information Program (MRIP) survey currently provides. The South Atlantic Council determined that weekly electronic reporting by federally permitted charter vessels will allow data to become available for the science and management process more quickly while also improving data accuracy. This rule requires a South Atlantic charter vessel permittee to submit an electronic fishing report to NMFS weekly, or at intervals shorter than a week if notified by NMFS, regardless of where they were fishing, or what species were caught or harvested. A reporting week is Monday through Sunday, and a weekly electronic fishing report is required to be submitted using NMFS-approved hardware and software by the Tuesday following each reporting week, which is 2 days after the end of a reporting week.

Through this final rule, a South Atlantic charter vessel permittee is required to submit an electronic fishing report using hardware and software that meets NMFS technical requirements and has been type-approved by NMFS. NMFS-approved hardware could include electronic devices such as computers, computer-tablets (hereinafter referred to as ''tablets''), and smartphones that allow for internet access and are capable of operating approved software. Hardware and software that meet the NMFS type-approval are posted on the NMFS Southeast Region website *https://www.fisheries.noaa.gov/southeast/et.*

An electronic fishing report is required from a South Atlantic charter vessel permittee regardless of where fishing occurs, *e.g.,* state, Federal, or foreign waters, or which species are caught or harvested. If a charter vessel is not used to fish during a reporting week, submission of a ''no-fishing'' report is required by the Tuesday of the following week. As explained in the proposed rule, the NMFS Southeast Fisheries Science Center (SEFSC), which operates and manages the Southeast Region Headboat Survey (SRHS), allows a headboat owner or operator to submit an advance no-fishing report for up to a 30-day period if the vessel will not be fishing during that time. The electronic reporting program implemented in this rule will also allow a South Atlantic charter vessel permittee to submit an advance no-fishing report for up to a 30-day period. A South Atlantic charter vessel permittee who fishes during the time period specified in a submitted no-fishing report, must report such fishing activities as required in this final rule.

The South Atlantic Council's intent is to reduce or eliminate duplicative reporting in certain circumstances for a South Atlantic charter vessel permittee who also holds a for-hire permit issued for a Federal fishery other than those covered in this rule (dually permitted fishermen). The South Atlantic Council explained that reports would be duplicative if a South Atlantic charter vessel permittee is subject to more stringent reporting requirements through another Federal permit, and the data reported under those requirements include the core data elements also required to be reported under the South Atlantic permits. Therefore, a South Atlantic charter vessel permittee who is also subject to electronic reporting requirements in other regions is required to comply with the Federal electronic reporting program that is more stringent, regardless of where they are fishing.

NMFS notes that the NMFS Greater Atlantic Regional Fisheries Office (GARFO) has implemented an electronic vessel trip report system for an owner and operator of a charter vessel or a party boat (headboat) issued a Federal for-hire permit for species managed by the Mid-Atlantic Fishery Management Council (Mid-Atlantic Council). Those for-hire vessels must submit an electronic vessel trip report using software approved by GARFO within 48 hours of completing a for-hire fishing trip (82 FR 42610, September 11, 2017). While the reporting frequency is more stringent than is required in this final rule, the data elements required to be reported through the GARFO system are slightly different from those in the South Atlantic reporting program, and as such, the programs are not interchangeable and all requirements of both programs apply. However, to reduce multiple reporting and the burden on those fishermen who have been issued both a Federal for-hire permit for species managed by the Mid-Atlantic Council and a Federal for-hire permit for species managed by the South Atlantic Council, software approved by the Southeast Regional Office (SERO) will allow, but not require, fishermen with Federal for-hire permits in both the Mid-Atlantic and South Atlantic regions to submit one report within 48 hours of completing a for-hire fishing trip that will meet the requirements of both programs.

The Gulf Council also developed amendments to the CMP FMP and the FMP for Reef Fish Resources of the Gulf of Mexico to address for-hire electronic reporting. (Notice of availability published in the **Federal Register** on June 21, 2018, at 83 FR 28797; proposed rule published in the **Federal Register** on October 26, 2018, at 83 FR 54069, with the public comment period extended on November 20, 2018, at 83 FR 58522.) The Secretary approved the amendments under section 304(a)(3) of the Magnuson-Stevens Act on September 19, 2018, and NMFS is developing the final rule to implement the Gulf Council's for-hire reporting amendments. The Gulf Council's for-hire electronic reporting requirements are more stringent than the South Atlantic Council's requirements. For example, the Gulf for-hire electronic reporting program would require a pre-trip notification to NMFS, vessel location information monitored by a global positioning system (GPS), and reporting after each trip prior to offloading catch, among other requirements. Therefore, an owner or operator of a charter vessel that has been issued Federal charter vessel/headboat permits for applicable fisheries in both the Atlantic and the Gulf would meet the reporting requirements under this rule if that owner or operator reports under the Gulf Council's more stringent for-hire electronic reporting program requirements. However, NMFS expects this final rule to implement the South Atlantic Council's reporting program will be effective prior to the final rule to implement the Gulf Council's for-hire electronic reporting program. Therefore, such dually-permitted owners or operators would be initially required to report under the South Atlantic Council's program, and then be required to change and report under the Gulf Council's reporting program upon the effective date of the Gulf Council's final rule. NMFS has determined that changing reporting programs in such a short period of time would create unnecessary disruption, confusion, and hardship for these dually-permitted owners and operators. Therefore, NMFS has determined that such owners or operators are not required to comply with the South Atlantic electronic reporting program until NMFS implements the Gulf electronic reporting program, regardless of where the for-hire trips occur. Once NMFS implements the Gulf for-hire electronic

reporting program, which is expected to occur in 2020, such owners or operators will be required to comply with the South Atlantic Council's reporting program by reporting under the Gulf Council's electronic reporting program.

This rule also extends other provisions to federally permitted charter vessels that currently apply to headboats for reporting during catastrophic conditions, and if delinquent reporting occurs. During catastrophic conditions, NMFS may accept paper reporting forms, and can modify or waive reporting requirements. Additionally, a delinquent report results in a prohibition on the harvest or possession of the applicable species by the charter vessel permit holder until all required and delinquent reports have been submitted and received by NMFS according to the reporting requirements.

*Timing of Electronic Reporting by Federally Permitted Headboats*

To further improve the accuracy and timeliness of data reported through the SRHS, this final rule changes the reporting deadline for a federally permitted headboat owner or operator currently reporting through the SRHS to submit an electronic fishing report after the end of a reporting week. A headboat owner or operator issued a Federal charter vessel/headboat permit for the applicable Atlantic fisheries covered in this rule will continue to be required to submit an electronic fishing report for each trip at weekly intervals, or at intervals shorter than a week if notified by NMFS. However, this rule requires the electronic fishing reports to be submitted by the Tuesday following a reporting week that runs from Monday through Sunday, 2 days after the end of a reporting week. This rule makes the reporting deadline for headboats consistent with the reporting deadline for charter vessels.

**Management Measures Contained in the For-Hire Reporting Amendment But Not Codified Through This Final Rule**

The For-hire Reporting Amendment specifies core data elements to be collected through the for-hire electronic reporting program. These core data elements include, but are not limited to, information about the permit holder, vessel, location fished, catch, discards, fishing effort, and socio-economic data. Other information that could further benefit the management of federally permitted for-hire vessels included under the For-hire Reporting Amendment may also be subject to collection in the future as determined by NMFS in coordination with the South Atlantic Council.

The For-hire Reporting Amendment also requires a South Atlantic charter vessel permittee to report their locations fished by either entering their latitude and longitude in an electronic reporting program or by selecting their fishing locations on a geographic grid in an electronic reporting program. The location accuracy of either reporting method would be to the nearest square nautical mile, or degrees and minutes. This location reporting requirement is consistent with what has been collected for headboats in the SRHS.

**Additional Changes to Codified Text Not in the For-Hire Reporting Amendment**

In addition to the measures described in the For-hire Reporting Amendment, this final rule corrects the FMP title name for the Dolphin Wahoo FMP in 50 CFR part 622. In 2004, NMFS published the final rule implementing the Dolphin Wahoo FMP, and that rule added the name of the Dolphin Wahoo FMP in Table 1 to § 622.1 (69 FR 30235, May 27, 2004). The Dolphin Wahoo FMP is also cited in two other places in 50 CFR part 622. The name of the Dolphin Wahoo FMP as it appears in 50 CFR part 622 is inconsistent with the original title of the Dolphin Wahoo FMP submitted by the South Atlantic Council, which is the Fishery Management Plan for the Dolphin and Wahoo Fishery of the Atlantic. Additionally, since NMFS implemented the Dolphin Wahoo FMP, the FMP name referenced by the South Atlantic Council and NMFS has often been the original title submitted by the South Atlantic Council. This final rule corrects the inconsistency between the regulations and the original name of the Dolphin Wahoo FMP and inserts ''FMP for the Dolphin and Wahoo Fishery of the Atlantic'' in Table 1 to § 622.1, and where the Dolphin Wahoo FMP is referenced in 50 CFR part 622.

Finally, this rule removes certain regulatory reporting requirements applicable to the owner or operator of a non-federally permitted charter vessel or headboat that does not fish in the exclusive economic zone (EEZ) but only harvests or possesses species from state waters adjoining the EEZ. As explained in the proposed rule, this rule removes those regulatory reporting requirements from 50 CFR 622.176(b)(1)(i) through (iii) (snapper-grouper species in the South Atlantic), 622.271(b)(1)(i) and (ii) (dolphin and wahoo in the Atlantic), and 622.374(b)(1) (coastal migratory pelagic species in the Atlantic). NMFS has determined that it does not have authority to request this information from non-federally permitted fishermen who do not fish in the EEZ. For the same reason, NMFS also removes this regulatory reporting requirement from 50 CFR 622.374(b)(1) for coastal migratory pelagic species in the Gulf. This is consistent with the revisions to § 622.374(b)(1) NMFS made in the proposed rule to implement the Gulf Council's for-hire electronic reporting amendments to their FMPs (83 FR 54069, October 26, 2018).

**Comments and Responses**

NMFS received 72 comments during the public comment periods on the NOA and proposed rule for the For-hire Reporting Amendment. The majority of the comments were in support of the For-hire Reporting Amendment and proposed rule. NMFS acknowledges the comments in favor of all or part of the actions in the For-hire Reporting Amendment and the proposed rule, and agrees with them. Many of the supporting comments stated that more accurate and timely data from fishermen on charter vessels and headboats will lead to better management of the for-hire component of the recreational sector and more sustainable fish populations. Some fishermen supported the electronic reporting requirement only if the data could be used to increase the accuracy of stock assessments and improve management decisions. Many comments in support of the For-hire Reporting Amendment and proposed rule recognized that the for-hire reporting requirements are a first step to improve data, and that adequate program compliance and validation of the data must follow. Sixteen comments were opposed to the proposed electronic reporting requirements. Comments that were beyond the scope of the proposed rule are not responded to in this final rule. In this final rule, NMFS made one change in response to public comment on the For-hire Reporting Amendment and the proposed rule. See the response to Comment 16 below. Comments specifically in opposition to all or some of the actions contained in the For-Hire Reporting Amendment and the proposed rule are summarized below, each followed by NMFS' respective responses.

*Comment 1:* The requirement of mandatory electronic reporting will be a burden to charter vessel fishermen. Species caught and discarded will be difficult to track and report when multiple customers are catching and releasing fish on a continuous basis during a trip. It will also be difficult to remember accurately what species were caught and discarded on a weekly basis.

*Response:* While implementation of this final rule will likely increase the

time required for reporting fishing activities, the electronic reporting requirements implemented in this final rule are expected to improve management of the federally permitted for-hire component in the Atlantic through improved availability of relevant management information. Multiple years of side-by-side data collection through this program and the MRIP survey are necessary before this program's data can be used for official catch estimates. NMFS will notify the South Atlantic Council if additional changes to the electronic reporting program are necessary. If certified by NMFS to replace the MRIP survey, NMFS expects these electronic reporting requirements to produce timelier, and more accurate and reliable information for managed fish species, and in particular species with low catches, small annual catch limits (ACLs), and those that are only rarely encountered by fishery participants.

To assist the owners and operators of for-hire vessels, NMFS and the South Atlantic Council have been holding outreach sessions to train those fishermen on the reporting requirements to help ensure compliance, and NMFS will continue with these outreach efforts. Although this final rule requires the reports weekly, fishermen may record or submit their electronic reports more often, and NMFS expects that recording trips before the deadline each week will become a common business practice. Electronic reporting may enable charter vessel owners and operators to store and access their trip-level information electronically, which may be helpful for other business purposes.

The electronic reporting program implemented by this final rule builds off the favorable results of the South Atlantic Council's pilot study on electronic reporting with for-hire fishermen in the South Atlantic, which tested the eTRIPS mobile application developed through the Atlantic Coastal Cooperative Statistics Program (ACCSP) and Harbor Light Software for use in U.S. northeast fisheries.

*Comment 2:* Weekly reporting does not provide charter vessel fishermen enough time to complete and submit their reports. The amount of time to transmit reports after a fishing week ends should be longer. Additionally, weather or business fluctuations can prevent fishermen from being able to fish for long periods of time, yet the reporting program requires weekly reporting.

*Response:* The South Atlantic Council's goal in selecting weekly electronic reporting for federally permitted charter vessels is to improve recreational for-hire fishery data used for management, allow for better monitoring of landings and discards, and allow more accurate assessments of the impacts of regulations. The shorter reporting deadline is expected to reduce recall bias, and to make data available on a timelier basis. The South Atlantic Council determined that weekly reporting will make data available more quickly and could decrease the likelihood of harvest overages for species that have in-season closures.

NMFS estimates that it will take about 10 minutes per fishing trip and 2 minutes for a no-fishing report to be completed and submitted, including time to review instructions, search existing data sources, to gather and maintain necessary data, and to compile, review, and submit the required information. NMFS expects reporting time to decrease as familiarity with the software increases. If no fishing occurs for any reason, no-fishing reports are due by the Tuesday following the fishing week; submission of no-fishing reports will be allowed for up to 30 days in advance, the same as currently allowed for headboats in the SRHS. The requirement for mandatory, weekly reporting, including reporting when no fishing occurred, was recommended by the Gulf and South Atlantic Council's Technical Subcommittee to enhance data validation.

*Comment 3:* Requiring charter vessel fishermen to report information such as charter fees, gross profits, and fuel costs has nothing to do with fishing regulations and should not be included in this electronic reporting program. Asking vessel operators to submit their financial information leads to a lack of program acceptance and trust among charter vessel participants. There are other methods available to collect this information such as website surveys, directly surveying permit holders, or simply asking these questions on a random basis rather than on a weekly basis.

*Response:* During the development of the For-hire Reporting Amendment, the South Atlantic Council determined that the collection of economic information was essential to the electronic reporting program. The collection of economic data from charter vessels will enhance the ability of the South Atlantic Council and NMFS to monitor and assess the economic effects of fishing regulations and environmental factors. This information will support the use of the best scientific information available for regulatory decision-making; will increase the accuracy of economic impacts and value estimates specific to the charter vessel component of the for-hire industry; and will support further research efforts and programs aimed at increasing net benefits to fishery stakeholders and the U.S. economy. Information reported by individuals and businesses will be confidential and protected in accordance with all applicable law.

*Comment 4:* Not all fishermen have access to a computer, smartphone, or tablet, nor do they all know how to use them. There should be an option for paper-based reporting or an option for reports that can be submitted via telephone.

*Response:* NMFS recognizes that there will be an economic cost for those individuals without a computer, tablet, smartphone, or internet access. However, these devices and services are essential to electronically transmit information to NMFS and fulfill the reporting program requirements. The use of computers and the internet has become commonplace and is a vital tool in business management and, according to the Small Business Administration, in 2010, approximately 94 percent of businesses used computers and 95 percent of these had internet service.

The South Atlantic Council did not consider a paper or telephone call-based reporting system for the federally permitted charter sector, apart from catastrophic conditions discussed below. (Note that reports may be submitted using a smartphone application or ''app'' if compatible and approved software is available for use.) Compared to paper or telephone call-based reporting, electronic reporting is more efficient, timely, and cost-effective, and results in fewer transmission errors. The South Atlantic Council anticipates that electronic reporting will provide more timely data for use in fisheries management actions. Electronic-based fishery reporting programs have been developed and are used in the NMFS Southeast Region and in other regions with success. To assist charter vessel owners and operators with the transition to an electronic reporting program, NMFS will continue to provide in-person outreach sessions, webinars, and other resources to help fishermen comply with the requirements. Also, all of the approved reporting software will provide help-desk support to answer questions.

An option for paper-based reporting is only available under catastrophic conditions as determined by the NMFS Regional Administrator, such as after a hurricane. If the NMFS Regional Administrator determines that catastrophic conditions exist, NMFS would announce that to the fleet, and

then may accept paper reporting forms and may modify or waive reporting requirements.

*Comment 5:* The electronic reporting program as described requires the collection of too much information. Fishermen should be required to only report the number of hooks in the water and the fish they caught. The electronic reporting requirements should only apply to fishing in Federal waters and should not include reporting of trips taken in state waters.

*Response:* In the course of developing and implementing fishery management measures, the South Atlantic Council and NMFS are required to consider many factors in addition to the amount of fish harvested and fishing effort. The South Atlantic Council identified core data elements that for-hire fishermen would report through the program. These include information about the trip, including general location, catch and discard information, as well as limited economic variables. The collection of socio-economic data is expected to improve management, as discussed in the response to *Comment 3.*

This final rule requires a for-hire vessel owner or operator to report all species, regardless of where fishing occurs, to avoid data gaps in catch reporting and to mitigate issues with compliance and enforcement. This information will improve the effectiveness of future management by ensuring that events, such as changes in a species' geographic range, developing fisheries, or species not managed by the South Atlantic Council, would be captured in the data system. Given that recreational fishermen in the South Atlantic for-hire component routinely catch multiple species in both state and Federal waters on the same trip, omitting state water data could result in a significant loss of information necessary for management.

*Comment 6:* It is unclear how the data collected through this electronic reporting program will be incorporated into stock assessments and how it will reduce uncertainty in fisheries management.

*Response:* MRIP data are currently the NMFS official estimates of catch and effort that are used in stock assessments. Until NMFS certifies this new electronic reporting program as statistically valid to replace MRIP, catch and effort from the for-hire component that would be used in stock assessments will continue to come from MRIP. In the short term, the information reported through the electronic reporting program will be used to validate minimum estimates of for-hire fishing effort for the for-hire survey conducted by MRIP. Multiple years of side-by-side comparisons of data collected by the new electronic reporting program and the MRIP survey will be needed before the electronic reporting program can be certified. Furthermore, the SEFSC has suggested that additional steps may be needed to improve the electronic reporting program before it can be certified. These steps could include a requirement for fishermen to inform NMFS when they are leaving on their trip (pre-trip notification) and to report their catch before it is off-loaded from their fishing vessel. Once certified, the data collected through this electronic reporting program would replace the MRIP survey used for official estimates of for-hire catch and effort that can be incorporated into stock assessments.

After certification, NMFS expects the electronic reporting program to facilitate timelier tracking of landings from federally permitted charter vessels, and to reduce uncertainty in the data since landings information would be collected from all federally permitted for-hire vessels, both charter vessels and headboats, rather than from only a portion of vessels. Currently, MRIP collects information from charter vessels randomly sampled through a survey rather than from every charter vessel. Having landings information from all federally permitted vessels under a certified program provides a better basis to prevent ACLs from being exceeded, and for improving information used in stock assessments. Direct, weekly electronic reporting by federally permitted charter vessels provides an opportunity for monitoring catch over shorter time periods, reducing management uncertainty and fostering more precise and responsive management.

*Comment 7:* For vessels holding multiple Federal permits, a single electronic report of all fish caught and discarded should suffice for Mid-Atlantic, South Atlantic, Atlantic Highly Migratory Species (HMS), and Gulf reporting requirements. Reporting the same landings to multiple, different systems will result in double reporting and less data accuracy.

*Response:* This final rule requires South Atlantic charter vessel permittees subject to electronic reporting requirements in other regions to comply with the electronic reporting program that is more stringent, regardless of where they are fishing. A single Federal reporting option may apply between different programs, such as with a for-hire permittee in Mid-Atlantic and South Atlantic fisheries; however, in some cases fishermen may still need to submit separate reports to different programs.

As discussed previously, because the Gulf Council's for-hire reporting program is more stringent than that for the South Atlantic, an owner or operator of a charter vessel issued the applicable Federal charter vessel/headboat permits in both the Atlantic and in the Gulf will submit their report through the Gulf system, and will not be required to submit a separate report through the South Atlantic reporting system. In addition, such an owner or operator of a charter vessel would not be required to comply with the South Atlantic electronic reporting program until the Gulf electronic reporting program is implemented, regardless of where for-hire trips occur, and can then comply by reporting through the Gulf program.

The NMFS GARFO electronic vessel trip report system collects information from for-hire vessels every 48 hours, but it does not require reporting of the same information as required to be collected through the South Atlantic program. NMFS recognizes the need to reduce duplication and the potential for double counting fish, and has developed NMFS-approved software for use in the South Atlantic that will allow fishermen with Federal for-hire permits for both the Mid-Atlantic and South Atlantic fisheries to submit one report, which meets all the different requirements of both programs, within 48 hours of completing a for-hire fishing trip. However, reporting in this manner is not required, and fishermen with Federal for-hire permits for both the Mid-Atlantic and South Atlantic fisheries may report separately under each program if they choose.

The NMFS Atlantic HMS program also has its own electronic reporting requirements. However, the Atlantic HMS regulations only require reporting of certain species by an owner or operator of a federally permitted HMS charter vessel or headboat. HMS charter vessel/headboat permit holders are required to report any dead discards of bluefin tuna, and any landings of bluefin tuna, swordfish, or billfish within 24 hours of landing at the dock through a mobile application, by calling the dedicated tuna or billfish reporting telephone numbers, or by submitting a report at the website *www.hmspermits.noaa.gov.* At this time, fishery participants with both South Atlantic and HMS for-hire permits would be required to report bluefin tuna, swordfish, or billfish harvests both through the HMS reporting mechanisms (within 24 hours) and through the South Atlantic electronic reporting program (weekly). Other species of Atlantic HMS

(*e.g.,* smooth dogfish shark) and any other species caught would only be reported through the South Atlantic reporting program, because this reporting program requires the reporting of all species that are caught or harvested. The NMFS HMS program is actively exploring options for reporting efficiency with the other reporting programs including future electronic logbooks, which could be based on existing systems, or the inclusion of HMS data elements within preexisting systems.

*Comment 8:* Having different reporting requirements for charter vessels and headboats will cause a problem for those vessels that may operate as a charter vessel during one trip and a headboat vessel during another.

*Response:* NMFS disagrees, because a federally permitted vessel that operates as both a charter vessel and a headboat during separate trips will continue to report based on whether the vessel owner or operator currently reports to the SRHS. In other words, if an owner or operator of a for-hire vessel has already been reporting to the SRHS, they will continue to report to the SRHS, regardless if they operate as a charter vessel or headboat on separate trips. Conversely, if an owner or operator of a for-hire vessel has not already been reporting to the SRHS, then they will report according to the requirements of the new South Atlantic electronic reporting program set forth in this final rule.

The South Atlantic Council's intent throughout the development of the For-hire Reporting Amendment was for electronic reporting requirements to be as consistent as possible between charter vessels and headboats. Therefore, the required data elements in the new South Atlantic electronic reporting program will be as similar as possible to those already collected through the SRHS, and this final rule requires both charter vessels and headboats to report by 2 days following the end of a fishing week (*i.e.,* by Tuesday).

*Comment 9:* Electronic reporting should be designed to minimize the complexity of these reports and to be as efficient as possible.

*Response:* NMFS agrees with the comment. NMFS evaluated potential software applications for the electronic reporting program, and specified approved software applications, including eTRIPS online and eTRIPS mobile, which are products of the ACCSP used by partner organizations in the region. NMFS will continue to conduct in-person outreach sessions and webinars, and on-line resources will be available to help ensure understanding of the program and compliance, such as, how to file electronic reports using NMFS-approved software. All NMFS-approved software vendors for the South Atlantic electronic reporting program will have help-desk support. In addition, although this final rule requires electronic reports to be submitted weekly, fishermen may submit their electronic reports more frequently.

*Comment 10:* The electronic reporting requirements for federally permitted for-hire vessels in the For-hire Reporting Amendment are a first step to a limited entry permit program, sector separation, or a catch share program, none of which are needed in the South Atlantic.

*Response:* NMFS disagrees that this final rule is intended to be a first step towards a limited entry permit program, sector separation, or a catch share program in the South Atlantic. As previously discussed in the response to *Comment 1,* the electronic reporting program implemented by this final rule is designed to collect better fishery management data from South Atlantic federally permitted for-hire owners and operators.

*Comment 11:* It is unclear how NMFS will protect data that are being reporting to them.

*Response:* NMFS will protect this data in accordance with applicable law. For example, under section 402(b)(1) of the Magnuson-Stevens Act, the data submitted to NMFS under the For-hire Reporting Amendment shall be confidential and shall not be disclosed, except under limited circumstances, as provided for in section 402(b) of the Magnuson-Stevens Act. Additionally, all data reported through the electronic reporting program will be collected through software that meets standards set out by NMFS, including data confidentiality and protection of personal information online, and will be treated as confidential in accordance with NOAA Administrative Order 216–100, Protection of Confidential Fisheries Statistics. The release of data in aggregate or summary form that does not directly or indirectly disclose the identity or business of any person who submits the information is a circumstance authorized under section 402(b)(3) of the Magnuson-Stevens Act.

*Comment 12:* The census approach to data collection is unworkable and does not provide data usable in fisheries management. The electronic reporting program needs to be enhanced to provide a reliable and usable tool for management. The electronic reporting program should include pre and post-trip notification requirements, and an education plan for charter captains to explain the value of participation and compliance.

*Response:* The South Atlantic Council considers the data collection program implemented by this final rule to be a first step towards better data collection in the federally permitted for-hire component of the recreational sector, and expects the electronic reporting program to provide data that can be used for effort validation and economic analysis. The South Atlantic Council intends to improve federally permitted charter vessel reporting, while requiring the collection of data similar to what the SRHS already collects. NMFS acknowledges that future modifications to the South Atlantic electronic reporting program, such as incorporating a pre-trip notification requirement and a requirement to report catch before off-loading from a vessel, may enhance the survey design, increase the robustness of catch estimates, and improve validation, which could decrease the overall cost of the program. However, the South Atlantic Council did not include such measures in the electronic reporting program or in the recommended core data elements. In addition, as stated in the response to *Comment 9,* NMFS will continue to hold in-person outreach sessions and webinars, and on-line resources will be available to help ensure understanding of the program and compliance.

*Comment 13:* Discard data, including the amount, a detailed disposition of discarded fish, and whether fish were vented or released to depth with a descending device, should be collected through this electronic reporting program. Refined disposition information of discarded fish can help fine-tune discard mortality estimates by quantifying what happened to fish upon their release.

*Response:* During the development of the For-hire Reporting Amendment, the South Atlantic Council identified core data elements that would be required to be reported through the program. These include information about the trip, including general location, catch and discard information, as well as limited economic variables. The specific discard information identified in the comment were not included as core data elements, and the SEFSC does not recommend the collection of discard disposition, because assessment of the condition of a released fish varies among fishermen and the mortality of a discarded fish is rarely instantaneous. However, NMFS, in coordination with the South Atlantic Council, may

consider modifying the list of data elements in the future.

*Comment 14:* The for-hire reporting program recommended by the Gulf Council was inaccurately summarized in the proposed rule for the South Atlantic for-hire reporting program. The proposed rule incorrectly stated that the Gulf for-hire reporting program would require location information monitored by a vessel monitoring system (VMS), among other requirements. The Gulf for-hire reporting program would provide flexibility for other NMFS-approved electronic devices to be used to monitor location information.

*Response:* NMFS agrees that the proposed rule described some of the measures recommended for the Gulf in error, and NMFS became aware of this after the proposed rule for the South Atlantic for-hire reporting program published in the **Federal Register**. The Gulf for-hire reporting program as recommended by the Gulf Council would require NMFS-approved hardware and software with GPS capabilities that, at a minimum, archive vessel position data during a trip for subsequent transmission to NMFS. NMFS-approved hardware could include VMS, and owners and operators of vessels already equipped with VMS may elect to utilize it if the VMS unit is approved for use in the Gulf electronic reporting program. However, NMFS anticipates approving other devices that may be used to meet the requirements of the Gulf electronic reporting program.

*Comment 15:* Implementation and evaluation of the electronic reporting program will be necessary before the new information can be used to support management decisions. This will require additional funds to support more staff time and improvements to data collection platforms. NMFS should carefully balance the need for funding of new electronic reporting programs, while ensuring that adequate financial and human resources continue to be allocated for managing South Atlantic fish populations that reflect the economic and ecological value of the region's diverse ecosystems and coastal communities.

*Response:* NMFS agrees that the electronic reporting program should be evaluated after it is implemented to make sure it properly supports management decisions. As noted in the response to *Comment 1,* additional steps will be required before the data collected through this program can replace the MRIP survey and be used for official estimates of for-hire catch and effort. NMFS expects that the certification process through MRIP will not begin until the data collected through this program can be independently validated, and validation will require funding. NMFS strives to meet all of the mandates under the Magnuson-Stevens Act, and finds the need for more timely and improved management data to be obtained through the electronic reporting program in balance and consistent with the management needs of South Atlantic fisheries.

*Comment 16:* The proposed regulations did not codify the intent to reduce duplicative reporting, but it could be used for enforcement purposes and will have to be changed if the Gulf Council changes their reporting requirements. The regulations for the South Atlantic and Gulf electronic reporting programs should be effective on the same day to avoid confusion and promote compliance.

*Response:* NMFS has determined that codifying measures to address the duplicative reporting circumstances discussed in the For-hire Reporting Amendment and proposed rule is appropriate and NMFS has added it to this final rule. If the Gulf Council changes its for-hire reporting requirements, NMFS and the South Atlantic Council will review the revised Gulf requirements and determine if changes are needed to the regulations for the applicable Atlantic fisheries. In addition, approximately 373 charter vessels have been issued both a Federal permit in the South Atlantic and in the Gulf, and will be subject to the reporting requirements in the South Atlantic and in the Gulf. As explained earlier in this final rule, NMFS has determined that initially requiring dually permitted Gulf and South Atlantic for-hire vessel owners and operators to report under the South Atlantic electronic reporting program, and then change and report under the Gulf electronic reporting program upon implementation of the Gulf program in such a short period of time would create unnecessary disruption, confusion, and hardship. Therefore, NMFS has determined that because the final rules to implement the two reporting programs will not be effective on the same date, such dually permitted owners or operators are not required to comply with the South Atlantic electronic reporting program until NMFS implements the Gulf electronic reporting program, regardless of where for-hire trips occur.

**Changes From the Proposed Rule**

This final rule clarifies a sentence in the preamble to the proposed rule on page 14403 in the left column that stated a headboat with Federal charter vessel/headboat permits for applicable fisheries in both the Atlantic and the Gulf would continue to be required to comply with the electronic reporting standards in effect based on where they are fishing, *e.g.,* in the Atlantic or the Gulf (83 FR 14400, April 4, 2018). As correctly stated earlier in this final rule, an owner or operator of a federally permitted headboat in both the Atlantic and the Gulf, who currently reports to the SRHS, is required to comply with the electronic reporting requirements in effect based on the permits issued to the vessel regardless of where they were fishing. Because the Gulf Council's for-hire reporting amendments require trip-level reporting prior to offloading fish from the vessel, among other requirements, the Gulf electronic reporting program would be more restrictive, and fishermen on such vessels would be required to report to standards of the Gulf electronic reporting program. NMFS did not change the regulatory language in the proposed rule as a result of this clarification.

In an effort to reduce multiple reporting, NMFS-approved software for the South Atlantic Council-managed fisheries will allow, but not require, fishermen with Federal for-hire permits in both the Mid-Atlantic and South Atlantic to submit one report within 48 hours of completing a for-hire fishing trip that will meet the reporting requirements of both the Mid-Atlantic and South Atlantic programs. The preamble to the proposed rule stated, on page 14402 in the right hand column, that because the program implemented by GARFO is more stringent, permit holders with both GARFO and South Atlantic permits would be required to report to the GARFO reporting program. This is incorrect. While the GARFO requirements are more stringent on the timing of the reports, the South Atlantic program requires more data elements to be reported.

Further, in the preamble to the proposed rule on page 14403 in the left and center columns that explained if NMFS approves the South Atlantic For-hire Reporting Amendment and implements the proposed rule before approving and implementing the Gulf Council's amendments for their for-hire electronic reporting program, a vessel issued the applicable Federal charter vessel/headboat permits in the Atlantic and in the Gulf would be required to comply with the South Atlantic electronic reporting program until a Gulf electronic reporting program is implemented, even if the for-hire trips only occur in the Gulf. Then, if NMFS implements the Gulf for-hire electronic

reporting program, a vessel issued such permits would be required to comply with the Gulf electronic reporting program.

NMFS has determined that a charter vessel owner or operator issued the applicable Federal charter vessel/headboat permits in both the Atlantic and in the Gulf will not be required to comply with the South Atlantic electronic reporting program implemented through this final rule until the date on which the Gulf electronic reporting program is implemented. Those owners and operators must then comply with the South Atlantic Council's reporting program by reporting under the Gulf Council's electronic reporting program. This is necessary to avoid confusion between the South Atlantic and proposed Gulf requirements, reduce the administrative burden on the agency, and eliminate an unnecessary economic burden on the fishermen holding both South Atlantic and Gulf permits.

**Changes to Regulatory Text From the Proposed Rule**

An owner or operator of a charter vessel with a Federal charter vessel/headboat permit for Atlantic CMP species, Atlantic dolphin and wahoo, or South Atlantic snapper-grouper must submit an electronic fishing report regardless of where they were fishing, *i.e.,* not only if fishing occurs in state or Federal waters. The modifications to §§ 622.176(b)(1), 622.271(b)(1), and 622.374(b)(1)(ii) more accurately reflect the applicability of reporting under this final rule. Additionally, in response to a comment on the implementation of the Gulf and South Atlantic electronic reporting programs, NMFS has determined that it is appropriate to codify the circumstance discussed earlier regarding avoiding duplicate reporting requirements if a federally permitted vessel is subject to more stringent reporting requirements through another Federal permit. NMFS has added language to the codified text in this final rule to explain that situation and references the NMFS SERO website for additional information on more stringent reporting requirements. NMFS discussed avoiding duplicate reporting requirements in the preamble to the proposed rule on page 14402 in the right hand column and has determined that adding it to the codified text will help clarify the reporting requirements.

NMFS revised language in §§ 622.176(b)(4), 622.271(b)(4), and 622.374(b)(4) to clarify the consequences of not complying with the reporting requirements.

In addition, reference to the NMFS SERO website was added to §§ 622.176(b)(5), 622.271(b)(5), and 622.374(b)(5) for additional information on approved hardware and software, and NMFS also modifies the language in § 622.374(b)(5), to remove a sentence referencing NMFS-approved hardware and software requirements in the Gulf that is inapplicable to the electronic reporting program in the South Atlantic and that is implemented by this final rule.

Finally, this final rule removes certain regulatory reporting requirements in the section referenced below, applicable to the owner or operator of a non-federally permitted charter vessel or headboat that does not fish in the EEZ but only harvests or possesses Gulf CMP species from state waters adjoining the Gulf EEZ. As stated earlier in this final rule, NMFS proposed to remove this language in the proposed rule for the Gulf electronic reporting program. However, for consistency with changes to requirements for Atlantic CMP species in this final rule, NMFS also removes the regulatory requirements stated in this paragraph from 50 CFR 622.374(b)(1)(i)(A) and (B). These reporting requirements were implemented early in the management of these species, and NMFS is not currently collecting this information. NMFS has determined that it does not now have the regulatory authority under the FMPs affected by this final rule to request this information.

**Classification**

The Regional Administrator for the NMFS Southeast Region has determined that this final rule is consistent with the For-hire Reporting Amendment, the respective FMPs, the Magnuson-Stevens Act, and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Magnuson-Stevens Act provides the statutory basis for this final rule. No duplicative, overlapping, or conflicting Federal rules have been identified. A description of this final rule, why it is being implemented, and the purposes of this final rule are contained in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of this preamble.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) during the proposed rule stage that this final rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here.

On July 18, 2019, the SBA issued an interim final rule (84 FR 34261) effective August 19, 2019, that adjusted the monetary-based industry size standards (*i.e.,* receipts- and assets-based) for inflation for many industries. For fisheries, for-hire businesses, and marinas, the rule changes the small business size standard from $7.5 million in annual gross receipts to $8 million. *See* 84 FR at 34273 (adjusting NAICS 487210 (Scenic and Sightseeing Transportation, Water) and 713930 (Marinas)).

Pursuant to the Regulatory Flexibility Act, and prior to SBA's July 18, 2019, interim final rule, a certification was developed for this action using SBA's former size standards. NMFS has reviewed the analyses prepared for this final rule in light of the new size standards. Under the former SBA size standards, all entities subject to this action were considered small entities, and they all would continue to be considered small under the new standards. NMFS has determined that the new size standards do not affect analyses prepared for this final rule. The economic effects discussed in the factual basis for the certification determination, as published in the proposed rule, remain unchanged.

Public comments relating to socio-economic implications and potential impacts on small businesses are addressed in the responses to *Comment 1 through Comment 4* in the Comments and Responses section of this final rule. No comments were received regarding the certification and NMFS has not received any new information that would affect its determination. As a result, a final regulatory flexibility analysis was not required and none was prepared.

This final rule contains collection-of-information requirements that have been submitted for approval to OMB under the Paperwork Reduction Act (PRA), Control Number 0648–0016, Southeast Region Logbook Family of Forms. Public reporting burden for compliance with a weekly electronic fishing report is estimated to average 10 minutes per trip and 2 minutes for a no-fishing report, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information.

Notwithstanding any other provision of the law, no person is required to respond to, and no person will be subject to penalty for failure to comply with, a collection of information subject

to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved collections of information may be viewed at *http://www.cio.noaa.gov/services_programs/prasubs.html* or *https://www.reginfo.gov/public/do/PRASearch#.*

**List of Subjects in 50 CFR Part 622**

Atlantic, Charter vessel, Cobia, Dolphin, Fisheries, Fishing, Gulf of Mexico, Headboat, King mackerel, Recordkeeping and reporting, Snapper-grouper, South Atlantic, Spanish mackerel, Wahoo.

Dated: February 10, 2020.

**Samuel D. Rauch III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

## PART 622—FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

■ 2. In § 622.1, remove the Table 1 entry for ''FMP for the Dolphin and Wahoo Fishery off the Atlantic States'' and add in its place the entry ''FMP for the Dolphin and Wahoo Fishery of the Atlantic'' to read as follows:

**§ 622.1 Purpose and scope.**

* * * * *

TABLE 1 TO § 622.1—FMPS IMPLEMENTED UNDER PART 622

| FMP title | Responsible fishery management council(s) | Geographical area |
|---|---|---|
| * * * * * | * | * |
| FMP for the Dolphin and Wahoo Fishery of the Atlantic | SAFMC | Atlantic. |
| * * * * * | * | * |

* * * * *

■ 3. In § 622.13, revise paragraph (g) to read as follows:

**§ 622.13 Prohibitions—general.**

* * * * *

(g) Harvest or possess fish if the required charter vessel or headboat reports have not been submitted in accordance with this part.

* * * * *

■ 4. In § 622.176, revise paragraph (b) to read as follows:

**§ 622.176 Recordkeeping and reporting.**

* * * * *

(b) *Charter vessel/headboat owners and operators*—(1) *General reporting requirement*—(i) *Charter vessels.* The owner or operator of a charter vessel for which a charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, as required under § 622.170(b)(1), and whose vessel is operating as a charter vessel, must record all fish harvested and discarded, and any other information requested by the SRD for each trip, and submit an electronic fishing report within the time period specified in paragraph (b)(2)(i) of this section. The electronic fishing report must be submitted to the SRD via NMFS-approved hardware and software, as specified in paragraph (b)(5) of this section. If the owner or operator subject to this paragraph (b)(1)(i) has been issued a Federal permit that requires more restrictive reporting requirements, as determined by NMFS and posted on the NMFS Southeast Region website, reporting under those more restrictive regulations will meet the requirements of this paragraph (b)(1)(i).

(ii) *Headboats.* The owner or operator of a headboat for which a charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, as required under § 622.170(b)(1), and whose vessel is operating as a headboat in state or Federal waters, must record all fish harvested and discarded, and any other information requested by the SRD for each trip in state or Federal waters, and submit an electronic fishing report within the time period specified in paragraph (b)(2)(i) of this section. The electronic fishing report must be submitted to the SRD via NMFS-approved hardware and software, as specified in paragraph (b)(5) of this section.

(iii) *Electronic logbook/video monitoring reporting.* The owner or operator of a vessel for which a charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, as required under § 622.170(b)(1), and whose vessel fishes for or lands such snapper-grouper in or from state or Federal waters, who is selected to report by the SRD must participate in the NMFS-sponsored electronic logbook and/or video monitoring program as directed by the SRD. Compliance with the reporting requirements of paragraph (b)(2)(i) of this section is required for permit renewal.

(2) *Reporting deadlines for charter vessels and headboats.* (i) Completed electronic fishing reports required by paragraph (b)(1) of this section must be submitted to the SRD by the Tuesday following each previous reporting week of Monday through Sunday, or at shorter intervals if notified by the SRD. If no fishing activity as a charter vessel or headboat occurred during a reporting week, an electronic report so stating must be submitted by the Tuesday following that reporting week, or at a shorter interval if notified by the SRD.

(ii) Completed fishing reports required by paragraph (b)(1)(iii) of this section for charter vessels or headboats may be required weekly or daily, as directed by the SRD. Information to be reported is indicated on the form and its accompanying instructions.

(3) *Catastrophic conditions.* During catastrophic conditions only, NMFS provides for use of paper forms for basic required functions as a backup to the electronic reports required by paragraphs (b)(1)(i) and (ii) of this section. The RA will determine when catastrophic conditions exist, the duration of the catastrophic conditions, and which participants or geographic areas are deemed affected by the catastrophic conditions. The RA will provide timely notice to affected participants via publication of notification in the **Federal Register**, and

other appropriate means such as fishery bulletins or NOAA weather radio, and will authorize the affected participants' use of paper forms for the duration of the catastrophic conditions. The paper forms will be available from NMFS. During catastrophic conditions, the RA has the authority to modify or waive reporting time requirements.

(4) *Compliance requirement.* Electronic reports required by paragraphs (b)(1)(i) and (ii) of this section must be submitted and received by NMFS according to the reporting requirements under this section. A report not received within the applicable time specified in paragraph (b)(2)(i) of this section is delinquent. A delinquent report results in the owner and operator of a charter vessel or headboat for which a charter vessel/headboat permit for South Atlantic snapper-grouper has been issued being prohibited from harvesting or possessing such species automatically, with no additional requirement for NMFS to provide notice to the owner and operator of their delinquency. The owner and operator who are prohibited from harvesting or possessing such species due to delinquent reports are authorized to harvest or possess such species only after all required and delinquent reports have been submitted and received by NMFS according to the reporting requirements under this section.

(5) *Hardware and software requirements for electronic reporting.* Owners and operators must submit electronic reports using NMFS-approved hardware and software as posted on the NMFS Southeast Region website.

* * * * *

■ 5. Revise the heading of subpart M to read as follows:

## Subpart M—Dolphin and Wahoo Fishery of the Atlantic

■ 6. In § 622.271, revise paragraph (b) to read as follows:

### § 622.271 Recordkeeping and reporting.

* * * * *

(b) *Charter vessel/headboat owners and operators*—(1) *General reporting requirement*—(i) *Charter vessels.* The owner or operator of a charter vessel for which a charter vessel/headboat permit for Atlantic dolphin and wahoo has been issued, as required under § 622.270(b)(1), and whose vessel is operating as a charter vessel, must record all fish harvested and discarded, and any other information requested by the SRD for each trip, and submit an electronic fishing report within the time period specified in paragraph (b)(2) of this section. The electronic fishing report must be submitted to the SRD via NMFS-approved hardware and software, as specified in paragraph (b)(5) of this section. If the owner or operator subject to this paragraph (b)(1)(i) has been issued a Federal permit that requires more restrictive reporting requirements, as determined by NMFS and posted on the NMFS Southeast Region website, reporting under those more restrictive regulations will meet the requirements of this paragraph (b)(1)(i).

(ii) *Headboats.* The owner or operator of a headboat for which a charter vessel/headboat permit for Atlantic dolphin and wahoo has been issued, as required under § 622.270(b)(1), and whose vessel is operating as a headboat in state or Federal waters, must record all fish harvested and discarded, and any other information requested by the SRD for each trip in state or Federal waters, and submit an electronic fishing report within the time period specified in paragraph (b)(2) of this section. The electronic fishing report must be submitted to the SRD via NMFS-approved hardware and software, as specified in paragraph (b)(5) of this section.

(2) *Reporting deadlines for charter vessels and headboats.* Completed electronic fishing reports required by paragraph (b)(1) of this section must be submitted to the SRD by the Tuesday following each previous reporting week of Monday through Sunday, or at shorter intervals if notified by the SRD. If no fishing activity as a charter vessel or headboat occurred during a reporting week, an electronic report so stating must be submitted by the Tuesday following that reporting week, or at a shorter interval if notified by the SRD.

(3) *Catastrophic conditions.* During catastrophic conditions only, NMFS provides for use of paper forms for basic required functions as a backup to the electronic reports required by paragraph (b)(1) of this section. The RA will determine when catastrophic conditions exist, the duration of the catastrophic conditions, and which participants or geographic areas are deemed affected by the catastrophic conditions. The RA will provide timely notice to affected participants via publication of notification in the **Federal Register**, and other appropriate means such as fishery bulletins or NOAA weather radio, and will authorize the affected participants' use of paper forms for the duration of the catastrophic conditions. The paper forms will be available from NMFS. During catastrophic conditions, the RA has the authority to waive or modify reporting time requirements.

(4) *Compliance requirements.* Electronic reports required by paragraph (b)(1) of this section must be submitted and received by NMFS according to the reporting requirements under this section. A report not received within the applicable time specified in paragraph (b)(2) of this section is delinquent. A delinquent report results in the owner and operator of a charter vessel or headboat for which a charter vessel/headboat permit for Atlantic dolphin and wahoo has been issued being prohibited from harvesting or possessing such species automatically, with no additional requirement for NMFS to provide notice to the owner and operator of their delinquency. The owner and operator who are prohibited from harvesting or possessing such species due to delinquent reports are authorized to harvest or possess such species only after all required and delinquent reports have been submitted and received by NMFS according to the reporting requirements under this section.

(5) *Hardware and software requirements for electronic reporting.* Owners and operators must submit electronic reports using NMFS-approved hardware and software as posted on the NMFS Southeast Region website.

* * * * *

■ 7. In § 622.281, revise the introductory text to read as follows:

### § 622.281 Adjustment of management measures.

In accordance with the framework procedures of the FMP for the Dolphin and Wahoo Fishery of the Atlantic, the RA may establish or modify the following items specified in paragraph (a) of this section for Atlantic dolphin and wahoo.

* * * * *

■ 8. In § 622.374, revise paragraph (b) to read as follows:

### § 622.374 Recordkeeping and reporting.

* * * * *

(b) *Charter vessel/headboat owners and operators*—(1) *General reporting requirements*—(i) *Gulf of Mexico*—(A) *Charter vessels.* The owner or operator of a charter vessel for which a charter vessel/headboat permit for Gulf coastal migratory pelagic fish has been issued, as required under § 622.370(b)(1), who is selected to report by the SRD must maintain a fishing record for each trip, or a portion of such trips as specified by the SRD, on forms provided by the SRD and must submit such record as specified in paragraph (b)(2)(i)(A) of this section.

(B) *Headboats.* The owner or operator of a headboat for which a charter vessel/headboat permit for Gulf coastal migratory fish has been issued, as required under § 622.370(b)(1), who is selected to report by the SRD must submit an electronic fishing record for each trip of all fish harvested within the time period specified in paragraph (b)(2)(i)(B) of this section, via the Southeast Region Headboat Survey.

(ii) *Atlantic*—(A) *Charter vessels.* The owner or operator of a charter vessel for which a charter vessel/headboat permit for Atlantic coastal migratory pelagic fish has been issued, as required under § 622.370(b)(1), and whose vessel is operating as a charter vessel, must record all fish harvested and discarded, and any other information requested by the SRD for each trip, and submit an electronic fishing report within the time period specified in paragraph (b)(2)(ii) of this section. The electronic fishing report must be submitted to the SRD via NMFS-approved hardware and software, as specified in paragraph (b)(5) of this section. If the owner or operator subject to this paragraph (b)(1)(ii)(A) has been issued a Federal permit that requires more restrictive reporting requirements, as determined by NMFS and posted on the NMFS Southeast Region website, reporting under those more restrictive regulations will meet the requirements of this paragraph (b)(1)(ii)(A).

(B) *Headboats.* The owner or operator of a headboat for which a charter vessel/headboat permit for Atlantic coastal migratory pelagic fish has been issued, as required under § 622.370(b)(1), and whose vessel is operating as a headboat in state or Federal waters, must record all fish harvested and discarded, and any other information requested by the SRD for each trip in state or Federal waters, and submit an electronic fishing report within the time period specified in paragraph (b)(2)(ii) of this section. The electronic fishing report must be submitted to the SRD via NMFS-approved hardware and software, as specified in paragraph (b)(5) of this section.

(2) *Reporting deadlines*—(i) *Gulf of Mexico*—(A) *Charter vessels.* Completed fishing records required by paragraph (b)(1)(i)(A) of this section for charter vessels must be submitted to the SRD weekly, postmarked no later than 7 days after the end of each week (Sunday). Information to be reported is indicated on the form and its accompanying instructions.

(B) *Headboats.* Electronic fishing records required by paragraph (b)(1)(i)(B) of this section for headboats must be submitted at weekly intervals (or intervals shorter than a week if notified by the SRD) by 11:59 p.m., local time, the Sunday following a reporting week. If no fishing activity occurred during a reporting week, an electronic report so stating must be submitted for that reporting week by 11:59 p.m., local time, the Sunday following a reporting week.

(ii) *Atlantic.* Completed electronic fishing reports required by paragraph (b)(1)(ii) of this section must be submitted to the SRD by the Tuesday following each previous reporting week of Monday through Sunday, or at shorter intervals if notified by the SRD. If no fishing activity as a charter vessel or headboat occurred during a reporting week, an electronic report so stating must be submitted by the Tuesday following that reporting week, or at a shorter interval if notified by the SRD.

(3) *Catastrophic conditions.* During catastrophic conditions only, NMFS provides for use of paper forms for basic required functions as a backup to the electronic reports required by paragraphs (b)(1)(i)(B) and (b)(1)(ii) of this section. The RA will determine when catastrophic conditions exist, the duration of the catastrophic conditions, and which participants or geographic areas are deemed affected by the catastrophic conditions. The RA will provide timely notice to affected participants via publication of notification in the **Federal Register**, and other appropriate means such as fishery bulletins or NOAA weather radio, and will authorize the affected participants' use of paper-based components for the duration of the catastrophic conditions. The paper forms will be available from NMFS. During catastrophic conditions, the RA has the authority to waive or modify reporting time requirements.

(4) *Compliance requirements.* Electronic reports required by paragraphs (b)(1)(i)(B) and (b)(1)(ii) of this section must be submitted and received by NMFS according to the reporting requirements under this section. A report not received within the applicable time specified in paragraph (b)(2)(i)(B) or (b)(2)(ii) of this section is delinquent. A delinquent report results in the owner and operator of a charter vessel or headboat for which a charter vessel/headboat permit for Gulf or Atlantic coastal migratory pelagic fish has been issued, as required under § 622.370(b)(1), being prohibited from harvesting or possessing such species automatically, with no additional requirement for NMFS to provide notice to the owner and operator of their delinquency. The owner and operator who are prohibited from harvesting or possessing such species due to delinquent reports are authorized to harvest or possess such species only after all required and delinquent reports have been submitted and received by NMFS according to the reporting requirements under this section.

(5) *Hardware and software requirements for electronic reporting.* An owner or operator of a vessel for which a charter vessel/headboat permit for Atlantic coastal migratory pelagic fish has been issued must submit electronic reports using NMFS-approved hardware and software as posted on the NMFS Southeast Region website.

* * * * *

[FR Doc. 2020–02964 Filed 2–21–20; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 635

**[Docket No. 180117042–8884–02]**

**RTID 0648–XT033**

### Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

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

**ACTION:** Temporary rule.

**SUMMARY:** NMFS closes the southern area Angling category fishery for large medium and giant (''trophy'' (*i.e.,* measuring 73 inches (185 cm) curved fork length or greater)) Atlantic bluefin tuna (BFT). This action is being taken to prevent further overharvest of the Angling category southern area trophy BFT subquota.

**DATES:** Effective 11:30 p.m., local time, February 20, 2020, through December 31, 2020.

**FOR FURTHER INFORMATION CONTACT:** Sarah McLaughlin, 978–281–9260, Larry Redd, 301–427–8503, or Nicholas Velseboer 978–675–2168.

**SUPPLEMENTARY INFORMATION:** Regulations implemented under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the

Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (2006 Consolidated HMS FMP) (71 FR 58058, October 2, 2006) and amendments.

NMFS is required, under § 635.28(a)(1), to file a closure notice with the Office of the Federal Register for publication when a BFT quota is reached or is projected to be reached. On and after the effective date and time of such notification, for the remainder of the fishing year or for a specified period as indicated in the notification, retaining, possessing, or landing BFT under that quota category is prohibited until the opening of the subsequent quota period or until such date as specified in the notice.

**Angling Category Large Medium and Giant Southern ''Trophy'' Fishery Closure**

The 2020 BFT fishing year, which is managed on a calendar-year basis and subject to an annual calendar-year quota, began January 1, 2020. The Angling category season opened January 1, 2020, and continues through December 31, 2020. The currently codified Angling category quota is 232.4 metric tons (mt), of which 5.3 mt is allocated for the harvest of large medium and giant (trophy) BFT by vessels fishing under the Angling category quota, with 1.8 mt allocated for each of the following areas: North of 39°18′ N lat. (off Great Egg Inlet, NJ); south of 39°18′ N lat. and outside the Gulf of Mexico (the ''southern area''); and in the Gulf of Mexico. Trophy BFT measure 73 inches (185 cm) curved fork length or greater.

Based on reported landings from the NMFS Automated Catch Reporting System and the North Carolina Tagging Program, NMFS has determined that the codified Angling category southern area trophy BFT subquota of 1.8 mt has been reached and exceeded and that a closure of the southern area trophy BFT fishery is warranted. Therefore, retaining, possessing, or landing large medium or giant BFT south of 39°18′ N. lat. and outside the Gulf of Mexico by persons aboard vessels permitted in the HMS Angling category and the HMS Charter/Headboat category (when fishing recreationally) must cease at 11:30 p.m. local time on February 20, 2020. This closure will remain effective through December 31, 2020. This action is intended to prevent further overharvest of the Angling category southern area trophy BFT subquota, and is taken consistent with the regulations at § 635.28(a)(1).

If needed, subsequent Angling category adjustments will be published in the **Federal Register**. Information regarding the Angling category fishery for Atlantic tunas, including daily retention limits for BFT measuring 27 inches (68.5 cm) to less than 73 inches and any further Angling category adjustments, is available at *hmspermits.noaa.gov* or by calling (978) 281–9260. HMS Angling and HMS Charter/Headboat category permit holders may catch and release (or tag and release) BFT of all sizes, subject to the requirements of the catch-and-release and tag-and-release programs at § 635.26. Anglers are also reminded that all BFT that are released must be handled in a manner that will maximize survival, and without removing the fish from the water, consistent with requirements at § 635.21(a)(1). For additional information on safe handling, see the ''Careful Catch and Release'' brochure available at *https://www.fisheries.noaa.gov/resource/outreach-and-education/careful-catch-and-release-brochure.*

HMS Charter/Headboat and Angling category vessel owners are required to report the catch of all BFT retained or discarded dead, within 24 hours of the landing(s) or end of each trip, by accessing *hmspermits.noaa.gov,* using the HMS Catch Reporting app, or calling (888) 872–8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

**Classification**

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason retention limit adjustments and fishery closures to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. The closure of the southern area Angling category trophy fishery is necessary to prevent any further overharvest of the southern area trophy fishery subquota. NMFS provides notification of closures by publishing the notice in the **Federal Register**, emailing individuals who have subscribed to the Atlantic HMS News electronic newsletter, and updating the information posted on the Atlantic Tunas Information Line and on *hmspermits.noaa.gov.*

These fisheries are currently underway and delaying this action would be contrary to the public interest as it could result in excessive trophy BFT landings that may result in future potential quota reductions for the Angling category, depending on the magnitude of a potential Angling category overharvest. NMFS must close the southern area trophy BFT fishery before additional landings of these sizes of BFT occur. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

This action is being taken under 50 CFR 635.28(a)(1), and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: February 19, 2020.

**Karyl K. Brewster-Geisz,**

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

[FR Doc. 2020–03613 Filed 2–19–20; 4:15 pm]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 180831813–9170–02]**

**RTID 0648–XY070**

## Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 620 in the Gulf of Alaska

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for pollock in Statistical Area 620 in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2020 total allowable catch of pollock for Statistical Area 620 in the GOA.

**DATES:** Effective 1200 hours, Alaska local time (A.l.t.), February 19, 2020, through 1200 hours, A.l.t., March 10, 2020.

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

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management

Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allowance of the 2020 total allowable catch (TAC) of pollock in Statistical Area 620 of the GOA is 18,757 metric tons (mt) as established by the final 2019 and 2020 harvest specifications for groundfish in the GOA (84 FR 9416, March 14, 2019) and inseason adjustment (84 FR 70436, December 23, 2019).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the A season allowance of the 2020 TAC of pollock in Statistical Area 620 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 300 mt and is setting aside the remaining 18,457 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the GOA.

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

## Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for pollock in Statistical Area 620 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of February 17, 2020.

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

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

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: February 19, 2020.

**Karyl K. Brewster-Geisz,**

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

[FR Doc. 2020–03561 Filed 2–19–20; 4:15 pm]

BILLING CODE 3510–22–P

# Proposed Rules

Federal Register
Vol. 85, No. 36
Monday, February 24, 2020

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. FAA–2020–0101; Product Identifier 2019–NM–190–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.) Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain De Havilland Aircraft of Canada Limited Model DHC–8–400 series airplanes. This proposed AD was prompted by a report that certain elevator power control unit (PCU) arm fittings have nonconforming fillet radii. This proposed AD would require an inspection for affected elevator PCU assemblies, inspections of affected elevator PCU arm fittings for nonconforming fillet radii and cracks, replacement if necessary, and re-identification of the affected elevator PCU assemblies. The FAA is proposing this AD to address the unsafe condition on these products.

**DATES:** The FAA must receive comments on this proposed AD by April 9, 2020.

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

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

For service information identified in this NPRM, contact De Havilland Aircraft of Canada Limited, Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; phone: 416–375–4000; fax: 416–375–4539; email: *thd@dehavilland.com;* internet: *https://dehavilland.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

### Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0101; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Andrea Jimenez, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 516–228–7330; fax: 516–794–5531; email: *9-avs-nyaco-cos@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2020–0101; Product Identifier 2019–NM–190–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

### Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2019–36, dated October 18, 2019 (''AD CF–2019–36'') (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain De Havilland Aircraft of Canada Limited Model DHC–8–400 series airplanes. You may examine the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0101.

This proposed AD was prompted by a report that certain elevator PCU arm fittings have nonconforming fillet radii. The FAA is proposing this AD to address elevator PCU assemblies with nonconforming fillet radii, which could lead to premature failure of the fitting and a jam in one elevator; if the fittings on both elevators fail, a complete loss of elevator control could occur. See the MCAI for additional background information.

### Related Service Information Under 1 CFR Part 51

De Havilland has issued Service Bulletin 84–55–10, Revision A, dated July 25, 2019. This service information describes procedures for an inspection for affected elevator PCU assemblies, inspections of affected elevator PCU arm fittings for nonconforming fillet radii and cracks, replacement if necessary, and re-identification of the affected elevator PCU assemblies. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

### FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI and service information referenced above. The FAA is proposing this AD because the FAA

evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

**Proposed Requirements of This NPRM**

This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between this Proposed AD and the MCAI or Service Information.''

**Differences Between This Proposed AD and the MCAI or Service Information**

Canadian AD CF–2019–36 specifies to do the required inspections before accumulating 8,000 flight cycles from the effective date of Canadian AD CF–2019–36, or before accumulating 30,000 total flight cycles, whichever occurs first. TCCA's risk assessment was developed using flight cycles on the elevator PCU assembly (which was inadvertently omitted from the Canadian AD). The FAA has determined that using the compliance times specified in the Canadian AD could inadvertently ground certain airplanes. Therefore, the FAA finds that the inspection must be accomplished within 8,000 flight cycles on the elevator PCU assembly after the effective date of this AD, or before the accumulation of 30,000 total flight cycles on the elevator PCU assembly, whichever occurs first, which represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety.

**Costs of Compliance**

The FAA estimates that this proposed AD affects 38 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

| Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|
| 5 work-hours × $85 per hour = $425 | $0 | $425 | $16,150 |

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

| Labor cost | Parts cost | Cost per product |
|---|---|---|
| 14 work-hours × $85 per hour = $1,190 | Up to $9,060 ($1,510 per elevator PCU arm fittings—6 total per airplane). | Up to $10,250. |

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**De Havilland Aircraft of Canada Limited (Type Certificate Previously Held by Bombardier, Inc.):** Docket No. FAA–2020–0101; Product Identifier 2019–NM–190–AD.

**(a) Comments Due Date**

The FAA must receive comments by April 9, 2020.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to De Havilland Aircraft of Canada Limited Model DHC–8–400, –401, and –402 series airplanes, certificated in any category, serial numbers 4001 and subsequent.

**(d) Subject**

Air Transport Association (ATA) of America Code 55, Stabilizers.

**(e) Reason**

This AD was prompted by a report that certain elevator power control unit (PCU) arm fittings have nonconforming fillet radii. The FAA is issuing this AD to address elevator PCU assemblies with nonconforming fillet radii, which could lead to premature failure of the fitting and a jam in one elevator; if the fittings on both elevators fail, a complete loss of elevator control could occur.

**(f) Compliance**

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

**(g) Definition**

Affected elevator PCU assemblies are those having part number 85527021–005 or 85527021–006, and having serial number MMC4255 through MMC4276 inclusive.

**(h) Inspections**

For airplanes having serial numbers 4001 through 4620 inclusive, within 8,000 flight cycles on the elevator PCU assembly after the effective date of this AD, or before the accumulation of 30,000 total flight cycles on the elevator PCU assembly, whichever occurs first: Do the actions specified in paragraphs (h)(1) and (2) of this AD.

(1) Inspect to determine the part number and serial number of each elevator PCU assembly installed on the airplane. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number and serial number of the elevator PCU assembly can be conclusively determined from that review.

(2) If, during any inspection or records review required by paragraph (h)(1) of this AD, any affected elevator PCU assembly is found, do a detailed inspection of the elevator PCU arm fittings for undersized fillet radii and cracks of the fillet radii in accordance with Part A of the Accomplishment Instructions of de Havilland Service Bulletin 84–55–10, Revision A, dated July 25, 2019. If no undersized fillet radii or cracks of the fillet radii are found, before further flight, re-identify the affected elevator PCU assembly in accordance with the Accomplishment Instructions of de Havilland Service Bulletin 84–55–10, Revision A, dated July 25, 2019.

**(i) Corrective Actions**

If during any inspection of the elevator PCU arm fittings required by paragraph (h)(2) of this AD, any undersized fillet radii or cracks of the fillet radii are found, before further flight, replace the elevator PCU arm fittings and re-identify each affected elevator PCU assembly in accordance with Part B of the Accomplishment Instructions of de Havilland Service Bulletin 84–55–10, Revision A, dated July 25, 2019.

**(j) Parts Installation Limitation**

As of the effective date of this AD, no person may install an affected elevator PCU assembly, on any airplane, unless it has been re-identified in accordance with the Accomplishment Instructions of de Havilland Service Bulletin 84–55–10, Revision A, dated July 25, 2019.

**(k) Credit for Previous Actions**

This paragraph provides credit for actions required by paragraphs (h) and (i) of this AD, if those actions were performed before the effective date of this AD using de Havilland Service Bulletin 84–55–10, dated May 29, 2019.

**(l) No Reporting Requirement**

Although de Havilland Service Bulletin 84–55–10, Revision A, dated July 25, 2019, specifies to submit certain information to the manufacturer, this AD does not include that requirement.

**(m) Other FAA AD Provisions**

The following provisions also apply to this AD:

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

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

**(n) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2019–36, dated October 18, 2019, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0101.

(2) For more information about this AD, contact Andrea Jimenez, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; phone: 516–228–7330; fax: 516–794–5531; email: *9-avs-nyaco-cos@faa.gov.*

(3) For service information identified in this AD, contact De Havilland Aircraft of Canada Limited, Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; phone: 416–375–4000; fax: 416–375–4539; email: *thd@dehavilland.com;* internet: *https://dehavilland.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on February 14, 2020.

**Gaetano A. Sciortino,**

*Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.*

[FR Doc. 2020–03353 Filed 2–21–20; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2020–0104; Product Identifier 2019–NM–210–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier, Inc., Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes. This proposed AD was prompted by a report that the anti-fretting coating on the piston rods of certain ram air turbine (RAT) deployment actuators may have been incorrectly applied. This proposed AD would require a review of airplane maintenance records or an inspection of the RAT deployment actuator to determine the serial number and, depending on the findings, replacement with an upgraded RAT deployment actuator. The FAA is proposing this AD to address the unsafe condition on these products.

**DATES:** The FAA must receive comments on this proposed AD by April 9, 2020.

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

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

For service information identified in this NPRM, contact Bombardier, Inc., 400 Côte Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email

*thd.crj@aero.bombardier.com;* internet *http://www.bombardier.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

**Examining the AD Docket**

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0104; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the regulatory evaluation, any comments received, and other information. The street address for Docket Operations is listed above. Comments will be available in the AD docket shortly after receipt.

**FOR FURTHER INFORMATION CONTACT:** Thomas Niczky, Aerospace Engineer, Avionics and Electrical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7347; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2020–0104; Product Identifier 2019–NM–210–AD'' at the beginning of your comments. The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this NPRM. The FAA will consider all comments received by the closing date and may amend this NPRM because of those comments.

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

**Discussion**

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian AD CF–2019–38, dated October 30, 2019 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Model BD–700–1A10 and BD–700–1A11 airplanes. You may examine the MCAI in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0104.

This proposed AD was prompted by a report that the anti-fretting coating on the piston rods of certain RAT deployment actuators may have been incorrectly applied. Incorrect application of this anti-fretting coating may lead to galling of the piston rod over time, which could cause the unit to seize and fail to fully deploy. The FAA is proposing this AD to address this condition which, if not corrected, could result in the inability to power essential systems in the event that other sources of power are also lost. See the MCAI for additional background information.

**Related Service Information Under 1 CFR Part 51**

Bombardier has issued the following service information, which describes procedures for inspecting the RAT deployment actuator to identify the serial number and replacing certain RAT deployment actuators with upgraded parts. These documents are distinct since they apply to different airplane models with different configurations.

- Bombardier Service Bulletin 700–1A11–24–029, dated February 22, 2019.
- Bombardier Service Bulletin 700–24–090, dated February 22, 2019.
- Bombardier Service Bulletin 700–24–5015, dated February 22, 2019.
- Bombardier Service Bulletin 700–24–6015, dated February 22, 2019.

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

**FAA's Determination**

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

**Proposed Requirements of This NPRM**

This proposed AD would require accomplishing the actions specified in the service information described previously.

**Costs of Compliance**

The FAA estimates that this proposed AD affects 380 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTION

| Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|
| 1 work-hour × $85 per hour = $85 | $0 | $85 | $32,300 |

ESTIMATED COSTS OF ON-CONDITION ACTIONS

| Labor cost | Parts cost | Cost per product |
|---|---|---|
| 5 work-hours × $85 per hour = $425 | Up to $41,006 | Up to $41,431. |

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

**Authority for This Rulemaking**

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of

the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

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

**Regulatory Findings**

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

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

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Bombardier, Inc.:** Docket No. FAA–2020–0104; Product Identifier 2019–NM–210–AD.

**(a) Comments Due Date**

The FAA must receive comments by April 9, 2020.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11airplanes, certificated in any category, serial numbers 9002 through 9828 inclusive, 9830, 9832 through 9835 inclusive, 9840, 9854, 9855 and 9998.

**(d) Subject**

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

**(e) Reason**

This AD was prompted by a report that the anti-fretting coating on the piston rods of certain ram air turbine (RAT) deployment actuators may have been incorrectly applied. Incorrect application of this anti-fretting coating may lead to galling of the piston rod over time, which could cause the unit to seize and fail to fully deploy. The FAA is issuing this AD to address this condition which, if not corrected, could result in the inability to power essential systems in the event that other sources of power are also lost.

**(f) Compliance**

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

**(g) Determine RAT Serial Number**

Within 36 months after the effective date of this AD: Perform an inspection to determine the serial number of the RAT deployment actuator, having part number (P/N) BZ02001–01 (GL456–1301–1). A review of the airplane maintenance records is acceptable in lieu of this inspection, provided the serial number of the RAT deployment actuator can be conclusively determined from that review.

(1) If the serial number of the RAT deployment actuator is not listed in the table referred to in paragraph 2.B., Part A—Special Check, of the Accomplishment Instructions of the applicable Bombardier service information specified in figure 1 to paragraphs (g)(1) and (2), (h), and (i) of this AD, no further action is required by this AD.

**Figure 1 to paragraphs (g)(1) and (2), (h), and (i) –** *Service Information*

| Airplane Model | Service Information |
|---|---|
| BD-700-1A10 airplanes having serial numbers 9002 through 9312 inclusive, 9314 through 9380 inclusive, and 9384 through 9429 inclusive | Bombardier Service Bulletin 700-24-090, dated February 22, 2019 |
| BD-700-1A10 airplanes having serial numbers 9313, 9381, 9432 through 9828 inclusive, 9830, 9832 through 9835 inclusive, 9854, and 9855 | Bombardier Service Bulletin 700-24-6015, dated February 22, 2019 |
| BD-700-1A11 airplanes having serial numbers 9127 through 9383 inclusive, 9389 through 9400 inclusive, 9404 through 9431 inclusive, and 9998 | Bombardier Service Bulletin 700-1A11-24-029, dated February 22, 2019 |
| BD-700-1A11 airplanes having serial numbers 9386, 9401, and 9445 through 9840 inclusive | Bombardier Service Bulletin 700-24-5015, dated February 22, 2019 |

(2) If the serial number of the RAT deployment actuator is listed in the table referred to in paragraph 2.B., Part A—Special Check, of the Accomplishment Instructions of the applicable Bombardier service information specified in figure 1 to

paragraphs (g)(1) and (2), (h), and (i) of this AD, do the replacement required by paragraph (h) of this AD.

**(h) Replacement**

If during the inspection or records review required by paragraph (g) of this AD any RAT deployment actuator is found to have an affected serial number: Within 36 months after the effective date of this AD, replace the RAT deployment actuator, having P/N BZ02001–01 (GL456–1301–1), with an upgraded part, in accordance with Paragraph 2.C., Part B—Modification, of the Accomplishment Instructions of the applicable Bombardier service information specified in figure 1 to paragraphs (g)(1) and (2), (h), and (i) of this AD.

**(i) Parts Installation Prohibition**

As of the effective date of this AD, no person may install on any airplane, a RAT deployment actuator having P/N BZ02001–01 (GL456–1301–1) with a serial number referred to in Paragraph 2.B., Part A—Special Check, of the Accomplishment Instructions, of the applicable Bombardier service information specified in figure 1 to paragraphs (g)(1) and (2), (h), and (i) of this AD.

**(j) Other FAA AD Provisions**

The following provisions also apply to this AD:

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

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

**(k) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian AD CF–2019–38, dated October 30, 2019, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2020–0104.

(2) For more information about this AD, contact Thomas Niczky, Aerospace Engineer, Avionics and Electrical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7347; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; email *thd.crj@aero.bombardier.com;* internet *http://www.bombardier.com.* You may view this service information at the FAA, Transport Standards Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on February 18, 2020.

**Gaetano A. Sciortino,**

*Deputy Director for Strategic Initiatives, Compliance & Airworthiness Division, Aircraft Certification Service.*

[FR Doc. 2020–03548 Filed 2–21–20; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF THE INTERIOR

## Bureau of Indian Affairs

## 25 CFR Part 82

**[1120A2100DD/AAKC001030/A0A501010.999900 253G]**

**RIN 1076–AF51**

## Procedures for Federal Acknowledgment of Alaska Native Entities

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Proposed rule; public meeting.

**SUMMARY:** This document announces that the Department of the Interior (Department) will be holding an additional public meeting by teleconference, to receive input on the proposed rule that would address how Alaska Native entities may become acknowledged as an Indian Tribe pursuant to the Alaska Amendment to the Indian Reorganization Act.

**DATES:** The public meeting will be held on Wednesday, February 26, 2020.

**ADDRESSES:** This is a virtual meeting. The call-in number is: 800–857–9752. The passcode is: 8078300.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Appel, Director, Office of Regulatory Affairs & Collaborative Action, (202) 273–4680; *elizabeth.appel@bia.gov.*

**SUPPLEMENTARY INFORMATION:** On January 2, 2020, the Department published a proposed rule that would establish an acknowledgment process for entities in Alaska that were not recognized as bands or Tribes before 1936. *See* 84 FR 37. The Department is providing an additional opportunity for the public to provide comments by phone on February 26, 2020, at 1 p.m. Eastern Time. The call-in number is: 800–857–9752. The passcode is: 8078300.

Dated: February 7, 2020.

**Tara Sweeney,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 2020–03736 Filed 2–21–20; 8:45 am]

BILLING CODE 4337–15–P

## LIBRARY OF CONGRESS

## Copyright Office

## 37 CFR Parts 201 and 202

**[Docket No. 2020–2]**

## Group Registration of Newsletters

**AGENCY:** U.S. Copyright Office, Library of Congress.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The U.S. Copyright Office is proposing to amend its regulation governing the group registration option for newsletter issues. The proposed rule eliminates the requirement that newsletters must be published at least two days each week to qualify for a group registration. This will let a broader range of newsletter publishers register a month of issues, without imposing an administrative burden on the Office. In addition, the proposed rule updates the address where complimentary subscriptions should be sent for purposes of satisfying the mandatory deposit requirement for newsletters and other serials.

**DATES:** Written comments must be received no later than 11:59 Eastern Time on March 25, 2020.

**ADDRESSES:** For reasons of government efficiency, the Copyright Office is using the *regulations.gov* system for the submission and posting of public comments in this proceeding. All comments are therefore to be submitted electronically through *regulations.gov.* Specific instructions for submitting comments are available on the Copyright Office website at *http://copyright.gov/rulemaking/group-newsletters-frequency/.* If electronic submission of comments is not feasible due to lack of access to a computer and/or the internet, please contact the Office using the contact information below for special instructions.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Kasunic, Associate Register of Copyrights and Director of Registration Policy and Practice, *rkas@copyright.gov;*

Erik Bertin, Deputy Director of Registration Policy and Practice, *ebertin@copyright.gov;* or Kevin Amer, Deputy General Counsel, *kamer@copyright.gov.* They can be reached by telephone at (202) 707–3000.

**SUPPLEMENTARY INFORMATION:** The Office has established a group registration option that lets a newsletter publisher register an entire month of issues with one application and one filing fee. A publisher may use this option if each issue is ''an all-new issue or an all-new collective work that has not been previously published.'' [1] In addition, the newsletter ''must usually'' be published ''at least two days each week.'' [2] The word ''usually'' was added to the regulation ''to account for occasional situations where the newsletter suspends publication (*e.g.* for a holiday).'' [3]

It has come to the Office's attention that many newsletters are published just once a week. The requirement that publication must usually occur at least twice a week renders these newsletters ineligible for this group registration option. Some newsletter publishers may be able to use the group registration option for serials (which is specifically intended for publications that are distributed at intervals of a week or longer), but to do so each issue ''must be an all-new collective work.'' [4] Thus, if a newsletter is published once a week and if those issues do not qualify as all-new collective works, the publisher may not qualify for the group registration option for newsletters or the group registration option for serials. For these types of newsletters, the publisher must submit a separate application and filing fee for each issue.

To address this issue, the Office has decided to eliminate the requirement that newsletters must be published at least two days a week to qualify for the group registration option for newsletters.[5] This will let publishers register newsletters that otherwise would be ineligible for this option, without imposing an administrative burden on the Office.

Newsletter publishers will still be required to complete and submit an online application and upload a digital deposit to seek a group registration.[6] The online application is labeled ''Daily Newsletters,'' but to be clear, this form may be used to register any newsletter, even if it is not published on a daily basis, as long as all of the issues are published within the same month.

Likewise, newsletter publishers will still be required to comply with the mandatory deposit requirement if the newsletter is published in the United States in a physical form.[7] To satisfy this requirement, the publisher must provide the Library of Congress with up to two complimentary subscriptions to the newsletter.[8] To facilitate this process, the Office is updating the mailing address where complimentary subscription copies should be sent.

The Office welcomes public input on the following proposed changes.

**List of Subjects**

*37 CFR Part 201*

Copyright, General Provisions.

*37 CFR Part 202*

Copyright, Preregistration and registration of claims to copyright.

**Proposed Regulations**

For the reasons set forth in the preamble, the Copyright Office proposes amending 37 CFR parts 201 and 202 as follows:

## PART 201—GENERAL PROVISIONS

■ 1. The authority citation for part 201 continues to read as follows:

**Authority:** 17 U.S.C. 702.

■ 2. Revise § 201.1(c)(6) to read as follows:

**§ 201.1 Communication with the Copyright Office.**

* * * * *

(c) * * *

(6) *Mandatory Deposit Copies.* Mandatory deposit copies of published works submitted for the Library of Congress under 17 U.S.C. 407 and § 202.19 of this chapter (including serial publications that are not being registered) should be addressed to: Library of Congress, U.S. Copyright Office, Attn: 407 Deposits, 101 Independence Avenue SE, Washington, DC 20559–6600, except that mandatory deposit copies submitted as complimentary subscriptions for serial publications that are being registered should be addressed to: Library of Congress, Group Serials Registration, Washington, DC 20540–4161.

* * * * *

## PART 202—PREREGISTRATION AND REGISTRATION OF CLAIMS TO COPYRIGHT

■ 3. The authority citation for part 202 continues to read as follows:

**Authority:** 17 U.S.C. 408(f), 702.

■ 4. Amend § 202.4(f)(1)(i) by removing ''Publication must usually occur at least two days each week and the'' and adding ''The'' in its place.

Dated: February 5, 2020.

**Regan A. Smith,**

*General Counsel and Associate Register of Copyrights.*

[FR Doc. 2020–03376 Filed 2–21–20; 8:45 am]

**BILLING CODE 1410–30–P**

[1] 37 CFR 202.4(f)(1)(iii).

[2] 37 CFR 202.4(f)(1)(i).

[3] 83 FR 22902, 22904 (May 17, 2018).

[4] 37 CFR 202.4(d)(1)(iii). *See id.* (d)(1)(v).

[5] To be eligible for group registration under this rule, the group must consist of at least two issues, and all of the issues included in the group must be published in the same calendar month. 37 CFR 202.4(f)(1)(ii), (v).

[6] 37 CFR 202.4(f)(2), (3).

[7] 37 CFR 202.19(d)(2)(xi).

[8] Newsletters that are published solely in electronic format remain subject to the Library's on-demand mandatory deposit regime for electronic serials. *See* 37 CFR 202.19(c)(5), 202.24.

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R05–OAR–2015–0700; FRL–10005–64–Region 5]**

## Air Plan Approval; Indiana; Attainment Plan for Sulfur Dioxide in Southwest Indiana

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is reproposing to approve under the Clean Air Act an element of the State Implementation Plan (SIP) revision for attaining the 1-hour sulfur dioxide ($SO_2$) primary national ambient air quality standard (NAAQS) for the Southwest Indiana nonattainment area (including parts of Daviess and Pike Counties), based on revised limits for the Indianapolis Power and Light's Petersburg facility (IP&L-Petersburg) that Indiana submitted on September 18, 2019. Indiana's revised limits are based on the same dispersion modeling and the same 1-hour average emission rates that EPA proposed to conclude would result in attainment. However, the revised limits reflect revised calculations of the degree of adjustment needed for the 30-day average limits to be comparably stringent to 1-hour limits at the modeled emission rates. EPA is soliciting additional comments that may arise from these revisions.

**DATES:** Comments must be received on or before March 25, 2020.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R05–OAR–2015–0700 at *http://www.regulations.gov,* or via email to *arra.sarah@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 *http://www2.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** John Summerhays, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6067, *summerhays.john@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Organization of this document. The following outline is provided to aid in locating information in this preamble.

**Table of Contents**

I. History of Nonattainment Planning for $SO_2$ in Southwest Indiana
II. Indiana's Revisions to Limits for IP&L-Petersburg
III. EPA Guidance Regarding Data Handling for Calculating Longer Term Average $SO_2$ Emission Limits
IV. EPA's Evaluation of the IP&L-Petersburg Limit Revisions
V. EPA's Proposed Action
VI. Incorporation by Reference
VII. Statutory and Executive Order Reviews

## I. History of Nonattainment Planning for $SO_2$ in Southwest Indiana

In 2013, in implementing its 2010 1-hour primary $SO_2$ NAAQS of 75 parts per billion (ppb), EPA designated a first set of 29 areas of the country as nonattainment for this NAAQS, including the Southwest Indiana area (defined to include portions of Daviess and Pike Counties). *See* 78 FR 47191 (August 5, 2013), codified at 40 CFR part 81, subpart C. In response to the resulting Clean Air Act requirements to adopt and submit to EPA a SIP demonstrating attainment of the NAAQS, Indiana submitted nonattainment plans for this and for three other areas on October 2, 2015. Indiana then submitted supplemental material pertinent in part to Southwest Indiana on November 15, 2017.

On August 15, 2018, EPA published a proposed rule that proposed to approve the $SO_2$ nonattainment plans for the Southwest Indiana, Indianapolis, and Terre Haute areas. (*See* 83 FR 40487.) EPA received no comments addressing the Indianapolis and Terre Haute areas, and EPA published a final rule regarding these two areas on March 22, 2019 (84 FR 10692). EPA also published separate actions regarding the $SO_2$ attainment plan for Morgan County, including a proposed rule published on July 9, 2019 (at 84 FR 32672) and a final rule published on September 23, 2019 (at 84 FR 49659). This rule therefore does not address these three areas that were addressed in Indiana's 2015 submittal, and only addresses $SO_2$ in Southwest Indiana.

Indiana's plan for $SO_2$ in Southwest Indiana addresses a number of Clean Air Act requirements that $SO_2$ nonattainment plans must meet in order to be approved by EPA, including requirements for emission limits sufficient to provide for attainment, a modeling demonstration that these limits in fact provide for attainment, and requirements for an emissions inventory, reasonably available control, reasonable further progress (RFP), and contingency measures.[1] Emission limits were submitted in October 2015 for both IP&L-Petersburg and the Frank E. Ratts facility. EPA's August 15, 2018 proposed action on this rule addressed these requirements.

In response to the August 15, 2018 proposed rule, EPA received comments on Indiana's 30-day average limits for IP&L-Petersburg, which prompted Indiana to reevaluate these limits.[2] This reevaluation led Indiana to adopt a revised set of limits for IP&L-Petersburg, incorporated in Commissioner's Order Number 2019–2, which Indiana submitted to EPA on September 18, 2019. As explained below, these revised limits are based on the same modeling that was used to derive the limits in Indiana's October 2015 submittal and, thus, reflect the same critical emission values that Indiana identified in its October 2015 submittal. However, as explained further below, Indiana reevaluated the adjustment factor that it used to determine the 30-day average emission limits for IP&L-Petersburg, which resulted in calculation of a revised adjustment factor and therefore revised emission limits. These limits were incorporated in Commissioner's Order Number 2019–2, which was issued on July 31, 2019 and became effective on August 18, 2019.

Indiana's October 2, 2015 submittal addresses reasonably available control measures (RACM) and RFP by means of its adopted limits, so the limit revisions implicitly affect these elements of the plan. However, Indiana's recent submittal did not otherwise revise its plan with respect to these elements, and EPA continues to believe that Indiana has met these requirements. The primary focus of this proposed action is to evaluate whether these revised limits, in conjunction with other limits that Indiana submitted previously, provide for attainment of the $SO_2$ NAAQS in Southwest Indiana and continue to support EPA's proposed conclusions regarding Indiana's satisfaction of the RACM and RFP elements.

## II. Indiana's Revisions to Limits for IP&L-Petersburg

Indiana's October 2015 submittal included two sets of limits for IP&L-Petersburg, including one set using 1-hour average emission limits and one set using 30-day average limits, with provisions for IP&L to select which limits would apply. IP&L has requested that the 30-day average limits apply, and IP&L's involvement in pursuing modified 30-day average limits suggests that IP&L envisions continuing to be subject to 30-day average limits. Nevertheless, Indiana requested that EPA approve both the 1-hour limits in 326 IAC 7–4–15 and the 30-day average limits in the commissioner's order, and EPA is reproposing action accordingly.

Historically, EPA required states to establish short-term emission limits at the level that modeling shows provides for NAAQS attainment, a level known as the critical emission value, with averaging times of limits expected to match the averaging time of the relevant NAAQS. EPA guidance for $SO_2$ nonattainment plans under the 2010 1-hour NAAQS states that limits with

[1] As discussed in the notice of proposed rulemaking, 83 FR 40487, 40497 (Aug. 15, 2018), EPA already approved Indiana's nonattainment new source review rules on October 7, 1994, with subsequent amendments approved July 8, 2011. *See* 59 FR 51108 and 76 FR 40242. EPA explained that these rules provide for appropriate new source review for $SO_2$ sources undergoing construction or major modification without the need for modification of the approved rules. Therefore, EPA concluded that Indiana had satisfied nonattainment new source review requirements previously for the Southwest Indiana area and did not need to include any provisions to address these requirements in its 2015 submittal.

[2] EPA received no comments regarding the 1-hour limits for the Frank E. Ratts facility.

averaging times up to 30 days may, in appropriate circumstances, provide a suitable basis for plans to ensure attainment of that NAAQS. However, EPA recommends that, to serve this purpose, any such limit should be designed to have comparable stringency to a 1-hour average limit at the critical emission value. Appendix C of EPA's guidance provides a recommended procedure for determining adjustment factors which may be multiplied by the value of a candidate 1-hour limit to estimate a longer term averaged limit that is presumptively comparably stringent. This procedure uses a pertinent hourly emissions data set to determine the 99th percentile among 1-hour average emission values, to determine the 99th percentile among longer term averaged values, and to calculate the ratio between these two 99th percentile values in order to determine an adjustment factor to be applied in determining the longer term average limit. This adjustment factor represents an estimate of the change in stringency from applying the limit on a longer term average basis rather than on a 1-hour basis, so that the adjusted longer term limit is estimated to be comparably stringent to a 1-hour limit at the critical emission value. The guidance document (including appendix C) provides extensive guidance on the data sets and the calculation procedures that EPA advises be used in these determinations.[3]

Indiana used this general approach to determine the 30-day average limits adopted for purposes of its 2015 submittal. Based on historical emissions data from a stack that vents controlled emissions from Unit 2 of IP&L-Petersburg, Indiana calculated an adjustment factor of 80 percent, leading Indiana to establish 30-day average limits at a level that was 80 percent of 1-hour emission rates that were reflected in its attainment demonstration modeling.

EPA's proposed rulemaking on Indiana's 2015 submittal elicited public comments that, among other issues, addressed the suitability of elements of the derivation of this adjustment factor. In response, Indiana recalculated the adjustment factor to be applied in determining the 30-day average limits for IP&L-Petersburg, and submitted these revised calculations and the resulting adopted limits on September 18, 2019. Although this recalculation used the same data set as the original submittal, namely the 2006 to 2010 emissions from the main stack at IP&L-Petersburg Unit 2, Indiana used an edited data set reflecting removal of a number of inappropriate zero entries (for hours with no operation and, thus, no valid pound per million British Thermal Unit (lb/MMBTU) value) and removal of selected hours with questionable data. The revised calculations are provided in a spreadsheet that is available in the docket for this action, along with spreadsheets showing related EPA calculations described below.

Indiana's recalculated adjustment factor was 68 percent. That is, Indiana's revised evaluation determined that the 30-day average limits for IP&L-Petersburg should be 68 percent (reduced from 80 percent) of the 1-hour average emissions limit indicated by the attainment demonstration modeling. Indiana conducted no additional modeling, and instead relied on the same critical emission values as were described in its 2015 submittal. The revised limits are shown in Table 1, along with the original limits. This table also shows the emission rates (identified as critical emission rates, expressed in lbs/MMBTU) that correspond (at maximum heat input) to the modeled critical emission values.

TABLE 1—REVISED LIMITS FOR IP&L-PETERSBURG

| Unit | Critical emission rate (lbs/MMBTU) | Revised limit (lbs/MMBTU) | Original limit (lbs/MMBTU) |
|---|---|---|---|
| Unit 1 | 0.15 | 0.10 | 0.12 |
| Unit 2 | 0.15 | 0.10 | 0.12 |
| Unit 3 | 0.37 | 0.25 | 0.29 |
| Unit 4 | 0.35 | 0.24 | 0.28 |

Indiana provided additional rationale for its selection of data for performing these calculations. IP&L reports data for two emission streams at Petersburg Unit 2, identified as main stack emissions and bypass stack emissions. Indiana explained that the main stack vents emissions that have been controlled by the unit's flue gas desulfurization equipment, whereas the bypass stack vents emissions that bypass such control. Therefore, Indiana explained, data on emissions from the main stack[4] provide the best representation of the prospective variability of emissions that are controlled well enough to meet the limits necessary to provide for attainment. Indiana explained further that while its limits govern all emissions from each unit (which is to say the sum of emissions from the main stack and from the bypass stack at Unit 2, and similarly for the pair of stacks at Unit 1), compliance with the adopted limits will require nearly eliminating emissions that bypass the control system.

In addition to the availability of a data set of controlled emissions at Unit 2, Indiana also provided an additional rationale for using data from Unit 2 to assess variability expected upon compliance with SIP limits. Unit 1 has a similar setup as Unit 2, with separate vents for controlled versus uncontrolled emissions. However, Indiana explained that historic data from Unit 1 included a high fraction of times when emissions exited through the bypass stack, so that the resulting data set is both less robust and less predictive of effective control equipment operation. Units 3 and 4 do not have separate vents for controlled versus uncontrolled emissions, so data from these units do not properly represent the variability of controlled emissions. Units 3 and 4 only have single stacks, venting a combination of controlled and uncontrolled emissions, so the historic data from these units show variability that is dominated by variability in control level, thus providing a poor data set for projecting the variability of controlled emissions.

Indiana's October 2015 submittal included both mass limits (in pounds per hour (lbs/hr)) and emission rate limits (lbs/MMBTU) for IP&L-

[3] This guidance, issued on April 23, 2014, entitled, ''Guidance for 1-Hour $SO_2$ Nonattainment Area SIP Submissions,'' is available at *https://www.epa.gov/sites/production/files/2016-06/documents/20140423guidance_nonattainment_sip.pdf*. This guidance is discussed at length in the August 15, 2018 notice of proposed rulemaking identified above.

[4] Indiana refers to this stack as the ''FGD stack,'' *i.e.,* the stack venting emissions controlled by the flue gas desulfurization system.

Petersburg, and applied the same adjustment factor to the modeled 1-hour values for these respective variables. EPA guidance provides for separate calculations of adjustment factors for these separate limits, which would reflect the different impact on stringency that can result from expressing a mass limit versus an emission rate limit as a 30-day average limit. Accordingly, Indiana reconsidered this feature of its October 2015 submittal, with the result that the replacement 30-day average limits for IP&L-Petersburg only include emission rate limits (in lbs/MMBTU), based on a view that limits on emission rates alone suffice, even at maximum heat inputs, to assure that the area will attain the standard.

An important aspect of any longer term average emission limit is the set of data handling procedures to be used in determining compliance. Indiana's commissioner's order makes no direct statement regarding data handling procedures. However, the order states that the ''requirements of this Order are in addition to any less stringent requirements applicable to [IP&L] pursuant to 326 IAC 7–4–15,'' implying that the state intends that compliance with the 30-day average limits in the order is to be evaluated using the same procedures as those for the 30-day average limits in the rule. Paragraph (d) of 326 IAC 7–4–15, which Indiana requests be incorporated into the SIP, states that ''Compliance with [the 30-day average limits in the rule] shall be determined by calculating the thirty (30) boiler operating day rolling arithmetic average emission rate at the end of each boiler operating day using all of the quality assured hourly average continuous emission monitoring system data for the previous thirty (30) boiler operating days.''

Indiana's submittal also includes a copy of the letter which transmitted the commissioner's order to IP&L. This letter describes the order as applying the data handling procedures of 326 IAC 7–4–15(d), and notes further that the ''methodology is documented in IPL-Petersburg's [compliance] assessment protocol, which follows methodologies recommended in U.S. EPA's Mercury and Air Toxics Standard (MATS) rule guidance and the U.S. EPA memorandum 'Guidance for 1-Hour $SO_2$ Nonattainment Area SIP Submissions'.''

## III. EPA Guidance Regarding Data Handling for Calculating Longer Term Average $SO_2$ Emission Limits

EPA's guidance on 1-hour $SO_2$ nonattainment plans, issued in April 2014, provides numerous detailed recommendations regarding longer term average $SO_2$ emission limits, including several recommendations regarding data handling procedures.[5] The guidance states that the rule promulgating MATS provides a good prototype for procedures for data handling. The guidance recommends the MATS approach of only averaging data obtained during operating hours, so that the compliance assessment focuses on how well emissions are controlled and is not influenced by the fraction of time that the facility operates. The guidance recommends that emission limits averaged over multiple days be addressed by averaging emissions over the pertinent number of operating days, as is done in MATS, which improves robustness of the compliance determination by helping assure that the compliance determination reflects an adequate set of data. The guidance recommends determining compliance with limits on emission factors (*e.g.,* limits on pounds of emissions per megawatt-hour) by dividing total mass over the 30 operating days by the total electrical output during that period. (The analogous approach for a limit expressed in pounds per MMBTU is to divide total pounds of emissions over the averaging period by total heat input in MMBTU during the period.) The guidance explains that this approach effectively weights each hour's data point according to the hour's emissions (more precisely, according to the hour's electrical output or heat input), and thus better indicates the average rate of emissions than, for example, computing an average of hourly average emission rates.

Unfortunately, in this last respect, EPA's $SO_2$ nonattainment planning guidance misrepresents the data handling procedures in MATS. In fact, MATS, consistent with common practice, determines compliance by averaging the pertinent hourly values, either in pounds per megawatt or in pounds per MMBTU (reflecting the units of the applicable limit). *See* 40 CFR 63.10021. On the other hand, while EPA promulgated MATS as a national emission standard for hazardous air pollutants (NESHAP) under Clean Air Act section 112, EPA also simultaneously promulgated revisions to new source performance standards (NSPS) under Clean Air Act section 111 with limits in which, for facilities constructed, modified, or reconstructed after May 3, 2011, ''compliance . . . is determined by dividing the sum of the $SO_2$ . . . emissions for the 30 successive boiler operating days by the sum of the [energy output] for the 30 successive boiler operating days.'' *See* 40 CFR 60.48Da(d), promulgated on February 16, 2012, 77 FR 9304, 9454. Thus, while the substance of EPA's recommendations was clear, the guidance was incorrect in its description of the data handling procedures of MATS, and the guidance should have cited the revisions to the NSPS for sources that began construction, modification or reconstruction after May 3, 2011 as a template for relevant data handling provisions, rather than the procedures of MATS. The following section reviews Indiana's revised submittal in light of this clarified guidance.

## IV. EPA's Evaluation of the IP&L-Petersburg Limit Revisions

EPA conducted multiple analyses of the expected variability of emissions at IP&L-Petersburg upon compliance with Indiana's limits. These analyses inform EPA's judgment as to whether Indiana's revised limits can be expected to be comparably stringent to 1-hour limits at the critical emission values.

The first analysis used the data provided by Indiana but used a different data handling procedure. Indiana's rule (326 IAC 7–4–15) specifies that compliance with the 30-day average limits in the rule shall be evaluated by determining the ''30 boiler operating day rolling arithmetic average emission rate at the end of each boiler operating day using all of the quality assured hourly average continuous emission monitoring system data.'' This indicates that if, for example, a 30-operating day period has 700 operating hours with valid data, the compliance determination for that period would be based on the average of those 700 hourly values.

The variability analysis provided by Indiana deviates from this procedure by first calculating daily average emission rates and then calculating averages of 30 operating days of daily averages. This approach gives more weight to days with fewer operating hours than the approach in 326 IAC 7–4–15. To evaluate the significance of this difference, EPA calculated a set of 30-day average emission rates based on the arithmetic average of all hourly emission rates. EPA's guidance is to use the same data handling approach in the assessment of variability as is provided in the state's compliance determination procedures, in order best to determine the degree to which use of a long term average limit affects stringency of the limit with those compliance procedures. Nevertheless, EPA's analysis found that

[5] Guidance is cited in footnote 3 above. *See* especially page 32.

the use of averaging procedures consistent with Indiana's compliance determination procedures only modestly affected the resulting adjustment factor; compared to IP&L's adjustment factor of 68 percent, use of Indiana's compliance determination procedures using the same data set yielded an adjustment factor of 68.2 percent.

IP&L explained that the data it used in its analysis are for the ''FGD stack,'' which corresponds to the monitoring site identified in data reported to EPA as ''MS2S.'' However, the data reported to EPA for these emissions differ from the emissions used by IP&L; for slightly over the first three years, most of the data reported to EPA appear to reflect approximately an 11 percent bias adjustment that is not reflected in the data used by Indiana. Therefore, EPA conducted an additional analysis of data reported to EPA for the MS2S monitoring site. Despite the difference in magnitudes of the emissions in these two data sets, the variability of emissions is similar, with EPA suggesting an adjustment factor of 65.0 percent, modestly lower than the 68.0 percent estimated by Indiana.

EPA also examined data reported to EPA for the main stack at Unit 1 for the same period examined by Indiana (2006 to 2010). EPA concurs with Indiana that this is a less robust data set that appears less representative of future controlled operations at this plant. The adjustment factor calculated from data for this stack (62.2 percent) is somewhat lower than the 68.0 percent adjustment factor that IP&L calculated from Unit 2 main stack data, which may reflect what appears to be comparatively unstable operation of control at Unit 1. Therefore, these Unit 1 data are consistent with Indiana's view that the historic data from the main stack at Unit 2 are the best predictors of variability from the four units at IP&L-Petersburg upon compliance with the limits.

EPA's general objective is to evaluate the degree of variability, in particular the impact of variability on the stringency of an emission limit expressed in this case as a 30-day average limit rather than as a 1-hour limit. EPA seeks for this evaluation to be predictive of the degree of variability that can be expected once the source is complying with the control requirements of the SIP. The rules Indiana submitted in October 2015 required compliance with the limits by January 2017. Although Indiana's September 18, 2019 submittal imposes slightly more stringent limits than its October 2, 2015 submittal, the control measure in either case is the existing flue gas desulfurization equipment, and EPA anticipates that the slight increase in control efficiency needed to meet the new limits will not materially increase the variability in emissions upon compliance with these limits. Therefore, the data that are available for 2½ years starting January 2017 provide a valuable indication of the likely degree of emissions variability that can be expected to apply into the future with compliance with the newer limits.

For these reasons, EPA analyzed the emissions data from January 2017 to June 2019 for each of the four units at IP&L-Petersburg. In this analysis, for Units 1 and 2, in both cases EPA used the sum of emissions from the main stack and from the bypass stack, reflecting the fact that Indiana's limits govern total emissions from each unit. In order to apply the same data handling procedures as are used to determine compliance with the limits, EPA considered only days in which the unit operated, EPA computed 30-operating-day averages ending at the end of each operating day, and EPA computed the average emission rate as an arithmetic average among the valid operating hour emission rate data. Substitution data (conservative emission estimates derived according to trading program requirements in cases where information needed for a precise emission calculation was missing) appeared to be rare and unlikely to affect results significantly, and so EPA's analyses used a complete data set that reflected no deletion of any substitution data.

EPA summarizes the results of these analyses in Table 2. Two spreadsheets that are included in the docket, including one for 2006 to 2010 data and one for 2017 to 2019 data, show the data and the calculations used in these analyses.

TABLE 2—ADJUSTMENT FACTORS FOR IP&L-PETERSBURG

| Analysis | Resulting adjustment factor |
|---|---|
| IP&L analysis, using Unit 2 Main Stack data (2006–2010) | 68.0 percent. |
| Using IP&L data with Indiana compliance statistics | 68.2 percent. |
| Using EPA data (Unit 2 main stack, 2006–2010) | 65.0 percent. |
| Using 2017—mid-2019 data | Unit 1: 73.0 percent.<br>Unit 2: 57.6 percent.<br>Unit 3: 68.6 percent.<br>Unit 4: 70.4 percent.<br>Average: 67.4 percent. |

As noted above, Indiana used data from the stack at Unit 2 that vents controlled emissions to determine an adjustment factor to apply in determining 30-day average limits. Indiana has confirmed that these limits govern the total of all emissions from the respective units; in particular the limits for Units 1 and 2 govern the sum of emissions from the main stack plus the emissions from the bypass stack for each of these two units. The determination of an adjustment factor from just the main stack data reflects a premise that the historic data for the controlled emission stack is most indicative of the prospective variability of all emissions once the control requirements of the SIP are met. This premise in turn reflects an expectation that implementation of the control strategy will result in (uncontrolled) bypass stack emissions being minimal.

EPA used the available 2017 to 2019 data to test these premises. For 2006 to 2010, according to data reported to EPA, bypass stack emissions for the 5 years accounted for 89 percent of the total Unit 1 emissions and 30 percent of the total Unit 2 emissions. In contrast, for 2017 to mid-2019, bypass stack emissions accounted for only 3 percent of emissions from Unit 1 and 0.2 percent of emissions from Unit 2.

In any case, the adjustment factors shown in Table 2 above for 2017 to mid-2019 are based on statistics for total emissions for each unit, which for Units 1 and 2 reflect the sum of emissions from the main stack plus emissions from the bypass stack. Thus, the results in Table 2 for recent emissions represent

the strongest evidence that the 2006 to 2010 data for the main stack at Unit 2 provides a suitable projection of the degree of variability in total emissions upon implementation of the SIP limits.

Since the methods recommended in appendix C of the guidance rely on 99th percentile values, the guidance recommends assuring that these assessments be based on a robust data set. For this reason, the guidance recommends using a data set with three to five years of data. The post-control data being used here represent only 2½ years. Therefore, EPA averaged the adjustment factors for the four units (shown in Table 2) in order to improve the robustness of the analysis.

As shown in Table 2 above, the post-control data for the four units at IP&L-Petersburg support an average adjustment factor of 67.4 percent, very close to the 68.0 percent adjustment factor applied by Indiana.[6] The similarity of these percentages support several findings. First, the 2006 to 2010 data for the stack known as MS2S, the stack that vents controlled emissions from Unit 2, provide a good representation of the variability of emissions to be expected upon implementation of the limits in Indiana's plan. Most plants do not have separate vents for controlled versus uncontrolled emissions, but the availability here of separate data for controlled versus uncontrolled emissions results in the availability of a good representation of the variability of emissions to be expected when the plan requires virtual elimination of uncontrolled emissions. Second, the similarity of percentages further supports Indiana's assertion that the controlled emissions from Unit 2 provide a better forecast of emissions variability for controlled emissions of all four units than would be obtained from the controlled emissions from Unit 1. Finally, this similarity supports a finding that the use of 2006 to 2010 data for the controlled emission stack for Unit 2 provides a good basis for estimating the degree of adjustment for determining 30-day average limits at IP&L-Petersburg that are comparably stringent to the 1-hour limits that would otherwise apply.

As noted in Section II, Indiana's rule provides for computing 30-day average emission rates as an arithmetic average of the hourly lbs/MMBTU values during operating hours. Notwithstanding the potential for confusion regarding EPA's guidance on this point (as discussed above), this approach differs from the recommendation in EPA's guidance to compute 30-day average emission rates as the ratio between the 30-day total emissions divided by the 30-day total heat input.

Therefore, EPA conducted additional evaluation, using the 2017 to mid-2019 data from the four units at IP&L-Petersburg, to compare the results of these two data handling approaches. This evaluation focused on 99th percentile values of the 30-day average emission rates calculated using these two approaches, in order to focus on periods when compliance is most challenging. Table 3 shows the results of this evaluation.

TABLE 3—EFFECT OF DATA HANDLING APPROACH ON 99TH PERCENTILE 30-DAY AVERAGE EMISSION RATES

| Unit | Arithmetic average (lbs/MMBTU) | Total emissions/ total heat input (lbs/MMBTU) | Ratio (%) |
|---|---|---|---|
| 1 | 0.097 | 0.088 | 110 |
| 2 | 0.117 | 0.121 | 97 |
| 3 | 0.214 | 0.219 | 98 |
| 4 | 0.214 | 0.220 | 97 |
| Average | | | 100 |

These results suggest several conclusions. First, the results of these approaches, at least at times of most concern (*i.e.,* times with relatively high emissions), tend to be quite similar. Second, neither approach is necessarily more conservative than the other. Third, the variation in results across the four units lends some support to the view that the arithmetic average approach gives slightly less stable results, but the results are sufficiently similar that either approach is a suitable approach for evaluating compliance.

While Indiana's submittal (in the State's letter to the company dated September 18, 2019) describes the commissioner's order as applying the compliance methodology ''recommended'' in MATS, the applicable compliance provisions (in 326 IAC 7–4–15(d)) provide for averaging ''all of the quality assured hourly average . . . data,'' which would include data collected during startup and shutdown of the units. Thus, Indiana's submittal does not raise questions as to whether it is permissible to exclude data during startup and shutdown in an attainment plan.

As noted above, EPA guidance recommends calculating adjustment factors using data obtained according to the procedures used in determining compliance. Since compliance with IP&L's 30-day average limits is evaluated on the basis of an arithmetic average of operating hour emission rates, the appropriate adjustment factors here are calculated on that basis. For reasons discussed above, EPA believes that Indiana has adopted limits that reflect suitable adjustments, such that these limits are comparably stringent to the 1-hour limits that Indiana's modeling has demonstrated would provide for attainment.

The August 2018 proposed rule observed that this facility, upon complying with its 30-day average limits, can be expected to have only a limited frequency and magnitude of hours with emissions exceeding the critical emission value. Since the changes in Indiana's plan for IP&L-Petersburg retain the same critical emission value but establish lower 30-day average emission limits, these changes can be expected to reduce the frequency and magnitude of occasions when emissions exceed the critical emission value.

Nevertheless, more pertinent data are now available to address this question. EPA previously examined this question based on 2006 to 2010 data from the main stack at Unit 2, but EPA now has data for 2017 to mid-2019 for all four

[6] The slightly lower adjustment factor suggests the possibility that the limits Indiana adopted correspond to (are comparably stringent to 1-hour limits at) slightly higher emission rates than Indiana modeled. However, Indiana's attainment demonstration (with a design value of 189.68 micrograms per cubic meter) provides a sufficient attainment margin so that these differences in adjustment factors would not alter the conclusion that Indiana's limits provide for attainment.

units, for a period when IP&L was required to meet limits similar to the final limits. For this period, Units 1, 3, and 4 are complying with the revised emission limits and are exceeding the critical emission values (*i.e.,* the modeled mass emissions in lbs/hour) for 0.9 percent, 0.1 percent, and 0.4 percent of the hours, respectively. Unit 2 is exceeding its revised limit 17 percent of the time, while exceeding the critical emission value 3 percent of the time.[7] This suggests that the necessary improvements in scrubber efficiency at Unit 2 would likely yield a percentage of hours with emissions above the critical emission value that is similar to the percentages found for the three units that are already complying with limits.

EPA proposed previously that Indiana's modeling provides an appropriate estimation of the critical emission values that will provide for attainment, and Indiana has made no changes that warrant EPA revisiting that finding. Instead, Indiana has changed only its calculation of an adjustment factor and, by applying the resulting revised adjustment factor, determined and adopted a revised set of 30-day average limits that EPA now judges to be comparably stringent to 1-hour limits at the critical emission values. Accordingly, in this proposed rule, EPA is soliciting comments on the revised adjustment factor calculations, the resulting revisions in Indiana's plan, and EPA's evaluation of these revisions. EPA is not soliciting additional comments on Indiana's plan and EPA's evaluation of that plan other than with respect to those elements of Indiana's plan and EPA's evaluation that have changed since EPA's prior proposed rulemaking.

Indiana's September 18, 2019 submittal requests that EPA approve 326 IAC 7–4–15, including the 1-hour limits for IP&L-Petersburg, except for the 30-day average limits for IP&L-Petersburg in that rule, and approve the commissioner's order, which includes substitute 30-day average limits. In seeking approval of both the rule and the commissioner's order, Indiana seeks to allow IP&L to switch between 1-hour limits in 326 IAC 7–4–15(a) and the 30-day average limits in the commissioner's order. Indiana clarified that the 30-day average limits in the commissioner's order are to be viewed as substitutes for the 30-day average limits in 326 IAC 7–4–15(c), and that references to the limits in subsection (c) in 326 IAC 7–4–15 should be understood as references to the limits in the order. *See* email from Mark Derf to John Summerhays dated November 19, 2019. Indiana further clarified that 326 IAC 7–4–15(e) thus provides terms under which IP&L may choose to switch between being required to comply with the 30-day average limits in the commissioner's order and being required to comply with the 1-hour limits in 326 IAC 7–4–15(a). EPA is proposing action in accordance with this interpretation.

## V. EPA's Proposed Action

EPA is proposing to conclude that, based on revised adjustment factor calculations, the revised emission limits that Indiana has adopted for IP&L-Petersburg are a suitable element of an approvable plan for attaining the 2010 1-hour $SO_2$ NAAQS for Southwest Indiana. This action is a supplement to a prior proposed rule, published August 15, 2018, at 83 FR 40487, which addressed the full range of requirements that the $SO_2$ nonattainment plan for Southwest Indiana must meet.

EPA is not soliciting additional comments on the other elements of Indiana's plan for Southwest Indiana, aside from any ramifications of Indiana's revised emission limits for IP&L-Petersburg. In response to comments received, Indiana has only revised its calculation of the degree of adjustment needed for 30-day average limits at IP&L-Petersburg to be comparably stringent to the 1-hour limits that would otherwise be necessary, and has adopted the limits that this revised calculation indicated to be warranted. Accordingly, EPA is only soliciting comments on the revisions that Indiana made and EPA's evaluation of these revisions. EPA acknowledges receipt of other comments on Indiana's plan and EPA's August 2018 proposed action, including comments on the general acceptability of 30-day average limits. EPA plans to address those comments as part of final rulemaking on Indiana's plan for $SO_2$ in Southwest Indiana.

EPA's August 2018 proposed action specifies particular Indiana rules that EPA proposed to incorporate by reference into the Indiana SIP. Two of these rules (Title 326 Indiana Administrative Code Rules 7–1.1–3 and 7–2–1 (326 IAC 7–1.1–3 and 7–2–1)) provide compliance deadlines, reporting requirements and compliance determination procedures not just for sources in Southwest Indiana but also for sources in the Indianapolis, Terre Haute, and Morgan County areas. EPA has already approved these rules as part of its action on the Indianapolis and Terre Haute area plans, as published on March 22, 2019 at 84 FR 10692, and so no further action on these rules is necessary. EPA also proposed to approve limitations for Pike County, in 326 IAC 7–4–15, which includes limitations for IP&L-Petersburg and for the Frank E. Ratts power plant. EPA continues to intend to approve most of this rule, specifically paragraphs a, b, d, and e, incorporating the limits for the Frank E. Ratts plant, the 1-hour limits for IP&L-Petersburg, and associated compliance provisions into the SIP. The only portion of 326 IAC 7–4–15 that EPA is proposing not to take action on is paragraph c, the paragraph with the prior 30-day average limits for IP&L-Petersburg; as requested by Indiana, EPA is instead proposing to approve the commissioner's order that Indiana submitted September 18, 2019, which EPA considers to provide substitute 30-day average limits for the 30-day average limits in 326 IAC 7–4–15(c).

## VI. 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 Commissioner's Order Number 2019–2, effective August 18, 2019, and 326 IAC 7–4–15 Pike County sulfur dioxide emission limitations (except for paragraph (c)), effective October 30, 2015. EPA has made, and will continue to make, these documents generally available through *www.regulations.gov,* and at the EPA Region 5 Office. (Please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information.)

## VII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Clean Air Act 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 Clean Air Act. Accordingly, this proposed 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

[7] The exceedances of the new Unit 2 limit, while somewhat frequent, are modest in magnitude; during this 2½-year period, Unit 2 met the prior limit for all but one 30-day average period, and a majority among the 30-day periods with averages above 0.10 lbs/MMBTU had average emission rates below 0.11 lbs/MMBTU.

of Management and Budget under Executive Order 12866 58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the 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 and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by Reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: February 10, 2020.

**Kurt A. Thiede,**

*Regional Administrator, Region 5.*

[FR Doc. 2020–03507 Filed 2–21–20; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Parts 52 and 70

**[EPA–R07–OAR–2020–0059; FRL–10005–47–Region 7]**

## Air Plan Approval; Iowa; State Implementation Plan and Operating Permits Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve revisions to the Iowa State Implementation Plan (SIP) and the Operating Permits Program. The revisions include updating definitions, regulatory references, correcting the State's mailing address, requiring facilities to submit electronic emissions inventory information under the State's title V permitting program, and updating references for the most recent federally approved minimum specifications and quality assurance procedures for performance evaluations of continuous monitoring systems. These revisions will not impact air quality and will ensure consistency between the State and Federally approved rules.

**DATES:** Comments must be received on or before March 25, 2020.

**ADDRESSES:** You may send comments, identified by Docket ID No. EPA–R07–OAR–2020–0059 to *https://www.regulations.gov.* Follow the online instructions for submitting comments.

*Instructions:* All submissions received must include the Docket ID No. for this rulemaking. Comments received will be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Written Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Doolan, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number (913) 551–7719; email address *doolan.stephanie@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document ''we,'' ''us,'' and ''our'' refer to EPA. This section provides additional information by addressing the following:

I. What is being addressed in this document?
II. What SIP revisions are being proposed by the EPA?
III. What operating permit plan revisions are being proposed by the EPA?
IV. Have the requirements for approval of a SIP and the operating permits program revisions been met?
V. What actions are proposed?
VI. Incorporation by Reference
VII. Statutory and Executive Order Reviews

### I. What is being addressed in this document?

The EPA is proposing to approve a submission from the State of Iowa to revise its SIP and the Operating Permits Program. On April 18, 2019, the Iowa Department of Natural Resources (IDNR) submitted a request to revise the SIP to incorporate recent changes to Iowa Administrative Code. The following three chapters are impacted. Chapter 20, ''Scope of Title—Definitions;'' Chapter 22, ''Controlling Pollution;'' and Chapter 25, ''Measurement of Emissions''.

The revisions include updates to the definition of ''EPA Reference Method'' and the corresponding procedures for Federal updates to methods and procedures for continuous monitoring systems, correct the mailing address for IDNR's Air Quality Bureau, add a regulatory cross-reference, and require facilities to submit electronic emissions inventory information under the state's title V permitting program. The specific changes and EPA analysis are discussed in more detail below.

Sections 111 and 112 of the Clean Air Act (CAA) allow the EPA to delegate authority to states for New Source Performance Standards (NSPS), National Emission Standards for Hazardous Air Pollutants (NESHAPs), and emission guidelines. The EPA has delegated authority to Iowa for approved portions of these sections of the CAA. Changes made to Iowa's Chapter 23 pertaining to new and revised NSPS, NESHAPs, and emission guidelines are not directly approved into the SIP, but rather, are adopted by reference. Thus, the EPA is not proposing to approve these changes to Iowa Administrative Code into the State's SIP.

### II. What SIP revisions are being proposed by the EPA?

The EPA is proposing the following revisions to the Iowa SIP: Chapter 20, Scope of Title-Definitions: The State revised the definition of ''EPA reference method'' to adopt methods for continuous monitoring approved by EPA on August 7, 2017. The update will ensure that state reference methods are equivalent to Federal reference

methods; thus, EPA proposes to approve this change.

Chapter 22, subrule 22.1(1), Permit Required: In subrule 22.1(1)c.(1), Eligibility, the State has added a reference to rule 567–31.3(455B). The addition of rule 567–31.3(455B)is a cross-reference to the rules for nonattainment areas specified in Chapter 31. Since there is no impact on air quality or the stringency of the SIP as a result of this change, EPA proposes to approve it.

Chapter 22, subrule 22.1(3), Construction Permits, subrule 22.3(8), Ownership change of permitted equipment, subrule 22.9(3), Duty to self-identify, subrule 22.300(8), Registration and reporting, and subrule 22.300(12), Change of ownership, have been revised to correct the address for the IDNR's Air Quality Bureau. EPA proposes to approve these changes.

Chapter 25, Measurement of Emissions: The State revised subrule 25.1(9),''Methods and Procedures,'' to adopt the minimum performance specificatons and quality assurance procedures for performance evaluations of continuous monitoring systems specified by the EPA in 40 CFR part 60, appendix B amended through August 7, 2017. The proposed update will ensure that State reference methods are equivalent to Federal reference methods and are no more stringent than Federal methods; thus, EPA proposes to approve this change.

## III. What operating permit plan revisions are being proposed by the EPA?

The EPA is proposing to approve the following revisions to Iowa's Operating Permits Program (title V) as follows:

Chapter 22, subrule 22.100 (455B): As discussed above, the definition of ''EPA reference method'' has similarly been revised in definitions for the operating permits program to adopt the minimum performance specificatons and quality assurance procedures for performance evaluations of continuous monitoring systems specified by the EPA in 40 CFR part 60, appendix B amended through August 7, 2017. Referencing the updated method will ensure that state methods are equivalent to Federal reference methods; thus, EPA proposes to approve this change.

Chapter 22, subrule 22.105(1), Duty to apply, subrule 22.128(4), Submission of copies, subrule 22.300(8), Registration and reporting; and subrule 22.300(12), Change of ownership, have been revised to correct the address for the IDNR's Air Quality Bureau. The EPA proposes to approve these changes.

As stated in 74 FR 68692 (December 29, 2009), the EPA is not acting on Iowa Administrative Code 567–22.105(1) that allows facility owners or operators to submit an electronic title V operating permit application until the State obtains approval from the EPA that its electronic document receiving system is consistent with the Cross-Media Electronic Reporting Rule, 40 CFR part 3. In addition, subrule 22.105(1) ''a'' subparagraph (9) is not approved.

Chapter 22, subrule 22.106(2), Emissions inventory and documentation due dates: This subrule has been changed to require facilities to electronically report annual emissions inventories under Iowa's approved title V permitting program. This change is expected to simplify the emissions inventory reporting progress. The EPA approved Iowa's State and Local Emissions Inventory System (SLEIS) pursuant to the Cross-Media Electronic Reporting Rule, 40 CFR part 3, on December 9, 2015. 80 FR 76474. The IDNR offers both in-person and on-line training to support the change from paper to electronic reporting in SLEIS. Since there is no impact to air quality and this change is consistent with federal requirements for reporting, the EPA proposes to approve this change.

## IV. Have the requirements for approval of a SIP and the operating permits program revisions been met?

The submission met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The State held a public comment period from December 19, 2018 to January 22, 2019, with a public hearing on January 22, 2019. One comment was received, but it was outside the scope of this rulemaking. The submission satisfies the completeness criteria of 40 CFR part 51, appendix V. In addition, these revisions meet the substantive SIP requirements of the CAA, including section 110 and implementing regulations. Finally, the revisions are also consistent with applicable EPA requirements of title V of the CAA and 40 CFR part 70.

## V. What actions are proposed?

The EPA is proposing to approve revisions to the Iowa SIP and the Operating Permits Program. The proposed revisions update the definition of ''EPA Reference Method'' and the corresponding procedures for Federal updates to methods and procedures for continuous monitoring systems, correct the mailing address for IDNR's Air Quality Bureau, add a regulatory cross-reference, and require facilities to submit electronic emissions inventory information under the State's title V permitting program. The EPA has determined that approval of these revisions will not impact air quality and will ensure consistency between the state and federally-approved rules, and ensure Federal enforceability of the State's revised air program rules.

## VI. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the Iowa Regulations described in the proposed amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

## VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, 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 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 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**

*40 CFR Part 52*

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

*40 CFR Part 70*

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: February 13, 2020.

**James Gulliford,**

*Regional Administrator, Region 7.*

For the reasons stated in the preamble, EPA proposes to amend 40 CFR parts 52 and 70 as set forth below:

## 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 Q—Iowa

■ 2. In § 52.820, the table in paragraph (c) is amended by revising the entries ''567–20.2'', ''567–22.1'', ''567–22.9'', ''567–22.300'' and ''567–25.1'' to read as follows:

**§ 52.820 Identification of plan.**

* * * * *

(c) * * *

EPA-APPROVED IOWA REGULATIONS

| Iowa citation | Title | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| **Iowa Department of Natural Resources Environmental Protection Commission [567]** | | | | |
| **Chapter 20—Scope of Title—Definitions** | | | | |
| * | * | * | * | * |
| 567–20.2 ..... | Definitions ..... | 4/17/2019 | [Date of publication of the final rule in the **Federal Register**], [**Federal Register** citation of the final rule]. | The definitions for ''anaerobic lagoon,'' ''odor,'' ''odorous substance,'' ''odorous substance source'' are not SIP approved. |
| * | * | * | * | * |
| **Chapter 22—Controlling Pollution** | | | | |
| 567–22.1 ..... | Permits Required for New or Stationary Sources. | 4/17/2019 | [Date of publication of the final rule in the **Federal Register**], [**Federal Register** citation of the final rule]. | In 22.1(3) the following sentence regarding electronic submission is not SIP approved. The sentence is: ''Alternatively, the owner or operator may apply for a construction permit for a new or modified stationary source through the electronic submittal format specified by the department.'' |
| * | * | * | * | * |
| 567–22.9 ..... | Special Requirements for Visibility Protection. | 4/17/2019 | [Date of publication of the final rule in the **Federal Register**], [**Federal Register** citation of the final rule]. | |
| * | * | * | * | * |
| 567–22.300 .. | Operating Permit by Rule for Small Sources. | 4/17/2019 | [Date of publication of the final rule in the **Federal Register**], [**Federal Register** citation of the final rule]. | |

EPA-APPROVED IOWA REGULATIONS—Continued

| Iowa citation | Title | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| * | * | * | * | * |
| **Chapter 25—Measurement of Emissions** | | | | |
| 567–25.1 ..... | Testing and Sampling of New and Existing Equipment. | 4/17/2019 | [Date of publication of the final rule in the **Federal Register**], [**Federal Register** citation of the final rule]. | |
| * | * | * | * | * |

* * * * *

## PART 70—STATE OPERATING PERMIT PROGRAMS

■ 3. The authority citation for part 70 continues to read as follows:

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

■ 4. Appendix A to part 70 is amended by adding paragraph (u) under ''*Iowa*'' to read as follows:

### Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

*Iowa*

* * * * *

(u) The Iowa Department of Natural Resources submitted for program approval revisions to rules 567–22.100, 567–22.105(1), 567–22.106(2), 567–22.128(4), 567–22.300(8), and 567–22.300(12). The state effective date is April 17, 2019. The proposed revision effective date is [date of Regional Administrator signature of the final rule in the **Federal Register**].

* * * * *

[FR Doc. 2020–03513 Filed 2–21–20; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Parts 52 and 81

**[EPA–R05–OAR–2019–0330; FRL–10005–63–Region 5]**

## Air Plan Approval; Illinois; Redesignation of the Lemont and Pekin Sulfur Dioxide Nonattainment Areas

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** In accordance with the Clean Air Act (CAA), the Environmental Protection Agency (EPA) is proposing to redesignate the Lemont and Pekin sulfur dioxide ($SO_2$) nonattainment areas from nonattainment to attainment. EPA is also proposing to approve Illinois' maintenance plans for these two areas. Emissions of $SO_2$ in the areas have been reduced, and the air quality in the two areas is currently better than the $SO_2$ national ambient air quality standard (NAAQS).

**DATES:** Comments must be received on or before March 25, 2020.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R05–OAR–2019–0330 at *http://www.regulations.gov,* or via email to *Blakley.pamela@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 *http://www2.epa.gov/dockets/commenting-epa-dockets.*

**FOR FURTHER INFORMATION CONTACT:** Mary Portanova, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–5954, *portanova.mary@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. Background and Redesignation Requirements
II. Determination of Attainment
a. Lemont
b. Pekin
III. Approval of Illinois' SIPs
IV. Permanent and Enforceable Emission Reductions
V. Maintenance Plans
VI. Requirements for the Areas Under Section 110 and Part D
VII. What action is EPA taking?
VIII. Statutory and Executive Order Reviews

### I. Background and Redesignation Requirements

In 2010, EPA established a revised primary $SO_2$ NAAQS of 75 parts per billion (ppb) (75 FR 35520, June 22, 2010). EPA designated the Lemont and Pekin areas as nonattainment for the 2010 $SO_2$ NAAQS on August 5, 2013 (78 FR 47191) based upon air quality monitoring data for calendar years 2009–2011. The Lemont nonattainment area is comprised of Lemont Township in Cook County and Lockport and DuPage Townships in Will County, Illinois. The Pekin nonattainment area is comprised of Hollis Township in Peoria County and Cincinnati and Pekin Townships in Tazewell County, Illinois.

On March 2, 2016, Illinois submitted nonattainment State Implementation Plans (SIPs) to provide for attainment of the NAAQS in the Lemont and Pekin nonattainment areas by the $SO_2$ attainment date of October 4, 2018. The plans were developed to meet the additional requirements of sections 172(c) and 191–192 of the CAA. Illinois supplemented the plans on August 8,

2016 and May 4, 2017, and EPA approved them on February 1, 2018 (83 FR 4591). Illinois submitted its request to redesignate the Lemont and Pekin areas on May 24, 2019.

Under CAA section 107(d)(3)(E), there are five criteria which must be met before a nonattainment area may be redesignated to attainment:

1. EPA has determined that the relevant NAAQS has been attained in the area.

2. The applicable implementation plan has been fully approved by EPA under section 110(k) of the CAA.

3. EPA has determined that improvement in air quality is due to permanent and enforceable reductions in emissions resulting from the SIP, applicable Federal regulations, and other permanent and enforceable reductions.

4. EPA has fully approved a maintenance plan, including a contingency plan, for the area under section 175A of the CAA.

5. The State has met all applicable requirements for the area under section 110 and part D of the CAA.

**II. Determination of Attainment**

The first requirement for redesignation is to demonstrate that the NAAQS has been attained in the area. Under EPA regulations at 40 CFR part 50, the $SO_2$ NAAQS is met at an ambient air quality monitoring site when the three-year average of the annual 99th percentile daily maximum one-hour average concentration values for the site is less than or equal to 75 ppb, as determined in accordance with appendix T of 40 CFR part 50. As stated in EPA's April 2014 ''Guidance for 1-Hour $SO_2$ Nonattainment Area SIP Submissions'' (April 2014 Guidance), there are two components needed to support an attainment determination for $SO_2$: An initial review of representative air quality monitoring data, then a further analysis, which generally requires air quality modeling, to demonstrate that the entire area is attaining the applicable NAAQS, based on current actual emissions or the fully implemented control strategy. Illinois has addressed both components for each nonattainment area.

*a. Lemont*

EPA has reviewed the ambient air monitoring data for the Lemont nonattainment area. There is one $SO_2$ monitoring site in Cook County for the Lemont area (monitor 17–031–1601 in Lemont Township). The data from this monitor have been certified and recorded in EPA's Air Quality System database. Illinois has committed to continue monitoring for $SO_2$ at this location. EPA's review addresses air quality data collected through 2018, which includes the most recent three years of complete, quality-assured data.

Table 1 shows the 99th percentile results and three-year average design values for the Lemont nonattainment area monitors for 2012–2018. Lemont has been in attainment of the 2010 $SO_2$ NAAQS of 75 ppb since the 2012–2014 three-year design value period, when the design value was 66 ppb. Currently, the design value at the Lemont monitor has dropped to 8 ppb (2016–2018). Therefore, Illinois has demonstrated that the Lemont area's $SO_2$ monitor shows attainment of the 2010 $SO_2$ NAAQS. Preliminary monitoring data for 2019 indicate that the area is continuing to attain the 2010 $SO_2$ NAAQS.

TABLE 1—LEMONT MONITORING DATA, 2012–2018

| Location/site ID | Year and 99th percentile value (ppb) | | | | | | |
|---|---|---|---|---|---|---|---|
| | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 |
| Lemont 17–031–1601 .. | 108 | 73 | 16 | 20 | 12 | 5 | 6 |
| | Three-year design value (ppb) | | | | | | |
| | | | 2012–2014 | 2013–2015 | 2014–2016 | 2015–2017 | 2016–2018 |
| | | | 66 | 36 | 16 | 13 | 8 |

Illinois also prepared a dispersion modeling analysis demonstrating that the Lemont area will attain the $SO_2$ NAAQS under the area's control strategy. Illinois provided this analysis in its March 2, 2016 nonattainment SIP submittal. Illinois' analysis showed that revised $SO_2$ emission limits at five $SO_2$ sources in the Lemont nonattainment area, in addition to statewide requirements for lower sulfur fuel oil, will provide for attainment. Illinois has confirmed that the modeled facilities are currently in full compliance with their emission limits. Current actual emissions at these facilities are therefore at or below the levels Illinois used in its modeling analysis. The modeling analysis was discussed in detail in the October 5, 2017 (82 FR 46434) notice of proposed rulemaking for the Lemont and Pekin $SO_2$ nonattainment SIPs. The modeling shows that compliance with the emission limits in Illinois' plan, even at maximum allowable emissions, yields attainment in the entire Lemont area. Further, since the sources in the Lemont area are complying with these limits, this modeling supports EPA's proposed conclusion that the Lemont area is attaining the $SO_2$ NAAQS.

*b. Pekin*

EPA has reviewed the ambient air monitoring data for the Pekin nonattainment area. There is one $SO_2$ monitoring site in Tazewell County for the Pekin area (17–179–0004, in Pekin Township). The initial $SO_2$ data gathered between August 31, 2016 and August 16, 2018 was invalidated after the monitor failed an audit in late 2018. Illinois addressed EPA's concerns with the monitor by replacing faulty equipment at the site on August 16, 2018. EPA is satisfied that Illinois is meeting the requirements of 40 CFR part 58, appendix A for this monitor, and that the $SO_2$ data gathered at this monitor after August 16, 2018 has been valid.

Because portions of the data from 2016 to 2018 were invalidated, there is no valid three-year design value for $SO_2$ at Pekin from the 2014–2016 time period to the present. The last valid three-year design value which was calculated using data gathered before the audit and data invalidation for Pekin was 167 ppb (2013–2015), which does not meet the 2010 $SO_2$ NAAQS. The 2013–2015 design value does not provide useful information on the current state of $SO_2$ air quality in Pekin, because it represents the local air

quality before Illinois' revised $SO_2$ nonattainment SIP limits for Pekin came into effect. $SO_2$ emissions in the area decreased after 2015 due to the revised SIP emission limits at three facilities: The Midwest Generation Powerton Station, the Illinois Power Holdings E.D. Edwards Power Plant, and Aventine Renewable Energy Resources, now Pacific Ethanol Pekin, Inc. Since January 1, 2017, the Pekin facilities have been in full compliance with their new emission limits. Air quality monitoring data measured from late 2018 to the present, confirmed to be valid, now indicates that emissions have sharply declined since 2015 and remain well below the 2010 $SO_2$ NAAQS for 2019. The 99th percentile one-hour maximum value for the valid portion of 2018 is 12 ppb. The preliminary data for 2019 indicates a 99th percentile one-hour maximum value of 17 ppb. The average of preliminary valid data for 2018–2019 is 15 ppb. While the available valid data from August 2018 to the present is not enough to calculate a valid three-year design value to confirm that the NAAQS are met, the available valid data indicates that ambient air concentrations of $SO_2$ at Pekin have substantially decreased to a level below the 2010 $SO_2$ NAAQS. This supports EPA's proposed conclusion that the Pekin area is attaining the standard and is eligible for redesignation.

Because the Pekin monitor cannot be used to fully demonstrate attainment of the 2010 $SO_2$ NAAQS until three years of valid data have been gathered, Illinois' redesignation request for the Pekin nonattainment area relied upon the demonstration of attainment based on air dispersion modeling which Illinois submitted to EPA as part of its March 2016 nonattainment SIP submittal. As noted in EPA's April 2014 Guidance, for a short-term (*i.e.,* 1-hour) standard, the EPA believes that dispersion modeling, using allowable emissions and addressing stationary sources in the affected area (and in some cases, those sources located outside the nonattainment area which may affect attainment in the area) is technically appropriate, efficient and effective in demonstrating attainment in nonattainment areas, because it takes into consideration combinations of meteorological and emission source operating conditions that can contribute to peak ground-level concentrations of $SO_2$.

Illinois' modeled demonstration of attainment for the Pekin area was discussed in detail in EPA's proposed approval of the Pekin $SO_2$ nonattainment plan. *See* 82 FR 46438, October 5, 2017. Illinois' analysis showed that revised $SO_2$ emission limits at three facilities in the Pekin nonattainment area, in addition to statewide requirements for lower sulfur fuel oil, will provide for attainment. The modeled demonstration included the three Pekin sources at their revised $SO_2$ emission limits and emissions from all other major $SO_2$ sources within 50 kilometers of the Pekin nonattainment area, modeled at their maximum allowable $SO_2$ emission rates. Illinois' analysis demonstrated that the Pekin area will attain and maintain the 2010 $SO_2$ NAAQS at the maximum allowable emission level. The Pekin sources were required to comply with their revised SIP emission limits by January 1, 2017. Illinois has confirmed that they are in full compliance with their emission limits. Current actual emissions at these facilities are therefore at or below the emission rates which Illinois used in its modeling analysis. Since the Pekin modeled attainment demonstration shows that compliance with the emission limits in Illinois' plan even at maximum allowable emissions yields attainment in the entire Pekin nonattainment area, and since the sources are complying with these limits, Illinois' modeled attainment demonstration supports EPA's proposed conclusion that the Pekin area is currently attaining and will continue to attain the $SO_2$ NAAQS.

EPA proposes to conclude that, considered together, the modeling and monitoring data currently available for the Pekin area are adequate to address the redesignation requirement to demonstrate attainment of the 2010 $SO_2$ NAAQS, and that both the results of the modeled attainment demonstration, based on current enforceable emission limits, and the currently available valid monitoring data for Pekin indicate that the Pekin area is attaining the 2010 $SO_2$ NAAQS.

## III. Approval of Illinois' SIPs

On February 1, 2018 (83 FR 4591), EPA approved Illinois' nonattainment SIPs for the Lemont and Pekin nonattainment areas, including emission limits which were demonstrated to provide for attainment in both areas. In that action, EPA found that Illinois had satisfied the requirements for providing for attainment of the $SO_2$ NAAQS in the Lemont and Pekin nonattainment area. Illinois has adopted $SO_2$ SIP regulations requiring emission reductions for sources in the Lemont and Pekin nonattainment areas. Illinois maintains an active enforcement program to ensure ongoing compliance in both areas. Illinois' new source review/prevention of significant deterioration program will address emissions from new sources in both areas. Therefore, EPA proposes to conclude that this redesignation criterion has been met by Illinois for both areas.

## IV. Permanent and Enforceable Emission Reductions

For an area to be redesignated, the state must be able to reasonably attribute the improvement in air quality to emission reductions which are permanent and enforceable. In the Lemont nonattainment area, Illinois applied revised emission limits to Owens Corning Roofing & Asphalt in Summit, Ingredion Bedford Park in Bedford Park, Oxbow Midwest Calcining in Lemont, the Midwest Generation Joliet Generating Station in Joliet, and the Midwest Generation Will County Generating Station in Romeoville. Total facility $SO_2$ emissions in the Lemont nonattainment area have decreased by over 5,000 tons per year (tpy). In the Pekin nonattainment area, Illinois applied revised emission limits to the Midwest Generation Powerton Station in Pekin, the Illinois Power Holdings E.D. Edwards Power Plant in Bartonville, and the Aventine Renewable Energy Resources ethanol facility, now Pacific Ethanol Pekin, Inc., located in Pekin. Total facility $SO_2$ emissions in the Pekin nonattainment area were reduced by over 21,000 tpy. These emission reductions have been made permanent and enforceable by the limits that Illinois adopted into Title 35, part 214 of the Illinois Administrative Code, which EPA approved into the SIP. *See* 83 FR 4591, February 1, 2018. EPA has approved Illinois' $SO_2$ SIP rules, which makes them federally enforceable.

Recent monitoring data indicate that ambient $SO_2$ levels have improved significantly in the Lemont and Pekin nonattainment areas. At the time that the areas were designated nonattainment, the 2009–2011 monitored design value in the Lemont area was 98 ppb, and the 2009–2011 monitored design value at the Pekin monitor was 211 ppb. After the new SIP emission limits came into effect in 2017, the monitored $SO_2$ design value for Lemont dropped to 8 ppb (2016–2018), which is well below the $SO_2$ NAAQS of 75 ppb. The monitored $SO_2$ values at the Pekin monitor also dropped after the new SIP emission limits came into effect, to less than 20 ppb in 2018 and 2019 (based on estimated 99th percentile annual maximum 1-hour values from valid data; see discussion in III.b. above). EPA proposes to find that the improvement in air quality in the

Lemont and Pekin nonattainment areas can be attributed to the permanent and enforceable emission reductions in Illinois' approved nonattainment SIPs.

## V. Maintenance Plans

CAA section 175A sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the nonattainment area is redesignated to attainment. Eight years after the redesignation, the state must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the ten years following the initial ten-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures as EPA deems necessary to assure prompt correction of any future one-hour violations. Specifically, the maintenance plan should address five requirements: The attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan.

Illinois' May 24, 2019 redesignation request contains its maintenance plans for Lemont and Pekin, which Illinois has committed to review and update eight years after redesignation.

Illinois projected $SO_2$ emissions for an interim future year, 2023, and for the maintenance year, 2030, for both areas. Illinois projected that total $SO_2$ emissions in the Lemont nonattainment area in the maintenance year would drop from 10,975 tpy in 2014 to 824 tpy in 2030, considering both the SIP reductions and projected future growth. Illinois projected that total $SO_2$ emissions in the Pekin nonattainment area in the maintenance year would drop from 32,331 tpy in 2014 to 10,588 tpy in 2030, considering both the SIP reductions and projected future growth.

Illinois' maintenance demonstration consists of the nonattainment SIP air quality analyses which demonstrated that the emission reductions in effect in the Lemont and Pekin nonattainment areas will provide for attainment of the $SO_2$ NAAQS. The permanent and enforceable $SO_2$ emission limits in Illinois' $SO_2$ SIP ensure that the $SO_2$ emissions in the Lemont and Pekin areas will be equal to or less than the emission levels which were evaluated in the air quality analyses, and Illinois' enforcement program will ensure that the Lemont and Pekin $SO_2$ emission limits are met continuously.

For continued verification, Illinois has committed to track the $SO_2$ emissions and compliance status of the facilities in the Lemont and Pekin areas. The state commits to update its emissions inventories as required by EPA. Illinois has also committed to continue ambient $SO_2$ monitoring at Lemont and Pekin to verify attainment of the $SO_2$ NAAQS.

The requirement to submit contingency measures in accordance with CAA section 172(c)(9) can be adequately addressed for $SO_2$ by the operation of a comprehensive enforcement program which can quickly identify and address sources that might be causing exceedances of the NAAQS level. Illinois' enforcement program is active and capable of prompt action to remedy compliance issues or NAAQS exceedances. Illinois' redesignation request discusses the state's plan to respond to increased $SO_2$ emissions or ambient monitored concentrations or new exceedances of the $SO_2$ NAAQS in the maintenance areas. Illinois commits to evaluate air quality and emission trends, identify areas of concern, and take action as needed, particularly if a violation is recorded, or an annual average 99th percentile maximum daily one-hour $SO_2$ concentration of 75 ppb or greater occurs, or if total $SO_2$ emissions increase more than five percent above the attainment year inventory. Illinois has the authority to expeditiously adopt, implement and enforce any subsequent emissions control measures deemed necessary to correct any future $SO_2$ violations. Illinois commits to adopt and implement such corrective actions as necessary. The public will have the opportunity to participate in the contingency measure implementation process.

Based on the above, EPA proposes to find that Illinois has addressed the contingency measure requirement for both areas. Further, EPA proposes to find that Illinois' maintenance plans adequately address the five basic components necessary to maintain the $SO_2$ NAAQS in the Lemont and Pekin nonattainment areas.

## VI. Requirements for the Areas Under Section 110 and Part D

Illinois has submitted information demonstrating that it meets all requirements of the CAA applicable to the Lemont and Pekin nonattainment areas. EPA approved Illinois' infrastructure SIP for $SO_2$ on October 16, 2014 (79 FR 62042). This infrastructure SIP approval confirms that Illinois's SIP meets the requirements of CAA section 110(a)(1) and 110(a)(2) to contain the basic program elements, such as an active enforcement program and permitting program. The program elements addressed in the infrastructure SIP will be implemented and enforced in the Lemont and Pekin areas.

Section 191 of the CAA requires Illinois to submit part D SIPs for the Lemont and Pekin nonattainment areas by April 4, 2015. As discussed earlier, Illinois submitted its part D SIPs for the two areas on March 2, 2016 and supplemented them on August 8, 2016 and May 4, 2017. The SIPs each included a demonstration of attainment and revised $SO_2$ emission limits. EPA approved the Lemont and Pekin SIPs on February 1, 2018 (83 FR 4591). In its rulemaking, EPA determined that Illinois had satisfied the various requirements under CAA section 110 and part D for the Lemont and Pekin nonattainment areas, such as the requirements for an attainment inventory of the $SO_2$ emissions from sources in each nonattainment area (required under CAA section 173(c)(3)), reasonably available control measures (required under CAA section 173(c)(1)), and reasonable further progress (required under CAA section 173(c)(2)).

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects that are developed, funded, or approved under title 23 of the United States Code and the Federal Transit Act (transportation conformity) as well as to all other federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with Federal conformity regulations relating to consultation, enforcement, and enforceability that EPA promulgated pursuant to its authority under the CAA. EPA approved Illinois' transportation conformity SIPs on December 23, 1997 (62 FR 67000). In April 2010, EPA promulgated changes to 40 CFR 51.851, eliminating the requirement for states to maintain a general conformity SIP. Illinois has met the applicable conformity requirements under CAA section 176.

Based on the above, EPA is proposing to find that Illinois has satisfied all requirements applicable to the Lemont and Pekin areas under section 110 and part D of title I of the CAA.

## VII. What action is EPA taking?

In accordance with Illinois' May 24, 2019 request, EPA is proposing to

redesignate the Lemont and Pekin $SO_2$ areas from nonattainment to attainment of the $SO_2$ NAAQS. Illinois has demonstrated, among other things, that these areas are attaining the $SO_2$ NAAQS, and that the improvement in air quality is due to permanent and enforceable $SO_2$ emission reductions in the nonattainment area. EPA is also proposing to approve Illinois' maintenance plans, which are designed to ensure that the Lemont and Pekin nonattainment areas will continue to maintain the $SO_2$ NAAQS.

## VIII. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, 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 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, 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 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), because redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on tribes, impact any existing sources of air pollution on tribal lands, nor impair the maintenance of ozone national ambient air quality standards in tribal lands.

## List of Subjects

*40 CFR Part 52*

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

*40 CFR Part 81*

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: February 10, 2020.

**Kurt A. Thiede,**

*Regional Administrator.*

[FR Doc. 2020–03506 Filed 2–21–20; 8:45 am]

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 721

**[EPA–HQ–OPPT–2019–0650; FRL–10004–90]**

**RIN 2070–AB27**

## Significant New Use Rules on Certain Chemical Substances (20–2.B)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for chemical substances which are the subject of premanufacture notices (PMNs). This action would require persons to notify EPA at least 90 days before commencing manufacture (defined by statute to include import) or processing of any of these chemical substances for an activity that is designated as a significant new use by this proposed rule. This action would further require that persons not commence manufacture or processing for the significant new use until they have submitted a Significant New Use Notice, and EPA has conducted a review of the notice, made an appropriate determination on the notice under TSCA 5(a)(3), and has taken any risk management actions as are required as a result of that determination.

**DATES:** Comments must be received on or before March 25, 2020.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2019–0650, 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:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 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:**

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

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

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this action apply to me?*

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

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

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import certification requirements promulgated at 19 CFR 12.118 through 12.127 and 19 CFR 127.28. Chemical importers must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA. Importers of chemicals subject to these proposed SNURs would need to certify their compliance with the SNUR requirements should these proposed rules be finalized. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, pursuant to 40 CFR 721.20, any persons who export or intend to export a chemical substance that is the subject of this proposed rule on or after March 25, 2020 are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)) and must comply with the export notification requirements in 40 CFR part 707, subpart D.

### *B. What should I consider as I prepare my comments for EPA?*

1. *Submitting CBI.* Do not submit CBI 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*.

## II. Background

### *A. What action is the Agency taking?*

EPA is proposing these SNURs under TSCA section 5(a)(2) for chemical substances which were the subjects of PMNs P–18–58, P–18–126, P–18–199, P–18–367, P–19–158, and P–19–164. These proposed SNURs would require persons who intend to manufacture or process any of these chemical substances for an activity that is designated as a significant new use to notify EPA at least 90 days before commencing that activity.

The record for the proposed SNURs on these chemicals was established as docket EPA–HQ–OPPT–2019–0650. That record includes information considered by the Agency in developing these proposed SNURs.

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

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including the four TSCA section 5(a)(2) factors listed in Unit III. In the case of a determination other than not likely to present unreasonable risk, the applicable review period must also expire before manufacturing or processing for the new use may commence. As described in Unit V., the general SNUR provisions are found at 40 CFR part 721, subpart A.

### *C. Applicability of General Provisions*

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the rule. Provisions relating to user fees appear at 40 CFR part 700. Pursuant to 40 CFR 721.1(c), persons subject to these SNURs must comply with the same SNUN requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A) (15 U.S.C. 2604(a)(1)(A)). In particular, these requirements include the information submission requirements of TSCA sections 5(b) and 5(d)(1) (15 U.S.C. 2604(b) and 2604(d)(1)), the exemptions authorized by TSCA sections 5(h)(1), 5(h)(2), 5(h)(3), and 5(h)(5) and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA must either determine that the use is not likely to present an unreasonable risk of injury under the conditions of use for the chemical substance or take such regulatory action as is associated with an alternative determination before the manufacture or processing for the significant new use can commence. If EPA determines that the use is not likely to present an unreasonable risk, EPA is required under TSCA section 5(g) to make public, and submit for publication in the **Federal Register**, a statement of EPA's findings.

## III. Significant New Use Determination

Section 5(a)(2) of TSCA states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

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

In determining what would constitute a significant new use for the chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substances, and potential human exposures and environmental releases that may be associated with the conditions of use of the substances, in the context of the four bulleted TSCA section 5(a)(2) factors listed in this unit. During its review of these chemicals, EPA identified certain conditions of use that are not intended by the submitters,

but reasonably foreseen to occur. EPA is proposing to designate those reasonably foreseen conditions of use as significant new uses.

## IV. Substances Subject to This Proposed Rule

EPA is proposing significant new use and recordkeeping requirements for XX chemical substances in 40 CFR part 721, subpart E. In this unit, EPA provides the following information for each chemical substance:

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

The regulatory text section of these proposed rules specifies the activities designated as significant new uses. Certain new uses, including production volume limits and other uses designated in the proposed rules, may be claimed as CBI.

The chemical substances that are the subject of these proposed SNURs are undergoing premanufacture review. In addition to those conditions of use intended by the submitter, EPA has identified certain other reasonably foreseen conditions of use. EPA has preliminarily determined that the chemicals under their intended conditions of use are not likely to present an unreasonable risk. However, EPA has not assessed risks associated with the reasonably foreseen conditions of use for these chemicals. EPA is proposing to designate these reasonably foreseen and other potential conditions of use as significant new uses. As a result, those conditions of use are no longer reasonably foreseen to occur without first going through a separate, subsequent EPA review and determination process associated with a SNUN.

The substances subject to these proposed rules are as follows:

*PMN Number: P–18–58*

*Chemical name:* Phosphonium, trihexyltetradecyl-, salt with 1,1,1-trifluoro-N-(trifluoromethyl)sulfonyl] methanesulfonamide (1:1).

*CAS number:* 460092–03–9.

*Basis for action:* The PMN states that the use of the substance will be as a component of electroconductive low-noise grease for long-term lubrication of capped or sealed ball bearings. Based on the physical/chemical properties of the PMN substance, test data for the PMN substance, and test data on analogous substances, EPA has identified concerns for neurotoxicity, liver effects, thyroid effects, respiratory effects, developmental/reproductive effects, and aquatic toxicity if the chemical substance is used in ways other than as intended by the PMN submitter. Other conditions of use of the PMN substance that EPA intends to assess before they occur include the following:

1. Manufacture, processing, or use in any manner that results in inhalation exposures; and
2. Release of a manufacturing, processing, or use stream associated with any use of the PMN substance into the waters of the United States exceeding a surface water concentration of 11 ppb.

The proposed SNUR would designate as a ''significant new use'' these conditions of use.

*Potentially useful information:* EPA has determined that certain information may be potentially useful to characterize the health and environmental effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of reproductive/developmental effects, specific target organ toxicity and aquatic toxicity studies would help characterize the potential health and environmental effects of the PMN substance.

*CFR citation:* 40 CFR 721.11453.

*PMN Number: P–18–126*

*Chemical name:* Calcium manganese titanium oxide.

*CAS number:* 153728–36–0.

*Basis for action:* The PMN states that the use of the substance will be as a black pigment for architectural paint. Based on the physical/chemical properties of the PMN substance, test data for the PMN substance, and SAR analysis of test data on analogous substances, EPA has identified concerns for lung effects (overload)/carcinogenicity, neurotoxicity, and aquatic toxicity if the chemical substance is used in ways other than as intended by the PMN submitter. Other conditions of use of the PMN substance that EPA intends to assess before they occur include the following:

1. Use other than as a black pigment for architectural paint;
2. Use in consumer products; and
3. Annual production volume of greater than the confidential volume in the PMN.

The proposed SNUR would designate as a ''significant new use'' these conditions of use.

*Potentially useful information:* EPA has determined that certain information may be potentially useful to characterize the health and environmental effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of pulmonary effects, specific target organ toxicity, and aquatic toxicity testing would help characterize the potential health and environmental effects of the PMN substance.

*CFR citation:* 40 CFR 721.11454.

*PMN Number: P–18–199*

*Chemical name:* Rare earth oxide (generic).

*CAS number:* Not available.

*Basis for action:* The PMN states that the generic (non-confidential) use of the substance will be as a fuel cell component. Based on the physical/chemical properties of the PMN substance and SAR analysis of test data on the PMN substance and analogous substances, EPA has identified concerns for lung effects, carcinogenicity, neurotoxicity, immunotoxicity, and blood, bone and liver effects if the chemical substance is used in ways other than as intended by the PMN submitter. Other conditions of use of the PMN substance that EPA intends to assess before they occur include the following:

- Use other than the confidential use described in the PMN.

The proposed SNUR would designate as a ''significant new use'' these conditions of use.

*Potentially useful information:* EPA has determined that certain information may be potentially useful to characterize the health and environmental effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of toxicokinetics, skin absorption, neurotoxicity, specific target organ toxicity, pulmonary effects, and bioavailability of certain metal ions in simulated lung fluid testing would help characterize the potential health effects of the PMN substance.

*CFR citation:* 40 CFR 721.11455.

*PMN Number: P–18–367*

*Chemical name:* Acid-modified polyether (generic).

*CAS number:* Not available.

*Basis for action:* The PMN states that the use of the substance will be as a wetting and dispersing additive for pigments in industrial paints and coatings. Based on the physical/chemical properties of the PMN substance and SAR analysis of test data on analogous substances, EPA has identified concerns for skin irritation, corrosion to the eyes and mucous membranes, lung effects (surfactancy), systemic toxicity, reproductive/developmental effects, and aquatic toxicity if the chemical substance is used in ways other than as intended by the PMN submitter. Other conditions of use of the PMN substance that EPA intends to assess before they occur include the following:

1. Manufacture of the substance within the United States;
2. Processing of the substance to greater than 2% concentration by weight in the final product formulation;
3. Use in consumer products; and
4. Release of a manufacturing, processing, or use stream associated with any use of the PMN substance into the waters of the United States exceeding a surface water concentration of 9 ppb.

The proposed SNUR would designate as a ''significant new use'' these conditions of use.

*Potentially useful information:* EPA has determined that certain information may be potentially useful to characterize the health and environmental effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of skin irritation, eye damage, specific target organ toxicity, pulmonary effects, reproductive toxicity, and aquatic toxicity testing would help characterize the potential health and environmental effects of the PMN substance.

*CFR citation:* 40 CFR 721.11456.

*PMN Number: P–19–158*

*Chemical name:* Alkenoic acid polymer with 2-ethyl-2-(hydroxymethyl)-1,3-alkyldiol, 1,1′-methylenebis(4-isocyantocarbomonocycle) and 3-methyl-1,5-alkyldiol, (generic).

*CAS number:* Not available.

*Basis for action:* The PMN states that the generic (non-confidential) use of the substance will be as an adhesive. Based on the physical/chemical properties of the PMN substance and SAR analysis of test data on analogous substances, EPA has identified concerns for irritation to skin, eyes, and respiratory tract, skin and respiratory sensitization, respiratory tract effects, systemic and reproductive effects, and carcinogenicity if the chemical substance is used in ways other than as intended by the PMN submitter. Other conditions of use of the PMN substance that EPA intends to assess before they occur include the following:

1. Manufacture, processing, or use in any manner that results in inhalation exposures;
2. Use in consumer products; and
3. Any release of a manufacturing, processing, or use stream associated with any use of the PMN substance into the waters of the United States.

The proposed SNUR would designate as a ''significant new use'' these conditions of use.

*Potentially useful information:* EPA has determined that exposure and release information may be potentially useful to characterize the health effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR.

*CFR citation:* 40 CFR 721.11457.

*PMN Number: P–19–164*

*Chemical name:* Bis-alkoxy substituted alkane, polymer with aminoalkanol (generic).

*CAS number:* Not available.

*Basis for action:* The PMN states that the use of the substance will be as a site limited intermediate for coating resin manufacture. Based on the physical/chemical properties of the PMN substance and SAR analysis of test data on analogous substances, EPA has identified concerns for irritation and corrosion to skin, eyes, and mucous membranes, systemic effects (body weight changes and liver effects), neurological effects, reproductive and developmental effects, and aquatic toxicity if the chemical substance is used in ways other than as intended by the PMN submitter. Other conditions of use of the PMN substance that EPA intends to assess before they occur include the following:

1. Manufacture, processing, or use in any manner that results in inhalation exposures; and
2. Release of a manufacturing, processing, or use stream associated with any use of the PMN substance into the waters of the United States exceeding a surface water concentration of 1 ppb.

The proposed SNUR would designate as a ''significant new use'' these conditions of use.

*Potentially useful information:* EPA has determined that certain information may be potentially useful to characterize the health and environmental effects of the PMN substance if a manufacturer or processor is considering submitting a SNUN for a significant new use that would be designated by this proposed SNUR. EPA has determined that the results of skin irritation, eye damage, and aquatic toxicity testing would help characterize the potential health and environmental effects of the PMN substance.

*CFR citation:* 40 CFR 721.11458.

## V. Rationale and Objectives of the Proposed Rule

### *A. Rationale*

During review of the PMNs submitted for the chemical substances that are the subject of these proposed SNURs and as further discussed in Unit IV., EPA identified certain other reasonably foreseen conditions of use, in addition to those conditions of use intended by the submitter. EPA has preliminarily determined that the chemical under the intended conditions of use is not likely to present an unreasonable risk. However, EPA has not assessed risks associated with the reasonably foreseen conditions of use. EPA is proposing to designate these conditions of use as significant new uses to ensure that they are no longer reasonably foreseen to occur without first going through a separate, subsequent EPA review and determination process associated with a SNUN.

### *B. Objectives*

EPA is proposing these SNURs because the Agency wants:

- To have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing or processing a listed chemical substance for the described significant new use.
- To be obligated to make a determination under TSCA section 5(a)(3) regarding the use described in the SNUN, under the conditions of use. The Agency will either determine under section 5(a)(3)(C) that the significant new use is not likely to present an unreasonable risk, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator under the conditions of use, or make a determination under section 5(a)(3) (A) or (B) and take the required regulatory action associated

with the determination, before manufacture or processing for the significant new use of the chemical substance can occur.

• To be able to complete its review and determination on each of the PMN substances, while deferring analysis on the significant new uses proposed in these rules unless and until the Agency receives a SNUN.

Issuance of a proposed SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Inventory. Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the internet at *https://www.epa.gov/tsca-inventory.*

## VI. Applicability of the Proposed Rules to Uses Occurring Before the Effective Date of the Final Rule

To establish a significant new use, EPA must determine that the use is not ongoing. The chemical substances subject to this proposed rule were undergoing premanufacture review at the time of signature of this proposed rule and were not on the TSCA Inventory. In cases where EPA has not received a notice of commencement (NOC) and the chemical substance has not been added to the TSCA Inventory, no person may commence such activities without first submitting a PMN. Therefore, for the chemical substances subject to these proposed SNURs, EPA concludes that the proposed significant new uses are not ongoing.

EPA designates February 3, 2020, as the cutoff date for determining whether the new use is ongoing. The objective of EPA's approach is to ensure that a person cannot defeat a SNUR by initiating a significant new use before the effective date of the final rule.

Persons who begin commercial manufacture or processing of the chemical substances for a significant new use identified on or after that date would have to cease any such activity upon the effective date of the final rule. To resume their activities, these persons would have to first comply with all applicable SNUR notification requirements and EPA would have to take action under section 5 allowing manufacture or processing to proceed. In developing this proposed rule, EPA has recognized that, given EPA's general practice of posting proposed rules on its website a week or more in advance of **Federal Register** publication, this objective could be thwarted even before **Federal Register** publication of the proposed rule.

## VII. Development and Submission of Information

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

In the absence of a rule, Order, or consent agreement under TSCA section 4 covering the chemical substance, persons are required only to submit information in their possession or control and to describe any other information known to or reasonably ascertainable by them (see 40 CFR 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. Unit IV. lists potentially useful information for all SNURs listed here. Descriptions are provided for informational purposes. The potentially useful information identified in Unit IV. will be useful to EPA's evaluation in the event that someone submits a SNUN for the significant new use. Companies who are considering submitting a SNUN are encouraged, but not required, to develop the information on the substance, which may assist with EPA's analysis of the SNUN.

EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol selection. Furthermore, pursuant to TSCA section 4(h), which pertains to reduction of testing in vertebrate animals, EPA encourages consultation with the Agency on the use of alternative test methods and strategies (also called New Approach Methodologies, or NAMs), if available, to generate the recommended test data. EPA encourages dialog with Agency representatives to help determine how best the submitter can meet both the data needs and the objective of TSCA section 4(h).

The potentially useful information described in Unit IV. may not be the only means of providing information to evaluate the chemical substance associated with the significant new uses. However, submitting a SNUN without any test data may increase the likelihood that EPA will take action under TSCA section 5(e) or 5(f). EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs which provide detailed information on the following:

• Human exposure and environmental release that may result from the significant new use of the chemical substances.

## VIII. SNUN Submissions

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

## IX. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers and processors of the chemical substances subject to this proposed rule. EPA's complete economic analysis is available in the docket under docket ID number EPA–HQ–OPPT–2019–0650.

## X. Statutory and Executive Order Reviews

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

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

This proposed rule would establish SNURs for new chemical substances that were the subject of PMNs. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

### *B. Paperwork Reduction Act (PRA)*

According to the PRA, 44 U.S.C. 3501 *et seq.,* an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control

numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

The information collection requirements related to this action have already been approved by OMB pursuant to PRA under OMB control number 2070–0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

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

*C. Regulatory Flexibility Act (RFA)*

Pursuant to section 605(b) of the RFA, 5 U.S.C. 601 *et seq.,* the Agency hereby certifies that promulgation of this proposed SNUR would not have a significant adverse economic impact on a substantial number of small entities. The requirement to submit a SNUN applies to any person (including small or large entities) who intends to engage in any activity described in the final rule as a ''significant new use.'' Because these uses are ''new,'' based on all information currently available to EPA, it appears that no small or large entities presently engage in such activities. A SNUR requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN. Although some small entities may decide to pursue a significant new use in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of SNURs covering over 1,000 chemicals, the Agency receives only a small number of notices per year. For example, the number of SNUNs received was seven in Federal fiscal year (FY) 2013, 13 in FY2014, six in FY2015, 12 in FY2016, 13 in FY2017, and 11 in FY2018, only a fraction of these were from small businesses. In addition, the Agency currently offers relief to qualifying small businesses by reducing the SNUN submission fee from $16,000 to $2,800. This lower fee reduces the total reporting and recordkeeping of cost of submitting a SNUN to about $10,116 for qualifying small firms. Therefore, the potential economic impacts of complying with this proposed SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published in the **Federal Register** of June 2, 1997 (62 FR 29684) (FRL–5597–1), the Agency presented its general determination that final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

*D. Unfunded Mandates Reform Act (UMRA)*

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this proposed rule. As such, EPA has determined that this proposed rule does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of UMRA sections 202, 203, 204, or 205 (2 U.S.C. 1531–1538 *et seq.*).

*E. Executive Order 13132: Federalism*

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

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

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

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

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

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

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

*I. National Technology Transfer and Advancement Act (NTTAA)*

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

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

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

**List of Subjects in 40 CFR Part 721**

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

Dated: January 31, 2020.

**Tala Henry,**

*Deputy Director, Office of Pollution Prevention and Toxics.*

Therefore, it is proposed that 40 CFR part 721 is amended as follows:

## PART 721—[AMENDED]

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

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

■ 2. Add §§ 721.11453 through 721.11458 to subpart E to read as follows:

## Subpart E—Significant New Uses for Specific Chemical Substances

### § 721.11453 Phosphonium, trihexyltetradecyl-, salt with 1,1,1-trifluoro-N-[(trifluoromethyl)sulfonyl] methanesulfonamide (1:1).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as phosphonium, trihexyltetradecyl-, salt with 1,1,1-trifluoro-N-[(trifluoromethyl) sulfonyl]methanesulfonamide (1:1) (PMN P–18–58; CASRN 460092–03–9) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance in a manner that results in inhalation exposure.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N=11.

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

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

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

### § 721.11454 Calcium manganese titanium oxide.

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified as calcium manganese titanium oxide (PMN P–18–126; CASRN 153728–36–0) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o). It is a significant new use to use the substance other than as a black pigment for architectural paint. It is a significant new to manufacture or import greater than the annual production volume identified in the PMN.

(ii) [Reserved]

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

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

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

### § 721.11455 Rare earth oxide (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as rare earth oxide (PMN P–18–199) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

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

(ii) [Reserved]

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

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

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

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

### § 721.11456 Acid-modified polyether (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as acid-modified polyether (PMN P–18–367) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(f) and (o). It is a significant new use to process the substance to a final product formulation of greater than 2% by weight.

(ii) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) where N=9.

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

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

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

### § 721.11457 Alkenoic acid polymer with 2-ethyl-2-(hydroxymethyl)-1,3-alkyldiol, 1,1′-methylenebis(4-isocyantocarbomonocycle) and 3-methyl-1,5-alkyldiol (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as alkenoic acid polymer with 2-ethyl-2-(hydroxymethyl)-1,3-alkyldiol, 1,1′-methylenebis(4-isocyanto carbomonocycle) and 3-methyl-1,5-alkyldiol (PMN P–19–158) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

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

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

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

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

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

### § 721.11458 Bis-alkoxy substituted alkane, polymer with aminoalkanol, (generic).

(a) *Chemical substance and significant new uses subject to reporting.* (1) The chemical substance identified generically as bis-alkoxy substituted alkane, polymer with aminoalkanol, (PMN P–19–164) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture, process, or use the substance in a manner that results in inhalation exposure.

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

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

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

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

[FR Doc. 2020–02892 Filed 2–21–20; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

**[Docket No. FWS–R4–ES–2019–0068; 4500090023]**

**RIN 1018–BE12**

## Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Florida Bristle Fern

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for the Florida bristle fern (*Trichomanes punctatum* ssp. *floridanum*) under the Endangered Species Act of 1973 (Act), as amended. In total, approximately 1,624 hectares (4,014 acres) in Miami-Dade and Sumter Counties, Florida, fall within the boundaries of the proposed critical habitat designation. If we finalize this rule as proposed, it would extend the Act's protections to this subspecies' critical habitat. We also announce the availability of a draft economic analysis of the proposed designation of critical habitat.

**DATES:** We will accept comments on the proposed rule and draft economic analysis received or postmarked on or before April 24, 2020. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by April 9, 2020.

**ADDRESSES:** *Written comments:* You may submit comments on the proposed rule or draft economic analysis by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *http://www.regulations.gov.* In the Search box, enter FWS–R4–ES–2019–0068, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment Now!''

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R4–ES–2019–0068; U.S. Fish and Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

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

*Document availability:* The draft economic analysis is available at *http://www.fws.gov/verobeach,* at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2019–0068, and at the South Florida Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

The coordinates or plot points or both from which the maps are generated are included in the administrative record for this proposed critical habitat designation and are available at *https://www.fws.gov/verobeach,* at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2019–0068, and at the South Florida Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). Any additional tools or supporting information that we may develop for the critical habitat designation will also be available at the Service website and Field Office set out above, and may also be included in the preamble of this proposed rule and/or at *http://www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Roxanna Hinzman, Field Supervisor, U.S. Fish and Wildlife Service, South Florida Ecological Services Field Office, 1339 20th Street, Vero Beach, FL 32960; telephone 772–562–3909. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### Executive Summary

*Why we need to publish a rule.* To the maximum extent prudent and determinable, we must designate critical habitat for any species that we determine to be an endangered or threatened species under the Act. Designations of critical habitat can only be completed by issuing a rule.

*What this document does.* This document proposes to designate critical habitat for the Florida bristle fern (*Trichomanes punctatum* ssp. *floridanum*), which was listed as endangered under the Act on November 5, 2015 (80 FR 60440).

*The basis for our action.* Section 4(a)(3) of the Act requires the Secretary of the Interior (Secretary) to designate critical habitat to the extent prudent and determinable. Section 4(b)(2) of the Act states that the Secretary shall designate critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, the impact on national security, and any other relevant impact of specifying any particular area as critical habitat. Section 3(5)(A) of the Act defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary that such areas are essential for the conservation of the species.

*Economic analysis.* In accordance with section 4(b)(2) of the Act, we prepared an analysis of the economic impacts of the proposed critical habitat designation. In this document, we announce the availability of the draft economic analysis for public review and comment.

*Peer review.* In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we will seek peer review of this proposed rule. We are seeking comments from independent specialists to ensure that our critical habitat proposal is based on scientifically sound data and analyses. We have invited these peer reviewers to comment on our specific assumptions and conclusions in this critical habitat proposal during the public comment period for this proposed rule (see **DATES**, above).

Because we will consider all comments and information received during the comment period, our final critical habitat designation may differ from this proposal. Based on the new information we receive (and any comments on that new information), we may conclude that some additional areas meet the definition of critical habitat, and some areas proposed as critical habitat may not meet the definition of critical habitat. In addition, we may find that the benefit of excluding some areas outweigh the benefits of including those areas

pursuant to 4(b)(2) of the Act, and may exclude them from the final designation unless we determine that exclusion would result in extinction of the Florida bristle fern. Such final decisions would be a logical outgrowth of this proposal, as long as we: (a) Base the decisions on the best scientific and commercial data available after considering all of the relevant factors; (2) do not rely on factors Congress has not intended us to consider; and (3) articulate a rational connection between the facts found and the conclusions made, including why we changed our conclusion.

**Information Requested**

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned government agencies, Native American tribes, the scientific community, industry, or any other interested party concerning this proposed rule. We particularly seek comments concerning:

(1) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including information to inform the following factors that the regulations identify as reasons why designation of critical habitat may be not prudent:

(a) The subspecies is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the subspecies;

(b) The present or threatened destruction, modification, or curtailment of a subspecies' habitat or range is not a threat to the subspecies, or threats to the subspecies' habitat stem solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(c) Areas within the jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States;

(d) No areas meet the definition of critical habitat.

(2) Specific information on:

(a) The amount and distribution of Florida bristle fern habitat;

(b) What may constitute physical or biological features essential to the conservation of the subspecies, specifically those related to canopy cover, hydrology, humidity and moisture levels, and minimum habitat amounts;

(c) Reproduction and dispersal methods of the subspecies, such as spore dispersal distance, the association between dispersal and hydrological conditions, and the reliance on vegetative dispersal for subspecies growth;

(d) What areas that were occupied at the time of listing and that contain the physical or biological features essential to the conservation of the subspecies should be included in the designation and why;

(e) Special management considerations or protection that may be needed in occupied critical habitat areas we are proposing, including managing for the potential effects of climate change;

(f) What areas not occupied at the time of listing are essential for the conservation of the subspecies. We particularly seek comments regarding:

(i) Whether occupied areas are inadequate for the conservation of the subspecies; and,

(ii) Specific information that supports the determination that unoccupied areas will, with reasonable certainty, contribute to the conservation of the subspecies and, contain at least one physical or biological feature essential to the conservation of the subspecies;

(g) The location and boundaries of hammock habitats and exposed limestone substrate within and surrounding the Jumper Creek Tract of the Withlacoochee State Forest in Sumter County, FL, that would support life-history processes essential for the conservation of the subspecies;

(h) The delineation of the substrate or substrate mapping through the subspecies' south Florida range;

(i) The methods we used to identify unoccupied critical habitat for each of the metapopulations; and,

(j) As to the following areas, their occupancy status and habitat suitability; whether physical or biological features essential to the conservation of the subspecies are present; and whether they should be included in the designation and why:

(i) Monkey Jungle (also known as Cox Hammock), Big and Little George Hammocks, Charles Deering, Bill Sadowski Park, Whispering Pines Hammock, Black Creek Forest, Hardin Hammock, Silver Palm Groves, Camp Owaissa Bauer, Lucille Hammock, Loveland Hammock, and Holiday Hammock in Miami-Dade County;

(ii) Rockland hammocks, other than Royal Palm Hammock, in Long Pine Key in Everglades National Park in Miami-Dade County;

(iii) Rockland hammocks in Big Cypress National Preserve in Collier and Monroe Counties;

(iv) Hammock habitats in the Jumper Creek Tract and Richloam Tract of the Withlacoochee State Forest in Sumter County;

(v) Hammock habitats in the vicinity of Lake Panasoffkee in Sumter County;

(vi) Hammock habitats on Flying Eagle Ranch and Pineola Grotto in Citrus County; and,

(vii) Hammock habitats in the vicinity of the Green Swamp in Pasco and Polk Counties.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on proposed critical habitat.

(4) Information on the projected and reasonably likely impacts of climate change on the Florida bristle fern and proposed critical habitat.

(5) Any probable economic, national security, or other relevant impacts of designating any area that may be included in the final designation, and the benefits of including or excluding areas that may be impacted.

(6) Information on the extent to which the description of probable economic impacts in the draft economic analysis is a reasonable estimate of those impacts.

(7) Whether any specific areas we are proposing for critical habitat designation should be considered for exclusion under section 4(b)(2) of the Act, and whether the benefits of potentially excluding any specific area outweigh the benefits of including that area under section 4(b)(2) of the Act.

(8) The likelihood of adverse social reactions to the designation of critical habitat, as discussed in the associated documents of the draft economic analysis, and how the consequences of such reactions, if likely to occur, would relate to the conservation and regulatory benefits of the proposed critical habitat designation.

(9) Whether we could improve or modify our approach to designating critical habitat in any way to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

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

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

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

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

## Public Hearings

Section 4(b)(5) of the Act provides for one or more public hearings on this proposal, if requested. Requests must be received by the date specified above in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if any are requested, and announce the dates, times, and places of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing.

## Previous Federal Actions

Please refer to the final listing rule for the Florida bristle fern, which published on October 6, 2015 (80 FR 60440), for a detailed description of previous Federal actions concerning this subspecies.

## Critical Habitat

### Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which may require special management considerations or protection; and

(2) Specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands, nor does designation require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the Federal agency would be required to consult with the Service under section 7(a)(2) of the Act. However, even if the Service were to conclude that the proposed activity would result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement ''reasonable and prudent alternatives'' to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat). In identifying those physical or biological features that occur in specific occupied areas, we focus on the specific features that are essential to support the life-history needs of the species, including but not limited to, water characteristics, soil type, geological features, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic, or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity.

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. When designating critical habitat, the Secretary will first evaluate areas occupied by the species. The Secretary will only consider unoccupied areas to be essential where a critical habitat designation limited to geographical areas occupied by the species would be inadequate to ensure the conservation of the species. In addition, for an unoccupied area to be considered essential, the Secretary must determine that there is a reasonable certainty both that the area will contribute to the conservation of the species and that the area contains one or more of those physical or biological features essential to the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information

Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) Conservation actions implemented under section 7(a)(1) of the Act, (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species, and (3) section 9 of the Act's prohibitions on taking any individual of the species, including taking caused by actions that affect habitat. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of this species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of these planning efforts calls for a different outcome.

**Prudency Determination**

Section 4(a)(3) of the Act, as amended, and its implementing regulations (50 CFR 424.12), require that the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species to the maximum extent prudent and determinable. Our regulations (50 CFR 424.12(a)(1)) state that the Secretary may, but is not required to, determine that a designation would not be prudent in the following circumstances:

(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species;

(2) The present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or threats to the species' habitat stems solely from causes that cannot be addressed through management actions resulting from consultations under section 7(a)(2) of the Act;

(3) Areas within jurisdiction of the United States provide no more than negligible conservation value, if any, for a species occurring primarily outside the jurisdiction of the United States;

(4) No areas meet the definition of critical habitat; or

(5) The Secretary otherwise determines that designation of critical habitat would not be prudent based on the best scientific data available.

No imminent threat of take attributed to collection or vandalism under Factor B was identified in the final listing rule for this subspecies, and identification and mapping of critical habitat is not expected to initiate any such threat. In our final listing rule, we determined that the present or threatened destruction, modification, or curtailment of a species' habitat or range (Factor A) is a threat to Florida bristle fern and that those threats in some way can be addressed by section 7(a)(2) consultation measures. The subspecies occurs wholly in the jurisdiction of the United States and we are able to identify areas that meet the definition of critical habitat. Therefore, because none of the circumstances enumerated in our regulations at 50 CFR 424.12(a)(1) have been met and because there are no other circumstances the Secretary has identified for which this designation of critical habitat would be not prudent, we have determined that the designation of critical habitat is prudent for the Florida bristle fern.

**Critical Habitat Determinability**

Having determined that designation is prudent, under section 4(a)(3) of the Act we must find whether critical habitat for the Florida bristle fern is determinable. Our regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable when one or both of the following situations exist:

(i) Data sufficient to perform required analyses are lacking; or

(ii) The biological needs of the species are not sufficiently well known to identify any area that meets the definition of ''critical habitat.''

We reviewed the available information pertaining to the biological needs of the subspecies and habitat characteristics where this subspecies is located. We find that this information is sufficient for us to conduct both the biological and economic analyses required for the critical habitat determination. This and other information represent the best scientific data available and lead us to conclude that the designation of critical habitat is now determinable for the Florida bristle fern.

**Physical or Biological Features**

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12(b), in determining which areas we will designate as critical habitat from within the geographical area occupied by the species at the time of listing, we consider the physical or biological features that are essential to the conservation of the species and that may require special management considerations or protection. The regulations at 50 CFR 424.02 define ''physical or biological features essential to the conservation of the species'' as the features that occur in specific areas and that are essential to support the life-history needs of the species. These include, but are not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other features. A feature may be a single habitat characteristic, or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity. For example, physical features essential to the conservation of the species might include gravel of a particular size required for spawning, alkali soil for

seed germination, protective cover for migration, or susceptibility to flooding or fire that maintains necessary early-successional habitat characteristics. Biological features might include prey species, forage grasses, specific kinds or ages of trees for roosting or nesting, symbiotic fungi, or a particular level of nonnative species consistent with conservation needs of the listed species. The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic essential to support the life history of the species. In considering whether features are essential to the conservation of the species, the Service may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species. These characteristics include, but are not limited to space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing (or development) of offspring; and habitats that are protected from disturbance.

The features may also be combinations of habitat characteristics and may encompass the relationship between characteristics or the necessary amount of a characteristic needed to support the life history of the species. In considering whether features are essential to the conservation of the species, the Service may consider an appropriate quality, quantity, and spatial and temporal arrangement of habitat characteristics in the context of the life-history needs, condition, and status of the species.

*Space for Individual and Population Growth and for Normal Behavior*

Florida bristle fern occurs exclusively in closed canopy, upland hardwood forest hammock habitats, which support the climate (stable humidity and temperature), hydrology, canopy cover, and limestone substrates necessary for the subspecies to persist, grow, and reproduce. Upland hardwood forests consist of a mosaic of natural hammock and hardwood communities primarily characterized as mesic, hydric, and rockland hammocks, or intermixed hammock strands, with associated transitional wetland matrix/hydric and upland communities (Florida Natural Areas Inventory [Inventory] 2010, pp. 16–28). The hammock habitats occurs within and as part of larger matrices of hydric or pine rockland communities (Inventory 2010, pp.16–28). Detailed descriptions of these natural communities can be found in Natural Communities of Florida (Inventory 2010, pp. 16–28) and in the final listing rule for Florida bristle fern (80 FR 60440, October 6, 2015). Natural communities include both wetland and upland communities having intact vegetation (*i.e.,* not cleared).

The current range of Florida bristle fern includes two metapopulations, one in south Florida (Miami-Dade County) and one in central Florida (Sumter County). The south Florida metapopulation is currently composed of four known populations, and the central Florida metapopulation is composed of two known populations. The south Florida populations of Florida bristle fern occur in communities characterized by primarily rockland hammock or closed tropical hardwood hammocks occurring within a larger matrix of pine rockland on the Miami Rock Ridge. In central Florida, the populations of the subspecies occur in predominantly mesic hammocks situated in a mosaic of hydric hammock and mixed wetland hardwoods. These internal or inter-mixed strands of hammock within the forested communities are characterized by fairly dense to extremely dense canopy cover, which prevents drastic changes in temperature and humidity and the desiccation of the fern from direct sunlight and drying winds.

The matrix of landscapes associated with the hammocks or the intermixed strands of these communities support the suitable conditions necessary for the growth and reproduction of Florida bristle fern. Suitable habitat quality and size are necessary to ensure the maintenance of the microclimate conditions (stable temperature, high humidity, moisture, canopy shade, and shelter) essential to the subspecies' survival and conservation. These combined factors establish the fern's microclimate: (a) The level of protection/exposure the fern experiences given its location in a solution hole (a limestone solution feature; in the Miami Rock Ridge, they consist of steep-sided pits, varying in size, formed by dissolution of subsurface limestone followed by a collapse above (Snyder et al. 1990, p. 236)) or on an exposed boulder, (b) the quality of the solution hole or exposed boulder substrate, and (c) the amount of canopy cover. The surrounding vegetation is a key component in producing and supporting this microclimate. There are differences in vegetation and substrate characteristics between the two geographically distant metapopulations that can account for differences in the amount of habitat needed to support the fern. For example, Florida bristle fern in south Florida occurs in a tropical climate and attaches to the interior walls of well-protected and insulated solution holes. By comparison, in central Florida, Florida bristle fern occurs in a more temperate climate and is found more exposed by attaching to a substrate that is above the surface. The size and quality of the intact habitat surrounding the exposed substrate can play a greater role in providing and supporting the stable, shaded, and wind-protected microclimate conditions the fern needs. Therefore, the microclimate conditions (stable temperature, high humidity, canopy shade, and shelter) have the potential to be maintained (and the plant is able to persist) within smaller areas in south Florida than those needed to support the microclimate conditions in central Florida. For both metapopulations, intact upland hardwood forest and associated hammock habitat is an essential feature to the conservation of this subspecies, and sufficient habitat is needed to ensure the maintenance of the fern's microclimate and life processes (growth, dispersal).

Therefore, we identify upland hardwood forest hammock habitats of sufficient quality and size to sustain the necessary microclimate and life processes for Florida bristle fern to be a physical or biological feature essential to the conservation for this subspecies.

*Food, Water, Air, Light, Minerals, or Other Nutritional or Physiological Requirements*

Substrate and Soils—Florida bristle fern is generally epipetric (grows on rocks) or epiphytic (grows non-parasitically upon another plant). In combination with the habitat characteristics discussed above, the subspecies requires exposed limestone substrate to provide suitable growing conditions for anchoring, nutrients, pH, and proper drainage (van der Heiden 2016, p. 1). Florida bristle fern prefers substrate having exposed oolitic (composed of minute rounded concretions resembling fish eggs) limestone or limestone solution features (solution holes) filled with a thin layer of highly organic soil and standing water for part or all of the year. The limestone substrate occurs primarily as solution holes in south Florida and exposed limestone boulders in central Florida.

In south Florida, Florida bristle fern is currently found growing in rocky

outcrops of rockland hammocks, in oolitic limestone solution holes, and occasionally, on tree roots in limestone-surrounded areas (Nauman 1986, p. 181; Possley 2013a, pers. comm.). These rockland habitats are outcrops primarily composed of marine limestone representing the distinct geological formation of the Miami Rock Ridge, a feature that encompasses a broad area from Miami to Homestead, Florida, and narrows, westward through the Long Pine Key area of Everglades National Park (Snyder et al. 1990, pp. 233–234). The limestone solution holes are considered specialized habitat within these hammock areas that host Florida bristle fern (Snyder et al.1990, p. 247). The solution-hole features that dominate the rock surface in the Miami Rock Ridge are steep-sided pits formed by dissolution of subsurface limestone followed by the eventual collapse of the surface above (Snyder et al. 1990, p. 236). The limestone solution holes often have complex internal topography and vary in size and depth, from shallow holes a few centimeters deep to those that are several meters in size and up to several meters deep (Snyder et al. 1990, p. 238; Kobza et al. 2004, p. 154). The bottoms of most solution holes are filled with organic soils, while deeper solution holes penetrate the water table and have (at least historically) standing water for part of the year (Snyder et al. 1990, pp. 236–237; Rehage et al. 2014, pp. S160–S161). A direct relationship has been found between the length of time a solution hole contains water (hydroperiod length) and the habitat quality (vegetative cover) of the solution hole (Rehage et al. 2014, p. S161).

Oolitic limestone occurs in south Florida (and other locations in the world), but it does not occur in central Florida. In central Florida, Florida bristle fern resides on limestone substrate in high-humidity hammocks (van der Heiden 2016, p. 1; van der Heiden 2013a, pers. comm.). In the mesic hammocks on the Jumper Creek Tract of the Withlacoochee State Forest, the subspecies has been observed growing on exposed limestone rocks as small as 0.1 meters (m) (0.3 feet (ft)) tall as well as larger boulders with tall, horizontal faces, and occurs alongside numerous other plant species, including rare State-listed species (*e.g.,* hemlock spleenwort (*Asplenium cristatum*) and widespread polypody (*Pecluma dispersa*)) (van der Heiden 2013b, pers. comm.; van der Heiden and Johnson 2014, pp. 7–8). Rock outcrops may also provide suitable substrate where the underlying Ocala limestone (a geologic formation of exposed limestone near Ocala, Florida) is near the surface.

Therefore, based on the information above, we identify exposed substrate derived from oolitic limestone, Ocala limestone, or exposed limestone boulders, which provide anchoring and nutritional requirements, to be a physical or biological feature essential to the conservation of Florida bristle fern.

Climate and Hydrology—Florida bristle fern is considered strongly hygrophilous (*i.e.,* growing or adapted to damp or wet conditions) and is generally perceived as restricted to constantly humid microhabitat (Krömer and Kessler 2006, p. 57; Proctor 2012, pp. 1024–1025). Features that allow for proper ecosystem functionality and a suitable microhabitat required for the growth and reproduction of the subspecies include a canopy cover of suitable density (*i.e.,* average canopy closure more than 75 percent) and humidity and moisture of sufficient levels and stability (on average, above approximately 90 percent relative humidity) (van der Heiden and Johnson 2014, p. 8; van der Heiden 2016, p. 18; Possley and Hazelton 2015, entire; Possley 2015, pers. comm.; Possley 2015, unpublished data).

The relationship between moist habitats and the *Hymenophyllaceae* Family of ferns (filmy ferns), to which the *Trichomanes* species belongs, has been long observed and documented (Shreve 1911, pp. 187, 189; Proctor 2003, entire; Proctor 2012, p. 1024). In a tropical rain forest system, the diversity and number of filmy fern species is shown to have a direct relation to the air moisture (relative humidity) (Gehrig-Downie et al. 2012; pp. 40–42). While not in the same fern Family as the Florida bristle fern, a study of the rare temperate woodland fern, Braun's hollyfern (*Polystichum braunii*), found air humidity to be a key factor in species health, with stronger plant productivity occurring in higher humidity levels (Schwerbrock and Leuschner 2016, p. 5). Although a minimum suitable humidity level, or threshold, for Florida bristle fern has not been quantified for either metapopulation of the subspecies, information from field studies indicates conditions of high and stable relative humidity are essential to the subspecies. Minor drops in ambient humidity may limit reproduction of the subspecies and can negatively impact overall health of the existing metapopulations, as well as inhibit the growth of new plants, impacting long-term viability (Possley 2013b, pers. comm.; van der Heiden 2013a, pers. comm.). This relationship was observed in Sumter County, where small drops (approximately 1–2 percent) in relative humidity associated with colder weather resulted in observed declines in the health of some clusters of Florida bristle fern within the local population (van der Heiden and Johnson 2014, p. 9).

The average relative humidity for hammocks in Sumter County remained near 95 percent for the duration of a September–November 2013 study (van der Heiden and Johnson 2014, pp. 8–9). Further, the minimum and maximum monthly average relative humidity from September 2013 to March 2015 for the two central Florida hammocks supporting Florida bristle fern were 88 and 99 percent and 89 and 100 percent, respectively (van der Heiden 2016, p. 18). The lowest monthly average relative humidity in each of the hammocks was 65 and 69 percent. In comparison, the minimum and maximum monthly average relative humidity documented outside of the hammock (from June 2014 to March 2015) was 68 and 93 percent with a low monthly relative humidity of 51 percent. In summary, similar and consistently high average humidity values occurred between and within the two hammocks supporting the subspecies, and consistently higher relative humidity values were recorded in the hammocks compared to outside the hammocks.

Likewise, in south Florida, 8 years of data-log monitoring of Deering's Cutler Slough (the location of a known extirpated population, Deering-Snapper Creek, of Florida bristle fern) recorded an average of 90 percent relative humidity occurring within a solution hole compared to the 84 percent average relative humidity documented in the slough outside of the solution hole during the same time period (Possley and Hazelton 2015, entire).

The hammock environments are high or slightly elevated grounds that do not regularly flood, but are dependent on a high water table to keep humidity levels high (Inventory 2010, pp. 19–28). The subspecies is affected by humidity at two spatial scales: the larger hammock community-scale and the smaller substrate (boulder/solution hole) microclimate-scale (van der Heiden and Johnson 2014, pp. 9–10). Moisture (precipitation and low evaporation) and humidity levels are likely factors limiting the occurrence of Florida bristle fern (Proctor 2003, p. 726; Gehrig-Downie et al. 2012, p. 40; Shreve 1911, p. 189). The high humidity levels discussed above and stable temperatures, moisture, and shading (cover) are all features considered

essential to the subspecies and produced by the combination of:

(1) Solution hole or boulder microclimate;

(2) Organic, moisture-retaining soils (high soil moisture conditions);

(3) Hydrology of the surrounding or adjacent wetlands; and

(4) Protective shelter of the surrounding habitat minimizing effects from drying winds and/solar radiation.

Solution holes provide the limestone substrate and produce the necessary humid and moist microclimate needed by the subspecies in south Florida. In central Florida, the fern occurs in the more northerly portion of the hammocks and northern aspect of the limestone boulders, obtaining greater shading and moist conditions compared to the sunnier and drier south-facing portions of the hammocks and sides of boulders (van der Heiden and Johnson 2014, pp. 7, 31). Variances within hammocks, such as slight structural differences or proximity to water, also play an important part in where suitable microhabitat occurs in the hammock habitats. Intact hydrology and the connectivity of substrates to surface water and streams may play a role in spore and vegetative fragment dispersal for the subspecies (more detail in following section, ''Sites for Reproduction, Growth, Spore Production and Dispersal''). Soils associated with the hammock ecosystems consist of sands mixed with organic matter, which produce better drained soils than soils of surrounding or adjacent wetland communities. Soils in habitats of extant Florida bristle fern populations in south Florida consist of an uneven layer of highly organic soil and moderately well-drained, sandy, and very shallow soils (classified as Matecumbe muck). Soils in habitats of the central Florida metapopulation are predominantly sand and Okeelanta muck (80 FR 60440, October 6 2015). For both metapopulations, a relatively high soil-moisture content and high humidity are maintained by dense litter accumulation, ground cover, and heavy shade produced by the dense canopy (Service 1999, pp. 3–99).

In addition, the protected hammock habitats are slightly higher in elevation than the surrounding habitat, which combined with the limestone substrate, leaf litter and sandy soils create a hydrology that differs from lower elevation habitats. It is this combination of hammock ecosystem characteristics (*i.e.,* closed canopy, limestone substrate, humid climate, higher elevation) occurring in hardwood forested upland communities as described earlier that are essential to the conservation for the subspecies.

Therefore, based on the information above, we identify a constantly humid microhabitat climate consisting of dense canopy cover, moisture, stable high temperature, and stable monthly average relative humidity of 90 percent or higher, with intact hydrology within hammocks and the surrounding and adjacent wetland communities, to be a physical or biological feature essential to the conservation of Florida bristle fern.

Cover and Shelter—Florida bristle fern occurs exclusively in hardwood hammock habitats having dense canopy, which provides shade necessary to support suitable microhabitat for the subspecies to persist, grow, and reproduce. In south Florida (Miami-Dade County), the extant populations of Florida bristle fern occur in communities classified as rockland hammocks on the Miami Rock Ridge. In central Florida (Sumter County), the extant populations of the subspecies occur in mesic hammocks, often situated in a mosaic of natural communities including hydric hammock and mixed wetland hardwoods.

The dense canopies of the hammock systems (including rockland and mesic hammocks) contribute to maintaining suitable temperature and humidity levels within this microclimate. The dense canopies found in these habitats minimize temperature fluctuations by reducing soil warming during the day and heat loss at night, thereby helping to prevent frost damage to hammock interiors (Inventory 2010, p. 25). In areas with greater temperature variations, as in central Florida, these benefits afforded by the dense canopy of both the mesic hammock and surrounding habitat combined are important to maintaining suitable conditions for Florida bristle fern. The rounded canopy profile of hammocks help maintain mesic (moist) conditions by deflecting winds, thereby limiting desiccation (extreme dryness) during dry periods and reducing interior storm damage (Inventory 2010, p. 25). Changes in the canopy can impact humidity and evaporation rates, as well as the amount of light available to the understory. Both known extant metapopulations of Florida bristle fern live in dense canopy habitat, with shady conditions, which may be obligatory due to the poikilohydric (*i.e.,* possess no mechanism to prevent desiccation) nature of some fern species including the Florida bristle fern (Krömer and Kessler 2006, p. 57).

While the proper amount of canopy is critical to the persistence of Florida bristle fern, the lower limit of acceptable canopy density has yet to be quantified for either metapopulation. Field observations in south Florida have found clusters of Florida bristle fern desiccated when the immediate canopy above plants was destroyed or substantially reduced, allowing high amounts of light into the understory (Possley 2019, entire; Possley 2013c, entire); however, over the course of many months, these clusters eventually recovered. In addition, this dense, closed canopy may serve as a shield for Florida bristle fern to inhibit the growth of other plant species on the same part of an inhabited rock area (van der Heiden and Johnson 2014, p. 9). In central Florida, the average canopy closure where Florida bristle fern occurs has been estimated to be more than 75 percent (van der Heiden and Johnson 2014, p. 9). Although there are several occurrences in these mesic hammocks where sunlight can be observed through the canopy, generally the habitat is shaded throughout the year, with the lowest canopy cover recorded at 64 percent in December (van der Heiden and Johnson 2014, pp. 8, 20). This information was obtained from a study of short duration (September–December 2013), and it is likely that percent canopy cover and consequently shading would be greater in summer months when foliage is densest (van der Heiden and Johnson 2014, p. 8).

Surrounding habitat that minimizes the effects from drying winds and solar radiation and provides a stable and protective shelter is necessary for this fern to survive. A suitable habitat size and quality is necessary to provide a functioning canopy cover that maintains the microclimate conditions (humidity, moisture, temperature, and shade) essential to the conservation of the subspecies.

Therefore, based on the information above, we identify dense canopy cover of surrounding native vegetation that consists of the upland hardwood forest hammock habitats to be a physical or biological feature essential to the conservation of Florida bristle fern.

*Sites for Reproduction, Germination, and Spore Production and Dispersal*

Growth and reproduction of Florida bristle fern can occur through spore dispersal, rhizome (underground stem) growth, and clonal vegetative fragments (80 FR 60440). The habitats identified above provide plant communities, which require a self-maintaining closed canopy and climate-controlled interior, an adequate space for the rhizomal

growth, dispersal of seeds, sporophyte and gametophyte survival, and recruitment of plant fragments.

While specific information on spore dispersal distances is largely unknown for this subspecies, the microclimate is found to be essential for spore germination and survival. Dispersal of spores, gametophytes, and vegetative fragments may take place via water-based methods, animals, and to a lesser extent, wind-driven opportunities. In the *Hymenophyllaceae* family of ferns, spores lack the capacity to withstand desiccation, are not known to be dispersed long distance through the wind, and depend upon the moist microclimate for growth and survival (Nural Hafiza 2014, p. 21).

In terms of protecting the subspecies' genetic components, a recent study of Florida bristle fern chloroplast DNA found little genetic differentiation between the two metapopulations, which can indicate that both metapopulations are recently established from a single source or that there is a favoring of a genetic sequence (Hughs 2015, pp. 1–2). Lower genetic variation in a population produces a lower effective population (the number of individuals that can undergo cross-fertilization). In such small populations, such as with Florida bristle fern, any loss of individuals may also be a loss of genetic information and a reduction of subspecies fitness (Fernando *et al.* 2015, pp. 32–34). Therefore, ensuring space for reproduction, germination, spore production, and dispersal of the subspecies helps ensure the conservation of genetic information and subspecies fitness.

Adequate space and the maintenance of the stable microclimate habitat support clonal growth as well as the reproductive stages of Florida bristle fern. The rare American hart's tongue fern is a species like the Florida bristle fern that relies on the specific microclimate conditions of high humidity, moisture, and shelter. In a study of the American hart's tongue fern, the presence of these microclimate habitat conditions determined the success of the fern's life-history processes (growth, reproduction, and spore production) (Fernando *et al.* 2015, p. 33).

Interior condition of the hammock microclimate (*e.g.,* humidity, temperature) are influenced by the hammock's own canopy and hydrology and the vegetative structure and hydrology of the surrounding habitat. For example, in south Florida, the pre-settlement landscape of the rockland hammocks on the Miami Rock Ridge occurred as ''small islands'' in a sea of pine rockland and seasonally flooded prairies, or transverse glades (shallow channels through the Miami Rock Ridge that had wet prairie vegetation and moved water out of the Everglades Basin toward the coast). It has been estimated that originally more than 500 hammocks occurred in this area, ranging in size from 0.1 hectares (ha) (0.2 acres (ac)) to over 40 ha (100 ac) (Craighead 1972, p. 153). The vast majority of these hammocks have been destroyed, and those that remain are significantly reduced in size. In addition, the habitats surrounding the remaining rockland hammocks have been drastically altered or destroyed, primarily through urban and agricultural development, and in many cases, no longer function as effective or efficient buffers to protect rockland hammocks from the impacts of changes in temperature and humidity, or extreme weather or natural stochastic events (*e.g.,* frost, high winds, and hurricanes/tropical storms). This fragmentation and distance between hammocks can hinder water-based dispersal and the recruitment of new plants and gametophytes. Fragmentation may reduce the stable, protected microclimate conditions and the survivability of spores within that microclimate. Thus, the hammock microhabitat supporting the subspecies must be of a suitable minimum size with sufficiently dense canopy, substrate, and understory vegetation within a hammock's interior, and there must also be intact surrounding habitat of sufficient amount, distribution, and space to support appropriate growing conditions for Florida bristle fern across its range.

The central Florida metapopulation of Florida bristle fern occurs in two mesic hammocks, which exist as part of a wetland matrix of hydric hammock, mixed wetland hardwoods, cypress/tupelo floodplain swamp, and freshwater marsh. The surrounding existing suitable habitat and substrate are essential to providing space for growth, reproduction and dispersal of the existing populations.

Therefore, we identify the habitats described as physical or biological features above that also provide suitable microhabitat conditions, hydrology, and connectivity that can support the subspecies growth, distribution, and population expansion (including rhizomal growth, spore dispersal, and sporophyte and gametophyte growth and survival) to be a physical or biological feature essential to the conservation of Florida bristle fern.

*Habitats Protected From Disturbance*

Florida bristle fern can be outcompeted by other native, as well as nonnative, invasive species. Nonnative and native invasive plants, including a few of the most common invasive plants such as Love vine (*Cassytha filiformis*), Brazilian pepper (*Schinus terebinthifolius*), and Burma reed (*Neyraudia reynaudiana*), compete with the subspecies for space, light, water, and nutrients; limit growth and abundance; and can make habitat conditions unsuitable. Nonnative plant species have affected hammock habitats where Florida bristle fern occurs, and as identified in the final listing rule (80 FR 60440, October 6, 2015), are considered one of the threats to the subspecies (Snyder *et al.* 1990, p. 273; Gann *et al.* 2002, pp. 552–554; Inventory 2010, pp. 22, 26). Nonnative plants can outcompete and displace the subspecies in solution holes, and can blanket existing occurrences, blocking out all light and smothering the fern (Possley 2013d, pers. comm.). In addition to the negative impacts of nonnative and native invasive plants, feral hogs can impact substrate and vegetation (directly) and habitat suitability (indirectly). Rooting from hogs can destroy existing habitat by displacing smaller rocks where the subspecies grows and potentially damage or eliminate a cluster of the fern (Werner 2013, pers. comm.). In Withlacoochee State Forest, damaged areas from feral hogs are also more susceptible to invasion from nonnative plant species (Werner 2013, pers. comm.).

Therefore, based on the information above, we identify a plant community of predominantly native vegetation that is minimally disturbed or free from human-related disturbance with either no competitive nonnative, invasive plant species, or such species in quantities low enough to have minimal effect on Florida bristle fern to be a physical or biological feature essential to the conservation of Florida bristle fern.

*Summary of Essential Physical or Biological Features*

We have determined that the following physical or biological features are essential to the conservation of Florida bristle fern:

(1) Upland hardwood forest hammock habitats of sufficient quality and size to sustain the necessary microclimate and life processes for Florida bristle fern.

(2) Exposed substrate derived from oolitic limestone, Ocala limestone, or exposed limestone boulders, which

provide anchoring and nutritional requirements.

(3) Constantly humid microhabitat consisting of dense canopy cover, moisture, stable high temperature, and stable monthly average humidity of 90 percent or higher, with intact hydrology within hammocks and the surrounding and adjacent wetland communities.

(4) Dense canopy cover of surrounding native vegetation that consists of the upland hardwood forest hammock habitats and provides shade, shelter, and moisture.

(5) Suitable microhabitat conditions, hydrology, and connectivity that can support the Florida bristle fern growth, distribution, and population expansion (including rhizomal growth, spore dispersal, and sporophyte and gametophyte growth and survival).

(6) Plant community of predominantly native vegetation that is minimally disturbed, free from human-related disturbance with either no competitive nonnative, invasive plant species, or such species in quantities low enough to have minimal effect on Florida bristle fern.

**Special Management Considerations or Protection**

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain features that are essential to the conservation of the species and that may require special management considerations or protection. The features essential to the conservation of Florida bristle fern may require special management considerations or protections to reduce threats related to habitat modification and destruction primarily due to development, agricultural conversion, hydrologic alteration, nonnative invasive species, and sea level rise. For more information on threats to Florida bristle fern, please refer to the final listing rule (80 FR 60440, October 6, 2015).

The four known populations of the south Florida metapopulation occur on County-managed conservation lands at Castellow Hammock, Hattie Bauer Hammock, Fuchs Hammock, and Meissner Hammock. However, these areas are still vulnerable to the effects of activities in the surrounding areas, including agricultural clearing and hydrologic alterations. In addition, these areas are vulnerable to threats from nonnative invasive species, especially if current control efforts are discontinued or decreased. The small amount of rockland hammock or mixed rockland/mesic hammock is vulnerable to impacts related to urban and agricultural development, including hydrologic alterations, and threats by nonnative invasive species (especially as such areas are often not actively managed for nonnative species). We expect these hammock communities in south Florida to be further degraded due to sea level rise and the increase in the number of flood events, which would fully or partially inundate some rockland hammocks along the coast and in the southern portion of Miami-Dade County and in Everglades National Park. Sea level rise is also expected to increase the salinity of the water table and soils, resulting in vegetation shifts across the Miami Rock Ridge.

The two known populations of the central Florida metapopulation both occur on State-owned land in the Jumper Creek Tract of the Withlacoochee State Forest. Land clearing and hydrological alterations on private lands adjacent to the Jumper Creek Tract continue to be threats to the subspecies' populations and habitat. In addition, while the Withlacoochee State Forest is generally considered public conservation land, it is managed by the Florida Forest Service and is subject to logging in certain areas. Logging is less likely to occur on the Jumper Creek Tract due to the existing matrix of hammocks and pinelands (versus a predominantly pineland community). This area is also subject to impacts from nonnative invasive species, although forest management on the Jumper Creek Tract currently includes nonnative plant control. Moisture and humidity levels of the fern habitat are also dependent upon the hydrology of the surrounding or adjacent wetlands. Alterations in the natural hydrologic regime within the hammock and these adjacent habitats affect these physical or biological features. Draining, ditching, and excessive pumping of groundwater can lower the water table in hammocks, causing reduced moisture and humidity levels. In such cases, mesic hammocks, for example, may undergo shifts in species composition toward xeric hammock composition. These impacts to hammock systems may ultimately reduce or eliminate suitable habitat for the subspecies. A lowered water table or dewatering of hammocks can also render the habitat vulnerable to catastrophic fire.

Special management considerations and protections that will address these threats include increased coordination and conservation of the subspecies and its habitat (including preventing impacts to hammock hydrology, canopy cover, and substrate) on Federal lands and with State, County, and private landowners of non-Federal lands. Habitat restoration and management efforts (including nonnative plant treatments) of high-priority sites will be emphasized. At this time, the subspecies does not occur on Federal lands for either metapopulation, but reintroduction is being explored for Royal Palm Hammock in Everglades National Park in south Florida.

**Criteria Used To Identify Critical Habitat**

As required by section 4(b)(2) of the Act, we use the best scientific data available to designate critical habitat. In accordance with the Act and our implementing regulations at 50 CFR 424.12(b), we review available information pertaining to the habitat requirements of the species and identify specific areas within the geographical area occupied by the species at the time of listing and any specific areas outside the geographical area occupied by the species to be considered for designation as critical habitat.

The current distribution of Florida bristle fern is reduced from its historical distribution to a level where it is danger of extinction. We anticipate that recovery will require continued protection of existing populations and habitat, as well as establishing sites that more closely approximate its historical distribution, in order to ensure there are adequate numbers of Florida bristle fern in stable populations and that these populations occur over a wide geographic area within both metapopulations. This strategy will help to ensure that catastrophic events, such as fire, cannot simultaneously affect all known populations. Rangewide recovery considerations, such as maintaining existing genetic diversity and striving for representation of all major portions of the subspecies' historical range, were considered in formulating this proposed critical habitat designation.

The amount and distribution of the proposed critical habitat are designed to provide:

(1) The processes that maintain the physical or biological features that are essential to the conservation of the subspecies;

(2) Sufficient quality and size of habitat to support the persistence of the physical or biological features for the subspecies (hammock microclimate, humidity, temperature, substrate, canopy cover, native plant community);

(3) Habitat to expand the distribution of Florida bristle fern into historically occupied areas;

(4) Space to increase the size of each population to a level where the threats of genetic, demographic, and normal

environmental uncertainties are diminished; and

(5) Additional space to improve the ability of the subspecies to withstand local or regional-level environmental fluctuations or catastrophes.

For Florida bristle fern, we are proposing to designate critical habitat in areas within the geographical area occupied by the subspecies at the time of listing. For those areas, we determined that they were of suitable habitat within the known historical range, with current occurrence records, and could support the physical or biological features identified earlier, such as through restoration. We are also proposing to designate specific areas outside the geographical area occupied by the subspecies at the time of listing because we have determined that a designation limited to occupied areas would be inadequate to ensure the conservation of the subspecies. For those unoccupied areas, we have determined that it is reasonably certain that the unoccupied areas will contribute to the conservation of the subspecies and contain one or more of the physical or biological features that are essential to the conservation of the subspecies.

*Sources of Data To Identify Critical Habitat Boundaries*

To determine the general extent, location, and boundaries of the proposed critical habitat, we used the following sources of information:

(1) Historical and current records of Florida bristle fern occurrence and distribution found in publications, reports, personal communications, and associated voucher specimens housed at museums and private collections;

(2) Florida Fish and Wildlife Commission (Commission), Inventory, Institute for Regional Conservation (Institute), and Fairchild Tropical Botanic Garden (Fairchild) geographic information system (GIS) data showing the location and extent of documented occurrences of Florida bristle fern;

(3) Reports and databases prepared by the Institute and Fairchild;

(4) ESRI ArcGIS online basemap aerial imagery (December 2010) and historical aerial imagery (1938 for Miami-Dade County; 1941 for Sumter County); and

(5) GIS data depicting land cover (Commission and Inventory Cooperative Land Cover Map, version 3.1) within Miami-Dade and Sumter Counties, and the location and habitat boundaries of rockland hammocks in Miami-Dade County (Florida Geographic Data Library 2017; Commission and Inventory 2018; Institute 2009; Miami-Dade County Information Technology Department 2015; Sumter County, Florida 2019).

The presence of the physical or biological features was determined using the above sources of information as well as site visits by biologists and botanists (Possley 2019, entire), and through field surveys, habitat mapping, and substrate mapping by the Institute (Possley and Hazelton 2015, entire; van der Heiden 2016, entire; van der Heiden and Johnson 2014, entire).

*Areas Occupied at the Time of Listing*

The proposed occupied critical habitat units were delineated around the documented extant populations and the existing physical or biological features that require special management and protection. We have determined that all currently known occupied habitat for Florida bristle fern was also occupied by the subspecies at the time of listing, and that these areas contain the physical or biological features essential to the conservation of the subspecies and which may require special management considerations or protection. We are proposing to designate these areas as occupied habitat.

*Occupied Habitat—South Florida Metapopulation (Miami-Dade County)*

Occupied habitat, which for the south Florida metapopulation occurs in rockland hammock habitat, was identified based on available occurrence data for Florida bristle fern. Rockland hammock boundaries were delineated using the Institute's 2009 rockland hammock GIS layer. Based on our assessment of rockland hammocks on the Miami Rock Ridge (see *Sites for Reproduction, Germination, or Spore Production and Dispersal*), we included in the assessment all of the remaining rockland hammocks within the proposed critical habitat boundaries. Next, we grouped rockland hammocks, where appropriate, to form units. Rockland hammocks in close proximity to one another provide connectivity and allow spore dispersal (water-based, animal, or wind-driven dispersal) from occupied to adjacent habitat, which is important for establishing new clusters of plants to increase population resiliency and subspecies redundancy. In addition, based on the Act's implementing regulations (50 CFR 424.12 (d)), when habitats are in close proximity to one another, an inclusive area may be designated. Although the population historically observed in Ross Hammock has been reported as extirpated, we combined Ross Hammock with Castellow Hammock into a single occupied unit (unit South Florida 9 [SF 9]) because: (1) The subspecies is exceedingly hard to find even by species experts and, therefore, may be present even though it has been reported as extirpated; (2) there is the likelihood that spores could travel between occupied and adjacent habitat, particularly during high-water events; and (3) habitat directly adjacent to known occurrences (*e.g.,* separated only by a road) can also be occupied if habitat conditions are suitable. Three occupied units (Castellow/Ross, Hattie Bauer, and Fuchs and Meissner hammocks) totaling 52 ha (129 ac) are proposed as critical habitat for the south Florida metapopulation.

*Occupied Critical Habitat—Central Florida Metapopulation (Sumter County)*

For the central Florida populations, habitat was defined as the intersection of mesic, hydric, and elevated hydric hammocks and a boulder layer shapefile (van der Heiden 2016, p. 3).

On the Jumper Creek Tract, known extant populations of Florida bristle fern occur in two small mesic hammocks located within and supported by a matrix of hydric hammock and mixed wetland hardwood communities. The mesic hammocks are approximately 0.18 ha (0.44 ac) and 0.11 ha (0.28 ac) in size and difficult to differentiate from the surrounding forested vegetation. Our evaluation of occurrence data for this metapopulation also included historical observations of the Florida bristle fern south of the Jumper Creek Tract where the subspecies was formerly known to occur near Battle Slough (near the existing town of Wahoo) and located in close proximity to the extant populations. In this area, habitat types include mixed wetland hardwoods surrounded by freshwater marsh, cypress/tupelo, and mixed hardwood-coniferous forest. Using the information mentioned above on current and historical occurrences and habitat type and applying the data for suitable substrate (boulders), we delineated a contiguous unit of occupied habitat for Florida bristle fern.

As discussed earlier, suitable hammock micro-conditions in this landscape (specifically the high humidity, stable temperatures, moisture, and shade) required by Florida bristle fern are supported by the surrounding vegetation, which minimizes drastic changes in temperature or humidity at the microclimate scale. Generally, forest edges receive more light, are prone to greater desiccation, and have a reduced biodiversity compared to the forest interiors. Pronounced edge effects from adjacent land clearing and fragmentation, such as with agricultural

lands, reduce the quality of forested habitat and detrimentally affect the interior microclimate.

Field observations of Florida bristle fern in central Florida found more robust and healthy ferns in an interior hammock with approximately 300 m (985 ft) of surrounding habitat between it and cleared pasture land. This was compared to ferns in a hammock that had only 100 m (328 ft) of surrounding habitat separating it from the edge of cleared pasture. The ferns located nearer the edge (approximately 100 m) of the adjacent cleared pasture had visible signs of stress, and these ferns appeared desiccated and had fewer reproductive bristles than the ferns in the hammock and with 300 m of surrounding vegetation (van der Heiden 2016, p. 3). These observations are consistent with findings that documented edge effects on ferns up to 200 m into the forest (Hylander et al. 2013, pp. 559–560). Edge effects included loss of individual plants, loss of percent canopy cover, and increased temperature, sunlight, and wind on the microclimate (Hylander et al. 2013, pp. 559–560; Leão da Silva and Schmitt 2015, pp. 227–228).

To most accurately represent suitable habitat for Florida bristle fern within these central Florida communities and ensure the persistence of the necessary microclimate, we consider natural communities within 300 m (985 ft) as measured from the edge of and surrounding the boulder substrate (equivalent to 9.3 ha (23 ac)) to be habitat essential to the conservation of the subspecies (van der Heiden 2014, pers. comm.; van der Heiden 2016, p. 3) in protecting the habitat from edge effects. The suitable habitat communities and the distribution of exposed limestone substrate (boulder) in these communities were delineated with the use of ground survey and satellite imagery data (van der Heiden and Johnson 2014, pp. 6–7; van der Heiden 2016, p. 3). Site-level data of vegetative communities produced from aerial photography (Commission and Inventory 2018) and feedback from species experts and local biologists on habitat and substrate occurrence in this area were also used.

Thus, using the best available data, one occupied unit totaling 742 ha (1,834 ac) is proposed as critical habitat for the central Florida metapopulation. This proposed critical habitat designation consists of a contiguous unit within and adjacent to Jumper Creek Tract of intact vegetation (*i.e.,* not cleared) in mesic or hydric hammocks and mixed wetland hardwood communities having exposed limestone substrate (boulders), which have, at minimum, a 300-m radius of surrounding intact vegetation.

*Areas Outside the Geographic Area Occupied at the Time of Listing*

To consider for designation areas not occupied by the subspecies at the time of listing, we must demonstrate that these areas are essential for the conservation of Florida bristle fern. In south Florida, proposed occupied critical habitat for the subspecies is within a relatively small amount of highly fragmented habitat and occupied patches are generally isolated from one another within the landscape. In addition, the extent of the geographic area in south Florida (Miami-Dade County) that is currently occupied by the plant is substantially (nearly 80 percent) smaller than its historical range. In central Florida, the two known existing populations are in very close proximity and also in a much smaller area than the known historical range. Because of this fragmentation and loss of range, both metapopulations have lower resiliency under these current conditions compared to historical occurrences, and therefore, the subspecies' adaptive capacity (representation) and redundancy has been reduced.

Based on these factors in relation to the threats to Florida bristle fern, we have determined we cannot recover the subspecies with only the occupied habitat; thus, additional habitat is essential to provide a sufficient amount of habitat (total area and number of patches) and connectivity for the long-term conservation of the plant. Therefore, because we have determined occupied areas alone are not adequate for the conservation of the subspecies, we have identified and are proposing for designation as critical habitat specific areas outside the geographical area occupied by the subspecies at the time of listing that are essential to the conservation of the subspecies. This will ensure enough sites and individuals exist for each metapopulation of Florida bristle fern. We used habitat and historical occurrence data and the physical or biological features described earlier to identify unoccupied habitat essential for the conservation of the Florida bristle fern. As discussed in more detail below, the unoccupied areas we selected are essential for the conservation of the subspecies because they:

(1) Consist of a documented historical, but now extirpated, occurrence of the subspecies;

(2) Provide areas of sufficient size to support ecosystem processes;

(3) Provide suitable habitat (that contain some or all of the physical or biological features) that allow for growth and expansion; and

(4) Occur in the known historical range of the subspecies.

These unoccupied areas provide sufficient space for growth and reproduction for the subspecies within the historical range and will provide ecological diversity so that the subspecies has the ability to evolve and adapt over time (representation) and ensure that the subspecies has an adequate level of redundancy to guard against future catastrophic events. These areas also represent the areas within the historical range with the best potential for recovery of the subspecies due to their current conditions, provide habitat and space to support spore dispersal and new growth, and are likely suitable for reintroductions.

*Unoccupied Habitat—South Florida Metapopulation (Miami-Dade County)*

The existing suitable habitat for the south Florida metapopulation consists of a patchwork of small parcels. Therefore, we must ensure the integrity of the solution hole and canopy cover, which is responsible for maintaining the stable damp, humid, and shaded microclimate identified as a physical or biological feature for the subspecies.

Using the Institute's 2009 rockland hammock GIS layer and Commission and Inventory's Cooperative Land Cover site-level data for rockland hammocks and site visit information from Service staff biologists and botanists from Fairchild, Miami, we evaluated all unoccupied sites within rockland hammock habitats, including mixed rockland/mesic hammock and rockland hammock with connecting mixed wetland hardwood habitat, in Miami-Dade County. Specifically, we reviewed available historical aerial photography of 20 rockland hammocks historically occupied, but now unoccupied, by the subspecies. Ten additional potential sites were visited by Service staff. Also, specific information provided by Miami-Dade County and Fairchild on four additional areas was reviewed. A site was considered in the evaluation for proposed unoccupied critical habitat if it is within the historical range of the subspecies and:

(1) Holds a documented historical occurrence;

(2) Contains one or more of the physical or biological features essential to the conservation of the subspecies;

(3) Provides viable habitat for introductions or could be restored to support Florida bristle fern;

(4) Occurs at the edge of the range and provided areas that would allow for growth and expansion; or

(5) Occurs near an occupied site (for potential recruitment).

Each site would, in conjunction with occupied areas of proposed critical habitat, support the conservation of the subspecies. Based on our review, we identified three unoccupied rockland hammock units on the Miami Rock Ridge outside of Everglades National Park (see table 1). These three proposed units represent the units with documented, but now extirpated, historical occurrences with intact rockland hammock within the historical range of the subspecies outside of the Everglades National Park. Within the Everglades National Park, we identified a fourth unit, the Royal Palm Hammock, for inclusion in the proposed critical habitat. This hammock was also historically occupied by the subspecies but was not occupied at the time of listing. The resulting four unoccupied proposed units consist of 83 ha (205 ac) and are considered essential for the conservation of Florida bristle fern because they protect habitat needed to recover the subspecies and reestablish wild populations within the known historical range of the subspecies in Miami-Dade County. The unoccupied units each contain one or more of the physical or biological features and are likely to provide for the conservation of the subspecies. Three of the unoccupied units are on lands managed by Miami-Dade County and the fourth unoccupied unit is on land managed by Everglades National Park.

*Unoccupied Habitat—Central Florida Metapopulation (Sumter County)*

For the central Florida metapopulation, criteria for determining unoccupied critical habitat included units that:

(1) Holds a documented historical occurrence;

(2) Contains one or more of the physical or biological features essential to the conservation of the subspecies;

(3) Provides space for growth and recovery (to add resiliency to a small population);

(4) Provides viable habitat for introductions; and

(5) Provides connectivity across the range of the subspecies.

Unoccupied habitat was delineated based on documented historical occurrences, existing suitable habitat (as defined by the physical or biological features), and evaluation of the habitat and substrate delineation mapping (van der Heiden 2016, pp. 5–7) with data obtained through field surveys and satellite mapping. The one unoccupied unit proposed for critical habitat designation consists of approximately 747 ha (1,846 ac) (table 1). It consists of documented historically occupied (now extirpated) habitat with suitable wetland and upland communities having intact vegetation (not cleared) and hammocks and exposed limestone boulders with at least a 300-m radius (984 ft) or greater of surrounding native vegetation (van der Heiden 2014, pers. comm.; van der Heiden 2016, p. 3). Its size was based on the conditions necessary to maintain the physical or biological features. It is considered essential for the conservation of Florida bristle fern because it protects habitat needed to recover the subspecies and reestablish wild populations within the known historical range of the subspecies in Sumter County. The unoccupied unit contains one or more of the physical or biological features and is likely to provide for the conservation of the subspecies.

*General Information on the Maps of the Proposed Critical Habitat Designation*

The proposed critical habitat designation is defined by the map or maps, as modified by any accompanying regulatory text, presented at the end of this document under Proposed Regulation Promulgation. We include more detailed information on the boundaries of the critical habitat designation in the discussion of individual units below. We will make the coordinates or plot points or both on which each map is based available to the public at *http://www.regulations.gov* under Docket No. FWS–R4–ES–2019–0068, at *http://www.fws.gov/verobeach,* and at the South Florida Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**, above).

When determining proposed critical habitat boundaries, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures because such lands lack physical or biological features necessary for Florida bristle fern. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this proposed rule have been excluded by text in the proposed rule and are not proposed for designation as critical habitat. Therefore, if the critical habitat is finalized as proposed, a Federal action involving these lands would not trigger section 7 consultation under the Act with respect to critical habitat and the requirement of no adverse modification unless the specific action would affect the physical or biological features in the adjacent critical habitat.

**Proposed Critical Habitat Designation**

We are proposing to designate as critical habitat for Florida bristle fern approximately 1,624 ha (4,014 ac) in nine units in Miami-Dade and Sumter Counties, Florida. The proposed critical habitat consists of units identified for the south and central Florida metapopulations and are delineated in (1) south Florida by rockland/tropical hammocks of Miami-Dade County (135 ha (334 ac)); and (2) central Florida by Withlacoochee State Forest, Jumper Creek Tract, and adjacent lands in Sumter County (1,489 ha (3680 ac)). Four of the units are currently occupied by the subspecies and contains those physical or biological features essential to the conservation of the subspecies but may require special management considerations. Five of the units are currently unoccupied by the subspecies but are essential to the conservation of the subspecies. Table 1 shows the name, occupancy, area, and land ownership of each unit within the proposed critical habitat designation for Florida bristle fern. Land ownership within the entire proposed critical habitat consists of Federal (4 percent), State (92 percent), County (3 percent), and private (1 percent).

TABLE 1—NAME, OCCUPANCY (O = OCCUPIED, U = UNOCCUPIED), AREA, AND LAND OWNERSHIP OF PROPOSED CRITICAL HABITAT UNITS FOR FLORIDA BRISTLE FERN (*Trichomanes punctatum* ssp. *floridanum*)

[Area estimates reflect all land within critical habitat unit boundaries. All areas are rounded to the nearest whole hectare (ha) and acre (ac). Ownership information is based on Miami-Dade County data (2017) and Sumter County data (2019).]

| Unit | Occupancy | Federal ha (ac) | State ha (ac) | County ha (ac) | Private/other ha (ac) | Total ha (ac) |
|---|---|---|---|---|---|---|
| **Rockland/Tropical Hammocks of South Florida, Miami-Dade County** | | | | | | |
| Matheson Hammock* (SF 1) | U | 0 | 0 | 16 (39) | 0 | 16 (39) |
| Snapper Creek* (SF 2) | U | 0 | 3 (8) | 0 | 0 | 3 (8) |
| Castellow and Ross* Hammocks (SF 3) | O | 0 | 13 (32) | 25 (61) | 0 | 38 (93) |
| Silver Palm Hammock* (SF 4) | U | 0 | 4 (10) | 0 | 0 | 4 (10) |
| Hattie Bauer Hammock (SF 5) | O | 0 | 0 | 3 (8) | 0 | 3 (8) |
| Fuchs and Meissner Hammocks (SF 6) | O | 0 | 2 (5) | 9 (23) | 0 | 11 (28) |
| Royal Palm Hammock* (SF 7) | U | 60 (148) | 0 | 0 | 0 | 60 (148) |
| South Florida Total | | 60 (148) | 22 (55) | 53 (131) | 0 | 135 (334) |
| **Withlacoochee State Forest, Jumper Creek Tract, and adjacent lands of Central Florida, Sumter County** | | | | | | |
| CF 1 | O | 0 | 726 (1,795) | 0 | 16 (39) | 742 (1,834) |
| CF 2* | U | 0 | 747 (1,846) | 0 | 0 | 747 (1,846) |
| Central Florida Total | | 0 | 1,473 (3,641) | 0 | 16 (39) | 1,489 (3,680) |
| Total South and Central Florida | | 60 (148) | 1,495 (3,696) | 53 (131) | 16 (39) | 1,624 (4,014) |

*Historically occupied.
**Note:** Area sizes may not sum due to rounding.

We present brief descriptions of all proposed units, and reasons why they meet the definition of critical habitat for Florida bristle fern, below.

*Rockland/Tropical Hammocks of South Florida, Miami-Dade County, Florida*

The proposed critical habitat for the south Florida metapopulation is composed of seven units (SF 1–SF 7) consisting of approximately 135 ha (334 ac) located between South Miami and eastern Everglades National Park in central and southern Miami-Dade County, Florida.

SF 1—Matheson Hammock

Because we have determined occupied areas are not adequate for the conservation of the subspecies, we have evaluated whether any unoccupied areas are essential for the conservation of the subspecies and identified this area as essential for the conservation of the Florida bristle fern. SF 1 consists of approximately 16 ha (39 ac) of habitat in Matheson Hammock in Matheson Hammock Park in Miami-Dade County, Florida. This unit is composed of County-owned land that is primarily managed cooperatively by the Miami-Dade County Environmentally Endangered Lands (EEL) program and the Natural Areas Management division. Matheson Hammock is within the historical range of Florida bristle fern but is not within the geographical range currently occupied by the subspecies at the time of listing.

Although it is currently considered unoccupied, this unit contains some or all of the physical or biological features necessary for the conservation of the subspecies. Unit SF1 possesses those characteristics as described by physical or biological feature 1 (upland hardwood forest hammock habitats of sufficient quality and size to sustain the necessary microclimate and life processes for Florida bristle fern) and physical or biological feature 2 (exposed substrate derived from oolitic limestone, Ocala limestone, or exposed limestone boulders, which provide anchoring and nutritional requirements). Physical or biological features 3–6 are degraded in this unit, and with appropriate management and restoration actions such as prescribed burns and removal of invasive plant species, these physical or biological features can be restored.

This unit would serve to protect habitat needed to recover the subspecies and reestablish wild populations within the historical range in Miami-Dade County. Re-establishing a population in this unit would increase redundancy in the South Florida metapopulation. It would also provide habitat for recolonization in the case of stochastic events (such as hurricanes), should other areas of suitable habitat be destroyed or Florida bristle fern be extirpated from one of its currently occupied locations. This unit is essential for the conservation of the subspecies because it will provide habitat for range expansion in known historical habitat that is necessary to increase viability of the subspecies by increasing its resiliency, redundancy, and representation.

We are reasonably certain that this unit will contribute to the conservation of the subspecies, because the need for conservation efforts is recognized and is being discussed by our conservation partners, and methods for restoring and reintroducing the subspecies are being developed. As stated previously, this unit is entirely composed of County-owned land and primarily managed cooperatively by the Miami-Dade County Environmentally Endangered Lands (EEL) program and the Natural Areas Management division. The EEL program's focus is on the ''protection and conservation of endangered lands,'' and these EEL areas are managed for restoration and conservation through actions such as prescribed burns and invasive plant removal. In addition, State and County partners have shown interest in reintroduction efforts for the Florida bristle fern in this area.

SF 2—Snapper Creek

Because we have determined occupied areas are not adequate for the conservation of the subspecies, we have evaluated whether any unoccupied areas are essential for the conservation of the subspecies and identified this area as essential for the conservation of the subspecies. SF 2 consists of approximately 3 ha (8 ac) of habitat in Deering-Snapper Creek Hammock

adjacent to R. Hardy Matheson Preserve in Miami-Dade County, Florida. This unit consists of State-owned land that is primarily managed cooperatively by the Miami-Dade County EEL program and the Natural Areas Management Division. Snapper Creek is within the historical range of Florida bristle fern but was not occupied by the subspecies at the time of listing.

Although it is currently considered unoccupied, this unit contains some or all of the physical or biological features necessary for the conservation of the subspecies. Unit SF2 possesses those characteristics as described by physical or biological feature 1 (upland hardwood forest hammock habitats of sufficient quality and size to sustain the necessary microclimate and life processes for Florida bristle fern) and physical or biological feature 2 (exposed substrate derived from oolitic limestone, Ocala limestone, or exposed limestone boulders, which provide anchoring and nutritional requirements). Physical or biological features 3–6 are degraded in this unit, and with appropriate management and restoration actions such as prescribed burns and removal of invasive plant species, these physical or biological features can be restored.

This unit would serve to protect habitat needed to recover the subspecies and reestablish wild populations within the historical range in Miami-Dade County. Re-establishing a population in this unit would an increase the subspecies redundancy in the South Florida metapopulation. It would also provide habitat for recolonization in the case of stochastic events (such as hurricanes), should other areas of suitable habitat be destroyed or Florida bristle fern be extirpated from one of its currently occupied locations. This unit is essential for the conservation of the subspecies because it will provide habitat for range expansion in known historical habitat that is necessary to increase viability of the subspecies by increasing its resiliency, redundancy, and representation.

We are reasonably certain that this unit will contribute to the conservation of the subspecies, because the need for conservation efforts is recognized and is being discussed by our conservation partners, and methods for restoring and reintroducing the subspecies are being developed. As stated previously, this unit is entirely composed of State-owned land and is primarily managed cooperatively by the Miami-Dade County EEL program and the Natural Areas Management Division. The EEL program's focus is on the ''protection and conservation of endangered lands,'' and these EEL areas are managed for restoration and conservation through actions such as prescribed burns and invasive plant removal. In addition, State and County partners have shown interest in reintroduction efforts for the Florida bristle fern in this area.

SF 3—Castellow and Ross Hammocks

SF 3 consists of approximately 38 ha (93 ac) of habitat in Castellow and Ross Hammocks in Miami-Dade County, Florida. This unit consists of 13 ha (32 ac) of State-owned and 25 ha (61 ac) of County-owned lands that are primarily managed cooperatively by the Miami-Dade County EEL program and Natural Areas Management Division. This unit is occupied by the subspecies and contains some or all of the physical or biological features essential to its conservation.

Special management considerations or protection may be required to address threats of commercial, residential, or agricultural development; hydrological alterations; competition with nonnative species; human use and recreation; and sea level rise. In some cases, these threats are being addressed or coordinated with our partners and landowners to implement needed actions. Such actions include removal of invasive species, review of County development plans, and review of projects considering land use changes.

SF 4—Silver Palm Hammock

Because we have determined occupied areas are not adequate for the conservation of the subspecies, we have evaluated whether any unoccupied areas are essential for the conservation of the subspecies and identified this area as essential for the conservation of the subspecies. SF 4 consists of approximately 4 ha (10 ac) of habitat in Silver Palm Hammock in Miami-Dade County, Florida. This unit consists of State-owned land that is primarily managed cooperatively by the Miami-Dade County EEL program and Natural Areas Management Division. Silver Palm Hammock is within the historical range of Florida bristle fern but was not occupied by the subspecies at the time of listing.

Although it is currently considered unoccupied, this unit contains some or all of the physical or biological features necessary for the conservation of the subspecies. Unit SF4 possesses those characteristics as describe by physical or biological feature 1 (upland hardwood forest hammock habitats of sufficient quality and size to sustain the necessary microclimate and life processes for Florida bristle fern); physical or biological feature 2 (exposed substrate derived from oolitic limestone, Ocala limestone, or exposed limestone boulders, which provide anchoring and nutritional requirements); physical or biological feature 3 (constantly humid microhabitat consisting of dense canopy cover, moisture, stable high temperature, and stable monthly average humidity of 90 percent or higher, with intact hydrology within hammocks and the surrounding and adjacent wetland communities); physical or biological feature 4 (dense canopy cover of surrounding native vegetation that consists of the upland hardwood forest hammock habitats and provides shade, shelter, and moisture); and physical or biological feature 5 (suitable microhabitat conditions, hydrology, and connectivity that can support the Florida bristle fern growth, distribution, and population expansion (including rhizomal growth, spore dispersal, and sporophyte and gametophyte growth and survival)). Physical or biological feature 6 is degraded in this unit, and with appropriate management and restoration actions such as prescribed burns and removal of invasive plant species, this feature can be restored.

This unit would serve to protect habitat needed to recover the subspecies and reestablish wild populations within the historical range in Miami-Dade County. Re-establishing a population in this unit would increase the subspecies redundancy in the South Florida metapopulation. It would also provide habitat for recolonization in the case of stochastic events (such as hurricanes), should other areas of suitable habitat be destroyed or Florida bristle fern be extirpated from one of its currently occupied locations. This unit is essential for the conservation of the subspecies because it will provide habitat for range expansion in known historical habitat that is necessary to increase viability of the subspecies by increasing its resiliency, redundancy, and representation.

We are reasonably certain that this unit will contribute to the conservation of the subspecies because the need for conservation efforts is recognized and is being discussed by our conservation partners, and methods for restoring and reintroducing the subspecies are being developed. As stated previously, this unit is entirely composed of State-owned land and is primarily managed cooperatively by the Miami-Dade County EEL program and the Natural Areas Management Division. The EEL program's focus is on the ''protection and conservation of endangered lands,'' and these EEL areas are managed for restoration and conservation through actions such as prescribed burns and invasive plant removal. In addition,

State and County partners have shown interest in reintroduction efforts for the Florida bristle fern in this area.

SF 5—Hattie Bauer Hammock

SF 5 consists of approximately 3 ha (8 ac) of habitat in Hattie Bauer Hammock in Miami-Dade County, Florida. This unit consists of County-owned land that is primarily managed cooperatively by the Miami-Dade County EEL program and Natural Areas Management Division. This unit is occupied by the subspecies and contains some or all of the physical or biological features essential to its conservation.

Special management considerations or protection may be required to address threats of commercial, residential, or agricultural development; hydrological alterations; competition with nonnative species; human use and recreation; and sea level rise. In some cases, these threats are being addressed or coordinated with our partners and landowners to implement needed actions. Such actions include removal of invasive species, review of County development plans, and review of projects considering land use changes.

SF 6—Fuchs and Meissner Hammocks

SF 6 consists of approximately 11 ha (28 ac) of habitat in Fuchs Hammock on Fuchs Hammock Preserve and Meissner Hammock in Miami-Dade County, Florida. This unit consists of 2 ha (5 ac) of State-owned and 9 ha (23 ac) of County-owned lands that are primarily managed cooperatively by the Miami-Dade County EEL program and Natural Areas Management Division. This unit is occupied by the subspecies and contains some or all of the physical or biological features essential to its conservation.

Special management considerations or protection may be required to address threats of commercial, residential, or agricultural development; hydrological alterations; competition with nonnative species; human use and recreation; and sea level rise. In some cases, these threats are being addressed or coordinated with our partners and landowners to implement needed actions. Such actions include removal of invasive species, review of County development plans, and review of projects considering land use changes.

SF 7—Royal Palm Hammock

Because we have determined occupied areas are not adequate for the conservation of the subspecies, we have evaluated whether any unoccupied areas are essential for the conservation of the subspecies and identified this area as essential for the conservation of the subspecies. SF 7 consists of approximately 60 ha (148 ac) of habitat in Royal Palm Hammock in Everglades National Park, which is Federally owned land, in Miami-Dade County, Florida. Royal Palm Hammock is within the historical range of Florida bristle fern but was not occupied by the subspecies at the time of listing.

Although it is currently considered unoccupied, this unit contains all of the physical or biological features necessary for the conservation of the subspecies. Unit SF7 possesses those characteristics as described by physical or biological features 1 through 6.

This unit would serves to protect habitat needed to recover the subspecies and reestablish wild populations within the historical range in Miami-Dade County. Re-establishing a population in this unit would increase the subspecies redundancy in the South Florida metapopulation. It would also provide habitat for recolonization in the case of stochastic events (such as hurricanes), should other areas of suitable habitat be destroyed or Florida bristle fern be extirpated from one of its currently occupied locations. This unit is essential for the conservation of the subspecies because it will provide habitat for range expansion in known historical habitat that is necessary to increase viability of the subspecies by increasing its resiliency, redundancy, and representation.

We are reasonably certain that this unit will contribute to the conservation of the subspecies because the need for conservation efforts is recognized and is being discussed by our conservation partners, and methods for restoring and reintroducing the subspecies are being developed. This unit is entirely composed of Everglades National Park, which is Federally owned land with section 7(a)(1) responsibilities to carry out programs for the conservation of federally listed threatened and endangered species. The Everglades National Park General Management Plan (Plan), approved in 2015 prior to the published final listing rule for Florida bristle fern, guides the National Park Service's management of Everglades National Park, including conservation of threatened and endangered species. The 2015 Plan identifies the Florida bristle fern as extirpated from Everglades National Park (Royal Palm Hammock), and therefore, specific conservation measures were not discussed for the subspecies. However, Everglades National Park continues to conduct nonnative plant species control in Royal Palm Hammock, which helps maintain the physical or biological essential to the conservation of the Florida bristle fern.

*Withlacoochee State Forest, Jumper Creek Tract, and Adjacent Lands of Central Florida, Sumter County*

The proposed critical habitat for the central Florida metapopulation is composed of two units (CF 1 and CF 2) consisting of approximately 1,489 ha (3,680 ac) located within and adjacent to the Jumper Creek Tract of the Withlacoochee State Forest in Sumter County, Florida.

CF 1

CF 1 consists of approximately 742 ha (1,834 ac) of habitat in Sumter County, Florida. This unit consists of 726 ha (1,795 ac) of State-owned land within the Jumper Creek Tract of the Withlacoochee State Forest and 16 ha (39 ac) of privately owned land directly adjacent to the two locations where Florida bristle fern is currently observed. The State-owned land is managed by the Florida Forest Service. This unit is occupied by the subspecies and contains all of the physical or biological features essential to its conservation.

Special management considerations or protection may be required to address threats of residential and agricultural development, land clearing, logging, cattle grazing, hydrological alteration, competition with nonnative species, human use and recreation, and impacts related to climate change. In some cases, these threats are being addressed or coordinated with our partners and landowners to implement needed actions.

CF 2

Because we have determined occupied areas are not adequate for the conservation of the subspecies, we have evaluated whether any unoccupied areas are essential for the conservation of the subspecies and identified this area as essential for the conservation of the subspecies. CF 2 consists of approximately 747 ha (1,846 ac) of habitat on State-owned land within the Jumper Creek Tract of the Withlacoochee State Forest, Sumter County, Florida. This unit has a documented historical population of Florida bristle fern but was not occupied by the subspecies at the time of listing.

Although it is currently considered unoccupied, this unit contains all of the physical or biological features necessary for the conservation of the subspecies. Unit CF2 possesses those characteristics as described by physical or biological features 1 through 6.

This unit would ensure maintenance of the microclimate and contains suitable habitat in association with documented presence of substrate and all of the physical or biological features that can support the subspecies. This unit would provide for an increase in range and connectivity of the subspecies through the natural processes of growth, spore dispersal, and fragmentation, and is considered suitable habitat for introductions to reestablish wild populations within the historical range in Sumter County. Re-establishing at least one historical population in this unit would increase the subspecies redundancy in the Central Florida metapopulation. It also provides habitat for recolonization in the case of stochastic events (such as hurricanes), should other areas of suitable habitat be destroyed or Florida bristle fern be extirpated from one of its currently occupied locations. This unit is essential for the conservation of the subspecies because it will provide habitat for range expansion in known historical habitat that is necessary to increase viability of the subspecies by increasing its resiliency, redundancy, and representation.

We are reasonably certain that this unit will contribute to the conservation of the subspecies because the need for conservation efforts is recognized and is being discussed by our conservation partners, and methods for restoring and reintroducing the subspecies are being developed. This unit is entirely composed of State-owned land that is part of the Withlacoochee State Forest. The Ten-Year Resource Management Plan for the Withlacoochee State Forest (Management Plan), approved in 2015 prior to the published final listing rule for Florida bristle fern, guides the Florida Forest Service's management, including protection of threatened and endangered species found on the Withlacoochee State Forest. The Management Plan does not specifically mention Florida bristle fern; therefore, specific conservation measures are not discussed for the subspecies. However, the Withlacoochee State Forest conducts nonnative species control, which helps maintain the physical or biological features essential to the conservation of the Florida bristle fern. The Forest has shown interest in reintroduction efforts for the Florida bristle fern in this area.

## Effects of Critical Habitat Designation

### *Section 7 Consultation*

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that any action they fund, authorize, or carry out is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of designated critical habitat of such species. In addition, section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any agency action that is likely to jeopardize the continued existence of any species proposed to be listed under the Act or result in the destruction or adverse modification of proposed critical habitat.

We published a final regulation with a revised definition of destruction or adverse modification on August 27, 2019 (84 FR 44976). Destruction or adverse modification means a direct or indirect alteration that appreciably diminishes the value of critical habitat as a whole for the conservation of a listed species.

If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Examples of actions that are subject to the section 7 consultation process are actions on State, tribal, local, or private lands that require a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from the Service under section 10 of the Act) or that involve some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency). Federal agency actions within the subspecies' habitat that may require conference or consultation or both include management and any other landscape-altering activities on Federal lands administered by the Service, U.S. Forest Service, and National Park Service; issuance of section 404 Clean Water Act permits by the U.S. Army Corps of Engineers; and construction and maintenance of roads or highways by the Federal Highway Administration. Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local, or private lands that are not federally funded, authorized, or carried out by a Federal agency, do not require section 7 consultation.

Compliance with the requirements of section 7(a)(2) is documented through the issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that may affect, and are likely to adversely affect, listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species and/or destroy or adversely modify critical habitat, we provide reasonable and prudent alternatives to the project, if any are identifiable, that would avoid the likelihood of jeopardy and/or destruction or adverse modification of critical habitat. We define ''reasonable and prudent alternatives'' (at 50 CFR 402.02) as alternative actions identified during consultation that:

(1) Can be implemented in a manner consistent with the intended purpose of the action,

(2) Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,

(3) Are economically and technologically feasible, and

(4) Would, in the Service Director's opinion, avoid the likelihood of jeopardizing the continued existence of the listed species and/or avoid the likelihood of destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 set forth requirements for Federal agencies to reinitiate formal consultation on previously reviewed actions. These requirements apply when the Federal agency has retained discretionary involvement or control over the action (or the agency's discretionary involvement or control is authorized by law) and, subsequent to the previous consultation, we have listed a new species or designated critical habitat that may be affected by the Federal action, or the action has been modified in a manner that affects the species or critical habitat in a way not considered in the previous consultation. In such situations, Federal agencies sometimes may need to request reinitiation of consultation with us, but the regulations also specify some exceptions to the requirement to reinitiate consultation on specific land management plans after subsequently listing a new species or designation critical habitat. See the regulations for descriptions of those exceptions.

### *Application of the ''Adverse Modification'' Standard*

The key factor related to the destruction or adverse modification

determination is whether implementation of the proposed Federal action directly or indirectly alters the designated critical habitat in a way that appreciably diminishes the value of the critical habitat as a whole for the conservation of the listed species. As discussed above, the role of critical habitat is to support physical or biological features essential to the conservation of a listed species and provide for the conservation of the species.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may violate 7(a)(2) of the Act by destroying or adversely modifying such designation.

Activities that the Services may, during consultation under section 7(a)(2) of the Act, find are likely to destroy or adversely modify critical habitat include, but are not limited to:

(1) Actions that would significantly alter native vegetation structure or composition within the upland hardwood forest hammock habitat consisting of rockland or closed tropical hardwood hammock (south Florida) or mesic, hydric, or intermixed hammock strands ecosystems (central Florida) as defined as a physical or biological feature in the proposed critical habitat. Such activities could include, but are not limited to, land conversion or clearing related to residential, commercial, agricultural, or recreational development, including associated infrastructure; logging; introduction of nonnative plant species; or improper fire management. These activities could result in loss, modification, and fragmentation of rockland/mesic hammock habitat, thereby eliminating or reducing the habitat necessary for the growth and reproduction of the subspecies.

(2) Actions that would significantly alter microhabitat for Florida bristle fern within the rockland or closed tropical hardwood hammock (in south Florida) or mesic, hydric, or intermixed hammock strands (in central Florida) ecosystems, including significant alterations to the substrate within the rockland/mesic-hydric hammocks or to the canopy or hydrology within the rockland/mesic-hydric hammocks or surrounding upland hardwood forest vegetation as identified as a physical or biological feature in the proposed critical habitat. Such activities could include, but are not limited to, residential, commercial, agricultural, or recreational development, including associated infrastructure; land conversion or clearing; logging; introduction of nonnative species including invasive plants or feral hogs; ground or surface water withdrawals; and ditching. These activities could result in changes to temperature, humidity, light, and existing water levels, thereby eliminating or reducing the microhabitat necessary for the growth and reproduction of the subspecies.

(3) Actions that would significantly alter the hydrology of the upland forested hammock ecosystems as defined as a physical or biological feature in the proposed critical habitat, including significant alterations to the hydrology of surrounding wetland habitat and the underlying water table. Such activities could include, but are not limited to, regional drainage efforts; ground or surface water withdrawals; and ditching. These activities could result in changes to existing water levels and humidity levels within the hammocks, thereby eliminating or reducing the habitat necessary for the growth and reproduction of the subspecies.

**Exemptions**

*Application of Section 4(a)(3) of the Act*

Section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) provides that: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan [INRMP] prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.'' There are no Department of Defense lands with a completed INRMP within the proposed critical habitat designation.

*Consideration of Impacts Under Section 4(b)(2) of the Act*

Section 4(b)(2) of the Act states that the Secretary shall designate and make revisions to critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination to exclude a particular area, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

As discussed below, we are not proposing to exclude any areas from critical habitat. However, the final decision on whether to exclude any areas will be based on the best scientific data available at the time of the final designation, including information obtained during the comment period and information about the economic impact of designation.

*Consideration of Economic Impacts*

Section 4(b)(2) of the Act and its implementing regulations require that we consider the economic impact that may result from a designation of critical habitat. To assess the probable economic impacts of a designation, we must first evaluate specific land uses or activities and projects that may occur in the area of the critical habitat. We then must evaluate the impacts that a specific critical habitat designation may have on restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas proposed. We then identify which conservation efforts may be the result of the species being listed under the Act versus those attributed solely to the designation of critical habitat for this particular species. The probable economic impact of a proposed critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.'' The ''without critical habitat'' scenario represents the baseline for the analysis, which includes the existing regulatory and socio-economic burden imposed on landowners, managers, or other resource users potentially affected by the designation of critical habitat (*e.g.,* under the Federal listing as well as other Federal, State, and local regulations). The baseline, therefore, represents the costs of all efforts attributable to the listing of the species under the Act (*i.e.,* conservation of the species and its habitat incurred regardless of whether critical habitat is designated). The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts would not be expected without the designation of critical habitat for the species. In other words, the incremental costs are

those attributable solely to the designation of critical habitat, above and beyond the baseline costs. These are the costs we use when evaluating the benefits of inclusion and exclusion of particular areas from the final designation of critical habitat should we choose to conduct a discretionary 4(b)(2) exclusion analysis.

For this proposed designation, we developed an incremental effects memorandum (IEM) considering the probable incremental economic impacts that may result from this proposed designation of critical habitat. The information contained in our IEM was then used to develop a screening analysis of the probable effects of the designation of critical habitat for Florida bristle fern (IEc 2020, entire). The purpose of the screening analysis is to filter out the geographic areas in which the critical habitat designation is unlikely to result in probable incremental economic impacts. In particular, the screening analysis considers baseline costs (*i.e.,* absent critical habitat designation) and includes probable economic impacts where land and water use may be subject to conservation plans, land management plans, best management practices, or regulations that protect the habitat area as a result of the Federal listing status of the subspecies. The screening analysis filters out particular areas of critical habitat that are already subject to such protections and are, therefore, unlikely to incur incremental economic impacts. Ultimately, the screening analysis allows us to focus our analysis on the specific areas or sectors that may incur probable incremental economic impacts as a result of the designation. The screening analysis also assesses whether units unoccupied by the subspecies may require additional management or conservation efforts as a result of the designation and which may incur incremental economic impacts. This screening analysis, combined with the information contained in our IEM, constitutes our draft economic analysis (DEA) of the proposed critical habitat designation for Florida bristle fern and is summarized in the narrative below.

Executive Orders (E.O.s) 12866 and 13563 direct Federal agencies to assess the costs and benefits of available regulatory alternatives in quantitative (to the extent feasible) and qualitative terms. Consistent with the E.O. regulatory analysis requirements, our effects analysis under the Act may take into consideration impacts to both directly and indirectly affected entities, where practicable and reasonable. If sufficient data are available, we assess to the extent practicable the probable impacts to both directly and indirectly affected entities. As part of our screening analysis, we considered the types of economic activities that are likely to occur within the areas likely affected by the critical habitat designation.

In our evaluation of the probable incremental economic impacts that may result from the proposed designation of critical habitat for Florida bristle fern, first we identified, in the IEM dated October 2019, probable incremental economic impacts associated with the following categories of activities: (1) Commercial or residential development; (2) roadway and bridge construction; (3) utility-related activities; (4) agriculture, including land clearing; (5) grazing; (6) groundwater pumping; (7) surface water withdrawals and diversions; (8) forest management; (9) fire management; (10) conservation and restoration activities, including nonnative species control; and (11) recreation. Additionally, we considered whether the activities have any Federal involvement. Critical habitat designation generally will not affect activities that do not have any Federal involvement; under the Act, designation of critical habitat only affects activities conducted, funded, permitted, or authorized by Federal agencies. In areas where Florida bristle fern is present, Federal agencies already are required to consult with the Service under section 7 of the Act on activities they fund, permit, or implement that may affect the subspecies. If we finalize this proposed critical habitat designation, consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

In our IEM, we attempted to clarify the distinction between the effects that will result from the subspecies being listed and those attributable to the critical habitat designation (*i.e.,* the difference between the jeopardy and adverse modification standards) for Florida bristle fern. The following considerations helped to inform our evaluation: (1) The essential physical or biological features identified for critical habitat are the same features essential for the life requisites of the subspecies, and (2) any actions that would result in sufficient harm or harassment to constitute jeopardy to Florida bristle fern would also likely adversely affect the essential physical or biological features of critical habitat. The IEM outlines our rationale concerning this limited distinction between baseline conservation efforts and incremental impacts of the designation of critical habitat for this subspecies. This evaluation of the incremental effects has been used as the basis to evaluate the probable incremental economic impacts of this proposed designation.

The proposed critical habitat designation for Florida bristle fern totals approximately 1,624 ha (4,014 ac) in Miami-Dade and Sumter Counties, Florida, and includes both occupied and unoccupied units. Within the occupied units, any actions that may affect the subspecies would also affect proposed critical habitat, and it is unlikely that any additional conservation efforts would be recommended to address the adverse modification standard over and above those recommended as necessary to avoid jeopardizing the continued existence of Florida bristle fern. Therefore, the economic impacts of implementing the rule through section 7 of the Act will most likely be limited to additional administrative effort to consider adverse modification.

Within the unoccupied units, incremental section 7 costs will include both the administrative costs of consultation and the costs of developing and implementing conservation measures needed to avoid adverse modification of critical habitat. Therefore, this analysis focuses on the likely impacts to activities occurring in unoccupied units of the proposed critical habitat designation. This analysis considers the potential need to consult on development, transportation, and other activities authorized, undertaken, or funded by Federal agencies within unoccupied habitat. The total incremental section 7 costs associated with the designation were estimated to be $210,000 in 2019 dollars (IEC 2020, p. 12). Accordingly, we conclude that these costs would not reach the threshold of ''significant'' under E.O. 12866.

As we stated earlier, we are soliciting data and comments from the public on the DEA, as well as all aspects of the proposed rule and our required determinations. See **ADDRESSES**, above, for information on where to send comments. We may revise the proposed rule or supporting documents to incorporate or address information we receive during the public comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area, provided the exclusion will not result in the extinction of this subspecies.

**Exclusions**

*Exclusions Based on Economic Impacts*

We are soliciting data and comments from the public on the DEA discussed above, as well as all aspects of the proposed rule. During the development of a final designation, we will consider the information presented in the DEA and any additional information on economic impacts received through the public comment period to determine whether any specific areas should be excluded from the final critical habitat designation under authority of section 4(b)(2) and our implementing regulations at 50 CFR 424.19.

*Exclusions Based on National Security Impacts or Homeland Security Impacts*

In preparing this proposal, we have determined that no lands within the proposed designation of critical habitat for Florida bristle fern are owned or managed by the Department of Defense or Department of Homeland Security, and therefore, we anticipate no impact on national security. However, during the development of a final designation we will consider any additional information received through the public comment period on the impacts of the proposed designation on national security or homeland security to determine whether any specific areas should be excluded from the final critical habitat designation under authority of section 4(b)(2) and our implementing regulations at 50 CFR 424.19.

*Exclusions Based on Other Relevant Impacts*

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors, including whether there are permitted conservation plans covering the species in the area such as habitat conservation plans (HCPs), safe harbor agreements, or candidate conservation agreements with assurances, or whether there are non-permitted conservation agreements and partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at the existence of tribal conservation plans and partnerships, and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this proposal, we have determined that there are currently no HCPs or other management plans for Florida bristle fern, and the proposed designation does not include any tribal lands or trust resources. We anticipate no impact on tribal lands, partnerships, or HCPs from this proposed critical habitat designation. During the development of a final designation, we will consider any additional information received through the public comment period regarding other relevant impacts to determine whether any specific areas should be excluded from the final critical habitat designation under authority of section 4(b)(2) and our implementing regulations at 50 CFR 424.19. Required Determinations

*Clarity of the Rule*

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

*Regulatory Planning and Review (Executive Orders 12866 and 13563)*

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA 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. We have developed this rule in a manner consistent with these requirements.

*Executive Order 13771*

This proposed rule is not an E.O. 13771 (''Reducing Regulation and Controlling Regulatory Costs'') (82 FR 9339, February 3, 2017) regulatory action because this proposed rule is not significant under E.O. 12866.

*Regulatory Flexibility Act (5 U.S.C. 601 et seq.)*

Under the Regulatory Flexibility Act (RFA; 5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA; 5 U.S.C. 801 *et seq.*), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.,* small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

According to the Small Business Administration, small entities include small organizations such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic

impact'' is meant to apply to a typical small business firm's business operations.

The Service's current understanding of the requirements under the RFA, as amended, and following recent court decisions, is that Federal agencies are only required to evaluate the potential incremental impacts of rulemaking on those entities directly regulated by the rulemaking itself and, therefore, not required to evaluate the potential impacts to indirectly regulated entities. The regulatory mechanism through which critical habitat protections are realized is section 7 of the Act, which requires Federal agencies, in consultation with the Service, to ensure that any action authorized, funded, or carried out by the agency is not likely to destroy or adversely modify critical habitat. Therefore, under section 7, only Federal action agencies are directly subject to the specific regulatory requirement (avoiding destruction and adverse modification) imposed by critical habitat designation. Consequently, it is our position that only Federal action agencies will be directly regulated if we adopt the proposed critical habitat designation. There is no requirement under the RFA to evaluate the potential impacts to entities not directly regulated. Moreover, Federal agencies are not small entities. Therefore, because no small entities are directly regulated by this rulemaking, the Service certifies that, if made final as proposed, this proposed critical habitat designation will not have a significant economic impact on a substantial number of small entities.

In summary, we have considered whether the proposed designation would result in a significant economic impact on a substantial number of small entities. For the above reasons and based on currently available information, we certify that, if made final as proposed, this proposed critical habitat designation will not have a significant economic impact on a substantial number of small business entities. Therefore, an initial regulatory flexibility analysis is not required.

*Energy Supply, Distribution, or Use—Executive Order 13211*

Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use) requires agencies to prepare Statements of Energy Effects when undertaking certain actions. In our economic analysis, we did not find that the designation of this proposed critical habitat would significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

*Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we make the following findings:

(1) This proposed rule would not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal Government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above onto State governments.

(2) We do not believe that this rule will significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The economic analysis concludes that incremental impacts may primarily occur due to administrative costs of section 7 consultations for development and transportation projects, and for other activities primarily related to land and facility management, cultural resource, research, and conservation activities in Everglades National Park; however, these are not expected to significantly affect small governments. Incremental impacts stemming from various species conservation and development control activities are expected to be borne by the Federal Government, State of Florida, and Miami-Dade County, which are not considered small governments. Consequently, we do not believe that the critical habitat designation would significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

*Takings—Executive Order 12630*

In accordance with E.O. 12630 (Government Actions and Interference with Constitutionally Protected Private Property Rights), we have analyzed the potential takings implications of designating critical habitat for Florida bristle fern in a takings implications assessment. The Act does not authorize the Service to regulate private actions on private lands or confiscate private property as a result of critical habitat designation. Designation of critical habitat does not affect land ownership, or establish any closures, or restrictions on use of or access to the designated areas. Furthermore, the designation of critical habitat does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions

that do require Federal funding or permits to go forward. However, Federal agencies are prohibited from carrying out, funding, or authorizing actions that would destroy or adversely modify critical habitat. A takings implications assessment has been completed and concludes that, if adopted, this designation of critical habitat for Florida bristle fern does not pose significant takings implications for lands within or affected by the designation.

*Federalism—Executive Order 13132*

In accordance with E.O. 13132 (Federalism), this proposed rule does not have significant Federalism effects. A federalism summary impact statement is not required. In keeping with Department of the Interior and Department of Commerce policy, we requested information from, and coordinated development of this proposed critical habitat designation with, appropriate State resource agencies in Florida. From a federalism perspective, the designation of critical habitat directly affects only the responsibilities of Federal agencies. The Act imposes no other duties with respect to critical habitat, either for States and local governments, or for anyone else. As a result, the rule does not have substantial direct effects either on the States, or on the relationship between the national government and the States, or on the distribution of powers and responsibilities among the various levels of government. The proposed designation may have some benefit to these governments because the areas that contain the features essential to the conservation of the subspecies are more clearly defined, and the physical or biological features of the habitat necessary to the conservation of the subspecies are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist State and local governments in long-range planning because they no longer have to wait for case-by-case section 7 consultations to occur. Where State and local governments require approval or authorization from a Federal agency for actions that may affect critical habitat, consultation under section 7(a)(2) of the Act would be required. While non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency.

*Civil Justice Reform—Executive Order 12988*

In accordance with Executive Order 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. To assist the public in understanding the habitat needs of the subspecies, this proposed rule identifies the elements of physical or biological features essential to the conservation of the subspecies. The proposed areas of designated critical habitat are presented on maps, and the proposed rule provides several options for the interested public to obtain more detailed location information, if desired.

*Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)*

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

*National Environmental Policy Act (NEPA, 42 U.S.C. 4321 et seq.)*

It is our position that, outside the jurisdiction of the U.S. Court of Appeals for the Tenth Circuit, we do not need to prepare environmental analyses pursuant to NEPA in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

*Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to tribes. As discussed above (see Exclusions), we have determined that no tribal lands would be affected by this designation.

## Authors

The primary authors of this proposed rule are the staff members of the U.S. Fish and Wildlife Service South Florida Ecological Services Field Office.

## References Cited

A complete list of references cited in this proposed rule is available on the internet at *http://www.regulations.gov* and upon request from the South Florida Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

## List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

## Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

## PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.12(h) by revising the entry for ''*Trichomanes punctatum* ssp. *floridanum* (Florida bristle fern)'' under ''Ferns and Allies'' in the List of Endangered and Threatened Plants to read as follows:

**§ 17.12 Endangered and threatened plants.**

* * * * *

(h) * * *

| Scientific name | Common name | Where listed | Status | Listing citations and applicable rules |
|---|---|---|---|---|
| * | * | * | * | * |
| FERNS AND ALLIES | | | | |
| * | * | * | * | * |
| *Trichomanes punctatum* ssp. *floridanum.* | Florida bristle fern | Wherever found | E | 80 FR 60439, 10/6/2015; 50 CFR 17.97(b)(1).[CH] |
| * | * | * | * | * |

■ 3. Add § 17.97 to read as follows:

**§ 17.97 Critical habitat; conifers, ferns and allies, lichens.**

(a) [Reserved.]

(b) *Ferns and allies.* (1) *Trichomanes punctatum* ssp. *floridanum* (Florida bristle fern).

(i) Critical habitat units are depicted for Miami-Dade and Sumter Counties, Florida, on the maps in this entry.

(ii) Within these areas, the physical or biological features essential to the conservation of Florida bristle fern consist of the following components:

(A) Upland hardwood forest hammock habitats of sufficient quality and size to sustain the necessary microclimate and life processes for Florida bristle fern.

(B) Exposed substrate derived from oolitic limestone, Ocala limestone, or exposed limestone boulders, which provide anchoring and nutritional requirements.

(C) Constantly humid microhabitat consisting of dense canopy cover, moisture, stable high temperature, and stable monthly average humidity of 90 percent or higher, with intact hydrology within hammocks and the surrounding and adjacent wetland communities.

(D) Dense canopy cover of surrounding native vegetation that consists of the upland hardwood forest hammock habitats and provides shade, shelter, and moisture.

(E) Suitable microhabitat conditions, hydrology, and connectivity that can support Florida bristle fern growth, distribution, and population expansion (including rhizomal growth, spore dispersal, and sporophyte and gametophyte growth and survival).

(F) Plant community of predominantly native vegetation that is minimally disturbed, free from human-related disturbance with either no competitive nonnative, invasive plant species, or such species in quantities low enough to have minimal effect on Florida bristle fern.

(iii) Critical habitat does not include manmade structures (such as buildings, aqueducts, runways, roads, and other paved areas) and the land on which they are located existing within the legal boundaries on [EFFECTIVE DATE OF THE FINAL RULE].

(iv) *Critical habitat map units.* Data layers defining map units were created using ESRI ArcGIS mapping software along with various spatial data layers. ArcGIS was used to calculate the size of habitat areas. The projection used in mapping and calculating distances and locations within the units was North American Albers Equal Area Conic, NAD 83 Geographic. The maps in this entry, as modified by any accompanying regulatory text, establish the boundaries of the critical habitat designation. The coordinates or plot points or both on which each map is based are available to the public at *http://www.fws.gov/verobeach, http://www.regulations.gov* under Docket No. FWS–R4–ES–2019–0068 and at the South Florida Ecological Services Field Office. You may obtain field office location information by contacting one of the Service regional offices, the addresses of which are listed at 50 CFR 2.2.

(v) *Note:* Index map follows:

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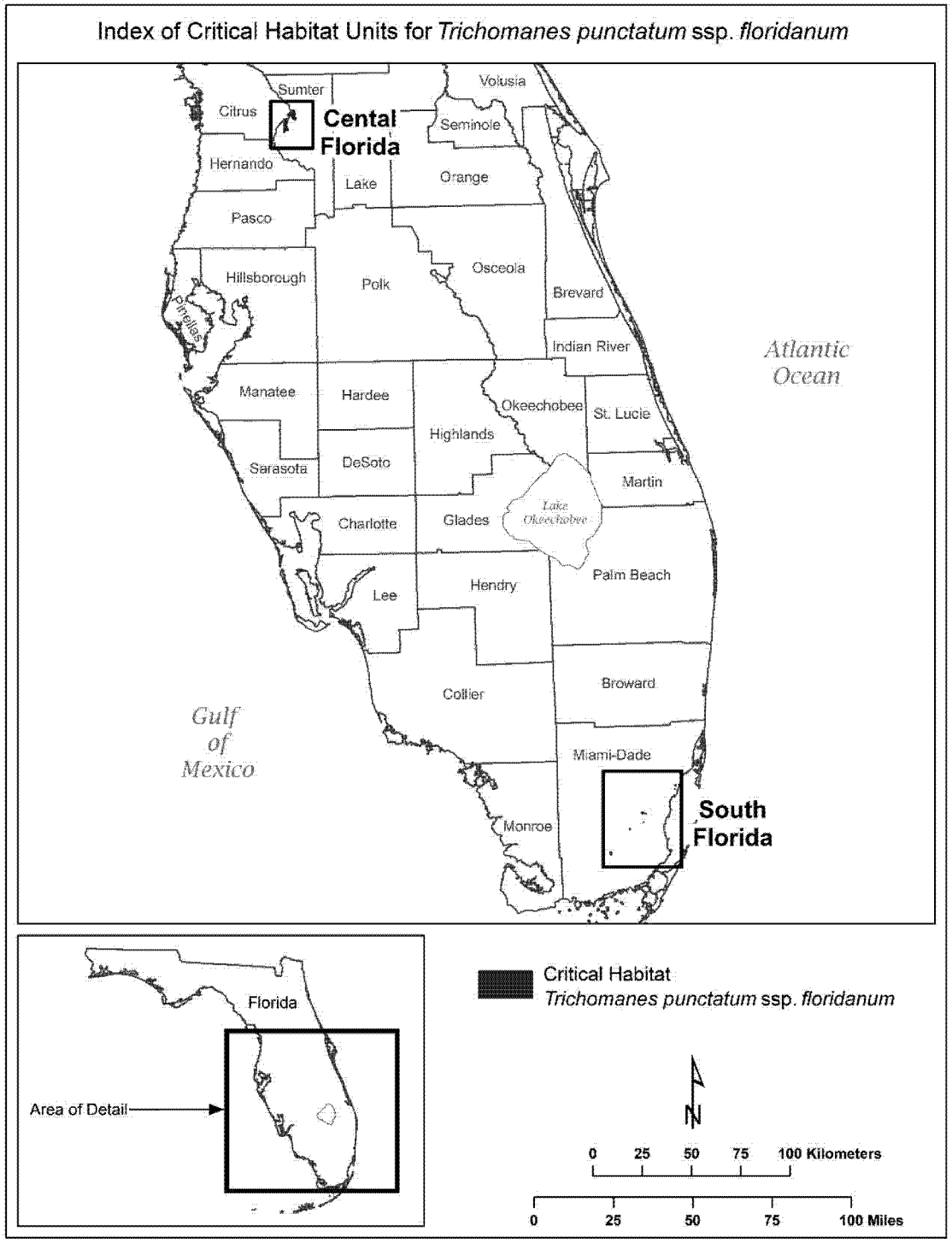
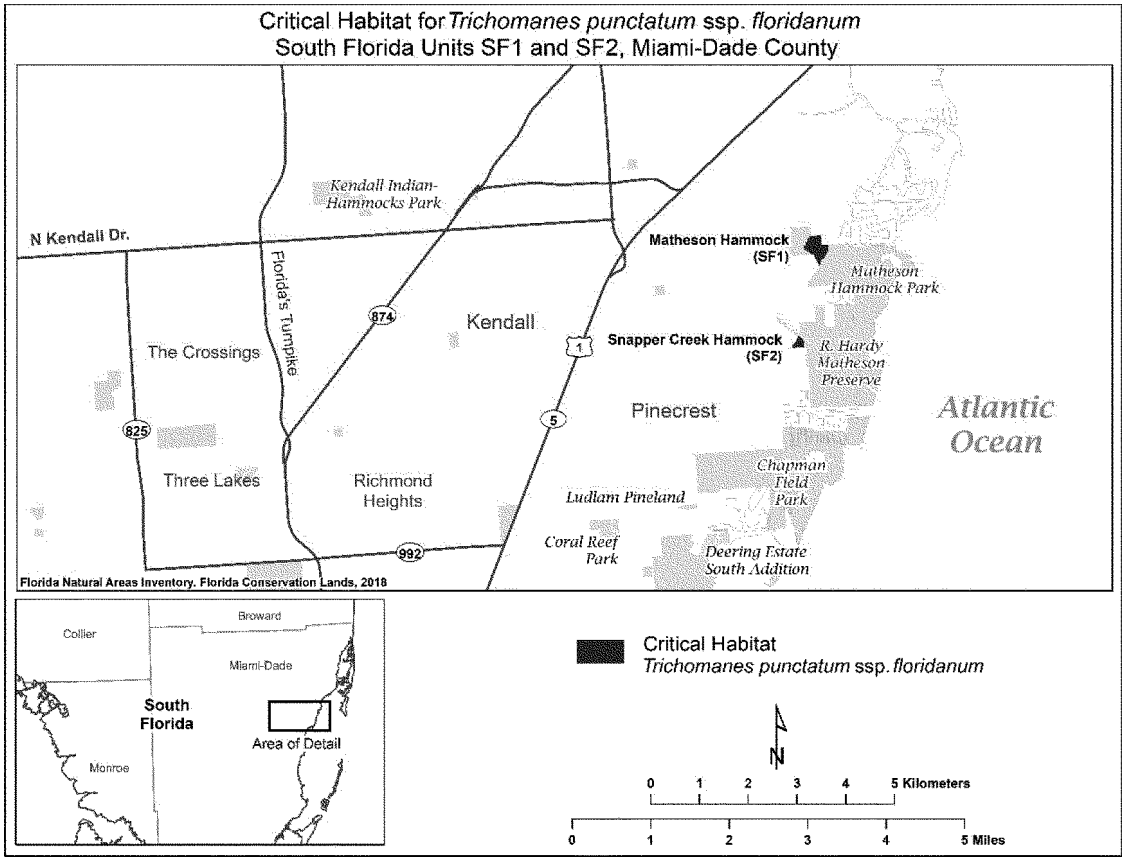



(vi) SF 1—Matheson Hammock, Miami-Dade County, Florida; and SF 2—Snapper Creek Hammock, Miami-Dade County, Florida.

(A) SF 1 consists of approximately 16 ha (39 ac) of unoccupied critical habitat in Matheson Hammock in Matheson Hammock Park. This unit comprises County-owned land that is primarily managed cooperatively by the Miami-Dade County Environmentally Endangered Lands program and Natural Areas Management division.

(B) SF 2 consists of approximately 3 ha (8 ac) of unoccupied critical habitat in Deering-Snapper Creek Hammock adjacent to R. Hardy Matheson Preserve. This unit comprises State-owned land that is primarily managed cooperatively by the Miami-Dade County Environmentally Endangered Lands program and Natural Areas Management division.

(C) Map of SF 1 and SF 2 follows:




(vii) SF 3—Castellow and Ross Hammocks, Miami-Dade County, Florida; SF 4—Silver Palm Hammock, Miami-Dade County, Florida; SF 5—Hattie Bauer Hammock, Miami-Dade County, Florida; and SF 6—Fuchs and Meisnner Hammocks, Miami-Dade County, Florida.

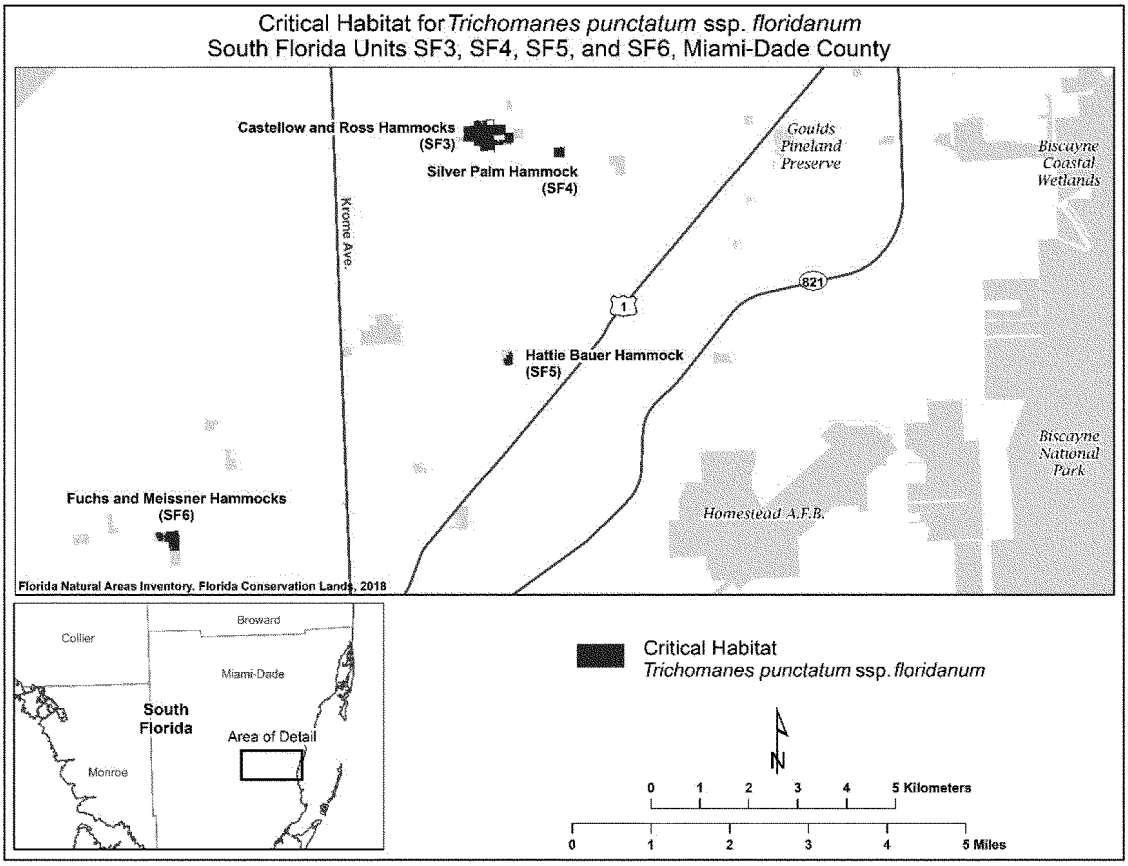
(A) SF 3 consists of approximately 38 ha (93 ac) of occupied critical habitat in Castellow and Ross Hammocks. This unit consists of 13 ha (32 ac) of State-owned and 25 ha (61 ac) of County-owned lands that is primarily managed cooperatively by the Miami-Dade County Environmentally Endangered Lands program and Natural Areas Management division.

(B) SF 4 consists of approximately 4 ha (10 ac) of unoccupied critical habitat in Silver Palm Hammock. This unit comprises State-owned land that is primarily managed cooperatively by the Miami-Dade County Environmentally Endangered Lands program and Natural Areas Management division.

(C) SF 5 consists of approximately 3 ha (8 ac) of occupied critical habitat in Hattie Bauer Hammock. This unit consists of County-owned land that is primarily managed cooperatively by the Miami-Dade County Environmentally Endangered Lands program and Natural Areas Management division.

(D) SF 6 consists of approximately 11 ha (28 ac) of occupied critical habitat in Fuchs Hammock on Fuchs Hammock Preserve and Meissner Hammock. This unit consists of 2 ha (5 ac) of State-owned and 9 ha (23 ac) of County-owned lands that is primarily managed cooperatively by the Miami-Dade County Environmentally Endangered Lands program and Natural Areas Management division.

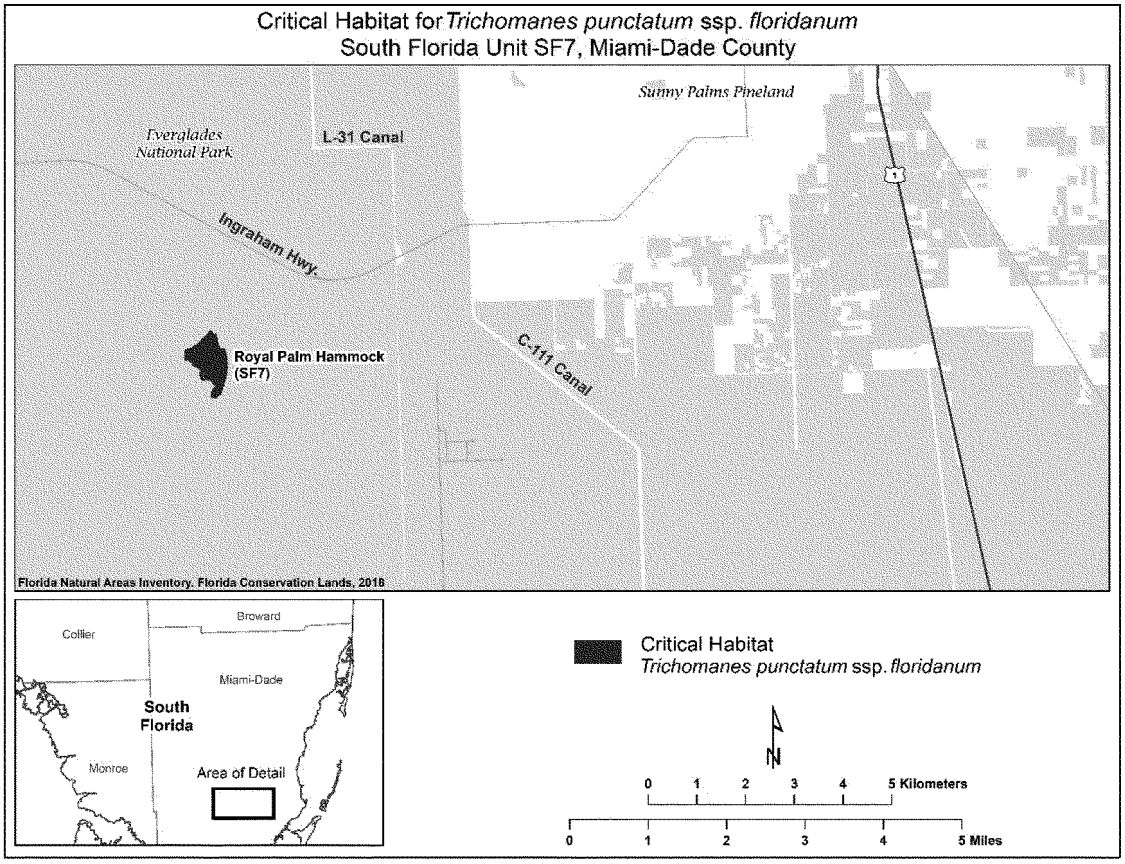
(E) Map of SF 3, SF 4, SF 5, and SF 6 follows:




(viii) SF 7—Royal Palm Hammock, Miami-Dade County, Florida.

(A) SF 7 consists of approximately 60 ha (148 ac) of unoccupied critical habitat in Royal Palm Hammock in Everglades National Park.

(B) Map of SF 7 follows:

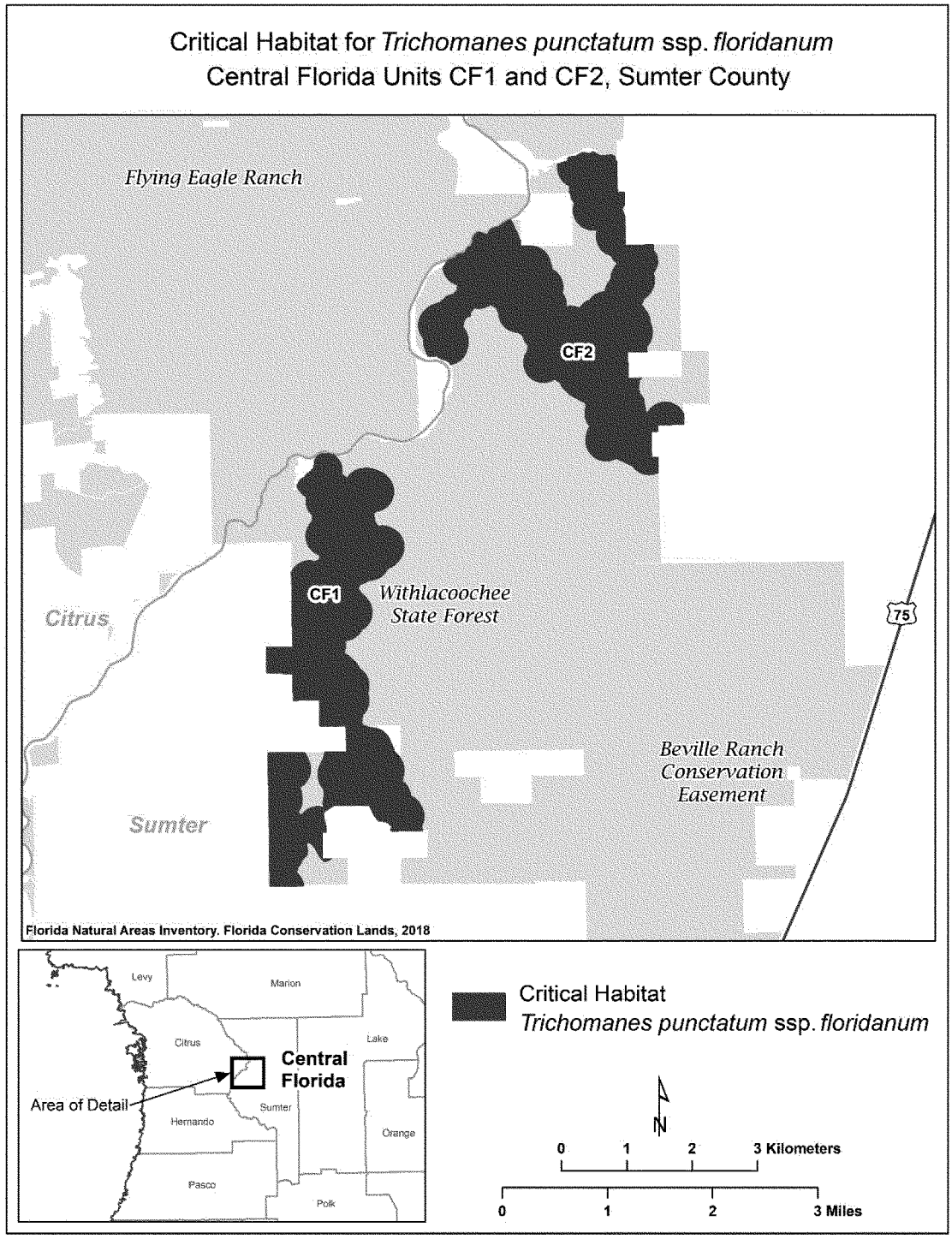



(ix) CF 1, Sumter County, Florida; and CF 2, Sumter County, Florida.

(A) CF 1 consists of approximately 742 ha (1,834 ac) of occupied critical habitat of State-owned land (726 ha (1,795 ac)) within the Jumper Creek Tract of the Withlacoochee State Forest and of privately owned land (16 ha (39 ac)) directly adjacent to Withlacoochee State Forest. The State-owned land is managed by the Florida Forest Service.

(B) CF 2 consists of approximately 747 ha (1,846 ac) of unoccupied critical habitat on State-owned land within the Jumper Creek Tract of the Withlacoochee State Forest.

(C) Map of CF 1 and CF 2 follows:




Dated: February 10, 2020.

**Aurelia Skipwith,**

*Director, U.S. Fish and Wildlife Service.*

[FR Doc. 2020–03441 Filed 2–21–20; 8:45 am]

**BILLING CODE 4333–15–C**

# Notices

Federal Register

Vol. 85, No. 36

Monday, February 24, 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–SC–20–0005; SC20–996–1]**

### Peanut Standards Board; Request for Nominations

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice; request for nominations.

**SUMMARY:** The Farm Security and Rural Investment Act of 2002 (2002 Farm Bill) requires the Secretary of Agriculture (Secretary) to establish a Peanut Standards Board (Board) for the purpose of advising the Secretary on quality and handling standards for domestically produced and imported peanuts. The U.S. Department of Agriculture (USDA) is seeking nominations for individuals to be considered for selection as Board members for a term of office ending June 30, 2023.

**DATES:** Written nominations must be received on or before April 9, 2020.

**ADDRESSES:** Nominations should be sent to Steven W. Kauffman of the Southeast Marketing Field Office, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1124 1st Street South, Winter Haven, FL 33880; Telephone: (863) 324–3375; Fax: (863) 291–8614; Email: *Steven.Kauffman@usda.gov.*

**SUPPLEMENTARY INFORMATION:** Section 1308 of the 2002 Farm Bill requires the Secretary to establish and consult with the Board for the purpose of advising the Secretary regarding the establishment of quality and handling standards for all domestic and imported peanuts marketed in the United States.

The 2002 Farm Bill, as amended by § 12502 of the Agriculture Improvement Act of 2018, provides the Board's makeup which will include three producers and three peanut industry representatives from States specified in each of the following producing regions: Southeast (Alabama, Georgia, and Florida); Southwest (Texas, Oklahoma, and New Mexico); and Virginia/Carolina (Virginia, North Carolina, and South Carolina). The Board consists of 18 members with representation equally divided between peanut producers and industry representatives. Each term of office is for a period of three years. The terms of office are staggered in order to replace one third of the Board members each year.

The term ''peanut industry representatives'' includes, but is not limited to, representatives of shellers, manufacturers, buying points, marketing associations and marketing cooperatives. The 2002 Farm Bill exempted the appointment of the Board from the requirements of the Federal Advisory Committee Act.

USDA invites individuals, organizations, and groups affiliated with the categories listed above to nominate individuals for membership on the Board. All qualified nominees are forwarded for consideration as the Farm Bill does not require any voting. Appointees sought by this action will fill two positions in the Southeast region, two positions in the Southwest region, and two positions in the Virginia/Carolina region.

Nominees should complete an Advisory Committee or Research and Promotion Background Information form (AD–755) and submit it to Steven W. Kauffman at the address provided in the **ADDRESSES** section above. Copies of this form may be obtained at the internet site *http://www.ams.usda.gov/about-ams/facas-advisory-councils/peanut-board,* or from the Southeast Marketing Field Office. USDA seeks a diverse group of members representing the peanut industry.

Equal opportunity practices will be followed in all appointments to the Board in accordance with USDA policies. To ensure the recommendations of the Board have considered the needs of the diverse groups within the peanut industry, membership shall include, to the extent practicable, individuals with demonstrated abilities to represent minorities, women, persons with disabilities, and limited resource agriculture producers.

(Authority: 7 U.S.C. 7958)

Dated: February 18, 2020.

**Bruce Summers,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 2020–03526 Filed 2–21–20; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

February 19, 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 25, 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.

**Rural Business-Cooperative Service**

*Title:* Rural Micro-Entrepreneur Assistance Program.

*OMB Control Number:* 0570–0062.

*Summary of Collection:* Section 6022 of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) authorizes the Rural Microentrepreneur Assistance Program (RMAP). The Secretary makes direct loans to rural microenterprise development organizations (MDOs) that are participating in the program (who are referred to as ''microlenders'') for the purpose of capitalizing microloan revolving funds to provide fixed interest rate business loans of $50,000 or less to microentrepreneurs, as defined in the 2008 Farm Bill.

*Need and Use of the Information:* The program provides rural microentrepreneurs with the skills necessary to establish new rural microenterprises; to provide continuing technical and financial assistance related to the successful operation of rural microenterprises; and to assist with the cost of providing other activities and services related to the successful operation of MDOs and rural microenterprises. Microlenders seeking loans and/or grants will have to submit applications that include specified information, certifications, and agreements to the Agency. This information will be used to determine applicant eligibility and to ensure that funds are used for authorized purposes. Failure to collect proper information could result in improper determinations of eligibility of improper use of funds.

*Description of Respondents:* Business or other for-profit; Not-for-profit Institutions; State, Local or Tribal governments.

*Number of Respondents:* 40.

*Frequency of Responses:* Reporting: Quarterly, Annually.

*Total Burden Hours:* 1,907.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2020–03596 Filed 2–21–20; 8:45 am]

**BILLING CODE 3410–XY–P**

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

February 19, 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 25, 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:* Domestic Quarantine Regulations.

*OMB Control Number:* 0579–0088.

*Summary of Collection:* Under the Plant Protection Act (7 U.S.C. 7701–7772) the Secretary of Agriculture is authorized to prohibit or restrict the importation, entry, or movement of plants and plant pests to prevent the introduction of plant pests into the United States or their dissemination within the United States. Plant Protection and Quarantine, a program within USDA's Animal and Plant Health Inspection Service, (APHIS) is responsible for implementing this Act and does so through the enforcement of its domestic quarantine regulations contained in Title 7 of the Code of Federal Regulations, CFR part 301. Administering these regulations often requires APHIS to collect information from a variety of individuals who are involved in growing, packing, handling, transporting, plants and plant products. The information collected from these individuals is vital to helping ensure that injurious plant diseases and insect pests do not spread within the United States. Information to be collected is necessary to determine compliance with domestic quarantines. Federal/State domestic quarantines are necessary to regulate the movement of articles from infested areas to noninfested area. Collecting information requires the use of a number of forms and documents. APHIS will collect information using various forms and documents.

*Need and Use of the Information:* APHIS will collect information by interviewing growers and shippers at the time the inspections are being conducted and by having growers and shippers of exported plants and plant products complete an application for a transit permit. Information is collected from the growers, packers, shippers, and exporters of regulated articles to ensure that the articles, when moved from a quarantined area, do not harbor injurious plant diseases and insect pests. The information obtained will be used to determine compliance with regulations and for issuance of forms, permits, certificates, and other required documents.

*Description of Respondents:* State, Local or Tribal Government; Business or other for-profit; Farms; Individuals.

*Number of Respondents:* 12,861.

*Frequency of Responses:* Recordkeeping; Reporting: On occasion.

*Total Burden Hours:* 345,950.

**Ruth Brown,**

*Departmental Information Collection Clearance Officer.*

[FR Doc. 2020–03592 Filed 2–21–20; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### U.S. Codex Office

### Codex Alimentarius Commission: Meeting of the Codex Committee on Methods of Analysis and Sampling

**AGENCY:** U.S. Codex Office.

**ACTION:** Notice of public meeting and request for comments.

**SUMMARY:** The U.S Codex Office is sponsoring a public meeting on April 16, 2020. The objective of the public meeting is to provide information and

receive public comments on agenda items and draft United States (U.S.) positions to be discussed at the 41th Session of the Codex Committee on Methods of Analysis (CCMAS) of the Codex Alimentarius Commission, in Budapest, Hungary, May 11–15, 2020. The U.S. Manager for Codex Alimentarius and the Under Secretary, Office of Trade and Foreign Agricultural Affairs, recognize the importance of providing interested parties the opportunity to obtain background information on the 40th Session of the CCMAS and to address items on the agenda.

**DATES:** The public meeting is scheduled for April 16, 2020, from 1:00 p.m. to 2:30 p.m. EST.

**ADDRESSES:** The public meeting will take place in the United States Department of Agriculture (USDA), South Building, Room 1442–S, 1400 Independence Avenue SW, Washington, DC 20250. Documents related to the 40th Session of the CCMAS will be accessible via the internet at the following address: *http://www.codexalimentarius.org/meetings-reports/en*. Gregory O. Noonan, Ph.D., U.S. Delegate to the 40th Session of the CCMAS, invites U.S. interested parties to submit their comments electronically to the following email address: *gregory.noonan@fda.hhs.gov*.

*Call in number:* If you wish to participate in the public meeting for the 40th Session of the CCMAS by conference call, please register in advance by emailing *doreen.chen-moulec@usda.gov*. Please use the call-in-number: 1–888–844–9904 and participant code: 512 6092.

*Registration:* Attendees may register to attend the public meeting by emailing *Doreen.chenmoulec@usda.gov* by April 14, 2020. Early registration is encouraged because it will expedite entry into the building. The meeting will take place in a Federal building. Attendees should bring photo identification and plan for adequate time to pass through the security screening systems. Attendees who are not able to attend the meeting in person, but who wish to participate, may do so by phone, as discussed above.

For further information about the 40th session of CCMAS, contact Gregory O. Noonan, Ph.D., Research Chemist, Center for Food Safety and Applied Nutrition (CFSAN), Food and Drug Administration, Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740. Phone: (240) 402–2250, Fax: (301) 436–2634, Email: *Gregory.Noonan@fda.hhs.gov*.

**FOR FURTHER INFORMATION CONTACT:** Doreen Chen-Moulec, U.S. Codex Office, 1400 Independence Avenue SW, Room 4867, South Building, Washington, DC 20250.Phone: (202) 205–7760, Fax: (202) 720–3157, Email: *doreen.chen-moulec@usda.gov*.

**SUPPLEMENTARY INFORMATION:**

## Background

Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure fair practices in the food trade. The CCMAS is responsible for defining the criteria appropriate to Codex Methods of Analysis and Sampling; serving as a coordinating body for Codex with other international groups working in methods of analysis and sampling and quality assurance systems for laboratories; specifying, on the basis of final recommendations submitted to it by other bodies, reference methods of analysis and sampling, appropriate to Codex standards which are generally applicable to a number of foods; considering, amending, and endorsing, as appropriate, methods of analysis and sampling proposed by Codex (Commodity) Committees, (except that methods of analysis and sampling for residues of pesticides or veterinary drugs in food, the assessment of micro-biological quality and safety in food, and the assessment of specifications for food additives, do not fall within the terms of reference of this Committee); elaborating sampling plans and procedures; considering specific sampling and analysis problems submitted to it by the Commission or any of its committees; and defining procedures, protocols, guidelines, or related texts for the assessment of food laboratory proficiency, as well as quality assurance systems for laboratories.

The CCMAS is hosted by Hungary, and the meeting is attended by the United States as a member country of the Codex Alimentarius.

## Issues To Be Discussed at the Public Meeting

The following items on the Agenda for the 40th Session of the CCMAS will be discussed during the public meeting:

- Matters Referred to the Committee by the Codex Alimentarius Commission and Other Subsidiary Bodies
- Endorsement of Methods of Analysis Provisions and Sampling Plans in Codex Standards
- Review of Methods of Analysis in the Codex Standard on Recommended Methods of Analysis and Sampling (CXS 234–1999)
- Dairy workable package
- Fats and oils workable package
- Cereals, pulses and legumes workable package
- Revision of the Guidelines on Measurement Uncertainty
- Information document on the Guidelines of Measurement Uncertainty
- Revision of the General Guidelines on Sampling (CXG 50–2004)
- Discussion paper on criteria to select Type II methods from multiple Type III methods
- Report of an Inter-Agency Meeting on Methods of Analysis
- Other Business and Future Work

Each issue listed will be fully described in documents distributed, or to be distributed by the Secretariat before the Committee meeting. Members of the public may access or request copies of these documents (see **ADDRESSES**).

## Public Meeting

At the April 16, 2019, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to Gregory O. Noonan.

## Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, the U.S. Codex Office will announce this **Federal Register** publication on-line through the USDA Codex web page located at: *http://www.usda.gov/codex,* a link that also offers an email subscription service providing access to information related to Codex. Customers can add or delete their subscriptions themselves and have the option to password protect their accounts.

## USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

**How To File a Complaint of Discrimination**

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative. Send your completed complaint form or letter to USDA by mail, fax, or email.

*Mail:* U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410.

*Fax:* (202) 690–7442.

*Email: program.intake@usda.gov.*

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Done at Washington, DC, on February 18, 2020.

**Mary Lowe,**

*U.S. Manager for Codex Alimentarius.*

[FR Doc. 2020–03518 Filed 2–21–20; 8:45 am]

BILLING CODE P

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

**[Docket No. FSIS–2019–0029]**

### Notice of Request for a New Information Collection: Voluntary Destruction of Imported Meat, Poultry, and Egg Products

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) regulations, the Food Safety and Inspection Service (FSIS) is announcing its intention to create a new information collection regarding the voluntary destruction of imported meat, poultry, and egg products. This is a new information collection with an estimated burden of 17,818 hours.

**DATES:** Submit comments on or before April 24, 2020.

**ADDRESSES:** FSIS invites interested persons to submit comments on this **Federal Register** notice. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This website provides commenters the ability to type short comments directly into the comment field on the web page or to attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail, Including CD–ROMs, etc.:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Room 6065, Washington, DC 20250–3700.
- *Hand- or Courier-Delivered Submittals:* Deliver to 1400 Independence Avenue SW, Room 6065, Washington, DC 20250–3700.

*Instructions:* All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2019–0029. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

*Docket:* For access to background documents or comments received, call (202) 720–5627 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Room 6065, Washington, DC 20250–3700.

**FOR FURTHER INFORMATION CONTACT:** Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Room 6065, South Building, Washington, DC 20250–3700; (202) 720–5627.

**SUPPLEMENTARY INFORMATION:**

*Title:* Voluntary Destruction of Imported Meat, Poultry, and Egg Products.

*OMB Control Number:* 0583–XXXX.

*Type of Request:* Request for a new information collection.

*Abstract:* FSIS has been delegated the authority to exercise the functions of the Secretary (7 CFR 2.18, 2.53), as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). These statutes mandate that FSIS protect the public by verifying that meat, poultry, and egg products are safe, wholesome, unadulterated, and properly labeled and packaged.

Imported meat, poultry, and egg products that do not comply with U.S. requirements are not allowed to enter U.S. commerce and are identified as ''U.S. Refused Entry'' product. Inspection Program Personnel (IPP) are required to verify that U.S. refused entry product is stored and segregated from other product at an official import inspection establishment until final disposition occurs, or permission to move the shipment is granted by a FSIS Office of Field Operations (OFO) District Office (DO).

The regulations at 9 CFR 327.13, 381.202, 557.13, and 590.945 provide different options for the disposition of U.S. Refused entry product, including: (1) Exportation (return) of the product to the originating country or to a third country, if permitted; (2) destruction of the product for human food purposes; (3) denaturing the product so it cannot be used for human food; (4) conversion of the product to animal food if permitted and approved by the Food and Drug Administration (FDA), and that permission is communicated to the FSIS DO; and (5) rectification if the reason for refusal has been corrected.

FSIS is requesting a new information collection to document the Importer/Broker/Agent decision to voluntarily destroy product for human food purposes. This information collection is applicable only to destruction witnessed by FSIS IPP. FSIS IPP will use the information during the observation of the product destruction to verify that the product being destroyed is the same product that was refused entry and that the product is controlled by the import establishment until destruction is completed. This is a new information collection with an estimated burden of 17,818 hours.

The Importer/Broker/Agent will complete FSIS Form 9840–4, *Voluntary Destruction of Imported Meat (Including Siluriformes), Poultry, and Egg Product,* for product that will be destroyed under FSIS supervision. The form will be maintained in the FSIS case file. IPP will also enter information into the Public Health Information System (PHIS) based on the information provided on the form.

FSIS has made the following estimates based upon an information collection assessment:

*Estimate of Burden:* FSIS estimates that it will take respondents an average of 5 minutes per response.

*Respondents:* Importers/Brokers/Agents.

*Estimated Total Number of Respondents:* 151.

*Estimated Annual Number of Responses per Respondent:* 1,416.

*Estimated Total Annual Burden on Respondents:* 17,818 hours. Copies of this information collection assessment can be obtained from Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Room 6065, South Building, Washington, DC 20250–3700; (202) 720–5627.

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS's estimate of the burden of the proposed collection of information, including the validity of the method and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20253.

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.

**Additional Public Notification**

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: *http://www.fsis.usda.gov/federal-register.*

FSIS will also announce and provide a link to this **Federal Register** publication through the FSIS *Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS can provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

**USDA Non-Discrimination Statement**

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

*How To File a Complaint of Discrimination*

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

*Mail:* U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410,.

*Fax:* (202) 690–7442,.

*Email: program.intake@usda.gov.*

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

**Paul Kiecker,**

*Deputy Administrator.*

[FR Doc. 2020–03552 Filed 2–21–20; 8:45 am]

**BILLING CODE 3410–DM–P**

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## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

**[Docket No. FSIS–2020–0002]**

### Notice of Request for Renewal of an Approved Information Collection (Sanitation SOPs and Pathogen Reduction/HACCP)

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, the Food Safety and Inspection Service (FSIS) is announcing its intention to request renewal of the approved information collection regarding Sanitation Standard Operating Procedures (Sanitation SOPs) and pathogen testing and Hazard Analysis and Critical Control Point (HACCP) Systems requirements. There are no changes to the existing information collection. The approval for this information collection will expire on May 31, 2020.

**DATES:** Submit comments on or before April 24, 2020.

**ADDRESSES:** FSIS invites interested persons to submit comments on this **Federal Register** notice. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal:* This website provides commenters the ability to type short comments directly into the comment field on the web page or to attach a file for lengthier comments. Go to *http://www.regulations.gov.* Follow the on-line instructions at that site for submitting comments.
- *Mail, including CD–ROMs, etc.:* Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 1400 Independence Avenue SW, Mailstop 3758, Room 6065, Washington, DC 20250–3700.
- *Hand- or courier-delivered submittals:* Deliver to 1400 Independence Avenue SW, Room 6065, Washington, DC 20250–3700.

*Instructions:* All items submitted by mail or electronic mail must include the Agency name and docket number FSIS–2020–0002. Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to *http://www.regulations.gov.*

*Docket:* For access to background documents or comments received, call (202)720–5627 to schedule a time to visit the FSIS Docket Room at 1400 Independence Avenue SW, Room 6065, Washington, DC 20250–3700.

**FOR FURTHER INFORMATION CONTACT:** Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Room 6065, South Building, Washington, DC 20250–3700; (202) 720–5627.

**SUPPLEMENTARY INFORMATION:**

*Title:* Sanitation SOPs and Pathogen Reduction/HACCP.

*OMB Number:* 0583–0103.

*Expiration Date of Approval:* 5/31/2020.

*Type of Request:* Renewal of an approved information collection.

*Abstract:* FSIS has been delegated the authority to exercise the functions of the Secretary (7 CFR 2.18 and 2.53), as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*). These statutes mandate that FSIS protect the public by verifying that meat and poultry products are safe, wholesome, unadulterated, and properly labeled and packaged.

FSIS is announcing its intention to request renewal of the approved

information collection regarding Sanitation Standard Operating Procedures (Sanitation SOPs), pathogen testing, and Hazard Analysis and Critical Control Point (HACCP) Systems requirements. There are no changes to the existing information collection. The approval for this information collection will expire on May 31, 2020.

FSIS has established requirements applicable to meat and poultry establishments designed to reduce the occurrence and numbers of pathogenic microorganisms on meat and poultry products, reduce the incidence of foodborne illness associated with the consumption of those products, and provide a framework for modernization of the meat and poultry inspection system. The regulations (1) require that each establishment develop, implement, and revise, as needed, written Sanitation SOPs (9 CFR part 416); (2) require regular microbial testing for generic *Escherichia coli* by livestock establishments (except swine which are sampled under 9 CFR 310.18) to verify the adequacy of the establishment's process controls for the prevention and removal of fecal contamination and associated bacteria (9 CFR 310.25(a)); and (3) require that all meat and poultry establishments develop and implement a system of preventive controls designed to improve the safety of their products, known as HACCP (9 CFR part 417).

Establishments may have programs that are prerequisite to HACCP that are designed to provide the basic environmental and operating conditions necessary for the production of safe, wholesome food. Because of its prerequisite programs, an establishment may decide that a food safety hazard is not reasonably likely to occur in its operations. The establishment would need to document this determination in its Hazard Analysis and include the procedures it employs to ensure that the program is working and that the hazard is not likely to occur (9 CFR 417.5 (a)(1)).

FSIS has made the estimates below based upon an information collection assessment.

*Estimate of Burden:* FSIS estimates that it will take respondents an average of 1,157 hours each year to comply with the information request associated with this collection.

*Respondents:* Meat and poultry establishments.

*Estimated Number of Respondents:* 6,087.

*Estimated Number of Annual Responses per Respondent:* 6,087.

*Estimated Total Annual Burden on Respondents:* 7,045,303 hours.

Copies of this information collection assessment can be obtained from Gina Kouba, Office of Policy and Program Development, Food Safety and Inspection Service, USDA, 1400 Independence Avenue SW, Room 6065, South Building, Washington, DC 20250–3700; (202) 720–5627.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS's estimate of the burden of the proposed collection of information, including the validity of the method and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both FSIS, at the addresses provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20253.

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.

**Additional Public Notification**

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS web page located at: *http://www.fsis.usda.gov/federal-register.*

FSIS will also announce and provide a link to this **Federal Register** publication through the FSIS *Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS can provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

**USDA Non-Discrimination Statement**

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

*How To File a Complaint of Discrimination*

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

*Mail:* U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410.

*Fax:* (202) 690–7442.

*Email: program.intake@usda.gov.*

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

**Paul Kiecker,**

*Deputy Administrator.*

[FR Doc. 2020–03555 Filed 2–21–20; 8:45 am]

BILLING CODE 3410–DM–P

## DEPARTMENT OF AGRICULTURE

### Rural Business-Cooperative Service

**[Docket No. RBS–20–Business–0004]**

### Notice of Request for Extension of a Currently Approved Information Collection

**AGENCY:** Rural Business-Cooperative Service, USDA.

**ACTION:** Notice; comment requested.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Rural Business-Cooperative Service (RBCS) invites comments on this information collection for which approval from the Office of Management and Budget (OMB) will be requested. The intention is to request a revision for a currently approved information collection in support of the program for

Voluntary Labeling Program for Biobased Products.

**DATES:** Comments on this notice must be received by April 24, 2020 to be assured of consideration.

**FOR FURTHER INFORMATION CONTACT:** Robin M. Jones, Rural Development Innovation Center—Regulations Management Division, USDA, 1400 Independence Avenue SW, STOP 1522, Room 2445, South Building, Washington, DC 20250–1522. Telephone: (202) 772–1172. Email: *robin.m.jones@usda.gov.*

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that RBCS is submitting to OMB for extension.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent by the Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the lower ''Search Regulations and Federal Actions'' box, select ''Rural Business-Cooperative Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select ''RBCS–20–XXX–0000'' to submit or view public comments and to view supporting and related materials available electronically. Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.

*Title:* Voluntary Labeling Program for Biobased Products.

*OMB Number:* 0570–0071.

*Expiration Date of Approval:* September 30, 2020.

*Type of Request:* Extension of a currently approved information collection.

*Abstract:* Section 9002(h) of the Farm Security and Rural Investment Act (FSRIA) of 2002, as amended by the Food, Conservation, and Energy Act (FCEA) of 2008, the Agricultural Act of 2014, and the Agricultural Improvement Act of 2018, requires the Secretary of Agriculture to implement a voluntary labeling program that would enable qualifying biobased products to be certified with a ''USDA Certified Biobased Product'' label. USDA subsequently published the terms and conditions for voluntary use of the label. These terms and conditions can be found in the Code of Federal Regulations (CFR) at 7 CFR part 3202. To implement the statutory requirements of FSRIA, USDA will gather relevant product information on biobased products for which manufacturers and vendors seek certification to use the label. Participation in the voluntary labeling program is entirely voluntary. The information collected will enable USDA to evaluate the qualifications of biobased products to carry the USDA Certified Biobased Product label and to ensure that the label is used properly and in accordance with the requirements specified in 7 CFR part 3202. To the extent feasible, the information sought by USDA can be transmitted electronically using the website *http://www.biopreferred.gov.* If electronic transmission of information is not practical for some applicants, USDA will provide technical assistance to support the transmission of information to USDA.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 3 hours per response.

*Respondents:* Manufacturers and vendors who wish to apply the ''USDA Certified Biobased Product'' label to their biobased products. Participation is voluntary.

*Estimated Number of Respondents:* 200.

*Estimated Number of Responses per Respondent:* 3.

*Estimated Number of Responses:* 600.

*Estimated Total Annual Burden on Respondents:* 1,800 hours.

Copies of this information collection can be obtained from Robin M. Jones, Innovation Center—Regulations Management Division, at (202) 772–1172, Email: *robin.m.jones@wdc.usda.gov.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

**Bette B. Brand,**

*Administrator, Rural Business-Cooperative Service.*

[FR Doc. 2020–03589 Filed 2–21–20; 8:45 am]

**BILLING CODE 3410–XY–P**

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the California Advisory Committee

**AGENCY:** U.S. Commission on Civil Rights.

**ACTION:** Announcement of Community Forum.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that a Community Forum of the California Advisory Committee (Committee) to the Commission will be held from 4:00 p.m. to 7:00 p.m. (Pacific Time) Wednesday, March 4, 2020. The purpose is to hear testimony regarding immigration enforcement impacting California children in K–12 schools. The Committee will examine the impact of U.S. Immigration and Customs Enforcement (ICE) enforcement practices on access to public education for California's K–12 students; access to equal protection under the law for individuals based on their perceived national origin; and the extent to which due process is denied to students and their families. This is the second meeting dedicated to hearing testimony on this topic. The Committee welcomes members of the public to share their stories.

**DATES:** The Community Forum will be held on Wednesday, March 4, 2020, from 4:00 p.m. to 7:00 p.m. Pacific Time.

**ADDRESSES:** Southwestern Community College, 900 Otay Lakes Road, Chula Vista, CA 91910, Room 64–238 North.

*Public Call Information:*
*Dial:* 800–367–2403.
*Conference ID:* 1073193.

**FOR FURTHER INFORMATION CONTACT:** Ana Victoria Fortes at *afortes@usccr.gov* or (213) 894–3437.

**SUPPLEMENTARY INFORMATION:** This meeting is available to the public through the following toll-free call-in number: 800–367–2403 conference ID number: 1073193. Any interested member of the public may call this

number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012. They may be faxed to the Commission at (213) 894–0508, or emailed Ana Victoria Fortes at *afortes@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (213) 894–3437.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzkUAAQ.*

Please click on ''Committee Meetings'' tab. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

**Agenda**

I. Opening Remarks
II. Public Comment
III. Closing Remarks

Dated: February 19, 2020.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2020–03582 Filed 2–21–20; 8:45 am]

BILLING CODE 6335–01–P

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the West Virginia Advisory Committee

**AGENCY:** Commission on Civil Rights.

**ACTION:** Announcement of meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA) that a meeting of the West Virginia Advisory Committee to the Commission will convene by conference call at 11:30 a.m. (EST) on Tuesday, March 3, 2020. The purpose of the meeting is planning for future SAC projects.

**DATES:** Tuesday, March 3, 2020 at 11:30 a.m. (EST).

*Public Call-In Information:* Conference call-in number: 1–800–367–2403 and conference call ID number: 2629531.

**FOR FURTHER INFORMATION CONTACT:** Ivy Davis at *ero@usccr.gov* or by phone at 202–376–7533.

**SUPPLEMENTARY INFORMATION:** Interested members of the public may listen to the discussion by calling the following toll-free conference call-in number: 1–800–367–2403 and conference call ID number: 2629531. Please be advised that before being placed into the conference call, the conference call operator will ask callers to provide their names, their organizational affiliations (if any), and email addresses (so that callers may be notified of future meetings). Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free conference call-in number.

Persons with hearing impairments may also follow the discussion by first calling the Federal Relay Service at 1–888–364–3109 and providing the operator with the toll-free conference call-in number: 1–800–2403 and conference call ID number: 2629531.

Members of the public are invited to make statements during the Public Comments section of the Agenda. They are also invited to submit written comments, which must be received in the regional office approximately 30 days after the scheduled meeting. Written comments may be mailed to the Eastern Regional Office, U.S. Commission on Civil Rights, 1331 Pennsylvania Avenue, Suite 1150, Washington, DC 20425 or emailed to Corrine Sanders at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records and documents discussed during the meeting will be available for public viewing as they become available at: *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzmCAAQ;* click the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Eastern Regional Office, as they become available, both before and after the meetings. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Eastern Regional Office at the above phone number, email or street address.

**Agenda**

*March 3, 2020 at 11:30 a.m. (EST).*

I. Rollcall
II. Welcome
III. Project Planning
IV. Other Business
V. Next Meeting
VI. Open Comments
VII. Adjourn

Dated: February 19, 2020.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2020–03583 Filed 2–21–20; 8:45 am]

BILLING CODE P

## DEPARTMENT OF COMMERCE

### Bureau of Economic Analysis

### Bureau of Economic Analysis Advisory Committee Meeting

**AGENCY:** Bureau of Economic Analysis, U.S. Department of Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, BEA announces a meeting of the Bureau of Economic Analysis Advisory Committee. The meeting will address proposed improvements, extensions, and research related to BEA's economic accounts. In addition, the meeting will include an update on recent statistical developments.

**DATES:** Friday, May 15, 2020. The meeting begins at 9:00 a.m. and adjourns at 3:30 p.m.

**ADDRESSES:** The meeting will take place at the Suitland Federal Center, 4600 Silver Hill Road, Suitland, MD 20746.

**FOR FURTHER INFORMATION CONTACT:** Gianna Marrone, Program Analyst, U.S. Department of Commerce, Bureau of Economic Analysis, Suitland, MD 20746; phone (301) 278–9282.

*Public Participation:* This meeting is open to the public. Because of security procedures, anyone planning to attend the meeting must contact Gianna Marrone at BEA (301) 278–9282 or

*gianna.marrone@bea.gov.* The meeting is physically accessible to people with disabilities. Requests for foreign language interpretation or other auxiliary aids should be directed to Gianna Marrone at (301) 278–9282 by May 8, 2020.

**SUPPLEMENTARY INFORMATION:** The Committee was established September 2, 1999. The Committee advises the Director of BEA on matters related to the development and improvement of BEA's national, regional, industry, and international economic accounts, with a focus on new and rapidly growing areas of the U.S. economy. The committee provides recommendations from the perspectives of the economics profession, business, and government.

Dated: February 18, 2020.

**Shaunda Villones,**

*Designated Federal Officer, Bureau of Economic Analysis.*

[FR Doc. 2020–03563 Filed 2–21–20; 8:45 am]

**BILLING CODE 3510–06–P**

## DEPARTMENT OF COMMERCE

### Economic Development Administration

### Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

**AGENCY:** Economic Development Administration, U.S. Department of Commerce.

**ACTION:** Notice and opportunity for public comment.

**SUMMARY:** The Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of the firms contributed importantly to the total or partial separation of the firms' workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

**SUPPLEMENTARY INFORMATION:**

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[1/24/2020 through 2/18/2020]

| Firm name | Firm address | Date accepted for investigation | Product(s) |
|---|---|---|---|
| Marzilli Machine Co. | 621 South Almond Street, Fall River, MA 02724. | 2/13/2020 | The firm manufactures metal parts, primarily of steel. |
| GridEdge Networks, Inc. | 6 Lyberty Way, Unit 102, Westford, MA 01886. | 2/13/2020 | The firm manufacturers systems for integrating electricity generation with electric grids. |
| Uvitron International, Inc. | 150 Front Street, Unit 4, West Springfield, MA 01089. | 2/18/2020 | The firm manufacturers light-based systems for curing adhesives, resins, coatings, and other materials. |
| Yellow Dog Design, Inc. | 112 O'Connor Street, Greensboro, NC 27406. | 2/18/2020 | The firm manufactures pet products, primarily of leather. |

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. These petitions are received pursuant to section 251 of the Trade Act of 1974, as amended.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

**Irette Patterson,**

*Program Analyst.*

[FR Doc. 2020–03603 Filed 2–21–20; 8:45 am]

**BILLING CODE 3510–WH–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–121]**

### Difluoromethane (R–32) From the People's Republic of China: Initiation of Less-Than-Fair-Value Investigation

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**DATES:** Applicable February 12, 2020.

**FOR FURTHER INFORMATION CONTACT:** Joshua Tucker or William Miller, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2044 or (202) 482–3906, respectively.

**SUPPLEMENTARY INFORMATION:**

### The Petition

On January 23, 2020, the U.S. Department of Commerce (Commerce) received an antidumping duty (AD) Petition concerning imports of difluoromethane (R–32) from the People's Republic of China (China), filed in proper form on behalf of Arkema Inc. (the petitioner).[1]

On January 28, 2020, Commerce requested supplemental information pertaining to certain aspects of the Petition.[2] The petitioner filed a response to this request on January 30, 2020.[3]

In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that imports of R–32 from China are being, or are likely to be, sold in the United States at less than fair value (LTFV) within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury

[1] *See* Petitioner's Letter, ''Petitions for the Imposition of Antidumping Duties on Imports of Difluoromethane (R–32) from the People's Republic of China,'' dated January 23, 2020 (the Petition).

[2] *See* Commerce's Letter, ''Petition for the Imposition of Antidumping Duties on Imports of Difluoromethane (R–32) from the People's Republic of China: Supplemental Questions,'' dated January 28, 2020.

[3] *See* Petitioner's Letter, ''Difluoromethane (R–32) from the People's Republic of China: Response to Commerce's Supplemental Questions,'' dated January 30, 2020 (Petition Supplement).

to, the domestic industry producing R–32 in the United States. Consistent with section 732(b)(1) of the Act, the Petition is accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed this Petition on behalf of the domestic industry because the petitioner is an interested party as defined in section 771(9)(C) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support with respect to the initiation of the requested AD investigation.[4]

**Period of Investigation**

Because China is a non-market economy (NME) country, pursuant to 19 CFR 351.204(b)(1), and because the Petition was filed on January 23, 2020, the period of investigation (POI) is July 1, 2019 through December 31, 2019.

**Scope of the Investigation**

The merchandise covered by this investigation is R–32 from China. For a full description of the scope of this investigation, *see* the Appendix to this notice.

**Comments on Scope of the Investigation**

During our review of the Petition, we requested that the petitioner make minor modifications to the proposed scope language in the Petition.[5] As a result, the scope of the Petition was modified to reflect these requests. The description of the merchandise covered by this investigation, as described in the Appendix to this notice, reflects these modifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (scope).[6] Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information,[7] all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit scope comments by 5:00 p.m. Eastern Time (ET) on March 3, 2020, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on March 13, 2020, which is 10 calendar days from the initial comment deadline.[8]

Commerce requests that any factual information the parties consider relevant to the scope of the investigation be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact Commerce and request permission to submit the additional information.

**Filing Requirements**

All submissions to Commerce must be filed electronically using Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS).[9] An electronically filed document must be received successfully in its entirety by the time and date it is due. Documents exempted from the electronic submission requirements must be filed manually (*i.e.,* in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

**Comments on Product Characteristics for AD Questionnaires**

Commerce is providing interested parties an opportunity to comment on the appropriate physical characteristics of R–32 to be reported in response to Commerce's AD questionnaire. This information will be used to identify the key physical characteristics of the subject merchandise in order to report the relevant factors of production (FOPs) accurately, as well as to develop appropriate product-comparison criteria.

Interested parties may provide any information or comments that they feel are relevant to the development of an accurate list of physical characteristics. In order to consider the suggestions of interested parties in developing and issuing the AD questionnaire, all comments must be filed by 5:00 p.m. ET on March 3, 2020, which is 20 calendar days from the signature date of this notice.[10] Any rebuttal comments must be filed by 5:00 p.m. ET on March 13, 2020, which is 10 calendar days from the initial comment deadline. All comments and submissions to Commerce must be filed electronically using ACCESS, as explained above, on the record of this AD investigation.

**Determination of Industry Support for the Petition**

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) Poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the ''industry.''

Section 771(4)(A) of the Act defines the ''industry'' as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,[11] they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such

[4] *See* ''Determination of Industry Support for the Petition'' section, *infra.*

[5] *See* Petition Supplement.

[6] *See Antidumping Duties; Countervailing Duties,* 62 FR 27296, 27323 (May 19, 1997).

[7] *See* 19 CFR 351.102(b)(21) (defining ''factual information'').

[8] *See* 19 CFR 351.303(b).

[9] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011); *see also Enforcement and Compliance; Change of Electronic Filing System Name,* 79 FR 69046 (November 20, 2014), for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on help using ACCESS can be found at *https://access.trade.gov/help.aspx* and a handbook can be found at *https://access.trade.gov/help/Handbook%20on%20Electronic%20Filling%20Procedures.pdf.*

[10] *See* 19 CFR 351.303(b).

[11] *See* section 771(10) of the Act.

differences do not render the decision of either agency contrary to law.[12]

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation'' (*i.e.,* the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the Petition.[13] Based on our analysis of the information submitted on the record, we have determined that R–32, as defined in the scope, constitutes a single domestic like product, and we have analyzed industry support in terms of that domestic like product.[14]

In determining whether the petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the ''Scope of the Investigation,'' in the Appendix to this notice. To establish industry support, the petitioner provided its own production of the domestic like product in 2019.[15] The petitioner states that there are no other known producers of R–32 in the United States; therefore, the Petition is supported by 100 percent of the U.S. industry.[16] We relied on data provided by the petitioner for purposes of measuring industry support.[17]

Our review of the data provided in the Petition and other information readily available to Commerce indicates that the petitioner has established industry support for the Petition.[18] First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.,* polling).[19] Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.[20] Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 732(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.[21] Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

*Allegations and Evidence of Material Injury and Causation*

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the imports of the subject merchandise sold at LTFV. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.[22]

The petitioner contends that the industry's injured condition is illustrated by a significant and increasing volume of subject imports; reduced market share; underselling and price depression or suppression; lost sales and revenues; and a downward trend in financial indicators.[23] We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.[24]

**Allegations of Sales at Less Than Fair Value**

The following is a description of the allegation of sales at LTFV upon which Commerce based its decision to initiate an AD investigation of imports of R–32 from China. The sources of data for the deductions and adjustments relating to U.S. price and normal value (NV) are discussed in greater detail in the AD Initiation Checklist.

**Export Price**

The petitioner based export price (EP) on a price quote to a customer in the United States for the sale of R–32 produced in and exported from China.[25] The price quote is stated on a free, on-board basis; therefore, the petitioner made no adjustment for ocean freight expenses. Additionally, the petitioner conservatively did not make an adjustment for foreign inland freight expenses.[26]

**Normal Value**

Commerce considers China to be an NME country.[27] In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by Commerce. Therefore, we continue to treat China as an NME country for purposes of the initiation of this investigation. Accordingly, NV in China is appropriately based on FOPs valued in a surrogate market economy country, in accordance with section 773(c) of the Act.[28]

The petitioner asserts that Malaysia is an appropriate surrogate country for China because it is a market economy that is at a level of economic development comparable to that of China and it is a significant producer of comparable merchandise.[29] The petitioner provided publicly available information from Malaysia to value all FOPs. Based on the information provided by the petitioner, we

[12] *See USEC, Inc.* v. *United States,* 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd.* v. *United States,* 688 F. Supp. 639, 644 (CIT 1988), *aff'd* 865 F.2d 240 (Fed. Cir. 1989)).

[13] *See* Volume I of the Petition, at 10–13.

[14] For a discussion of the domestic like product analysis as applied to these cases and information regarding industry support, *see* ''Antidumping Duty Initiation Checklist: Difluoromethane (R–32) from the People's Republic of China,'' (Initiation Checklist), at Attachment II, Industry Support for the Antidumping Duty Petition Covering Difluoromethane from the People's Republic of China (Attachment II). This checklist is dated concurrently with, and hereby adopted by, this notice and on file electronically via ACCESS. Access to documents filed via ACCESS is also available in the Central Records Unit, Room B8024 of the main Department of Commerce building.

[15] *See* Volume I of the Petition, at 3, 27, and Exhibit I–2.

[16] *Id.* at 3 and Exhibit I–2.

[17] *Id.* For further discussion, *see* Initiation Checklist, at Attachment II.

[18] *See* Initiation Checklist, at Attachment II.

[19] *See* section 732(c)(4)(D) of the Act; *see also* Initiation Checklist, at Attachment II.

[20] *See* Initiation Checklist, at Attachment II.

[21] *Id.*

[22] *See* Volume I of the Petition, at 14–15, and Exhibits I–1 and I–2.

[23] *Id.* at 21–36, and Exhibits I–1, I–2, I–10 through I–19, and II–13.

[24] *See* Initiation Checklist, at Attachment III, and Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping Duty Petition Covering Difluoromethane from the People's Republic of China (Attachment III).

[25] *See* Volume II of the Petition, at 41 and Exhibit II–3; *see also* Petition Supplement, at 2 and S–4.

[26] *See* Volume II of the Petition, at 41 and Exhibit II–3; *see also* Petition Supplement, at 2 and S–4.

[27] *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), and accompanying Decision Memorandum, *China's Status as a Non-Market Economy,* 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).

[28] *See* Initiation Checklist.

[29] *See* Volume II of the Petition, at 37–39 and Exhibit II–2, Exhibit II–4.

determine that it is appropriate to use Malaysia as a surrogate country for initiation purposes.

Interested parties will have the opportunity to submit comments regarding surrogate country selection and, pursuant to 19 CFR 351.301(c)(3)(i), will be provided an opportunity to submit publicly available information to value FOPs no later than 30 days before the scheduled date of the preliminary determination.

**Factors of Production**

Because information regarding the volume of inputs consumed by the Chinese producer/exporter was not reasonably available, the petitioner used its own product-specific consumption rates as a surrogate to estimate the Chinese manufacturer's FOPs.[30] The petitioner valued the estimated FOPs using surrogate values from Malaysia, as noted above.[31] The petitioner calculated factory overhead, selling, general and administrative expenses, and profit based on the experience of a Malaysian producer of comparable merchandise (*i.e.,* industrial gases).[32]

**Fair Value Comparisons**

Based on the data provided by the Petition, there is reason to believe that imports of R–32 from China are being, or are likely to be, sold in the United States at LTFV. Based on comparisons of EP to NV, in accordance with sections 772 and 773 of the Act, the estimated dumping margin for R–32 from China is 87.83 percent.[33]

**Initiation of LTFV Investigation**

Based upon the examination of the Petition on R–32 from China, we find that the Petition meets the requirements of section 732 of the Act. Therefore, we are initiating an AD investigation to determine whether imports of R–32 from China are being, or are likely to be, sold in the United States at LTFV. In accordance with section 733(b)(1)(A) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 140 days after the date of this initiation.

**Respondent Selection**

The petitioner named 19 companies in China as producers/exporters of R–32.[34] Commerce will issue quantity and value (Q&V) questionnaires to all 19 identified producers and exporters. In addition, Commerce will post the Q&V questionnaire along with filing instructions on the Enforcement and Compliance website at *http://www.trade.gov/enforcement/news.asp.* In accordance with our standard practice for respondent selection in AD cases involving NME countries, we intend to base respondent selection on the responses to the Q&V questionnaire that we receive.

Producers/exporters of R–32 from China that do not receive Q&V questionnaires by mail may still submit a response to the Q&V questionnaire and can obtain a copy from the Enforcement & Compliance website. The Q&V response must be submitted by the relevant China exporters/producers no later than February 28, 2020. All Q&V responses must be filed electronically via ACCESS.

**Separate Rates**

In order to obtain separate-rate status in an NME investigation, exporters and producers must submit a separate rate application.[35] The specific requirements for submitting a separate rate application in the China investigation are outlined in detail in the application itself, which is available on Commerce's website at *http://enforcement.trade.gov/nme/nme-sep-rate.html.* The separate rate application will be due 30 days after publication of this initiation notice.[36] Exporters and producers who submit a separate rate application and have been selected as mandatory respondents will be eligible for consideration for separate rate status only if they respond to all parts of Commerce's AD questionnaire as mandatory respondents. Commerce requires that companies from China submit a response to both the Q&V questionnaire and the separate rate application by the respective deadlines in order to receive consideration for separate rate status. Companies not filing a timely Q&V response will not receive separate rate consideration.

**Use of Combination Rates**

Commerce will calculate combination rates for certain respondents that are eligible for a separate rate in an NME investigation. The Separate Rates and Combination Rates Bulletin states:

> {w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME Investigation will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.[37]

**Distribution of Copies of the Petition**

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the government of China via ACCESS. Because of the large number of producers/exporters identified in the Petition, Commerce considers the service of the public version of the Petition to the foreign producers/exporters satisfied by delivery of the public version to the government of China, consistent with 19 CFR 351.203(c)(2).

**ITC Notification**

We will notify the ITC of our initiation, as required by section 732(d) of the Act.

**Preliminary Determinations by the ITC**

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of R–32 from China are materially injuring or threatening material injury to a U.S. industry.[38] A negative ITC determination will result in the investigation being terminated.[39] Otherwise, this investigation will proceed according to statutory and regulatory time limits.

**Submission of Factual Information**

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) Evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR

[30] *Id.* at 39 and Exhibit II–3.

[31] *Id.* at 39–41.

[32] *See* Volume II of the Petition, at 40, and Exhibit II–10 and Exhibit II–11.

[33] *See* Petition Supplement at Exhibit S–5; *see also* Initiation Checklist.

[34] *See* Petition Supplement at Exhibit S–1.

[35] *See* Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigation involving Non-Market Economy Countries (April 5, 2005), available at *http://enforcement.trade.gov/policy/bull05-1.pdf* (Policy Bulletin 05.1).

[36] Although in past investigations this deadline was 60 days, consistent with 19 CFR 351.301(a), which states that ''the Secretary may request any person to submit factual information at any time during a proceeding,'' this deadline is now 30 days.

[37] *See* Policy Bulletin 05.1 at 6 (emphasis added).

[38] *See* section 733(a) of the Act.

[39] *Id.*

351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Any party, when submitting factual information, must specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted[40] and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.[41] Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Please review the regulations prior to submitting factual information in this investigation.

**Extensions of Time Limits**

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET on the due date. Under certain circumstances, we may elect to specify a different time limit by which extension requests will be considered untimely for submissions which are due from multiple parties simultaneously. In such a case, we will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, stand-alone submission; under limited circumstances we will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule,* 78 FR 57790 (September 20, 2013), available at *http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm,* prior to submitting factual information in this investigation.

**Certification Requirements**

Any party submitting factual information in an AD or countervailing duty proceeding must certify to the accuracy and completeness of that information.[42] Parties must use the certification formats provided in 19 CFR 351.303(g).[43] Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

**Notification to Interested Parties**

Interested parties must submit applications for disclosure under administrative protective order (APO) in accordance with 19 CFR 351.305. On January 22, 2008, Commerce published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures,* 73 FR 3634 (January 22, 2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.,* the filing of letters of appearance as discussed in 19 CFR 351.103(d)).

This notice is issued and published pursuant to sections 732(c)(2) and 777(i) of the Act, and 19 CFR 351.203(c).

Dated: February 12, 2020.

**Christian Marsh,**

*Deputy Assistant Secretary for Enforcement and Compliance.*

## Appendix

**Scope of the Investigation**

The merchandise covered by this investigation is difluoromethane (R–32), or its chemical equivalent, regardless of form, type or purity level. R–32 has the Chemical Abstracts Service (CAS) registry number of 75–10–5 and the chemical formula $CH_2F_2$. R–32 is also referred to as difluoromethane, HFC–32, FC–32, Freon-32, methylene difluoride, methylene fluoride, carbon fluoride hydride, halocarbon R32, fluorocarbon R32, and UN 3252. Subject merchandise also includes R–32 and unpurified R–32 that are processed in a third country or the United States, including, but not limited to, purifying or any other processing that would not otherwise remove the merchandise from the scope of this investigation if performed in the country of manufacture of the in-scope R–32. R–32 that has been blended with products other than pentafluoroethane (R–125) is included within this scope if such blends contain 85% or more by volume on an actual percentage basis of R–32. In addition, R–32 that has been blended with any amount of R–125 is included within this scope if such blends contain more than 52% by volume on an actual percentage basis of R–32. Whether R–32 is blended with R–125 or other products, only the R–32 component of the mixture is covered by the scope of this investigation. The scope also includes R–32 that is commingled with R–32 from sources not subject to this investigation. Only the subject component of such commingled products is covered by the scope of this investigation.

Excluded from the current scope is merchandise covered by the scope of the antidumping order on hydrofluorocarbon blends from the People's Republic of China. *See Hydrofluorocarbon Blends from the People's Republic of China: Antidumping Duty Order,* 81 FR 55436 (August 19, 2016) (the Blends Order).

R–32 is classified under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2903.39.2035. Other merchandise subject to the current scope, including the abovementioned blends that are outside the scope of the Blends Order, may be classified under 2903.39.2045 and 3824.78.0020. The HTSUS subheadings and CAS registry number are provided for convenience and customs purposes. The written description of the scope of the investigation is dispositive.

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[40] *See* 19 CFR 351.301(b).

[41] *See* 19 CFR 351.301(b)(2).

[42] *See* section 782(b) of the Act.

[43] *See also Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings,* 78 FR 42678 (July 17, 2013) (*Final Rule*). Answers to frequently asked questions regarding the *Final Rule* are available at *http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.*

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## DEPARTMENT OF COMMERCE

### International Trade Administration

### Solar Photovoltaic (PV) Value Chain Industry Roundtable

**AGENCY:** International Trade Administration, DOC.

**ACTION:** Notice of a roundtable discussion on challenges and opportunities for strengthening the U.S. solar supply chain for PV manufacturing.

**SUMMARY:** Through this notice, the International Trade Administration (ITA) of the Department of Commerce announces a roundtable discussion with industry representatives and U.S. government staff. ITA invites applications to participate in the roundtable from existing manufacturers and prospective new market entrants, with products that are or will be produced in the United States in one or more of the following segments: Solar-grade polysilicon, silicon ingots, silicon wafers, solar cells, and solar modules.

**DATES:**

*Event:* The roundtable will be held on March 19, 2020 from 9:30 a.m. to 4:00 p.m., Eastern Daylight Time.

*Event Registration:* ITA will evaluate registrations based on the submitted information (see below) and inform applicants of selection decisions, which will be made on a rolling basis until 30 participants have been selected.

**ADDRESSES:** *Event:* The roundtable will be held at the Department of Commerce, Commerce Research Library, 1401 Constitution Ave. NW, Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Cora Dickson, Senior International Trade Specialist, ITA, at (202) 482–6083.

**SUPPLEMENTARY INFORMATION:** Global investment in solar technology and services (over $100 billion per year since 2010) has grown exponentially and is expected to be the dominant new electricity source for the next several decades. The United States ranks second in the world for overall solar generation capacity. Despite this large domestic demand for solar, U.S. manufacturers have difficulty competing with the massive scale and unfair trade practices of overseas suppliers, and the United States has thus become dependent on imports.

The Department seeks individual input and views at the March 19, 2020 roundtable regarding the United States solar PV value chain, including the following topics:

- National security implications of solar PV manufacturing in the United States and its related value chain;
- The current state of upstream manufacturing for solar PV in the United States, including solar cells, silicon wafers, polysilicon, and other key materials and components of PV modules;
- Long-range goals and strategic vision for solar PV innovation in the United States, including the role of both federal research and industry's collaboration with universities;
- The role of trade policy in providing a level playing field for U.S. solar PV manufacturing and its value chain to scale up and compete with imports; and
- Incentives that could attract investment in and strengthen the competitive position of U.S. manufacturers of solar PV and its value chain.

Due to limited space, the event is closed to press and observers. Industry participation is limited to 30 qualifying industry representatives. Officials from the Department of Energy, Department of State, and other relevant agencies will also be invited to participate in the discussion.

*Selection:* To attend, participants should submit the below information to *Cora.Dickson@trade.gov* by March 10, 2020. I&A will evaluate registrations based on the submitted information (and based on the criteria below) on a rolling basis until 30 participants have been selected and inform applicants of selection decisions.

Applicants are encouraged to send representatives at a sufficiently senior level to be knowledgeable about their organization's capabilities, interests and challenges in the U.S. solar PV value chain. Due to space constraints, there is a limit of one person per organization.

Registrations should include the following information in their registration email:

- Name of attendee and short bio.
- Organization and brief organization description.
- A statement self-certifying how the organization meets each of the following criteria:

1. It is not majority owned by a foreign government entity (or entities).

2. It is an existing manufacturer or prospective new market entrant, with products that are or will be produced in the United States in one or more of the following segments: Solar-grade polysilicon, silicon ingots, silicon wafers, solar cells, and solar modules.

3. In the case of a trade association, academic or research institution, the applicant will only be representing companies during the roundtable that satisfy each of the criteria above.

Selection will be based on the following criteria:

- Suitability of the company's (or in the case of another organization, represented companies' or constituents') existing products in the solar PV value chain.
- Suitability of the company's (or in the case of another organization, represented companies' or constituents') experience in manufacturing in the United States.
- Suitability of the representative's position and biography to be able to engage in the conversation.
- Ability of the company or organization to contribute to the roundtable's purpose of seeking individual input and views on the United States solar PV value chain, including whether the company or organization may have conflicting interests, such that its selection could hinder the effectiveness of the roundtable.

Dated: February 18, 2020.

**Man Cho,**

*Deputy Director, Office of Energy and Environmental Industries.*

[FR Doc. 2020–03543 Filed 2–21–20; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–898]**

### Chlorinated Isocyanurates From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2017–2018

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) finds that certain companies covered by this administrative review made sales of chlorinated isocyanurates from the People's Republic of China (China) at less than normal value during the period of review (POR) June 1, 2017 through May 31, 2018.

**DATES:** Applicable February 24, 2020.

**FOR FURTHER INFORMATION CONTACT:** Sean Carey, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3964.

**SUPPLEMENTARY INFORMATION:**

### Background

On August 19, 2019, the Department of Commerce (Commerce) published its *Preliminary Results* of the administrative review of the antidumping duty order on chlorinated isocyanurates from the People's Republic of China (China).[1] The petitioners in this investigation are Bio-lab, Inc., Clearon Corp., and Occidental Chemical Corp. (collectively, the petitioners). The mandatory respondents in this administrative review are Heze Huayi Chemical Co. Ltd. (Heze Huayi) and Juancheng Kangtai Chemical Co. Ltd. (Kangtai). We held a public hearing on January 28, 2020 to address issues raised in the case and rebuttal briefs.[2] A complete summary of the events that occurred since publication of the *Preliminary Determination,* as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision

[1] *See Chlorinated Isocyanurates from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018,* 84 FR 42891 (August 19, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Hearing Transcript, ''Public Hearing in the Matter of the Antidumping Administrative Review of Chlorinated Isocyanurates from the People's Republic of China,'' (January 28, 2020).

Memorandum.[3] The Issues and Decision Memorandum is a public document and is available electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). Access is available to registered users at *http://access.trade.gov,* and to all parties in the Central Records Unit, Room B–8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Issues and Decision Memorandum are identical in content.

**Scope of the Order**

The products covered by the order are chloro isos, which are derivatives of cyanuric acid, described as chlorinated s-triazine triones. Chlorinated isos are currently classifiable under subheadings 2933.69.6015, 2933.69.6021, 2933.69.6050, 3808.40.50, 3808.50.40 and 3808.94.5000 of the Harmonized Tariff Schedule of the United States. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of merchandise subject to the scope is dispositive. For a full description of the scope of the order, *see* Issues and Decision Memorandum.

**Separate Rates**

In the *Preliminary Results,* we found that evidence provided by Heze Huayi and Kangtai supported finding an absence of both *de jure* and *de facto* government control, and, therefore, we preliminarily granted a separate rate to each of these companies.[4] We received no information since the issuance of the *Preliminary Results* that provides a basis for reconsidering these determinations with respect to Heze Huayi and Kangtai. Therefore, for the final results, we continue to find that Heze Huayi and Kangtai are eligible for separate rates.

**Analysis of Comments Received**

All issues raised in the case and rebuttal briefs filed by parties in this review are addressed in the Issues and Decision Memorandum, which is hereby adopted by this notice. A list of the issues that parties raised and to which we responded in the Issues and Decision Memorandum follows as an appendix to this notice.

**Changes Since the Preliminary Results**

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results,* we made one change to our margin calculations. Specifically, we converted the Mexican Global Trade Atlas (GTA) data from a ''freight-on-board'' basis to a ''cost of insurance and freight'' (CIF) basis. The final dumping margins for this review are listed below.

**Final Results of Administrative Review**

The weighted-average dumping margins for Heze Huayi and Kangtai in the instant administrative review are as follows:

| Exporter | Weight-average dumping margin (percent) |
|---|---|
| Heze Huayi Chemical Co., Ltd ... | 76.63 |
| Juancheng Kangtai Chemical Co., Ltd ..... | 116.83 |

**Assessment Rates**

Pursuant to section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.212(b), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Commerce intends to issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this administrative review.

Where the respondent reported reliable entered values, we calculated importer- (or customer-) specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer).[5] Where Commerce calculated a weighted-average dumping margin by dividing the total amount of dumping for reviewed sales to that party by the total sales quantity associated with those transactions, Commerce will direct CBP to assess importer-specific assessment rates based on the resulting per-unit rates.[6] Where an importer- (or customer-) specific *ad valorem* or per-unit rate is greater than *de minimis* (*i.e.,* 0.50 percent), Commerce will instruct CBP to collect the appropriate duties at the time of liquidation.[7] Where an importer- (or customer-) specific *ad valorem* or per-unit rate is zero or *de minimis,* Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[8]

Pursuant to Commerce's assessment practice, for entries that were not reported in the U.S. sales databases submitted by companies individually examined during this review, Commerce will instruct CBP to liquidate such entries at the China-wide entity rate. Additionally, if Commerce determines that an exporter had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's rate) will be liquidated at the China-wide entity rate.[9]

**Cash Deposit Requirements**

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C) of the Act: (1) For the exporters listed above, the cash deposit rate will be the rate established in the final results of this review (except, if the rate is zero or *de minimis,* a zero cash deposit rate will be required for that company); (2) for previously investigated or reviewed China and non-China exporters not listed above that have separate rates, the cash deposit rate will continue to be the existing producer/exporter-specific rate published for the most recent period; (3) for all China exporters of subject merchandise that have not been found to be eligible for a separate rate, the cash deposit rate will be the China-wide rate of 285.63 percent; and (4) for all non-China exporters of subject merchandise that have not received their own rate, the cash deposit rate will be the rate applicable to the China exporter(s) that supplied that non-China exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

**Disclosure**

We intend to disclose the calculations performed regarding these final results

[3] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review: Chlorinated Isocyanurates from China; 2017–2018,'' issued concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[4] *See Preliminary Results* PDM at 3–5.

[5] *See* 19 CFR 351.212(b)(1).

[6] *Id.*

[7] *Id.*

[8] *See* 19 CFR 351.106(c)(2).

[9] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011). For an explanation on the derivation of the China-wide rate, *see also Notice of Final Determination of Sales at Less Than Fair Value: Chlorinated Isocyanurates from the People's Republic of China,* 70 FR 24502, 24505 (May 10, 2005).

within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b).

**Notification to Importers**

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties has occurred and that subsequent assessment of doubled antidumping duties.

**Administrative Protective Orders**

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

**Notification to Interested Parties**

We are issuing and publishing these final results of administrative review in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(h).

Dated: February 14, 2020.

**Jeffrey I. Kessler,**

*Assistant Secretary for Enforcement and Compliance.*

## Appendix

**List of Topics Discussed in the Issues and Decision Memorandum**

I. Summary
II. Background
III. Scope of the Order
IV. Changes Since the Preliminary Determination
V. Discussion of the Issues
Comment 1: Whether a Principal-Agent Relationship Exists Between Heze Huayi and Its U.S. Customer
Comment 2: Selection of the Primary Surrogate Country
Comment 3: Whether Malaysian Trade Data Monitor Data Is Superior to the Mexican Global Trade Atlas (GTA) Data
Comment 4: Whether Mexican GTA Import Data Is Less Preferable Because It Is Not on a CIF Basis
Comment 5: Whether the Malaysian Data for Water and Labor Is Superior to the Mexican Data
VI. Recommendation

[FR Doc. 2020–03598 Filed 2–21–20; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Proposed Information Collection; Comment Request; Alaska Region Pacific Halibut Fisheries: Charter

**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 all comments must be submitted on or before April 24, 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 instrument and instructions should be directed to Kurt Iverson, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802–1668; 907–586–7228.

**SUPPLEMENTARY INFORMATION:**

### I. Abstract

The National Marine Fisheries Service (NMFS) is requesting revision and extension of a currently approved information collection. This information collection is revised to include the collection instruments approved under OMB Control Number 0648–0592, after which that control number will be discontinued. This revised collection contains permitting, recordkeeping, and reporting requirements for the guided sport (charter) halibut fishery and the title will be slightly altered to ''Alaska Pacific Halibut Fisheries: Charter.''

Management of and regulations for Pacific halibut in Alaska are developed on the international, Federal, and state levels by the International Pacific Halibut Commission (IPHC), the North Pacific Fishery Management Council, NMFS Alaska Region, and the State of Alaska Department of Fish and Game (ADF&G). The IPHC and NMFS manage fishing for Pacific halibut through regulations established under authority of the Convention between the United States Halibut Fishery of the Northern Pacific Ocean and Bering Sea, the Northern Pacific Halibut Act of 1982, 16 U.S.C. 773, and Section 303(b) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). Regulations that implement this collection-of-information are found at 50 CFR 300 subpart E and at 50 CFR 679.5(l)(7).

NMFS manages the charter halibut fishery in IPHC Regulatory Areas (Areas) 2C and 3A under the Charter Halibut Limited Access Program, which limits the number of operators in the charter halibut fishery. All vessel operators in Areas 2C and 3A with charter anglers on board must have an original, valid Federal charter halibut permit (CHP) on board during every charter vessel fishing trip on which Pacific halibut are caught and retained. As the application period to obtain a CHP (other than a military CHP or community CHP) ended in 2010, CHPs may now only be obtained through transfer. This information collection contains the application forms used to annually register CHPs, to apply for new military CHPs, and to transfer CHPs. Information collected by these applications include permit holder information or applicant information, and depending on the form, may include CHP identification, CHP ownership information and affiliation, a survey question on the use of the CHP, and transaction information for transfer of a CHP.

NMFS manages the charter halibut sector in Areas 2C and 3A to charter catch limits established under the Pacific Halibut Catch Sharing Plan (CSP). The CSP authorizes annual transfers of commercial halibut Individual Fishing Quota (IFQ) as guided angler fish (GAF) to CHP holders for harvest in the charter halibut fishery. GAF offers CHP holders in Area 2C or Area 3A an opportunity to lease a limited amount of IFQ from commercial quota share holders to allow charter

clients to harvest halibut in addition to, or instead of, the halibut harvested under the daily bag limit for charter anglers. This information collection contains the application used to transfer Area 2C or 3A commercial halibut IFQ to a CHP holder for use as GAF or for the CHP holder to return unused GAF to the IFQ permit holder from which it was obtained. Information collected by the application includes permit holder information, IFQ permit information, CHP information, GAF permit information, and transaction information. NMFS, on approving the transfer of IFQ to GAF, issues a GAF permit, which authorizes the holder to allow charter vessel anglers to retain GAF halibut caught in the IPHC regulatory area specified on the permit.

This information collection also contains the GAF landing report and the GAF permit log, The GAF landing report is submitted by GAF permit holders and collects information on each GAF halibut retained by an angler on a charter vessel fishing trip in Area 2C or 3A. The GAF permit log, which is printed on the back of each GAF permit, is used by the GAF permit holder to record the GAF landing report confirmation number and information on GAF halibut after a trip in which GAF halibut were retained.

Federal regulations at 50 CFR 300.65 require charter vessel operators fishing in Areas 2C and 3A to comply with the ADF&G annual registration of sport fishing guides and businesses and ADF&G Saltwater Sport Fishing Charter Trip Logbook (Charter Logbook). This information collection contains the Charter Logbook, which is the primary recordkeeping and reporting requirement for charter vessel operators for all species harvested in saltwater in Areas 2C and 3A. The logbook collects information including where and when charter fishing occurs and the species and numbers of fish kept and released by the individual charter anglers.

## II. Method of Collection

Information is collected primarily via mail or fax. The application forms are available as fillable pdfs on the NMFS Alaska Region website and may be downloaded, completed, and printed out prior to submission. The GAF landing report is submitted online through eFISH on the NMFS Alaska Region website. If a GAF permit holders is unable to submit a GAF landing report electronically, the GAF permit holder must contact NOAA Office of Law Enforcement by telephone.

## III. Data

*OMB Control Number:* 0648–0575.

*Form Number(s):* None.

*Type of Review:* Revision and extension of a current information collection.

*Affected Public:* Business or other for-profit organizations; Individuals or households.

*Estimated Number of Respondents:* 639.

*Estimated Time per Response:* 15 minutes for Application for Annual Registration of Charter Halibut Permits (CHPs); 0.5 hour for Application of Military CHP; 2 hours for Application for Transfer of CHP; 1.5 hours for Application for Transfer Between IFQ and GAF and Issuance of GAF Permit; 5 minutes for GAF Landing Report; 2 minutes for GAF Permit Log; 4 minutes for ADF&G Saltwater Sport Fishing Charter Trip Logbook; and 4 hours for Appeals.

*Estimated Total Annual Burden Hours:* 3,403.

*Estimated Total Annual Cost to Public:* $11,198 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. 2020–03624 Filed 2–21–20; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Proposed Information Collection; Comment Request; U.S.-Canada Albacore Treaty Reporting System

**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 take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be submitted on or before April 24, 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 instrument and instructions should be directed to Shannon Penna, National Marine Fisheries Service (NMFS), West Coast Region (WCR) Long Beach Office, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802, (562) 980–4238 or *shannon.penna@noaa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. Abstract

This request is for an extension of a current information collection.

The National Marine Fisheries Service (NMFS), West Coast Region (WCR), manages the United States (U.S.)—Canada Albacore Tuna Treaty of 1981 (Treaty). Owners of vessels that fish from U.S. West Coast ports for albacore tuna *(Thunnus alalunga)* are required to notify the NMFS WCR of their desire to be on the list of vessels provided to Canada each year indicating vessels eligible to fish for albacore tuna in waters under the jurisdiction of Canada. Additionally, vessel operators are required to report in advance their

intention to fish in Canadian waters prior to crossing the maritime border as well as to mark their fishing vessels to facilitate enforcement of the effort limits under the Treaty. Vessel operators are also required to maintain and submit a logbook of all catch and fishing effort. The regulations implementing the reporting and vessel marking requirements under the Treaty are at 50 CFR part 300.172–300.176. If a vessel enters into Canadian waters without adhering to these regulations, they will be in violation of the treaty and Canadian enforcement may issue a fine or a warning.

The estimated burden below includes hours to complete the logbook requirement, although it is assumed that most if not all of the respondents already complete the required logbook under the mandatory West Coast Highly Migratory Species Fishery Management Plan (HMS FMP), OMB Control No. 0648–0223. Duplicate reporting under the Treaty and HMS FMP is not required. Most years, there will be much less fishing (and thus less reporting) under the Treaty than the level on which the estimate is based.

## II. Method of Collection

Requests to be placed on the vessel eligibility list may be made in writing via mail, fax, email, telephone, or through online registration if available. Communications to comply with 'hail in' and 'hail out' requirements are made via ship to shore radio or via telephone and are compiled in an electronic database by Fisheries and Oceans Canada. Summaries of hail reports are provided to NMFS on a periodic basis. Vessel marking requirements entail painting the letter 'U' immediately after the U.S. Coast Guard documentation identification number or state registration number already on the vessel. Logbooks are maintained in pre-printed paper format and submitted via mail.

## III. Data

*OMB Control Number:* 0648–0492.

*Form Number(s):* None.

*Type of Review:* Regular submission (extension of a current information collection).

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 135.

*Estimated Time per Response:* 5 minutes for the request to be placed on the eligible list per year; 2 hours and 55 minutes for required vessel markings; 10 minutes for logbook entries; 5 minutes for each set of two hail reports for border crossings per year.

*Estimated Total Annual Burden Hours:* 840 hours.

*Estimated Total Annual Cost to Public:* $2311.

## 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. 2020–03628 Filed 2–21–20; 8:45 am]

BILLING CODE 3510–22–P

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# DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## Proposed Information Collection; Comment Request; Marine Recreational Fishing Expenditure Survey

**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 comments must be submitted on or before April 24, 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 instrument and instructions should be directed to Sabrina Lovell, Economist, Office of Science and Technology, NMFS, 1315 East-West Hwy., Silver Spring, MD 20910. Tel: (301) 427–8153 or *sabrina.lovell@noaa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. Abstract

This request is for a regular submission, extension of a current information collection.

As specified in the Magnuson-Stevenson Fishery Conservation and Management Act of 1996 (and reauthorized in 2007), the National Oceanic and Atmospheric Administration's (NOAA's) National Marine Fisheries Service (NMFS) is required to enumerate the economic impacts of the policies it implements on fishing participants and coastal communities. The objective of the survey is to collect information on marine (saltwater) recreational fishing trip expenditures and durable good expenditures made by marine recreational anglers. The voluntary survey has two parts that may be conducted either jointly during the same calendar year or in separate years. The trip expenditure portion will ask anglers about the expenses incurred on their most recent marine recreational fishing trip. The durable goods portion will ask anglers about their purchases of durable goods such as fishing gear, boats, vehicles, and second homes over a 12-month period. The expenditure data collected in this regular survey is widely used by both federal, state, and non-governmental organizations for research and analysis regarding the economic importance and contributions of marine recreational fishing to each coastal state and nationwide. The NMFS Office of Science and Technology conducts the survey and publishes the results in both technical reports and the annual 'Fisheries Economics of the U.S.' report series.

## II. Method of Collection

The trip expenditure portion of the survey may be conducted using in-

person interviews at fishing sites or using email or mail invitations to an online web survey (with a paper version of the survey for anglers without internet access). The durable goods expenditure portion will use email or mail invitations to an online web survey (with a paper version of the survey for anglers without internet access).

### III. Data

*OMB Control Number:* 0648–0693.

*Form Number(s):* None.

*Type of Review:* Regular submission (extension of a current information collection).

*Affected Public:* Individuals.

*Estimated Number of Respondents:* 88,350: 13,350 for durable good expenditure survey; 75,000 for trip expenditure survey.

*Estimated Time per Response:* Durable goods expenditure survey, 15 minutes; trip expenditure survey 5 minutes.

*Estimated Total Annual Burden Hours:* 3,346.

*Estimated Total Annual Cost to Public:* $0 in record keeping and 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. 2020–03629 Filed 2–21–20; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XR077]**

## Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Gustavus Ferry Terminal Improvements Project

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

**ACTION:** Notice; issuance of an incidental harassment authorization.

**SUMMARY:** In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to the Alaska Department of Transportation and Public Facilities (ADOT&PF) to incidentally harass, by Level A and Level B harassment only, marine mammals during pile driving and removal activities associated with the Gustavus Ferry Terminal Improvements Project in Gustavus, Alaska.

**DATES:** This authorizations is effective for one year from February 15, 2020 through February 14, 2021.

**FOR FURTHER INFORMATION CONTACT:** Robert Pauline, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* In case of problems accessing these documents, please call the contact listed above.

**SUPPLEMENTARY INFORMATION:**

### Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization may be provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

### Summary of Request

On November 20, 2019, NMFS received a request from the ADOT&PF for an IHA to take marine mammals incidental to in-water construction activities in Gustavus, Alaska. NMFS previously issued an IHA to ADOT&PF to incidentally take seven species of marine mammal, by Level A and Level B harassment, during construction activities associated with this same project. The IHA, issued on April 4, 2017 (82 FR 17209; April 10, 2017), had effective dates of December 15, 2017 through December 14, 2018. However, ADOT&PF was unable to conduct any of the work and, therefore, requested a new IHA. NMFS issued a second IHA with effective dates of December 15, 2018 through December 14, 2019 (83 FR 55348; November 5, 2018) to cover the incidental take analyzed and authorized in the first IHA. There were minor modifications to the number of piles driven but these had no effect on authorized take numbers, monitoring requirement, or reporting measures, which remained the same as stated in the original 2017–2018 IHA.

ADOT&PF was unable to meet the fall pile driving window (September 1 through November 30, 2019) as originally anticipated. Due to this setback, construction is planned to begin in spring 2020. ADOT&PF submitted an addendum to the original application requesting that a supplementary two-week timeframe be included in the spring window from February 15 through May 31, 2020. During this two-week timeframe, the contractor will begin vibratory removal of structures in order to get ahead of schedule while also accommodating for one last sailing of the ferry to the community before the ferry terminal's

closure for the remainder of construction. The only difference between this IHA and previously issued IHAs is a construction start date of February 15 instead of March 1. Take numbers remain the same as authorized for the 2018–2019 IHA referenced above.

**Description of Activity**

The 2020–2021 IHA is nearly identical to the 2018–2019 IHA with the most significant change being an earlier in-water pile driving start date of February 15, 2020 instead of March 1, 2020. Specifically, over approximately 50 days of in-water activity a total of 59 permanent piles ranging in size from 12.75 inches to 30 inches would be installed by vibratory and impact driving. A total of 30 temporary or pre-existing piles would undergo vibratory removal. A detailed description of planned activities may be found in the **Federal Register** proposing authorization of this IHA (85 FR 2403; January 15, 2020). Therefore, a detailed description is not provided here.

**Comments and Responses**

A notice of NMFS's proposal to issue an IHA to ADOT&PF was published in the **Federal Register** on January 15, 2020 (85 FR 2403). During the 30-day public comment period, NMFS received comment letters from the Marine Mammal Commission (Commission) and Defenders of Wildlife (Defenders).

*Comment 1:* The Commission recommended that NMFS use at least 165 dB re 1 μPa while Defenders recommended use of 166 dB re 1 μPa rather than 157.7 dB re 1 μPa at 10 m as the source level (SL) for vibratory driving of 30-in steel piles at Gustavus. The Commission and Defenders recommended that NMFS re-estimate the extent of the Level A and B harassment zones as well as increase the number of Level A and B harassment takes appropriately during both impact and vibratory pile driving.

*NMFS Response:* As noted in responses to the comments submitted by the Commission for the previous IHAs, NMFS used a proxy source level of 157.7 dB re 1 μPa for vibratory driving of 30-in steel piles during the estimated take analysis. NMFS also previously noted that ADOT&PF will be using the same type of vibratory hammers at Gustavus as were used at Kake and that the pile types and sizes are comparable between the two sites. NMFS does not dispute that the SL used in the Gustavus analysis is generally lower than others that have been recorded across various sites. However, SLs for similar piles measured at different locations tend to cover a range of values. For example, SL measurements from Kodiak for vibratory driving of the same size and type of pile were even lower than those recorded at Kake, although the researchers speculated that the low values be due to the drilling/socketing of piles or sediment composition at Kodiak (Denes *et al.,* 2017). For the Gustavus analysis, NMFS elected to use a value from the lower end of recorded ranges. In order to confirm that the SLs adopted by NMFS are appropriate for use at Gustavus, NMFS will still require ADOT&PF to conduct sound source verification (SSV) testing. If the recorded SLs at Gustavus are appreciably greater than those measured at Kake, ADOT&PF will increase the shutdown and harassment zones as appropriate.

*Comment 2:* The Commission and Defenders recommended that NMFS require ADOT&PF to use at least three Protected Species Observers (PSOs) to monitor the full extent of the Level B harassment zones.

*NMFS Response:* As has been noted in the previous Gustavus IHAs, NMFS believes that the existing Level B harassment zone can be adequately measured utilizing two PSOs. The option of adding more PSOs stationed on boats or nearby islands was originally discussed with ADOT&PF before the first IHA was issued. However, due to the frequency, severity and unpredictability of weather in Icy Passage, ADOT&PF was reluctant to employ vessels for monitoring purposes since the safety of PSOs could be at risk. Additionally, island-based PSOs could be stranded on these uninhabited islands overnight, or longer, if retrieval vessels are unable to pick up observers due to adverse weather conditions.

*Comment 3:* The Commission recommended that NMFS ensure that ADOT&PF keep a running tally of the total takes, both observed and extrapolated, to confirm that the numbers of authorized takes are not exceeded.

*Response:* We agree that ADOT&PF must ensure they do not exceed authorized takes. We have included in the authorization that ADOT&PF must include extrapolation of the estimated takes by Level B harassment based on the number of observed exposures within the Level B harassment zone and the percentage of the Level B harassment zone that was not visible in the draft and final reports.

*Comment 4:* The Commission and Defenders recommended that NMFS require all action proponents that would be required to or propose to conduct hydroacoustic monitoring to provide their proposed hydroacoustic monitoring plans prior to publication of the proposed authorization in the **Federal Register** notice and ensure all such plans are posted on its website the day the notice publishes in the **Federal Register**.

*Response:* During the initial application review period, NMFS requests that applicants provide basic information regarding proposed hydroacoustic monitoring plans. We also generally ask for more fully detailed, near-final monitoring plans for review prior to publication of the final IHA. If NMFS has received the finalized monitoring plan before publication of the final IHA, it is shared with the Commission and posted to our website. However, the MMPA does not require submission of the final monitoring plan prior to publication of the final IHA, as long as the basic plan, with sufficient details for review by NMFS and the public, is approved prior to issuance of the IHA and NMFS is kept apprised of any subsequent revisions and provided the final plan for final approval prior to the start of work. Under these conditions, NMFS indicates in the final IHA that a hydroacoustic monitoring plan must be submitted to NMFS and approved prior to initiation of the monitoring.

Note that the hydroacoustic monitoring plan for this issued IHA is currently posted on our website.

*Comment 5:* The Commission recommended that NMFS update templates for draft authorizations to include all the relevant minimum reporting requirements for hydroacoustic monitoring reports as described in the *Description of Mitigation, Monitoring and Reporting Measures* section consistent with the Commission's recommendations. Defenders recommended that hydroacoustic monitoring plans should incorporate the best available science.

*Response:* The Commission's recommendations have been included in this IHA. NMFS will consider these recommendations and ensure that templates include the appropriate minimum reporting requirements for hydroacoustic monitoring reports. NMFS also reviews every hydroacoustic monitoring plan to ensure that the most current monitoring protocols and methodologies are incorporated.

*Comment 6:* The Commission recommended that NMFS finish reviewing and finalize its recommended proxy source levels for both impact and vibratory installation of the various pile types and sizes. If the proxy source levels for impact pile driving are finalized prior to those for vibratory pile

driving and removal, they should be made available to action proponents and the public when completed and should not be retained until the vibratory source levels are finalized. Defenders also recommended that NMFS complete the guidance.

*Response:* As the Commission notes, NMFS is developing proxy source level recommendations and guidance for impact and vibratory pile driving based on all available data, and we intend to make that information available to the public as it is developed. Until that time, NMFS has advised applicants and the Commission that Caltrans 2015 represents the most complete pile driving source level compilation, and applicants should defer to these data absent any project site specific data. Once the guidance has been finalized, it will be posted on NMFS's incidental take authorization website, as appropriate.

*Comment 7:* The Commission has asserted in the past and continues to consider that the renewal process is inconsistent with the statutory requirements under section 101(a)(5)(D) of the MMPA. As such, the Commission recommends that NMFS refrain from issuing renewals for any authorization and instead use its abbreviated **Federal Register** notice process. That process, as was used for ADOT&PFs proposed authorization, is similarly expeditious and fulfills NMFS's intent to maximize efficiencies.

*Response 8:* NMFS appreciates the streamlining achieved by the use of abbreviated **Federal Register** notices and intends to continue using them for proposed IHAs that include minor changes from previously issued IHAs, but which do not satisfy the Renewal requirements. However, we believe our method for issuing Renewals meets statutory requirements and maximizes efficiency, and we plan to continue considering requests for Renewals.

*Comment 9:* The Commission recommends that it (1) stipulate that a Renewal is a one-time opportunity (a) in all **Federal Register** notices requesting comments on the possibility of a Renewal, (b) on its web page detailing the Renewal process, and (c) in all draft and final authorizations that include a term and condition for a Renewal.

*Response:* NMFS' website indicates that Renewals are good for ''up to another year of the activities covered in the initial IHA.'' NMFS has never issued a Renewal for more than one year, and in no place have we implied that Renewals are available for more than one year. Any given **Federal Register** notice considering a Renewal clearly indicates that it is only being considered for one year. Accordingly, changes to the Renewal language on the website, **Federal Register** notices, or authorizations is not necessary.

*Comment 10:* Defenders noted that NMFS used a categorical exclusion to satisfy NEPA requirements for this action since no mortality or serious injury is expected. Defenders asserted that if no injury or mortality were expected by NMFS, there would be no need to authorize takes of several species by Level A harassment. Since NMFS has authorized take by Level A harassment mortality or injury is anticipated and, therefore, an environmental assessment should be prepared to analyze potential impacts associated with the action.

*Response:* NMFS does not anticipate that mortality or serious injury would occur. Defenders is using the terms injury and serious injury interchangeably. Note that NMFS defines serious injury in regulations (50 CFR 229.2) as ''any injury that will likely result in mortality,'' whereas injury that will not likely result in mortality is considered ''Level A Harassment.'' NMFS acknowledges the possibility that a marine mammal could experience limited auditory injury in the form of permanent threshold shift (PTS), which is considered Level A Harassment. Animals that experience PTS would likely only experience minor degradation of hearing capabilities, such as the loss of a few decibels in its hearing sensitivity. In most cases such a loss is not likely to meaningfully affect the ability to forage and communicate with conspecifics. Additionally, NMFS has authorized take of marine mammals by Level A harassment for numerous pile driving actions and is unaware of any instances that resulted in mortality or serious injury of marine mammals. Therefore, NMFS determined that this action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A and that the issuance of this IHA qualifies to be categorically excluded from further NEPA review.

*Comment 11:* Defenders expressed concerned that the public comment period for this IHA closes on February 14th, 2020 and that the IHA would be effective on February 15th, 2020, there is not adequate time for NMFS to consider public input.

*Response:* While NMFS was targeting an issuance date of February 15th, issuance of the final IHA would be delayed, if necessary, to adequately address any comments that arrive at the end of the public comment period.

## Changes From the Proposed IHA to the Final IHA

NMFS has included in the final IHA additional detail regarding hydroacoustic monitoring plan and reporting requirements for the final IHA. ADOT&PF is required to conduct monitoring of three 24-in and three 36-in piles during both impact and vibratory installation. The proposed IHA only required a single pile of each size. Updated hydroacoustic monitoring reporting requirements may be found in the *Description of Mitigation, Monitoring and Reporting Measures* section. NMFS has removed the 30-minute clearance time for cetaceans from the final IHA while retaining the standard 15-minute clearance time applicable to all marine mammals in shallow waters. NMFS has also revised the final IHA to include the most current standard marine mammal reporting requirements.

## Analysis

### *Description of Marine Mammals in the Area of Specified Activities*

A detailed description of the species likely to be affected by ADOT&PF's planned project, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, may be found in the **Federal Register** notice for the proposed IHA (85 FR 2403; January 15, 2020); as well as previous IHAs issued for this project (82 FR 17209, April 10, 2017; 83 FR 55348, November 5, 2018). We are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here.

### *Potential Effects on Marine Mammals and Their Habitat*

A description of the potential effects of the specified activities on marine mammals and their habitat may be found in these previous documents. There is no new information on potential effects.

### *Estimated Take*

A detailed description of the methods and inputs used to estimate authorized take is found in these previous documents. The methods of estimating take for the 2020–2021 IHA are identical to those used in the 2017–2018 IHA. The source levels also remain unchanged from the previously issued IHAs. Observational data was used to calculate daily take rates in the absence

of density data. Since the number of pile-driving days (50) estimated for the 2017–2018 IHA, 2018–2019 IHA and 2020–2021 IHA remains the same, the total estimated take projections will be identical. Note that marine mammal occurrences are more frequent in the late spring near the Gustavus ferry terminal. Moving the start date forward by two weeks will reduce the amount of in-water construction occurring later in the spring when animal occurrences are elevated. Therefore, the total recorded take amounts may be reduced. Note that since abundance estimates of some stocks have been updated in the Draft 2019 SAR (Muto *et al.* 2019b) the percentage of stock taken has also changed. These changes are shown in Table 1.

TABLE 1—ESTIMATED NUMBER OF INSTANCES OF EXPOSURES THAT MAY BE SUBJECT TO LEVEL A AND LEVEL B HARASSMENT AND PERCENTAGE OF STOCKS

| Species | Level A authorized takes | Level B authorized takes | Total authorized takes | Stock(s) abundance estimate | Instances of take as a percentage of total stock |
|---|---|---|---|---|---|
| Steller Sea Lion | 0 | 709 | 709 | 53,624 (western distinct population segment in Alaska)/43,201 (eastern stock). | 1.3 */1.6.* |
| Humpback whale | 0 | 600/(36 [1]) | 600/(36 [1]) | 10,103 (Central North Pacific Stock)/3,264 (Mexico DPS). | 5.9/1.1. |
| Harbor Seal | 38 | 616 | 654 | 7,455 (Glacier Bay/Icy Strait) | 8.7.* |
| Harbor Porpoise | 26 | 127 | 153 | 11,146 (Southeast Alaska) | 1.37. |
| Killer whale | 0 | 126 | 126 | 302 (Northern resident)/587 (Gulf of Alaska transient)/243 (West Coast transient). | 41.7 */21.4/51.8. |
| Minke whale | 0 | 42 | 42 | Unknown | Unknown. |
| Dall's Porpoise | 7 | 35 | 42 | 83,400 | <0.01. |

[1] 6.1 percent of humpbacks whales in southeast Alaska (36) are from Mexico DPS (Wade *et al.* 2016).
* Updated information from Muto *et al.* 2019. Draft Alaska Marine Mammal Stock Assessments, 2019. Available at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports.*

*Description of Mitigation, Monitoring and Reporting Measures*

A description of required mitigation, monitoring, and reporting measures is found in the previous documents, which are nearly identical to those contained in this 2020–2021 IHA. The following measures apply to ADOT&PF's mitigation requirements:

1. *Implementation of Shutdown Zone*—For all pile driving activities, ADOT&PF will implement a shutdown zone. The purpose of a shutdown zone is generally to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). In this case, shutdown zones (Table 2) are intended to contain areas in which sound pressure levels (SPLs) equal or exceed acoustic injury criteria for some authorized species, based on NMFS' acoustic technical guidance (NMFS 2018).

2. *Implementation of Monitoring Zones*—ADOT&PF must monitor Level A harassment zones as shown in Table 2. These zones are areas beyond the shutdown zones where animals may be exposed to sound levels that could result in PTS. ADOT&PF must also monitor the Level B harassment disturbance zones as shown in Table 4 which are areas where SPLs equal or exceed 160 dB rms for impact driving and 120 dB rms during vibratory driving. Observation of monitoring zones enables observers to be aware of and communicate the presence of marine mammals in the project area and outside the shutdown zone and thus prepare for potential shutdowns of activity, and also allows for the collection of marine mammal and effects data. NMFS has established monitoring protocols described in the **Federal Register** notice of the issuance (82 FR 17209; April 10, 2017) which are based on the distance and size of the monitoring and shutdown zones. These same protocols are contained in the issued 2020–2021 IHA.

TABLE 2—SHUTDOWN, INJURY AND BEHAVIORAL HARASSMENT ISOPLETHS FROM IMPACT AND VIBRATORY PILE DRIVING

| Species | Shutdown zone—impact/vibratory (m) | Level A harassment zone—impact (m) | Level B harassment zone-impact/vibratory (m) |
|---|---|---|---|
| Steller Sea Lion | 25/10 | n/a | 2,090/3,265 |
| Humpback whale | 550/20 | n/a | 2,090/3,265 |
| Harbor Seal | 100/10 | 285 | 2,090/3,265 |
| Harbor Porpoise | 100/20 | 630 | 2,090/3,265 |
| Killer whale | 25/10 | n/a | 2,090/3,265 |
| Minke whale | 550/20 | n/a | 2,090/3,265 |
| Dall's Porpoise | 100/20 | 630 | 2,090/3,265 |

3. *Temporal and Seasonal Restrictions*—Work may only occur during daylight hours, when visual monitoring of marine mammals can be conducted and all in-water construction will be limited to the periods February 15 through May 31, 2020, and September 1 through November 30, 2020.

4. *Soft Start*—The use of a soft-start procedure is believed to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to

leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors will be required to implement soft start procedures. Soft Start is not required during vibratory pile driving and removal activities.

5. *Visual Marine Mammal Observation*—Visual monitoring must be conducted by qualified PSOs. In order to effectively monitor the pile driving monitoring zones, two PSOs must be positioned at the best practical vantage point(s). If waters exceed a sea-state which restricts the observers' ability to make observations within the shutdown zone (*e.g.,* excessive wind or fog), pile installation and removal will cease. Pile driving will not be initiated until the entire shutdown zone is visible. PSOs shall record specific information on the sighting forms as described in this issued IHA which contains current standards. At the conclusion of the in-water construction work, ADOT&PF will provide NMFS with a monitoring report, which includes summaries of recorded takes and estimates of the number of marine mammals that may have been harassed.

6. ADOT&PF must conduct SSV testing of impact and vibratory pile driving for this project within 7 days after underwater pile driving work is initiated. ADOT&PF is required to conduct monitoring of three 24-in and three 36-in piles during both impact and vibratory installation according to methodology described in hydroacoustic monitoring plan. The SSV testing must be conducted by an acoustical firm with prior experience conducting SSV tests in Alaska. Results must be sent to NMFS no later than 14 days after field testing has been completed. If necessary, the shutdown, Level A, and Level B harassment zones will be adjusted to meet MMPA requirements within 7 days of NMFS receiving results. The following data, which was not included in the draft IHA, must be collected during acoustic monitoring and reported:

(a) Hydrophone equipment and methods: Recording device, sampling rate, distance from the pile where recordings were made; depth of recording device(s);

(b) Type of pile being driven, method of driving, and use of bubble curtain or other noise abatement device (*e.g.,* driving behind the cofferdam) during recordings;

(c) Mean, medium, and maximum sound levels (dB re: 1 μPa): Cumulative sound exposure level (SELcum), peak sound pressure level (SPLpeak), root mean square sound pressure level (SPLrms), and single-strike sound exposure level (SELs-s); and

(d) Number of strikes per pile measured, one-third octave band spectrum and/or power spectral density.

**Determinations**

ADOT&PF plans to conduct activities similar to those covered in the previous 2017–2018 and 2018–2019 IHAs. As described above, the number of estimated takes of the same stocks of marine mammals are the same as those authorized in the 2017–2018 and 2018–2019 IHAs that were found to meet the negligible impact and small numbers standards. Our analysis showed that less than 9 percent of the populations of affected stocks, with the exception of minke and killer whales, could be taken by harassment. For Northern resident and West Coast transient killer whales, the percentages, when instances of take are compared to abundance, are 41.7 percent and 51.8 percent, respectively. However, the takes estimated for these stocks (up to 126 instances assuming all takes are accrued to a single stock) are not likely to represent unique individuals. Instead, we anticipate that there will be multiple takes of a smaller number of individuals and that the total number of individuals will fall below one third of the abundance.

The Northern resident killer whale stock are most commonly seen in the waters around the northern end of Vancouver Island, and in sheltered inlets along British Columbia's Central and North Coasts. They also range northward into Southeast Alaska in the winter months. Pile driving operations are not permitted from December through February. It is unlikely that such a large portion of Northern resident killer whales with ranges of this magnitude would be concentrated in and around Icy Passage, which is a shallow, narrow channel connected to the deeper waters of Icy Strait and separates Gustavus and the rest of the mainland from Pleasant Island.

NMFS believes that small numbers of the West coast transient killer whale stock would be taken based on the limited region and duration of exposure in comparison with the known distribution of the transient stock. The West coast transient stock ranges from Southeast Alaska to California, while the planned project activity would be stationary. A notable percentage of West coast transient whales have never been observed in Southeast Alaska. Only 155 West coast transient killer whales have been identified as occurring in Southeast Alaska according to Dahlheim and White (2010). The same study identified three pods of transients, equivalent to 19 animals that remained almost exclusively in the southern part of Southeast Alaska (*i.e.,* Clarence Strait and Sumner Strait). This information indicates that only a small subset of the entire West coast Transient stock would be at risk for take in the Icy Passage area because a sizable portion of the stock has either not been observed in Southeast Alaska or consistently remains far south of Icy Passage.

There is no current abundance estimate for minke whale since population data on this species is dated. However, the authorized take of 42 minke whales may be considered small. A visual survey for cetaceans was conducted in the central-eastern Bering Sea in July–August 1999, and in the southeastern Bering Sea in 2000. Results of the surveys in 1999 and 2000 provide provisional abundance estimates of 810 and 1,003 minke whales in the central-eastern and southeastern Bering Sea, respectively (Moore *et al.,* 2002). Additionally, line-transect surveys were conducted in shelf and nearshore waters in 2001–2003 from the Kenai Fjords in the Gulf of Alaska to the central Aleutian Islands. Minke whale abundance was estimated to be 1,233 for this area (Zerbini *et al.,* 2006). However, these estimates cannot be used as an estimate of the entire Alaska stock of minke whales because only a portion of the stock's range was surveyed. (Allen and Anglis, 2012). Clearly, 42 authorized takes should be considered a small number, as it constitutes only 5.2 percent of the smallest abundance estimate generated during the surveys just described and each of these surveys represented only a portion of the minke whale range.

Note that the numbers of animals authorized to be taken for all species, with the exception of Northern resident and West coast transient killer whales, would be considered small relative to the relevant stocks or populations even if each estimated taking occurred to a new individual—an extremely unlikely scenario.

The issued 2020–2021 IHA includes mitigation, monitoring, and reporting requirements that are nearly identical to those depicted in the 2017–2018 and 2018–2019 IHAs, and there is no new information suggesting that our analysis or findings should change.

Based on the information contained here and in the referenced documents, NMFS has determined the following: (1) The required mitigation measures will affect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine

mammals relative to the affected stock abundances; and (4) ADOT&PF's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action.

**National Environmental Policy Act**

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an incidental harassment authorization) with respect to potential impacts on the human environment. This action is consistent with categories of activities identified in Categorical Exclusion B4 (incidental harassment authorizations with no anticipated serious injury or mortality) of the Companion Manual for NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

**Endangered Species Act (ESA)**

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

In order to comply with the ESA, NMFS Alaska Regional Office (AKR) Protected Resources Division issued a Biological Opinion on March 21, 2017 under section 7 of the ESA, on the issuance of an IHA to ADOT&PF under section 101(a)(5)(D) of the MMPA. This consultation concluded that the project was likely to adversely affect but unlikely to jeopardize the continued existence of the threatened Mexico DPS of humpback whale (*Megaptera novaeangliae*) or the endangered western DPS of Steller sea lion (*Eumatopias jubatus*), or adversely modify designated critical habitat for Steller sea lions. In a memo dated January 7, 2020 NMFS AKR concluded that re-initiation of section 7 consultation was not necessary for the issuance of the 2020–2021 IHA and extended the Gustavus incidental take statement (ITS). All of the terms and conditions listed in the ITS issued March 21, 2017 still apply to this action.

**Authorization**

As a result of these determinations, we have issued an IHA to ADOT&PF for conducting the described construction activities related to city dock and ferry terminal improvements from February 15, 2020 through February 14, 2021, provided the previously described mitigation, monitoring, and reporting requirements are incorporated.

Dated: February 18, 2020.

**Donna Wieting,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2020–03630 Filed 2–21–20; 8:45 am]

BILLING CODE 3510–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Federal Consistency Appeal by Electric Boat Corporation

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Notice of appeal.

**SUMMARY:** This announcement provides notice that the Department of Commerce (DOC) has received a ''Notice of Appeal'' filed by Electric Boat Corporation (Appellant) requesting that the Secretary override an objection by the New York State Department of State to a consistency certification for a proposed project to dispose of dredged material in the Eastern Long Island Sound Dredged Material Disposal Site.

**DATES:** You may submit written comments concerning this appeal or requests for a public hearing on or before March 25, 2020.

**ADDRESSES:** The National Oceanic and Atmospheric Administration (NOAA) intends to provide access to publicly available materials and related documents comprising the appeal record on the following website: *http://www.regulations.gov/#!docketDetail;D=NOAA-HQ-2020-0021*.

Comments or requests for a public hearing must be submitted by:

*Electronic submission:* Submit all electronic public comments or requests for a public hearing via the Federal eRulemaking portal. Go to (*http://www.regulations.gov/#!docketDetail;D=NOAA-HQ-2020-0021*), click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments. 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 NOAA.

**FOR FURTHER INFORMATION CONTACT:** For questions about this Notice, contact Lauren Bregman, NOAA Office of the General Counsel, Oceans and Coasts Section, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910, (301) 713–7389, *lauren.bregman@noaa.gov*.

**SUPPLEMENTARY INFORMATION:**

**I. Notice of Appeal**

On January 24, 2020, the Secretary of Commerce (Secretary) received a ''Notice of Appeal'' filed by Electric Boat Corporation pursuant to the Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. 1451 *et seq.,* and implementing regulations found at 15 CFR part 930, subpart H. The ''Notice of Appeal'' is taken from an objection by the New York State Department of State to a consistency certification for a proposed U.S. Army Corps of Engineers permit to dispose of dredged material in the Eastern Long Island Sound Dredged Material Disposal Site.

Under the CZMA, the Secretary may override the New York State Department of State's objection on grounds that the project is consistent with the objectives or purposes of the CZMA, or is necessary in the interest of national security. To make the determination that the proposed activity is ''consistent with the objectives or purposes of the CZMA,'' the Secretary must find that: (1) The proposed activity furthers the national interest as articulated in sections 302 or 303 of the CZMA, in a significant or substantial manner; (2) the national interest furthered by the proposed activity outweighs the activity's adverse coastal effects, when those effects are considered separately or cumulatively; and (3) no reasonable alternative is available that would permit the proposed activity to be conducted in a manner consistent with the enforceable policies of the applicable coastal management program. 15 CFR 930.121. To make the determination that the proposed activity is ''necessary in the interest of national security,'' the Secretary must find that a national defense or other national security interest would be significantly impaired if the proposed activity is not permitted to go forward as proposed. 15 CFR 930.122.

## II. Request for Public and Federal Agency Comments

We encourage the public and interested federal agencies to participate in this appeal by submitting written comments and any relevant materials supporting those comments using the method specified in the **ADDRESSES** section of this notice. 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 personally identifiable information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NOAA will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

## III. Public Hearing Request

You may submit a request for a public hearing using the method specified in the **ADDRESSES** section of this notice. In your request, explain why you believe a public hearing would be beneficial. If we determine a public hearing would aid the decisionmaker, a notice announcing the date, time, and location of the public hearing will be published in the **Federal Register**. The public and federal agency comment period will also be reopened for a ten-day period following the conclusion of the public hearing to allow for additional input.

## IV. Public Availability of Appeal Documents

NOAA intends to provide access to publicly available materials and related documents comprising the appeal record on the following website: *http://www.regulations.gov/#!docketDetail;D=NOAA-HQ-2020-0021*.

(Authority: 15 CFR 930.128(a))

**Adam Dilts,**

*Chief, Oceans and Coasts Section, NOAA Office of the General Counsel.*

[FR Doc. 2020–03577 Filed 2–21–20; 8:45 am]

**BILLING CODE 3510–JE–P**

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## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## Proposed Information Collection; Comment Request; Southeast Region Individual Fishing Quota Programs

**AGENCY:** National Marine Fisheries Service (NMFS), 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 (PRA) of 1995.

**DATES:** To ensure consideration all comments must be submitted by April 24, 2020.

**ADDRESSES:** Direct all written comments to Adrienne Thomas, PRA Officer, NOAA, 151 Patton Ave., Room 159, Asheville, NC 28801 (or via the internet at *PRAcomments@doc.gov*). All comments received are part of the public record and will generally be posted on *www.regulations.gov* 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 instrument and instructions should be directed to Adam Bailey, National Marine Fisheries Service, Southeast Regional Office, Sustainable Fisheries Division, 263 13th Ave. South, St. Petersburg, FL 33701, telephone: 727–824–5305, email: *adam.bailey@noaa.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. Abstract

This request is for the revision of a current information collection under the Office of Management and Budget's (OMB) Control Number 0648–0551, Southeast Region Individual Fishing Quota (IFQ) Programs. The NMFS Southeast Regional Office manages three commercial IFQ and individual transferable quota (ITQ) programs in the Southeast Region under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* The IFQ programs for red snapper, and groupers and tilefishes occur in Federal waters of the Gulf of Mexico (Gulf), and the ITQ program for wreckfish occurs in Federal waters of the South Atlantic.

This collection of information tracks the transfer and use of IFQ and ITQ shares, and IFQ allocation and landings necessary to operate, administer, and review management of the IFQ and ITQ programs. Regulations for the IFQ and ITQ programs are located at 50 CFR part 622.

The NMFS Southeast Regional Office proposes to revise parts of the information collection approved under OMB Control Number 0648–0551. For the Gulf IFQ Programs, the revision would modify pages within the Catch Share Online System. The Transfer Shares page allows IFQ shareholders to transfer shares online to other IFQ shareholders. Similarly, the Transfer Allocation page allows IFQ shareholders to transfer allocation online to other IFQ shareholders. Beginning in early 2020, IFQ shareholders can use IFQ shares as collateral in the Federal Fisheries Finance Program to obtain a loan that can be used for fishing related expenses. However, to accommodate the finance program, the Transfer Shares and Transfer Allocation pages must be modified to allow IFQ shareholders to indicate if their shares are being held as part of a lien. The Landing Transaction page allows IFQ dealers to submit landing transactions online to record landings of IFQ species. NMFS would revise the Landing Transaction page to allow for better data collection and monitoring of landings in conjunction with the NMFS Southeast Fisheries Science Center.

If implemented by NMFS, these revisions would not change the estimated time per response and the associated cost burden would remain at zero dollars. NMFS estimates that it would still require approximately 3 minutes to complete the Transfer Shares or Transfer Allocation pages per occurrence, and 6 minutes to complete the Landing Transaction page per occurrence.

## II. Method of Collection

Information for the Gulf red snapper, and grouper and tilefish IFQ programs is collected electronically via a web-based system, through satellite-linked vessel monitoring systems, through a 24-hour call line, and with paper form submission for landing corrections, closing an account, and account applications, as well as landing transactions under catastrophic circumstances. This revision would update a page in the web-based system.

The share transfer process in the wreckfish ITQ program requires the signatures of witnesses on paper forms. The wreckfish ITQ program remains paper-based until the South Atlantic Fishery Management Council and NMFS consider whether to implement an electronic system. NMFS is not proposing to change the wreckfish ITQ program or information collection.

## III. Data

*OMB Control Number:* 0648–0551.

*Form Number(s):* None.

*Type of Review:* Regular submission—revision of a current information collection.

*Affected Public:* Businesses or other for-profit organizations; Individuals or households.

*Estimated Number of Respondents:* 1,164.

*Estimated Time Per Response:*

- Share Transfer Receipt form, Cost Recovery Fee Submission form, 1 minute;
- Share Transfer form, IFQ Close Account form, Cost Recovery Fee Submission form, Landing Transaction Correction Request form, Landing Location Submission form, Transfer Allocation form, Cost Recovery Fee payment through *pay.gov,* 3 minutes;
- Notification of Landing form, 5 minutes;
- Landing Transaction Report form, 6 minutes;
- IFQ Online Account Application form, 15 minutes;
- Wreckfish Quota Share Transfer form, 18 minutes.

*Estimated Total Annual Burden Hours:* 2,223.

*Estimated Total Annual Cost to Public:* $503 in recordkeeping and 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. 2020–03625 Filed 2–21–20; 8:45 am]

BILLING CODE 3510–22–P

# CONSUMER PRODUCT SAFETY COMMISSION

## Sunshine Act Meeting Notice

**TIME AND DATE:** Wednesday, February 26, 2020; 10:00 a.m.

**PLACE:** Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, MD 20814.

**STATUS:** Commission Meeting—Open to the Public

**MATTERS TO BE CONSIDERED:** Briefing Matter: Data Strategy and Artificial Intelligence.

**CONTACT PERSON FOR MORE INFORMATION:** Alberta E. Mills, Secretary, Division of the Secretariat, Office of the General Counsel, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7479.

Dated: February 20, 2020.

**Alberta E. Mills,**

*Secretary.*

[FR Doc. 2020–03776 Filed 2–20–20; 4:15 pm]

BILLING CODE 6355–01–P

# DEPARTMENT OF EDUCATION

**[Docket No.: ED–2020–SCC–0035]**

## Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Developing Hispanic-Serving Institutions Program Application

**AGENCY:** Office of Postsecondary Education (OPE), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, ED is proposing an extension of an existing information collection.

**DATES:** Interested persons are invited to submit comments on or before March 25, 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–0035. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W–208D, Washington, DC 20202–4537.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Njeri Clark, 202–453–6224.

**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:* Developing Hispanic-Serving Institutions Program Application.

*OMB Control Number:* 1840–0745.

*Type of Review:* An extension of an existing information collection.

*Respondents/Affected Public:* Private Sector.

*Total Estimated Number of Annual Responses:* 300.

*Total Estimated Number of Annual Burden Hours:* 16,500.

*Abstract:* This collection of information is gathered electronically by the Department for the purpose of obtaining programmatic and budgetary information needed to evaluate applications and to make funding decisions based on the authorizing statute and the published selection criteria. This collection will be conducted annually, based on availability of funding for new grants under Title V, Part A.

Dated: February 19, 2020.

**Kate Mullan,**

*PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer.*

[FR Doc. 2020–03621 Filed 2–21–20; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

**[Docket No.: ED–2019–ICCD–0155]**

### Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Fiscal Operations Report for 2019–2020 and Application To Participate 2021–2022 (FISAP) and Reallocation Form

**AGENCY:** Federal Student Aid (FSA), Department of Education (ED).

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of an existing information collection.

**DATES:** Interested persons are invited to submit comments on or before March 25, 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–0155. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave SW, LBJ, Room 6W–208D, Washington, DC 20202–4537.

**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Beth Grebeldinger, 202–377–4018.

**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* Fiscal Operations Report for 2019–2020 and Application to Participate 2021–2022 (FISAP) and Reallocation Form.

*OMB Control Number:* 1845–0030.

*Type of Review:* A revision of an existing information collection.

*Respondents/Affected Public:* State, Local, and Tribal Governments; Private Sector.

*Total Estimated Number of Annual Responses:* 3,893.

*Total Estimated Number of Annual Burden Hours:* 89,846.

*Abstract:* The Higher Education Opportunity Act (HEOA) (Pub. L. 110–315) was enacted on August 14, 2008 and reauthorized the Higher Education Act of 1965, as amended, (HEA). It requires participating Title IV institutions to apply for funds and report expenditures for the Federal Perkins Loan (Perkins), the Federal Supplemental Educational Opportunity Grant (FSEOG) and the Federal Work-Study (FWS) Programs on an annual basis. The data submitted electronically in the Fiscal Operations Report and Application to Participate (FISAP) is used by the Department of Education to determine the institution's funding need for the award year and monitor program effectiveness and accountability of fund expenditures. The data is used in conjunction with institutional program reviews to assess the administrative capability and compliance of the applicant. There are no other resources for collecting this data. The HEA requires that if an institution anticipates not using all of its allocated funds for the FWS, and FSEOG programs by the end of an award year, it must specify the anticipated remaining unused amount to the Secretary, who reduces the institution's allocation accordingly. The changes to the version of the FISAP are to update the deadline and award year references, incorporate new data fields added to capture cumulative service cancellation reimbursement activity beginning in the 2019–20 award year under the Perkins Loan Program.

Dated: February 19, 2020.

**Kate Mullan,**

*PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer.*

[FR Doc. 2020–03622 Filed 2–21–20; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Request for Information Regarding Key Challenges in Reconstituting Uranium Mining and Conversion Capabilities in the United States

**AGENCY:** Office of Nuclear Energy, Department of Energy.

**ACTION:** Request for information (RFI).

**SUMMARY:** The U.S Department of Energy (DOE) is issuing this RFI to invite public input on key challenges in reconstituting uranium mining and conversion capabilities in the United States. This invitation is in recognition of the importance of nuclear fuel supply chain capabilities to the United States. The Joint Explanatory Statement of the Energy and Water Development Committees on H.R. 1865, the Fiscal Year 2020 Energy and Water Appropriations Act, requests the Department to contract not later than 60 days after enactment of the Act with a Federally-Funded Research and Development Center (FFRDC) or other

independent organization to work with industry to identify key challenges in reconstituting mining and conversion capabilities in the United States. The responses received from this RFI will be provided to the FFRDC or the independent organization.

**DATES:** Written comments and information are requested on or before March 16, 2020.

**ADDRESSES:** Interested persons may submit comments by any of the following methods:

1. *Email: rfi-uranium@hq.doe.gov.* Submit electronic comments in Microsoft Word or PDF file format and avoid the use of special characters or any form of encryption. Please include ''Response to RFI'' in the subject line.

2. *Postal Mail:* Response to Mining and Conversion RFI, c/o Ms. Cheryl Moss Herman, U.S. Department of Energy, Office of Nuclear Energy, NE–42, Room B–409, 19901 Germantown Rd., Germantown, MD 20874–1290.

3. *Hand Delivery/Courier:* Ms. Cheryl Moss Herman, U.S. Department of Energy, Office of Nuclear Energy, NE–42, Room B–409, 19901 Germantown Rd., Germantown, MD 20874–1290. Phone: (301) 903–1788.

4. *Online:* Responses will be accepted online at *https://www.regulations.gov.*

*Instructions:* All submissions received must include the agency name for this request for information. No facsimiles (faxes) will be accepted.

**FOR FURTHER INFORMATION CONTACT:** Requests for further information should be sent to: *rfi-uranium@hq.doe.gov* or Ms. Cheryl Moss Herman, U.S. Department of Energy, Office of Nuclear Energy, NE–42, Room B–409, 19901 Germantown Rd., Germantown, MD 20874–1290. Phone: (301) 903–1788. Please include ''Question on RFI'' in the subject line.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Both the President and Congress have recognized the importance of domestic nuclear fuel production capabilities to the United States.

According to the Energy Information Administration (EIA), U.S. uranium production in 2018 of 1.47 million pounds $U_3O_8$ was at the lowest level since 1950 (*https://www.eia.gov/todayinenergy/detail.php?id=39352*). U.S. uranium mining capabilities are at risk for closure if production ceases. The only U.S. conversion capability is in ''ready idle'' status due to poor market conditions.

In a memorandum on July 12, 2019, President Donald J. Trump stated that ''the United States uranium industry faces significant challenges in producing uranium domestically and that this is an issue of national security.'' The President established the U.S. Nuclear Fuel Working Group to ensure a comprehensive review of the entire domestic nuclear supply chain and ''to develop recommendations for reviving and expanding domestic nuclear fuel production.'' (*https://www.whitehouse.gov/presidential-actions/memorandum-effect-uranium-imports-national-security-establishment-united-states-nuclear-fuel-working-group/*)

On December 20, 2019, in the Joint Explanatory Statement accompanying the Further Consolidated Appropriations Act, 2020 (Pub. L. 116–94), DOE was requested to contract not later than 60 days after enactment with a Federally-Funded Research and Development Center (FFRDC) or other independent organization to work with industry to identify key challenges in reconstituting mining and conversion capabilities in the United States.

The responses received from this invitation for public input will be considered by the independent organization in its identification of key challenges in, and the formulation of recommendations for, reconstituting mining and conversion capabilities in the United States.

## II. Specific Questions on Which Information Is Requested

Public comment on the following questions is requested. Please provide data, analysis or other justification for all responses:

*Market-Related*

1. What are the most important market-related challenges to reconstituting the uranium mining and conversion industries? Please consider the following challenges and provide input on additional challenges as needed.

- U.S. and global demand
  - What level of demand and specific characteristics (U.S. and global, long-term versus short-term, etc.) would incentivize restarting or ramping up uranium production and conversion services capabilities in the United States?
- What is a viable level of production to support uranium mining and conversion capability and how are you defining ''viable''?
  - For U.S. industry in total?
  - For individual projects, such as a mine, extraction or processing facility, company, etc.?
- Contract terms
  - What contract term lengths would support sustainable U.S. supply and what constitutes a ''sustainable U.S. supply''?
  - What price level would be sufficient to encourage domestic production from existing as well as new production centers, and how much production is assumed in that price level?
- How long would it take from a ''restart'' decision (presumably after signing needed contracts) to achieve a viable level of production?
- What is the impact of $U_3O_8$ and $UF_6$ inventories on U.S. mining and conversion capabilities?

*Technical/Regulatory*

2. What are the technical and/or regulatory barriers to the restart of uranium mining and conversion capabilities in the United States?

- For existing projects and facilities?
- For new projects and facilities?
- How do these barriers compare to those in other countries involved in uranium mining? What unique characteristics (*e.g.,* nationalized mines) exist in these countries?

3. Are there concerns or limitations with existing uranium mining and conversion infrastructure (*e.g.,* aging facilities, new regulations)? If so, what impact do they have on the ability to start/restart production, production costs or capacity?

*Financial*

4. What are the financial challenges related to reconstituting uranium mining and conversion capabilities in the United States?

- What are the challenges related to the ability to raise needed capital?
- What financial incentives are required for new companies to enter the industry?

*Human Resources*

5. What are the human resource-related considerations for reconstituting uranium mining and conversion services capabilities in the United States?

- Are there specific recruitment and/or training challenges that must be overcome?
- Describe the nature of any potential shortfall in subject matter experts?
- What is the expected timeframe for realizing sufficient human resources to reconstitute the United States' uranium and conversion capabilities?

*Other*

6. Are there additional considerations that should be taken into account regarding key challenges to

reconstituting a uranium mining and conversion capability in the United States?

*Importance*

7. Please indicate which of the challenges addressed are the most important to reconstituting a uranium mining and conversion capability in the United States?

*Recommendations and Timing*

8. Please provide any recommendations that might address and mitigate any industry challenges. Indicate the implementation timing needed to be effective.

**III. Submission of Comments**

DOE invites all interested parties to submit, in writing by March 16, 2020, comments and information on matters addressed in this RFI. Any information that may be business proprietary and exempt by law from public disclosure should be submitted as described in Section IV. Business Proprietary Information.

**IV. Business Proprietary Information**

Pursuant to 10 CFR 1004.11, any person submitting information he or she believes to be business proprietary and exempt by law from public disclosure should submit via email, postal mail, or hand delivery/courier two well-marked copies: One copy of the document marked ''Business Proprietary'' including all the information believed to be proprietary, and one copy of the document marked ''non-Proprietary'' with the information believed to be business proprietary deleted. DOE will make its own determination about the business proprietary status of the information and treat it according to its determination. Factors of interest to DOE when evaluating requests to treat submitted information as business proprietary include: (1) A description of the items; (2) whether and why such items are customarily treated as business proprietary within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its business proprietary nature; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) when such information might lose its business proprietary character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

Signed in Washington, DC, on February 18, 2020.

**Andrew Griffith,**

*Deputy Assistant Secretary for Nuclear Fuel Cycle and Supply Chain, Office of Nuclear Energy, Department of Energy.*

[FR Doc. 2020–03599 Filed 2–21–20; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Fusion Energy Sciences Advisory Committee; Meeting

**AGENCY:** Office of Science, Department of Energy,

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Fusion Energy Sciences Advisory Committee (FESAC). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** March 16, 2020; 8:30 a.m. to 5:00 p.m.

March 17, 2020; 8:30 a.m. to 12:00 noon.

**ADDRESSES:** Hilton Washington DC/Rockville Hotel, 1750 Rockville Pike, Rockville, Maryland 20852

**FOR FURTHER INFORMATION CONTACT:** Dr. Samuel J. Barish, Acting Designated Federal Officer, Office of Fusion Energy Sciences (FES); U.S. Department of Energy; Office of Science; 1000 Independence Avenue SW; Washington, DC 20585; Telephone: (301) 903–2917.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Committee:* To provide advice on a continuing basis to the Director, Office of Science of the Department of Energy, on the many complex scientific and technical issues that arise in the development and implementation of the fusion energy sciences program.

*Tentative Agenda Items:*

- FES perspective
- Report of the Community Planning Process Team on a long-range strategic plan for the FES program
- Next Steps for a long-range strategic plan for the FES program
- 2019 Advancing fusion with machine learning workshop
- Diversity, equity, and inclusion initiatives in the Office of Science
- Public comment
- Adjourn

*Note:* Remote attendance of the FESAC meeting will be possible via Zoom. Instructions will be posted on the FESAC website: *https://science.osti.gov/fes/fesac/Meetings* prior to the meeting and can also be obtained by contacting Dr. Barish by email *sam.barish@science.doe.gov* or by phone (301) 903–2917.

*Public Participation:* The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make an oral statement regarding any of the items on the agenda, you should contact Dr. Barish at (301) 903–8584 (fax) or *sam.barish@science.doe.gov* (email). Reasonable provision will be made to include the scheduled oral statements during the Public Comment time on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

*Minutes:* The minutes of the meeting will be available for public review and copying within 30 days on the Fusion Energy Sciences Advisory Committee website at: *http://science.energy.gov/fes/fesac/*.

Signed in Washington, DC, on February 19, 2020.

**LaTanya Butler,**

*Deputy Committee Management Officer.*

[FR Doc. 2020–03614 Filed 2–21–20; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 8700–005]**

### Alan J. Amy; Amy Family Holdings, LLC; Notice of Transfer of Exemption

1. On November 21, 2019, Alan J. Amy exemptee for the Amy Ranch Hydroelectric Project No. 8700, filed a letter notifying the Commission that the project was transferred from Alan J. Amy to Amy Family Holdings, LLC. The exemption from licensing was originally issued on October 11, 1985.[1] The project is located on Deep Creek and Black Creek in Butte County, Idaho. The transfer of an exemption does not require Commission approval.

2. Amy Family Holdings, LLC is now the exemptee of the Amy Ranch Hydroelectric Project No. 8700. All correspondence must be forwarded to: Ms. Loretta Amy, Amy Family Holdings, LLC, 3244 S. Laurelhurst Place, Boise, ID 83705, telephone: (208) 949–5278; and for day-to-day project activities: Delwin C. Amy, 952 East 1020 North, Richfield, ID 83349, telephone: (208) 420–1255.

[1] *Alan J. Amy,* 33 FERC 62,045 (1985).

Dated: February 18, 2020.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2020–03572 Filed 2–21–20; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

*Docket Number:* PR20–19–001.
*Applicants:* NET Mexico Pipeline Partners, LLC.
*Description:* Tariff filing per 284.123(b),(e)+(g): Revised NGPA Section 311 Statement of Operating Conditions to be effective 12/30/2019.
*Filed Date:* 2/13/2020.
*Accession Number:* 202002135032.
*Comments Due:* 5 p.m. ET 3/5/2020.
*284.123(g) Protests Due:* 5 p.m. ET 3/5/2020.

*Docket Number:* RP20–519–000.
*Applicants:* Northern Natural Gas Company.
*Description:* Northern Natural Gas submits report of the penalty and daily delivery variance charge (DDVC) revenues that have been credited to shippers under RP20–519.
*Filed Date:* 2/13/20.
*Accession Number:* 20200213–5078.
*Comments Due:* 5 p.m. ET 2/25/20.

*Docket Number:* RP20–520–000.
*Applicants:* Kern River Gas Transmission Company.
*Description:* § 4(d) Rate Filing: 2020 February Negotiated Rates to be effective 2/15/2020.
*Filed Date:* 2/14/20.
*Accession Number:* 20200214–5039.
*Comments Due:* 5 p.m. ET 2/26/20.

*Docket Number:* RP20–523–000.
*Applicants:* Southwest Gas Transmission Company, A Limited Partnership.
*Description:* § 4(d) Rate Filing: Cover Page Contact Information to be effective 3/19/2020.
*Filed Date:* 2/14/20.
*Accession Number:* 20200214–5105.
*Comments Due:* 5 p.m. ET 2/26/20.

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 18, 2020.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2020–03567 Filed 2–21–20; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER20–975–000]**

### Crowned Ridge Wind II, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced Crowned Ridge Wind II, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 9, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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.

Dated: February 18, 2020.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2020–03568 Filed 2–21–20; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER20–1015–000]**

### Cove Mountain Solar 2, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Cove Mountain Solar 2, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and

assumptions of liability, is March 9, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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.

Dated: February 18, 2020.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2020–03570 Filed 2–21–20; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER20–1014–000]**

### Cove Mountain Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Cove Mountain Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 9, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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.

Dated: February 18, 2020.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2020–03569 Filed 2–21–20; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP20–521–000]**

### Betelgeuse Energy, LLC v. Paso Natural Gas Company, L.L.C.; Notice of Complaint

Take notice that on February 13, 2020, pursuant to Rule 206 of the Rules of Practice and Procedures of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206, Betelgeuse Energy, LLC (Betelgeuse or Complainant) filed a complaint against El Paso Natural Gas Company, L.L.C. (El Paso or Respondent), alleging that El Paso unlawfully rejected bids submitted by Betelgeuse in two open seasons held by El Paso pursuant to the right of first refusal provisions in its FERC Gas Tariff, Third Revised Volume No. 1A. In so doing, Betelgeuse alleges that El Paso violated those provisions of its tariff, as well as section 4(c) of the Natural Gas Act, 15 U.S.C. 717c(c), and section 282.221(d)(2) of the Commission's regulations, 18 CFR 282.221(d)(2) (2019), as more fully explained in the complaint.

The Complainant certifies that copies of the complaint were served on the contacts for the Respondent as listed on the Commission's list of Corporate Officials.

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. All interventions, or protests must be filed on or before the comment date.

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:* 5:00 p.m. Eastern Time on March 4, 2020.

Dated: February 18, 2020.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2020–03571 Filed 2–21–20; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER20–967–000]**

### Great Bay Solar II, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

February 11, 2020.

This is a supplemental notice in the above-referenced proceeding of Great Bay Solar II, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is March 2, 2020.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2020–03575 Filed 2–21–20; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Effectiveness of Exempt Wholesale Generator Status

February 11, 2020.

| | Docket Nos. |
|---|---|
| Sun Streams 2, LLC | EG20–22–000 |
| Sun Streams 4, LLC | EG20–23–000 |
| Sun Streams PVS, LLC | EG20–24–000 |
| Sun Streams Expansion, LLC | EG20–25–000 |
| Crowned Ridge Wind Farm, LLC | EG20–26–000 |
| Bitter Ridge Wind Farm, LLC | EG20–27–000 |
| Maverick Wind Project, LLC | EG20–28–000 |
| Maverick Wind Project Holdings LLC | EG20–29–000 |
| Sundance Wind Project, LLC | EG20–30–000 |
| Sundance Wind Project Holdings LLC | EG20–31–000 |
| Traverse Wind Energy LLC | EG20–32–000 |
| Traverse Wind Energy Holdings LLC | EG20–33–000 |
| Invenergy Wilkinson Solar Holdings LLC | EG20–34–000 |
| AES Kekaha Solar, LLC | EG20–35–000 |
| Coachella Wind Holdings, LLC | EG20–36–000 |
| Desert Hot Springs, LLC | EG20–37–000 |
| Mojave 16/17/18 LLC | EG20–38–000 |
| Oasis Alta, LLC | EG20–39–000 |
| Mojave 3/4/5 LLC | EG20–40–000 |
| Painted Hills Wind Holdings, LLC | EG20–41–000 |
| Refresh Wind 2, LLC | EG20–42–000 |
| Refresh Wind, LLC | EG20–43–000 |
| San Jacinto Wind II, LLC | EG20–44–000 |
| Terra-Gen 251 Wind, LLC | EG20–45–000 |
| Acorn I Energy Storage, LLC | EG20–46–000 |
| Wildcat I Energy Storage, LLC | EG20–47–000 |
| Little Bear Solar 1, LLC | EG20–48–000 |
| Little Bear Solar 3, LLC | EG20–49–000 |
| Little Bear Solar 4, LLC | EG20–50–000 |
| Little Bear Solar 5, LLC | EG20–51–000 |
| Greenleaf Energy Unit 2 LLC | EG20–52–000 |
| Golden Fields Solar II, LLC | EG20–53–000 |
| Golden Fields Solar III, LLC | EG20–54–000 |
| Golden Fields Solar IV, LLC | EG20–55–000 |
| Crooked Run Solar, LLC | EG20–56–000 |
| Cubico Crooked Run Lessee, LLC | EG20–57–000 |

Take notice that during the month of January 2020, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations. 18 CFR 366.7(a) (2019).

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2020–03576 Filed 2–21–20; 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:* EC20–39–000.
*Applicants:* Upstream Wind Energy LLC.
*Description:* Application for Authorization Under Section 203 of the Federal Power Act, et al. of Upstream Wind Energy LLC.
*Filed Date:* 2/18/20.
*Accession Number:* 20200218–5135.
*Comments Due:* 5 p.m. ET 3/10/20.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER18–2513–003.
*Applicants:* Midcontinent Independent System Operator, Inc.
*Description:* Compliance filing: 2020–02–18 Compliance Filing to Address Self-Fund to be effective 6/24/2015.
*Filed Date:* 2/18/20.
*Accession Number:* 20200218–5091.
*Comments Due:* 5 p.m. ET 3/10/20.

*Docket Numbers:* ER19–1864–002.
*Applicants:* Public Service Company of Colorado.
*Description:* Compliance filing: OATT_Att N–LGIP-Order 845 Compliance to be effective 5/22/2019.
*Filed Date:* 2/18/20.
*Accession Number:* 20200218–5108.
*Comments Due:* 5 p.m. ET 3/10/20.

*Docket Numbers:* ER19–1948–002.
*Applicants:* PacifiCorp.
*Description:* Compliance filing: OATT Order 845—Compliance (per 12.19.19) to be effective 5/22/2019.
*Filed Date:* 2/14/20.
*Accession Number:* 20200214–5137.
*Comments Due:* 5 p.m. ET 3/6/20.

*Docket Numbers:* ER19–1955–002.
*Applicants:* Public Service Company of New Mexico.
*Description:* Compliance filing: Order No. 845 Compliance Filing to be effective 5/22/2018.
*Filed Date:* 2/14/20.
*Accession Number:* 20200214–5225.
*Comments Due:* 5 p.m. ET 3/6/20.

*Docket Numbers:* ER19–1955–003.
*Applicants:* Public Service Company of New Mexico.
*Description:* Compliance filing: Order No. 845 Compliance Filing to be effective 5/22/2019.
*Filed Date:* 2/18/20.
*Accession Number:* 20200218–5000.
*Comments Due:* 5 p.m. ET 3/10/20.

*Docket Numbers:* ER19–1957–002.
*Applicants:* Alabama Power Company.
*Description:* Compliance filing: Order No. 845 and 845–A Compliance Filing to be effective 5/22/2019.
*Filed Date:* 2/18/20.
*Accession Number:* 20200218–5198.
*Comments Due:* 5 p.m. ET 3/10/20.

*Docket Numbers:* ER20–1018–000.
*Applicants:* Gateway Energy Storage, LLC.
*Description:* § 205(d) Rate Filing: Revised Market-Based Rate Tariff to be effective 2/15/2020.
*Filed Date:* 2/14/20.
*Accession Number:* 20200214–5212.
*Comments Due:* 5 p.m. ET 3/6/20.

*Docket Numbers:* ER20–1019–000.
*Applicants:* Ashtabula Wind, LLC.
*Description:* Tariff Cancellation: Ashtabula Wind, LLC Notice of Cancellation of Market-Based Rate Tariff to be effective 2/18/2020.
*Filed Date:* 2/18/20.
*Accession Number:* 20200218–5001.
*Comments Due:* 5 p.m. ET 3/10/20.

*Docket Numbers:* ER20–1020–000.
*Applicants:* Story Wind, LLC.
*Description:* Tariff Cancellation: Story Wind, LLC Notice of Cancellation of Market-Based Rate Tariff to be effective 2/18/2020.
*Filed Date:* 2/18/20.
*Accession Number:* 20200218–5002.
*Comments Due:* 5 p.m. ET 3/10/20.

*Docket Numbers:* ER20–1021–000.
*Applicants:* NorthWestern Corporation.
*Description:* § 205(d) Rate Filing: SA 889—EP&C Agreement with Idaho Power Company to be effective 2/18/2020.
*Filed Date:* 2/18/20.
*Accession Number:* 20200218–5017.
*Comments Due:* 5 p.m. ET 3/10/20.

*Docket Numbers:* ER20–1022–000.
*Applicants:* PacifiCorp.
*Description:* § 205(d) Rate Filing: BPA Construction Agreement (Summer Lake CB & SCADA) Rev 1 to be effective 4/2/2020.
*Filed Date:* 2/18/20.
*Accession Number:* 20200218–5018.
*Comments Due:* 5 p.m. ET 3/10/20.

*Docket Numbers:* ER20–1023–000.
*Applicants:* Mankato Energy Center, LLC.
*Description:* § 205(d) Rate Filing: Revised Market-Based Rate Tariff and Affiliate Sales Authorization to be effective 1/17/2020.
*Filed Date:* 2/18/20.
*Accession Number:* 20200218–5104.
*Comments Due:* 5 p.m. ET 3/10/20.

*Docket Numbers:* ER20–1024–000.
*Applicants:* Mankato Energy Center II, LLC.
*Description:* § 205(d) Rate Filing: Revised Market-Based Rate Tariff and Affiliate Sales Authorization to be effective 1/17/2020.
*Filed Date:* 2/18/20.
*Accession Number:* 20200218–5106.
*Comments Due:* 5 p.m. ET 3/10/20.

*Docket Numbers:* ER20–1025–000.
*Applicants:* ISO New England Inc.
*Description:* Fourteenth Forward Capacity Auction Results of ISO New England Inc.
*Filed Date:* 2/18/20.
*Accession Number:* 20200218–5132.
*Comments Due:* 5 p.m. ET 4/3/20.

*Docket Numbers:* ER20–1026–000.
*Applicants:* Southern California Edison Company.
*Description:* § 205(d) Rate Filing: Amended IFA High Desert Power Project, LLC SA No. 11 to be effective 4/19/2020.
*Filed Date:* 2/18/20.
*Accession Number:* 20200218–5161.
*Comments Due:* 5 p.m. ET 3/10/20.

*Docket Numbers:* ER20–1027–000.
*Applicants:* Tri-State Generation and Transmission Association, Inc.
*Description:* § 205(d) Rate Filing: Filing of Rate Schedule FERC No. 264 among Tri-State, PacifiCorp and WAPA to be effective 1/3/2020.
*Filed Date:* 2/18/20.
*Accession Number:* 20200218–5185.
*Comments Due:* 5 p.m. ET 3/10/20.

*Docket Numbers:* ER20–1028–000.
*Applicants:* Midcontinent Independent System Operator, Inc.
*Description:* § 205(d) Rate Filing: 2020–02–18_SA 3166 Ameren Illinois-Cardinal Point 2nd Rev GIA (J456) to be effective 1/31/2020.
*Filed Date:* 2/18/20.
*Accession Number:* 20200218–5192.
*Comments Due:* 5 p.m. ET 3/10/20.

*Docket Numbers:* ER20–1029–000.
*Applicants:* PJM Interconnection, L.L.C.
*Description:* § 205(d) Rate Filing: Original ISA, SA No. 5562 and ICSA, SA No.5563; Queue No. AB2–032/AB2–153 to be effective 1/16/2020.
*Filed Date:* 2/18/20.
*Accession Number:* 20200218–5199.
*Comments Due:* 5 p.m. ET 3/10/20.

*Docket Numbers:* ER20–1030–000.
*Applicants:* Northern Pass Transmission LLC.
*Description:* Tariff Cancellation: Termination of Transmission Service Agreement to be effective 9/6/2019.
*Filed Date:* 2/18/20.
*Accession Number:* 20200218–5200.
*Comments Due:* 5 p.m. ET 3/10/20.

*Docket Numbers:* ER20–1031–000.
*Applicants:* Northern Pass Transmission LLC.
*Description:* § 205(d) Rate Filing: Section 205 Request For Approval Of Cost Reimbursement to be effective 4/19/2020.
*Filed Date:* 2/18/20.
*Accession Number:* 20200218–5206.
*Comments Due:* 5 p.m. ET 3/10/20.

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 18, 2020.

**Nathaniel J. Davis, Sr.,**

*Deputy Secretary.*

[FR Doc. 2020–03566 Filed 2–21–20; 8:45 am]

**BILLING CODE 6717–01–P**

## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

### Agency Information Collection Activities; Demographic Information on Applicants for Federal Employment

**AGENCY:** Equal Employment Opportunity Commission.

**ACTION:** Notice of information collection—extension without change.

**SUMMARY:** In accordance with the Paperwork Reduction Act, the Equal Employment Opportunity Commission (EEOC or Commission) announces that it intends to submit to the Office of Management and Budget (OMB) a request for a three-year extension of the Demographic Information on Federal Job Applicants, OMB No. 3046–0046.

**DATES:** Written comments on this notice must be submitted on or before April 24, 2020.

**ADDRESSES:** Comments should be sent to Bernadette Wilson, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 131 M Street NE, Washington, DC 20507. As a convenience to commenters, the Executive Secretariat will accept comments totaling six or fewer pages by facsimile (''FAX'') machine. This limitation is necessary to assure access to the equipment. The telephone number of the FAX receiver is (202) 663–4114. (This is not a toll-free number). Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or 1–800–669–6820 (TTY). (These are not toll-free telephone numbers.) Instead of sending written comments to the EEOC, 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. All comments received through this portal will be posted without change, including any personal information you provide, except as noted below. The EEOC reserves the right to refrain from posting libelous or otherwise inappropriate comments including those that contain obscene, indecent, or profane language; that contain threats or defamatory statements; that contain hate speech directed at race, color, sex, national origin, age, religion, disability, or genetic information; or that promote or endorse services or products. All comments received, including any personal information provided, also will be available for public inspection during normal business hours by appointment only at the EEOC Headquarters' Library, 131 M Street NE, Washington, DC 20507. Upon request, individuals who require assistance viewing comments will be provided appropriate aids such as readers or print magnifiers. To schedule an appointment to inspect the comments at EEOC's library, contact the library staff at (202) 663–4630 (voice) or 1–800–669–6820 (TTY). (These are not toll-free numbers.)

**FOR FURTHER INFORMATION CONTACT:** Navarro Pulley, Federal Sector Programs, Office of Federal Operations, 131 M Street NE, Washington, DC 20507, (202) 663–4514 (voice) or 1–800–669–6820 (TTY). (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:** The EEOC's Demographic Information on Federal Job Applicants form (OMB No. 3046–0046) is intended for use by federal agencies in gathering data on the race, ethnicity, sex, and disability status of job applicants. This form is used by the EEOC and other agencies to gauge progress and trends over time with respect to equal employment opportunity goals.

Pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and OMB regulation 5 CFR 1320.8(d)(1), the Commission solicits public comment to enable it to:

(1) Evaluate whether the proposed data collection tool will have practical utility by enabling a federal agency to determine whether recruitment activities are effectively reaching all segments of the relevant labor pool in compliance with the laws enforced by the Commission and whether the agency's selection procedures allow all applicants to compete on a level playing field regardless of race, national origin, sex or disability status;

(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 applicants for federal employees who choose 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.

### Overview of This Information Collection

*Collection Title:* Demographic Information on Federal Job Applicants.
*OMB Control No.:* 3046–0046.
*Description of Affected Public:* Individuals submitting applications for federal employment.
*Number of Annual Responses:* 5,042.
*Estimated Time per Response:* 3 minutes.
*Total Annual Burden Hours:* 252.[1]
*Annual Federal Cost:* None.
*Abstract:* Under section 717 of Title VII and 501 of the Rehabilitation Act, the Commission is charged with reviewing and approving federal agencies plans to affirmatively address potential discrimination before it

[1] This total is calculated as follows: 5,042 annual responses × 3 minutes per response = 15,126 minutes. 15,126/60 = 252 hours.

occurs. Pursuant to such oversight responsibilities, the Commission has established systems to monitor compliance with Title VII and the Rehabilitation Act by requiring federal agencies to evaluate their employment practices through the collection and analysis of data on the race, national origin, sex and disability status of applicants for both permanent and temporary employment.

Several federal agencies (or components of such agencies) have previously obtained separate OMB approval for the use of forms collecting data on the race, national origin, sex, and disability status of applicants. In order to avoid unnecessary duplication of effort and a proliferation of forms, the EEOC seeks an extension of the approval of a common form to be used by all federal agencies.

Response by applicants is optional. The information obtained will be used by federal agencies only for evaluating whether an agency's recruitment activities are effectively reaching all segments of the relevant labor pool and whether the agency's selection procedures allow all applicants to compete on a level playing field regardless of race, national origin, sex, or disability status. The voluntary responses are treated in a highly confidential manner and play no part in the job selection process. The information is not provided to any panel rating the applications, to selecting officials, to anyone who can affect the application, or to the public. Rather, the information is used in summary form to determine trends over many selections within a given occupational or organization area. No information from the form is entered into an official personnel file.

*Burden Statement:* Because of the predominant use of online application systems, which require only pointing and clicking on the selected responses, and because the form requests only eight questions regarding basic information, the EEOC estimates that an applicant can complete the form in approximately 3 minutes or less. Based on past experience, we expect that 5,042 applicants will choose to complete the form.

Upon approval of this common form by OMB, federal agencies may request OMB approval to use this common form without having to publish notices and request public comments for 60 and 30 days. Each agency must account for the burden associated with their use of the common form.

Dated: February 18, 2020.

For the Commission.

**Janet L. Dhillon,**

*Chair.*

**BILLING CODE 6570–01–P**

**DEMOGRAPHIC INFORMATION ON APPLICANTS**

**OMB No.:**

**Expiration Date:**

| **Vacancy Announcement No.:** |
| --- |
| **Position Title:** |

**YOUR PRIVACY IS PROTECTED**

This information is used to determine if our equal employment opportunity efforts are reaching all segments of the population, consistent with Federal equal employment opportunity laws. Responses to these questions are voluntary. Your responses will not be shown to the panel rating the applications, to the official selecting an applicant for a position, or to anyone else who can affect your application. This form will not be placed in your Personnel file nor will it be provided to your supervisors in your employing office should you be hired. The aggregate information collected through this form will be kept private to the extent permitted by law. See the Privacy Act Statement below for more information.

Completion of this form is voluntary. No individual personnel selections are made based on this information. There will be no impact on your application if you choose not to answer any of these questions.

Thank you for helping us to provide better service.

**1. How did you learn about this position? (Check One):**

☐ Agency Internet Site recruitment

☐ Private Employment Web Site

☐ Other Internet Site

☐ Job Fair

☐ Newspaper or magazine

☐ Agency or other Federal government on campus

☐ School or college counselor or other official

☐ Friend or relative working for this agency .

☐ Private Employment Office

☐ Agency Human Resources Department (bulletin board or other announcement)

☐ Federal, State, or Local Job Information Center

☐ Other

**2. Sex (Check One):**

☐ **Male**

☐ **Female**

**3. Ethnicity (Check One):**

☐ **Hispanic or Latino** - a person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.

☐ **Not Hispanic or Latino**

**4. Race (Check all that apply):**

- ☐ **American Indian or Alaska Native** - a person having origins in any of the original peoples of North or South America (including Central America), and who maintains tribal affiliation or community attachment.
- ☐ **Asian** - a person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent, including, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, or Vietnam.
- ☐ **Black or African American** - a person having origins in any of the black racial groups of Africa.
- ☐ **Native Hawaiian or Other Pacific Islander** - a person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific islands.
- ☐ **White** - a person having origins in any of the original peoples of Europe, the Middle East, or North Africa.

**5. Disability/Serious Health Condition**

**The next questions address disability and serious health conditions. Your responses will ensure that our outreach and recruitment policies are reaching a wide range of individuals with physical or mental conditions. Consider your answers without the use of medication and aids (except eyeglasses) or the help of another person.**

**A. Do you have any of the following? Check all boxes that apply to you:**

- ☐ **Deaf or serious difficulty hearing**
- ☐ **Blind or serious difficulty seeing even when wearing glasses**
- ☐ **Missing an arm, leg, hand, or foot**
- ☐ **Paralysis: Partial or complete paralysis (any cause)**
- ☐ **Significant Disfigurement: for example, severe disfigurements caused by burns, wounds, accidents, or congenital disorders**

- ☐ **Significant Mobility Impairment: for example, uses a wheelchair, scooter, walker or uses a leg brace to walk**
- ☐ **Significant Psychiatric Disorder: for example, bipolar disorder, schizophrenia, PTSD, or major depression**
- ☐ **Intellectual Disability (formerly described as mental retardation)**
- ☐ **Developmental Disability: for example, cerebral palsy or autism spectrum disorder**
- ☐ **Traumatic Brain Injury**
- ☐ **Dwarfism**
- ☐ **Epilepsy or other seizure disorder**
- ☐ **Other disability or serious health condition: for example, diabetes, cancer, cardiovascular disease, anxiety disorder, or HIV infection; a learning disability, a speech impairment, or a hearing impairment**

**If you did not select one of the options above, please indicate whether.**

- ☐ **None of the conditions listed above apply to me.**
- ☐ **I do not wish to answer questions regarding disability/health conditions.**

**If you have indicated that you have one of the above conditions, you may be eligible to apply under Schedule A Hiring Authority. For more information, please see http://www.opm.gov/policy-data-oversight/disability-employment/hiring/#url=Schedule-A-Hiring-Authority .**

**If an applicant checks the box for "other disability or serious health condition," the applicant will be taken to Section A.1.**

**A.1. Other Disability or Serious Health Condition (Optional)**

**You indicated that you have a disability or a serious health condition. If you are willing, please select any of the conditions listed below that apply to you. As explained above, your responses will not be shown to the panel rating the applications, to the selecting official, or to anyone else who can affect your application. All responses will remain private to the extent permitted by law.** See the Privacy Act Statement below for more information.

**Please check all that apply:**

- ☐ **I do not wish to specify any condition.**
- ☐ **Alcoholism**
- ☐ **Cancer**
- ☐ **Cardiovascular or heart disease**
- ☐ **Crohn's disease, irritable bowel syndrome, or other gastrointestinal impairment**
- ☐ **Depression, anxiety disorder, or other psychological disorder**
- ☐ **Diabetes or other metabolic disease**
- ☐ **Difficulty seeing even when wearing glasses**
- ☐ **Hearing impairment**
- ☐ **History of drug addiction (but not currently using illegal drugs)**
- ☐ **HIV Infection/AIDS or other immune disorder**
- ☐ **Kidney dysfunction: for example, requires dialysis**
- ☐ **Learning disabilities or ADHD**
- ☐ **Liver disease: for example, hepatitis or cirrhosis**
- ☐ **Lupus, fibromyalgia, rheumatoid arthritis, or other autoimmune disorder**

- ☐ **Morbid obesity**
- ☐ **Nervous system disorder: for example, migraine headaches, Parkinson's disease, or multiple sclerosis**
- ☐ **Non-paralytic orthopedic impairments: for example, chronic pain, stiffness, weakness in bones or joints, or some loss of ability to use parts of the body**
- ☐ **Orthopedic impairments or osteo-arthritis**
- ☐ **Pulmonary or respiratory impairment: for example, asthma, chronic bronchitis, or TB**
- ☐ **Sickle cell anemia, hemophilia, or other blood disease**
- ☐ **Speech impairment**
- ☐ **Spinal abnormalities: for example, spina bifida or scoliosis**
- ☐ **Thyroid dysfunction or other endocrine disorder**
- ☐ **Other. Please identify the disability/health condition, if willing: _____**

## PRIVACY ACT AND PAPERWORK REDUCTION ACT STATEMENTS

**Privacy Act Statement**: This Privacy Act Statement is provided pursuant to 5 U.S.C. 552a (commonly known as the Privacy Act of 1974). The authority for this form is 5 U.S.C. 7201, which provides that the Office of Personnel Management shall implement a minority recruitment program, by the Uniform Guidelines on Employee Selection Procedures, 29 C.F.R. Part 1607.4, which requires collection of demographic data to determine if a selection procedure has an unlawful disparate impact, and by Section 501 of the Rehabilitation Act of 1973, which requires federal agencies to prepare affirmative action plans for the hiring and advancement of people with disabilities. Data relating to an individual applicant are not provided to selecting officials. This form will be seen by Human Resource personnel in the Office of Personnel Management (who are not involved in considering an applicant for a particular job) and by Equal Employment Opportunity Commission officials who will receive aggregate, non-identifiable data from the Office of Personnel Management derived from this form. **Purpose and Routine Uses:** The aggregate, non-identifiable information summarizing all applicants for a position will be used by the Office of Personnel Management and by the Equal Employment Opportunity Commission to determine if the executive branch of the Federal Government is effectively recruiting and selecting individuals from all segments of the population. **Effects of Nondisclosure:** Providing this information is voluntary. No individual personnel selections are

made based on this information. There will be no impact on your application if you choose not to answer any of these questions.

**Paperwork Reduction Act Statement:** The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et. seq,) requires us to inform you that this information is being collected for planning and assessing affirmative employment program initiatives. Response to this request is voluntary. 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 estimated burden of completing this form is five (5) minutes per response, including the time for reviewing instructions. Direct comments regarding the burden estimate or any other aspect of this form to [INSERT: Agency name and address] and to the Office of Management Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

[FR Doc. 2020–03536 Filed 2–21–20; 8:45 am]

BILLING CODE 6570–01–C

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Lead Exposure and Prevention Advisory Committee (LEPAC); Notice of Charter Renewal

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice of charter renewal.

**SUMMARY:** This gives notice under the Federal Advisory Committee Act of October 6, 1972, that the Lead Exposure and Prevention Advisory Committee (LEPAC), Centers for Disease Control and Prevention, Department of Health and Human Services, has been renewed for a 2-year period through January 17, 2022.

**FOR FURTHER INFORMATION CONTACT:** Perri Ruckart, MPH, Designated Federal Officer, NCEH, DDNID, CDC, 1600 Clifton Road NE, MS S106–5, Atlanta, Georgia 30329–4027, telephone (770) 488–3808; *afp4@cdc.gov.*

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Kalwant Smagh,**

*Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2020–03588 Filed 2–21–20; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Collection of Certain Data Regarding Passengers and Crew Arriving From Foreign Countries by Airlines

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Agency order.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), a component of the Department of Health and Human Services (HHS), announces the issuance of an Order requiring airlines to collect and provide information about any passenger who has departed from, or was otherwise present within, the People's Republic of China (excluding the special administrative regions of Hong Kong and Macau) within 14 days of the person's entry or attempted entry into the United States via that airline's carriage (''Designated Passenger'').

**DATES:** This order was issued on February 18, 2020.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Buigut, Division of Global Migration and Quarantine, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS V18–2, Atlanta, GA 30329. Phone: 404–498–1600. Email: *dgmqpolicy@cdc.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Background

On February 12, 2020 HHS/CDC published an Interim Final Rule (IFR) in the **Federal Register** amending its Foreign Quarantine regulations at 42 CFR part 71 (85 FR 7874) to enable CDC to require airlines to collect, and, upon order of the Director of CDC, provide to CDC in a timelier manner, certain data regarding passengers and crew arriving from foreign countries for the purposes of health education, treatment, prophylaxis, or other appropriate public health interventions, including travel restrictions. This Interim Final Rule became effective on February 7, 2020, the day on which it went on display at the Office of the Federal Register. HHS/CDC undertook this rulemaking because a fundamental component of the public health response to the report of a person with a communicable disease is the identification and evaluation of those who may have been exposed. Thus, in order to control the introduction, transmission, and spread of communicable diseases into the United States, such as COVID–19, CDC must be able to identify and locate persons arriving in the United States from a foreign country who may have been exposed to a communicable disease abroad. Another fundamental component of a public health response is identifying and contacting those individuals who may have come in contact with a person with a communicable disease and who may be at risk of contracting the disease as a result of their interactions with such

affected persons. The identification and notification of those exposed is an essential first step in providing the exposed access to potentially life-saving medical screening, follow-up, disease prevention measures, including vaccination and other preventive treatments, and medical treatment and supportive care. Preventing secondary cases among contacts, in turn, helps prevent the propagation and spread of disease within the community. Therefore, travelers and the public at large derive direct benefit from a system that ensures that, if an exposure has occurred, health authorities can identify, locate, and notify affected passengers and those individuals who came into contact with them within the incubation period of the disease. Contact tracing is effective at reducing cases of communicable disease at the early stages of a potential outbreak if the contacts are notified as soon after initial exposure as possible. If an efficient contact system is not in place when the first ill passengers arrive, the benefits of the contact tracing are greatly diminished.

**Order of the Centers for Disease Control and Prevention, Department of Health and Human Services Under 42 CFR 71.31 and 71.4**

*Attn:* Each airline carrying a passenger who has departed from, or was otherwise present within, the People's Republic of China (excluding the special administrative regions of Hong Kong and Macau) within 14 days of the date of the passenger's entry or attempted entry into the United States via that airline's carriage.

In accordance with 42 CFR 71.31(b) and 71.4(d), as authorized by 42 U.S.C. 264:

1. Each airline is hereby ordered to collect and provide information about any passenger who has departed from, or was otherwise present within, the People's Republic of China (excluding the special administrative regions of Hong Kong and Macau) within 14 days of the date of the passenger's entry or attempted entry into the United States via that airline's carriage (''Designated Passengers'').

2. Each airline must collect and provide the following information (''Designated Information'') to the extent such information exists for any Designated Passenger carried by that airline:

a. Full name (last, first, and, if available, middle or others);

b. Primary contact phone number to include country code, at which a Designated Passenger can be contacted while in the United States;

c. Secondary contact phone number to include country code;

d. Address or addresses while a Designated Passenger is in the United States (number and street, city, State, and zip code), except that a U.S. citizen or a lawful permanent resident will provide address of permanent residence in the United States (number and street, city, State, and zip code); and

e. Email address that a Designated Passenger will use for email communications while in the United States.

3. Each airline must produce, using existing data-sharing channels, the Designated Information to the Director of the CDC's Division of Global Migration and Quarantine (''DGMQ''), or his representative. If existing data-sharing channels become unavailable, within 12 hours, the affected airline or airlines must identify an alternate means of transmitting the required data in a manner acceptable to CDC.

4. Each airline must provide Designated Information within 2 hours of the departure of the flight carrying a Designated Passenger.

5. Before or immediately upon arrival in the United States, each airline must provide to CDC (the head of the arrival airport's Quarantine Station) the name of any Designated Passenger who had refused or was otherwise unable to provide all five fields of the Designated Information prior to departure.

6. Each airline must provide Designated Information for the duration of the January 31, 2020 Proclamation on Suspension of Entry as Immigrants and Nonimmigrants of Persons who Pose a Risk of Transmitting 2019 Coronavirus. This order will cease to be effective when the Interim Final Rule at **Federal Register**, Vol. 85, No. 29, ceases to be effective.

The CDC Director has determined that Designated Passengers may be at risk of exposure to COVID–19. CDC will use this information for the purposes of public health follow-up, such as health education, treatment, prophylaxis, or other appropriate public health interventions, including travel restrictions.

''Airline'' as used in this order has the meaning provided at 42 CFR 71.1(b).

Failure to comply with this order may result in the imposition of fines or other penalties as provided in 42 U.S.C. 271 and 42 CFR 71.2, or as otherwise provided by law. CDC maintains information retrieved by personal identifier in accordance with federal law, including the Privacy Act of 1974 (5 U.S.C. 552a). Identifiable information may be shared only for lawful purposes, including with authorized personnel of the U.S. Department of Health and Human Services, state and local public health departments, and other cooperating authorities. CDC will delete the Designated Information when no longer required for the purposes set forth above, in accordance with federal law, and request that State and local governments do the same.

CDC may modify this order by an updated publication in the **Federal Register** or by posting an advisory to follow at *www.cdc.gov.*

**Paperwork Reduction Act**

The Paperwork Reduction Act applies to the collection of this information. CDC has obtained approval from the Office of Management and Budget (OMB) for this data collection titled 'Airline and Vessel and Traveler Information Collection (42 CFR part 71)' under OMB Control No. 0920–1180 (exp. May 30, 2020).

Dated: February 19, 2020.

**Robert R. Redfield,**

*Director, Centers for Disease Control and Prevention.*

[FR Doc. 2020–03636 Filed 2–19–20; 4:45 pm]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Solicitation of Nominations for Appointment to the Healthcare Infection Control Practices Advisory Committee (HICPAC)

**ACTION:** Notice.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC) is seeking nominations for membership on the HICPAC. The HICPAC consists of 14 experts in fields including but not limited to, infectious diseases, infection prevention, healthcare epidemiology, nursing, clinical microbiology, surgery, hospitalist medicine, internal medicine, epidemiology, health policy, health services research, public health, and related medical fields. Nominations are being sought for individuals who have expertise and qualifications necessary to contribute to the accomplishments of the committee's objectives. Nominees will be selected based on expertise in the fields of infectious diseases, infection prevention, healthcare epidemiology, nursing, environmental and clinical microbiology, surgery, internal medicine, and public health. Federal employees will not be considered for membership. Members

may be invited to serve for four-year terms.

Selection of members is based on candidates' qualifications to contribute to the accomplishment of HICPAC objectives *https://www.cdc.gov/hicpac/.*

**DATES:** Nominations for membership on the HICPAC must be received no later than August 3, 2020. Packages received after this time will not be considered for the current membership cycle.

**ADDRESSES:** All nominations should be mailed to HICPAC, Division of Healthcare Quality Promotion, NCEZID, CDC, 1600 Clifton Road NE, Mailstop H16–3, Atlanta, Georgia 30329–4027, emailed (recommended) to *hicpac@cdc.gov,* or faxed to (404) 639–4043.

**FOR FURTHER INFORMATION CONTACT:** Koo-Whang Chung, MPH, HICPAC, Division of Healthcare Quality Promotion, NCEZID, CDC, 1600 Clifton Road NE, Mailstop H16–3, Atlanta, Georgia 30329–4027; *hicpac@cdc.gov.*

**SUPPLEMENTARY INFORMATION:** The U.S. Department of Health and Human Services policy stipulates that committee membership be balanced in terms of points of view represented, and the committee's function. Appointments shall be made without discrimination on the basis of age, race, ethnicity, gender, sexual orientation, gender identity, HIV status, disability, and cultural, religious, or socioeconomic status. Nominees must be U.S. citizens, and cannot be full-time employees of the U.S. Government. Current participation on federal workgroups or prior experience serving on a federal advisory committee does not disqualify a candidate; however, HHS policy is to avoid excessive individual service on advisory committees and multiple committee memberships. Committee members are Special Government Employees (SGEs), requiring the filing of financial disclosure reports at the beginning and annually during their terms. CDC reviews potential candidates for HICPAC membership each year and provides a slate of nominees for consideration to the Secretary of HHS for final selection. HHS notifies selected candidates of their appointment near the start of the term in July 2021, or as soon as the HHS selection process is completed. Note that the need for different expertise varies from year to year and a candidate who is not selected in one year may be reconsidered in a subsequent year. SGE Nominees must be U.S. citizens, and cannot be full-time employees of the U.S. Government. Candidates should submit the following items:

- Current curriculum vitae, including complete contact information (telephone numbers, mailing address, email address).
- At least one letter of recommendation from person(s) not employed by the U.S. Department of Health and Human Services. (Candidates may submit letter(s) from current HHS employees if they wish, but at least one letter must be submitted by a person not employed by an HHS agency (*e.g.,* CDC, NIH, FDA, etc.).

Nominations may be submitted by the candidate him- or herself, or by the person/organization recommending the candidate.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Kalwant Smagh,**

*Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2020–03585 Filed 2–21–20; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Board of Scientific Counselors, National Center for Injury Prevention and Control, (BSC, NCIPC)

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, the CDC announces the following meeting for the Board of Scientific Counselors, National Center for Injury Prevention and Control, (BSC, NCIPC). This meeting is open to the public limited only by the space and ports available. There will be 2,000 telephone ports available. There will be a public comment period at the end of the meeting; from 3:00 p.m.–3:45 p.m., EDT.

**DATES:** The meeting will be held on April 30, 2020, 12:30 p.m. to 3:50 p.m., EDT.

**ADDRESSES:** Teleconference: Dial-In Number: 1–800–369–3110, Participant Code: 7563795.

**FOR FURTHER INFORMATION CONTACT:** Gwendolyn H. Cattledge, Ph.D., M.S.E.H., Deputy Associate Director for Science, NCIPC, CDC, 4770 Buford Highway NE, Mailstop F–63, Atlanta, GA 30341, Telephone (770) 488–1430; Email address: *ncipcbsc@cdc.gov.*

**SUPPLEMENTARY INFORMATION:**

*Purpose:* The Board will: (1) Conduct, encourage, cooperate with, and assist other appropriate public health authorities, scientific institutions, and scientists in the conduct of research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases, and other impairments; (2) assist States and their political subdivisions in preventing and suppressing communicable and non-communicable diseases and other preventable conditions and in promoting health and well-being; and (3) conduct and assist in research and control activities related to injury. The Board of Scientific Counselors makes recommendations regarding policies, strategies, objectives, and priorities; and reviews progress toward injury prevention goals and provides evidence in injury prevention-related research and programs. The Board also provides advice on the appropriate balance of intramural and extramural research, the structure, progress and performance of intramural programs. The Board is designed to provide guidance on extramural scientific program matters, including the: (1) Review of extramural research concepts for funding opportunity announcements; (2) conduct of Secondary Peer Review of extramural research grants, cooperative agreements, and contracts applications received in response to the funding opportunity announcements as it relates to the Center's programmatic balance and mission; (3) submission of secondary review recommendations to the Center Director of applications to be considered for funding support; (4) review of research portfolios; and (5) review of program proposals.

*Matters To Be Considered:* The agenda will discuss an update on the CDC Opioid Prescribing Estimates Project, the Management of Acute and Chronic Pain: Opportunities for Stakeholder Engagement, and Public Comments. In addition, an update will be provided on the formation of the BSC, NCIPC Opioid Workgroup. Agenda items are subject to change as priorities dictate.

The Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention, has been delegated the authority to sign **Federal Register** notices pertaining to

announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

**Kalwant Smagh,**

*Director, Strategic Business Initiatives Unit, Office of the Chief Operating Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2020–03584 Filed 2–21–20; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifier: CMS–1728–19, CMS–10714 and CMS–484, 846, 847, 848, 849, 10125, 10126]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services, HHS.

**ACTION:** Notice.

**SUMMARY:** The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**DATES:** Comments on the collection(s) of information must be received by the OMB desk officer by *March 25, 2020.*

**ADDRESSES:** When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR* Email: *OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

1. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

2. Call the Reports Clearance Office at (410) 786–1326.

**FOR FURTHER INFORMATION CONTACT:** William Parham at (410) 786–4669.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Home Health Agency Cost Report; *Use:* Under the authority of sections 1815(a) and 1833(e) of the Social Security Act (42 U.S.C. 1395g), CMS requires that providers of services participating in the Medicare program submit information to determine costs for health care services rendered to Medicare beneficiaries. CMS requires that providers follow reasonable cost principles under 1861(v)(1)(A) of the Act when completing the Medicare cost report. Under the regulations at 42 CFR 413.20 and 413.24, CMS defines adequate cost data and requires cost reports from providers on an annual basis. The Form CMS–1728–19 cost report is needed to determine a provider's reasonable cost incurred in furnishing medical services to Medicare beneficiaries and reimbursement due to or from a provider. The Form CMS–1728–19 cost report is also used for annual rate setting and payment refinement activities, including developing a home health market basket. Additionally, the Medicare Payment Advisory Commission (MedPAC) uses the home health cost report data to calculate Medicare margins, to formulate recommendations to Congress regarding the HHA PPS, and to conduct additional analysis of the HHA PPS. Providers receiving Medicare reimbursement must provide adequate cost data based on financial and statistical records that can be verified by qualified auditors. *Form Number:* CMS–1728–19 (OMB control number: 0938–0022); *Frequency:* Yearly; *Affected Public:* Business or Other for-Profits, Not-for-Profit Institutions; *Number of Respondents:* 10,196; *Total Annual Responses:* 10,196; *Total Annual Hours:* 1,988,220. (For policy questions regarding this collection contact LuAnn Piccione at 410–786–5423.)

2. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Electronic Medical Documentation Interoperability (EMDI) Pre and Post Pilot Measures Survey; *Use:* The EMDI program assists the Centers for Medicare & Medicaid Services (CMS) Health Information Technology (health IT) standards and interoperability (S&I) initiative, which is to: (1) Facilitate and expand the secure transport of interoperable electronic documentation, (2) utilize and fill in the gaps in the current standards to achieve increased level of interoperability among systems and organizations, and (3) demonstrate the utility of these standards by establishing pilot programs with existing Health Information Handlers, Health Information Service Providers (HISP), and health care providers.

The EMDI Initiative, associated documentation, and pilots are for the purposes of evaluating the performance of CMS policies that involve interoperability and the collection of data/information only. The collected data/information will help CMS, and the EMDI team in determining the overall effectiveness of piloting the EMDI program, as well as assessing each provider's current ability to send, and receive electronic data. *Form Number:* CMS–10714 (OMB control number: 0938–New); *Frequency:* Yearly; *Affected Public:* Private Sector (Business or other

for-profit, not-for-profit institutions); *Number of Respondents:* 240; *Total Annual Responses:* 240; *Total Annual Hours:* 120. For policy questions regarding this collection contact Christopher Lofts at 410–786–4076.

3. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Durable Medical Equipment Medicare Administrative Contractor Certificate of Medical Necessity and Supporting Documentation Requirements; *Use:* The certificates of medical necessity (CMNs) collect information required to help determine the medical necessity of certain items. CMS requires CMNs where there may be a vulnerability to the Medicare program. Each initial claim for these items must have an associated CMN for the beneficiary. Suppliers (those who bill for the items) complete the administrative information (*e.g.,* patient's name and address, items ordered, etc.) on each CMN. The 1994 Amendments to the Social Security Act require that the supplier also provide a narrative description of the items ordered and all related accessories, their charge for each of these items, and the Medicare fee schedule allowance (where applicable). The supplier then sends the CMN to the treating physician or other clinicians (*e.g.,* physician assistant, LPN, etc.) who completes questions pertaining to the beneficiary's medical condition and signs the CMN. The physician or other clinician returns the CMN to the supplier who has the option to maintain a copy and then submits the CMN electronically to CMS, along with a claim for reimbursement. *Form Numbers:* CMS–484, 846, 847, 848, 849, 10125, 10126 (OMB control number: 0938–0679); *Frequency:* Occasionally; *Affected Public:* Individuals or Households; *Number of Respondents:* 1,335,658; *Total Annual Responses:* 1,335,658; *Total Annual Hours:* 267,132. For policy questions regarding this collection contact Melissa Singer at 410–786–0365.

Dated: February 19, 2020.

**William N. Parham, III,**

*Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2020–03633 Filed 2–21–20; 8:45 am]

BILLING CODE 4120–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifier: CMS–R–199, CMS–10180 and CMS–1771]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services, HHS

**ACTION:** Notice.

**SUMMARY:** The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**DATES:** Comments on the collection(s) of information must be received by the OMB desk officer by March 25, 2020.

**ADDRESSES:** When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR* Email: *OIRA_submission@omb.eop.gov.*

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

1. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

2. Call the Reports Clearance Office at (410) 786–1326.

**FOR FURTHER INFORMATION CONTACT:** William Parham at (410) 786–4669.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Reinstatement without change of a currently approved collection; *Title of Information Collection:* Medicaid Report on Payables and Receivables; *Use:* Section 1903(b)(d)(1) of the Social Security Act requires the Secretary to estimate the amount each State should be paid at the beginning of each quarter. This amount is to be based on a report filed by the State. Section 1903(b)(d)(2)(A) of the Social Security Act authorizes the Secretary to pay the amount estimated, reduced or increased to the extent of any overpayment or underpayment for any prior quarter. Section 3515 of CFO Act requires government agencies to produce auditable financial statements in accordance with Office of Management and Budget guidelines on Form and Content. The Government Management and Reform Act of 1994 requires that all offices, bureaus and associated activities of the 24 CFO Act agencies must be covered in an agency. *Form Number:* CMS–R–199 (OMB control number: 0938–0697); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses:* 56; *Total Annual Hours:* 504. (*For policy questions regarding this collection*

*contact* Beverly Boher at (410) 786–7806.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Children's Health Insurance Program (CHIP) Report on Payables and Receivables; *Use:* Section 2105 of the Social Security Act (Title XXI) requires the Secretary to estimate the amount each State should be paid at the beginning of each quarter. This amount is based on a report filed by the State. Section 2105 of the Social Security Act authorizes the Secretary to pay the amount estimated, reduced or increased to the extent of any overpayment or underpayment for any prior quarter. Section 3515 of the CFO Act requires government agencies to produce auditable financial statements in accordance with Office of Management and Budget guidelines on Form and Content. The Government Management and Reform Act of 1994 requires that all offices, bureaus and associated activities of the 24 CFO Act agencies must be covered in an agency-wide, audited financial statement. Collection of CHIP data and the calculation of the CHIP Incurred But Not Reported (IBNR) estimate are pertinent to CMS' financial audit. The CHIP Report on Payables and Receivables will provide the information needed to calculate the CHIP IBNR. Failure to collect this information could result in non-compliance with the law. *Form Number:* CMS–10180 (OMB control number: 0938–0988); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses:* 56; *Total Annual Hours:* 504. (*For policy questions regarding this collection contact* Beverly Boher at (410) 786–7806.)

3. *Type of Information Collection Request:* Reinstatement without change of a currently approved collection*; Title of Information Collection:* Emergency and Foreign Hospital Services and Supporting Regulation in 42 CFR Section 424.103*; Use:* Section 1866 of the Social Security Act states that any provider of services shall be qualified to participate in the Medicare program and shall be eligible for payments under Medicare if it files an agreement with the Secretary to meet the conditions outlined in this section of the Act. Section 1814 (d)(1) of the Social Security Act and 42 CFR 424.100, allows payment of Medicare benefits for a Medicare beneficiary to a nonparticipating hospital that does not have an agreement in effect with the Centers for Medicare and Medicaid Services. These payments can be made if such services were emergency services and if CMS would be required to make the payment if the hospital had an agreement in effect and met the conditions of payment. This form is used in connection with claims for emergency hospital services provided by hospitals that do not have an agreement in effect under Section 1866 of the Social Security Act. 42 CFR 424.103 (b) requires that before a non-participating hospital may be paid for emergency services rendered to a Medicare beneficiary, a statement must be submitted that is sufficiently comprehensive to support that an emergency existed. Form CMS- 1771 contains a series of questions relating to the medical necessity of the emergency. The attending physician must attest that the hospitalization was required under the regulatory emergency definition (42 CFR 424.101 attached) and give clinical documentation to support the claim. A photocopy of the beneficiary's hospital records may be used in lieu of the CMS–1771 if the records contain all the information required by the form. *Form Number:* CMS–1771 (OMB control number: 0938–0023); *Frequency:* Yearly; *Affected Public:* Private Sector; Business or other for-profits, Not-for-profit Institutions; *Number of Respondents:* 100; *Total Annual Responses:* 200; *Total Annual Hours:* 50. *(For policy questions regarding this collection contact* Shauntari Cheely *at (410) 786–1818.)*

Dated: February 18, 2020.

**William N. Parham, III,**

*Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2020–03537 Filed 2–21–20; 8:45 am]

**BILLING CODE 4120–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifier: CMS–R–267 and CMS–10396]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services, HHS.

**ACTION:** Notice.

**SUMMARY:** The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**DATES:** Comments must be received by April 24, 2020.

**ADDRESSES:** When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

**FOR FURTHER INFORMATION CONTACT:** William N. Parham at (410) 786–4669.

**SUPPLEMENTARY INFORMATION:**

**Contents**

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–R–267 Medicare Plus Choice Program Requirements Referenced in 42 CFR 422.000—422.700

CMS–10396 Medication Therapy Management Program Improvements—Standardized Format

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

**Information Collection**

1. *Type of Information Collection Request:* Revision with change of a currently approved collection; *Title of Information Collection:* Medicare Plus Choice Program Requirements Referenced in 42 CFR 422.000–422.700; *Use:* The information collection requirements are mandated by 42 CFR part 422. Section 4001 of the Balanced Budget Act of 1997 (BBA) added sections 1851 through 1859 to the Social Security Act to establish the Managed Care program. The Medicare, Medicaid, and SCHIP Benefits Improvement Act and Protection Act of 2000, Public Law 106–554 added requirements to the Managed Care program. The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173) created the Medicare Advantage program.

A major goal of the Medicare Advantage program is to provide ease of access for Original Medicare beneficiaries who wish to enroll in a Medicare Advantage program. Certain populations of beneficiaries such as the dually eligible population (those beneficiaries enrolled in both Medicaid and Medicare) have grown since the program was created and these populations require more flexibilities.

MA organizations (formerly M+C organizations) and potential MA organizations (applicants) use the information collected based on the regulations at 42 CFR part 422 to comply with the application requirements and the MA contract requirements. CMS uses the information collected based on the regulations at 42 CFR part 422 to approve contract applications, monitor compliance with contract requirements, make proper payment to MA organizations, determine compliance with the new prescription drug benefit requirements established by the MMA, and to ensure that correct information is disclosed to Medicare beneficiaries, both potential enrollees and enrollees.

Information supplied by organizations is used to determine eligibility for contracting with CMS, for determining compliance with contract requirements, and for calculating proper payment to the organizations. Information supplied by Medicare beneficiaries is used to determine eligibility to enroll in the M+C organization and to determine proper payment to the organization that enrolled the beneficiary. Separate OMB approval was sought for each form as required.

The information collection request also incorporates the new minimum criteria for dual eligible special needs plans (D–SNPs) to integrate Medicare and Medicaid benefits detailed in Section 50311(b) of the Bipartisan Budget Act of 2018 and set forth in in Final rule (CMS–4185–F, RIN 0938–AT59) for CY2020 and 2021. The integration requirements improve care coordination, quality of care, and beneficiary satisfaction while reducing administrative burden. *Form Number:* CMS–R–267 (OMB control number: 0938–0753); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 6,727,508; *Total Annual Responses:* 6,750,814; *Total Annual Hours:* 1,848,180. (For policy questions regarding this collection contact Marna Metcalf Akbar at 410–786–8251.)

2. *Type of Information Collection Request:* Revision with change of a currently approved collection; *Title of Information Collection:* Medication Therapy Management Program Improvements—Standardized Format; *Use:* The Medicare Modernization Act of 2003 (MMA) under title 42 CFR part 423, subpart D, establishes the requirements that Part D sponsors, an organization which has one or more contract(s) with CMS to provide Part D benefits to Medicare beneficiaries, must meet with regard to cost control and quality improvement including requirements for medication therapy management (MTM) programs. MTM is a patient-centric and comprehensive approach to improve medication use, reduce the risk of adverse events, and improve medication adherence. At minimum, a Part D sponsors' MTM program must offer to its enrollees an annual comprehensive medication review with written summaries, quarterly targeted medication reviews, and follow-up interventions for both beneficiaries and prescribers when necessary.

Information collected by Part D MTM programs as required by the Standardized Format for the CMR summary, which is used by beneficiaries or their authorized representatives, caregivers, and their healthcare providers to improve medication use and achieve better healthcare outcomes. The Standardized Format must comply with applicable industry standards for medication therapy management and electronic data interchange, and should enable CMR data elements to be captured for clinical, reporting or measurement purposes.

After a CMR is performed, the sponsor creates and sends a summary of the CMR to the beneficiary that includes a medication action plan and personal medication list using the Standardized Format. The information users are beneficiaries or their authorized representatives, caregivers, and their healthcare providers as stated in this section. *Form Number:* CMS–10396 (OMB control number: 0938–1154); *Frequency:* Yearly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 735; *Total Annual Responses:* 2,173,254; *Total Annual Hours:* 1,448,908. (For policy questions regarding this collection contact Victoria Dang at 410–786–3991.)

Dated: February 18, 2020.

**William N. Parham, III,**

*Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2020–03533 Filed 2–21–20; 8:45 am]

BILLING CODE 4120–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Child Care and Development Fund (CCDF) Consumer Education Website and Reports of Serious Injuries and Death

**AGENCY:** Office of Child Care, Administration for Children and Families, HHS.

**ACTION:** Request for public comment.

**SUMMARY:** The Office of Child Care (OCC), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is proposing a revision to an approved information collection: ''Child Care and Development Fund (CCDF) Consumer Education website and Reports of Serious Injuries and Death.'' (OMB #0970–0473, expiration 2/29/2020).

**DATES:** *Comments due within 30 days of publication.* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*, Attn: Desk Officer for the Administration for Children and Families.

Copies of the proposed collection may be obtained by emailing *infocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research, and Evaluation, 330 C Street SW, Washington, DC 20201, Attn: ACF Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

**SUPPLEMENTARY INFORMATION:**

*Description:* The revised Consumer Education website information collection requirement will require states and territories to include certain information about their state or territory policies (related to background checks) on their Consumer Education websites.

The existing Reporting of Serious Injuries and Death information collection requirement will not be modified. There are no standard federal forms associated with these reporting requirements.

*Respondents:* The Consumer Education website information collection requirement applies to the 50 States, the District of Columbia, and five Territories that receive CCDF grants. The estimated number of provider respondents for the Reporting of Serious Injuries and Death information collection requirement would be approximately 10,000 annually.

ANNUAL BURDEN ESTIMATES

| Instrument | Annual number of respondents | Total number of responses per respondent | Average burden hours per response | Annual burden hours |
|---|---|---|---|---|
| Consumer Education Website | 56 States and Territories | 1 | 300 | 16,800 |
| Reporting of Serious Injuries and Death | 10,000 Child Care Providers | 1 | 1 | 10,000 |

Estimated Total Annual Burden Hours: 26,800.

**Authority:** Pub. L. 113–186; 42 U.S.C. 9858 *et seq.*

**Mary B. Jones,**

*ACF/OPRE Certifying Officer.*

[FR Doc. 2020–03557 Filed 2–21–20; 8:45 am]

**BILLING CODE 4184–43–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Proposed Information Collection Activity; Adoption Call to Action Data Collection (New Data Collection)

**AGENCY:** Administration on Children, Youth and Families, Administration for Children and Families, HHS.

**ACTION:** Request for public comment.

**SUMMARY:** The Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is proposing to collect data for a new descriptive study, Adoption Call to Action (ACTA) Data Collection.

**DATES:** *Comments due within 60 days of publication.* In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

**ADDRESSES:** Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing *infocollection@acf.hhs.gov.* Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation (OPRE), 330 C Street SW, Washington, DC 20201, Attn: ACF Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

**SUPPLEMENTARY INFORMATION:**

*Description:* The ACTA is an effort by the ACF Children's Bureau. The purpose of the ACTA is to engage child welfare agencies to improve the timeliness and likelihood of permanency for children who are waiting for adoption. This new information collection will provide the Children's Bureau with an understanding of agency target populations, specific strategies (interventions), and outcomes measurement, in order to inform technical assistance strategies and provide a national picture of the overall success of the initiative. Baseline data will be collected with an initial survey (Baseline Survey), followed by two administrations of a follow-up survey instrument (Progress Update Survey) designed to collect process and outcome measures at two additional points in time. The instruments focus on: (1) Identifying the target population(s) agencies are addressing, (2) understanding elements of intervention implementation (process measures), and (3) capturing information related to the outcomes of these efforts.

*Respondents:* Respondents of these data collection instruments will include one representative from each of the 53 child welfare agencies who are participating in ACTA activities.

ANNUAL BURDEN ESTIMATES

| Instrument | Total number of respondents | Total number of responses per respondent | Average burden hours per response | Total burden hours | Annual burden hours |
|---|---|---|---|---|---|
| Adoption Call to Action: Baseline Survey | 53 | 1 | .33 | 18 | 6 |
| Adoption Call to Action: Progress Update | 53 | 2 | .25 | 27 | 9 |

*Estimated Total Annual Burden Hours:* 15.

*Comments:* The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

**Authority:** Section 203 of Section II: Adoption Opportunities of the Child Abuse Prevention and Treatment Act (42 U.S.C. 5113).

**Molly B. Jones,**

*ACF/OPRE Certifying Officer.*

[FR Doc. 2020–03579 Filed 2–21–20; 8:45 am]

BILLING CODE 4184–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2020–N–0008]**

### Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Orthopaedic and Rehabilitation Devices Panel of the Medical Devices Advisory Committee. The general function of the committee is to provide advice and recommendations to the Agency on FDA's regulatory issues. The meeting will be open to the public.

**DATES:** The meeting will be held on April 23, 2020, from 8 a.m. to 6 p.m. and on April 24, 2020, from 8 a.m. to 1 p.m.

**ADDRESSES:** FDA White Oak Campus, 10903 New Hampshire Ave., Building 31, Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Entrance for public meeting participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For security information, please refer to *https://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.* Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

**FOR FURTHER INFORMATION CONTACT:** Patricio Garcia, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5216, Silver Spring, MD 20993–0002, *Patricio.Garcia@fda.hhs.gov,* 301–796–6875, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

**SUPPLEMENTARY INFORMATION:**

*Agenda:* On April 23, 2020, during session I, the committee will discuss and make recommendations regarding the classification of facet screws systems, which are currently unclassified pre-amendment devices to class II (general and special controls). During session II, the committee will discuss and make recommendations regarding the reclassification of noninvasive bone growth stimulators, which are currently post-amendment devices from class III (general controls and premarket approval) to class II (general and special controls).

On April 24, 2020, the committee will discuss and make recommendations regarding the classification of three devices, which are currently unclassified pre-amendment devices to class II (general and special controls). The committee, during session I, will discuss semiconstrained toe (metatarsophalangeal) joint prostheses; during session II, will discuss intracompartmental pressure monitors; and during session III, will discuss intra-abdominal pressure monitoring devices.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's website after the meeting. Background material is available at *https://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/default.htm.* Scroll down to the appropriate advisory committee meeting link.

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before April 1, 2020. Oral presentations from the public will be scheduled on April 23, 2020, between approximately 8:15 a.m. and 8:45 a.m. and between approximately 1 p.m. and 1:30 p.m.; on April 24, 2020, between approximately 8:15 a.m. and 9:15 a.m. Those individuals interested in making formal oral presentations should notify the contact person and indicate during which session they would like to present (see **FOR FURTHER INFORMATION CONTACT**). The notification should include a brief statement of the general nature of the evidence or arguments

they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before March 24, 2020. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing sessions. The contact person will notify interested persons regarding their request to speak by March 25, 2020.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Artair Mallet at *artair.mallett@fda.hhs.gov* or 301–796–9638 at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 19, 2020.

**Lowell J. Schiller,**

*Principal Associate Commissioner for Policy.*

[FR Doc. 2020–03565 Filed 2–21–20; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2014–N–1006]**

### Providing Regulatory Submissions in Electronic Format—Certain Human Pharmaceutical Product Applications and Related Submissions Using the eCTD Specifications (Revision 7); Guidance for Industry; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability.

**SUMMARY:** The Food and Drug Administration (FDA or the Agency) is announcing the availability of a final guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format—Certain Human Pharmaceutical Product Applications and Related Submissions Using the eCTD Specifications (Revision 7).'' FDA has identified certain submission types that warrant an exemption (Type III drug master files (DMFs)) or a long-term waiver (certain positron emission tomography (PET) drug products and certain Type II DMFs supporting PET drugs or noncommercial submissions or applications) from the requirement to submit to the Agency in electronic common technical document (eCTD) format. In addition, this guidance outlines certain circumstances where FDA may determine that a short-term waiver from eCTD submission requirements could be granted. This guidance finalizes the revised draft guidance of the same title issued in July 2019 and replaces the final guidance issued in January 2019 (Revision 6).

**DATES:** The announcement of the guidance is published in the **Federal Register** on February 24, 2020.

**ADDRESSES:** You may submit either electronic or written comments on Agency guidances at any time as follows:

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2014–N–1006 for ''Providing Regulatory Submissions in Electronic Format—Certain Human Pharmaceutical Product Applications and Related Submissions Using the eCTD Specifications (Revision 7).'' Received comments 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.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

**FOR FURTHER INFORMATION CONTACT:** Dorothy West, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6332, Silver Spring, MD 20993–0002, 301–796–0164; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

**SUPPLEMENTARY INFORMATION:**

## I. Background

FDA is announcing the availability of a guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format—Certain Human Pharmaceutical Product Applications and Related Submissions Using the eCTD Specifications (Revision 7).'' This guidance provides information regarding submission types that warrant an exemption or long-term waiver from Agency eCTD requirements. In addition, this guidance outlines certain circumstances where FDA will consider granting short-term waivers from eCTD submission requirements. This guidance is intended to address current concerns raised with FDA regarding the burden of complying with eCTD submission requirements, which could have unintended public health consequences.

This guidance finalizes the draft guidance entitled ''Providing Regulatory Submissions in Electronic Format—Certain Human Pharmaceutical Product Applications and Related Submissions Using the Electronic Common Technical Document Specifications (Revision 7)'' issued on July 16, 2019 (84 FR 33949). The Agency received comments on the draft guidance requesting that FDA clarify certain requirements relating to Type III DMF submissions. The Agency considered these comments and made technical and editorial changes for clarity, where appropriate. For example, ''noncommercial products'' was changed to ''noncommercial INDs'' to clarify the type of submissions referenced in that section of the guidance. In addition, the FDA Electronic Submissions Gateway (ESG) waiver request submission option has been removed to avoid confusion when selecting from the ESG drop-down options.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on ''Providing Regulatory Submissions in Electronic Format—Certain Human Pharmaceutical Product Applications and Related Submissions Using the eCTD Specifications (Revision 7).''

FDA guidances ordinarily contain standard language explaining that guidances should be viewed only as recommendations unless specific regulatory or statutory requirements are cited. FDA is not including this standard language in this guidance because this guidance contains binding provisions. In section 745A(a) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 379k–1(a)), Congress granted explicit authorization to FDA to specify in guidance the format for the electronic submissions required under that section and required that FDA ''shall'' issue such guidance. Accordingly, this guidance explains such requirements under section 745A(a) of the FD&C Act, indicated by the use of the words *must* or *required,* and therefore is not subject to the usual restrictions in FDA's good guidance practice regulations, such as the requirement that guidances not establish legally enforceable responsibilities. See *e.g.,* 21 CFR 10.115(d).

## II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014; the collections of information in 21 CFR part 314 have been approved under OMB control number 0910–0001; and the collections of information in 21 CFR part 601 have been approved under OMB control number 0910–0338.

## III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/drugs/guidance-compliance-regulatory-information/guidances-drugs, https://www.fda.gov/vaccines-blood-biologics/guidance-compliance-regulatory-information-biologics/biologics-guidances,* or *https://www.regulations.gov.*

Dated: February 18, 2020.

**Lowell J. Schiller,**

*Principal Associate Commissioner for Policy.*

[FR Doc. 2020–03522 Filed 2–21–20; 8:45 am]

BILLING CODE 4164–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2018–D–1216]**

### Electronic Common Technical Document v4.0 Technical Conformance Guide; Food and Drug Administration Electronic Common Technical Document v4.0 Module 1 Implementation Package; Request for Comments

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Food and Drug Administration (FDA or the Agency) is requesting comment on the draft Electronic Common Technical Document (eCTD) v4.0 Technical Conformance Guide and the FDA eCTD v4.0 Module 1 Implementation Package. The eCTD v4.0 Technical Conformance Guide will provide specifications, recommendations, and general considerations on how to submit eCTD v4.0-based electronic submissions to the Center for Drug Evaluation and Research (CDER) or the Center for Biologics Evaluation and Research (CBER) using the International Council for Harmonisation eCTD v4.0 Implementation Package and the FDA eCTD v4.0 Module 1 Implementation Package. The Agency is seeking comment on the eCTD v4.0 Technical Conformance Guide and the FDA eCTD v4.0 Module 1 Implementation Package for the accuracy, suitability, and appropriateness of these specifications for the submission of eCTD v4.0 submissions. These versions of the documents are not for implementation.

**DATES:** Submit either electronic or written comments by April 9, 2020.

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before April 9, 2020. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of April 9, 2020. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

*Electronic Submissions*

Submit electronic comments in the following way:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instruction.''

*Instructions:* All submissions received must include the Docket No. FDA–2018–D–1216 for ''Electronic Common Technical Document (eCTD) v4.0 Technical Conformance Guide; FDA eCTD v4.0 Module 1 Implementation Package.'' 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. The eCTD v4.0 Technical Conformance Guide and FDA eCTD v4.0 Module 1 Implementation Package are available on FDA's eCTD v4.0 web page at: *https://www.fda.gov/Drugs/DevelopmentApprovalProcess/FormsSubmissionRequirements/ElectronicSubmissions/ucm309911.htm.*

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the eCTD v4.0 Technical Conformance Guide or FDA eCTD v4.0 Module 1 Implementation Package to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002; or to the Office of Communication, Outreach and Development, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 3128, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to these documents.

**FOR FURTHER INFORMATION CONTACT:** Jonathan Resnick, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 3160, Silver Spring, MD 20993–0002, 301–796–7997; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The eCTD v4.0 Technical Conformance Guide and the FDA eCTD v4.0 Module 1 Implementation Package are draft versions of the eCTD standard format. FDA will continue to only accept eCTD v3.2.2 submissions until eCTD version 4.0 is finalized. Once eCTD v4.0 is finalized, FDA will accept both eCTD v3.2.2 and eCTD v4.0 submissions for a lengthy phase-in period before eventually only accepting eCTD v4.0 submissions. FDA is requesting comments on the draft eCTD v4.0 Technical Conformance Guide and the FDA eCTD v4.0 Module 1 Implementation Package for eCTD v4.0 submissions only. After receiving comments, the Agency will update the eCTD v4.0 Technical Conformance Guide and the FDA eCTD v4.0 Module 1 Implementation Package to facilitate the Agency's future acceptance of eCTD v4.0 submissions.

The eCTD v4.0 Technical Conformance Guide will provide specifications, recommendations, and general considerations on how to submit eCTD v4.0-based electronic submissions to CDER or CBER when the Agency implements eCTD v4.0. The eCTD v4.0 Technical Conformance Guide is organized as follows:

*Section 1: Introduction*

• Provides information on regulatory policy and guidance background, purpose, document control, new features of eCTD v4.0, and guidelines for an eCTD v4.0 submission.

*Section 2: Submission Contents*

• Recommends and provides details on specific topics organized by their placement (by module) in the eCTD submission.

*Section 3: Combination Products*

• Recommends and provides details on device combination product information organized by their placement in the eCTD submission.

*Section 4: Two-Way Communications*

• Provides details on the two-way communication process.

*Section 5: Rules for Submission Tracking Information*

• Provides details on the submission tracking relationships for an FDA eCTD submission.

The FDA eCTD v4.0 Module 1 Implementation Package will provide the detailed specifications to create Module 1 of an eCTD v4.0-based electronic submission for CDER or CBER. The Implementation Package will provide the technical specifications and the necessary components to create a valid FDA eCTD v4.0 submission. The Implementation Package contains the following components:

*FDA eCTD Module 1 Implementation Guide*

• The technical specification for the FDA eCTD v4.0 Module 1 using the Health Level Seven Regulated Product Submission Release 2, Normative standard.

*FDA Regional Genericode Controlled Vocabulary Files*

• Includes region-specific vocabulary and the files intended for implementers to use as a computable version of the controlled vocabulary content.

*FDA Regional Module XML Samples*

• Includes samples of M1 eCTD v4.0 xml.

*FDA Object Identifiers (OID) Listing*

• Provides the OIDs to be used for the FDA Module 1 controlled vocabulary.

*FDA Regional Controlled Vocabulary*

• Includes region-specific vocabulary and these files are intended as the human readable version of the controlled vocabulary content.

*FDA Regional Controlled Vocabulary for Transition Mapping Message DTD 2.01*

• Provides a human readable version of the controlled vocabulary transition mapping for the transition from Module 1 DTD 2.01.

*FDA Regional Controlled Vocabulary for Transition Mapping Message DTD 3.3*

• Provides a human readable version of the controlled vocabulary transition mapping for the transition from Module 1 DTD 3.3.

## II. Electronic Access

Persons with access to the internet may obtain the eCTD v4.0 Technical Conformance Guide and the FDA eCTD v4.0 Module 1 Implementation Package at either *https://www.fda.gov/Drugs/DevelopmentApprovalProcess/FormsSubmissionRequirements/ElectronicSubmissions/ucm309911.htm* or *https://www.regulations.gov.*

Dated: February 19, 2020.

**Lowell J. Schiller,**

*Principal Associate Commissioner for Policy.*

[FR Doc. 2020–03574 Filed 2–21–20; 8:45 am]

BILLING CODE 4164–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2020–N–0008]**

### Allergenic Products Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Allergenic Products Advisory Committee. The general function of the committee is to provide advice and recommendations to the Agency on FDA's regulatory issues. The meeting will be open to the public.

**DATES:** The meeting will be held on May 15, 2020, from 8:30 a.m. to 3 p.m.

**ADDRESSES:** The meeting will be held at FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31, Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. Entrance for the public meeting participants (non-FDA employees) is through Building 1 where routine security check procedures will be performed. For security information, please refer to *https://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.* For those unable to attend in person, the meeting will also be webcast and will be available at the following link: *https://collaboration.fda.gov/apac051520/.* Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

**FOR FURTHER INFORMATION CONTACT:** Kathleen Hayes or Monique Hill, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 6307C, Silver Spring, MD 20993–0002, 301–796–7864, *Kathleen.Hayes@fda.hhs.gov,* or 301–796–4620, *monique.hill@fda.hhs.gov,* respectively; or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

**SUPPLEMENTARY INFORMATION:**

*Agenda:* On May 15, 2020, the Center for Biologics Evaluation and Research's (CBER) Allergenic Products Advisory Committee (APAC) will meet in open session to discuss and make recommendations on the safety and efficacy of Peanut (*Arachis hypogaea*) Allergen Extract manufactured by DBV Technologies, S.A for treatment of patients 4 through 11 years old with a confirmed diagnosis of peanut allergy.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's website after the meeting. Background material is available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before May 8, 2020. Oral presentations from the public will be scheduled between approximately 11:45 a.m. to 12:45 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before April 30, 2020. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by May 1, 2020.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Kathleen Hayes at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: February 19, 2020.

**Lowell J. Schiller,**

*Principal Associate Commissioner for Policy.*

[FR Doc. 2020–03604 Filed 2–21–20; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### "Low Income Levels" Used for Various Health Professions and Nursing Programs Authorized in Titles III, VII, and VIII of the Public Health Service Act

**AGENCY:** Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** HRSA is updating income levels used to identify a ''low income family'' for the purpose of determining eligibility for programs that provide health professions and nursing training to individuals from disadvantaged backgrounds. These various programs are authorized in Titles III, VII, and VIII of the Public Health Service Act.

**SUPPLEMENTARY INFORMATION:** HHS periodically publishes in the **Federal Register** low-income levels to be used by institutions receiving grants and cooperative agreements to determine eligibility for programs providing training for (1) disadvantaged individuals, (2) individuals from disadvantaged backgrounds, or (3) individuals from low-income families.

Many health professions and nursing grant and cooperative agreement awardees use the low-income levels to determine whether potential program participants are from an economically disadvantaged background and would be eligible to participate in the program, as well as to determine the amount of funding the individual receives. Awards are generally made to accredited schools of medicine, osteopathic medicine, public health, dentistry, veterinary medicine, optometry, pharmacy, allied health, podiatric medicine, nursing, and chiropractic; public or private nonprofit schools which offer graduate programs in behavioral health and mental health practice; and other public or private nonprofit health or education entities to assist the disadvantaged to enter and graduate from health professions and nursing schools. Some programs provide for the repayment of health professions or nursing education loans for disadvantaged students.

A ''low-income family/household'' for workforce training programs included in Titles III, VII, and VIII of the Public Health Service Act is defined as having an annual income that does not exceed 200 percent of the Department's poverty guidelines. A family is a group of two or more individuals related by birth, marriage, or adoption who live together.

Most HRSA programs use the income of a student's parent(s) to compute low income status. However, a ''household'' may potentially be only one person. Other HRSA programs, depending upon the legislative intent of the program, the programmatic purpose related to income level, as well as the age and circumstances of the participant, will apply these low income standards to the individual student to determine eligibility, as long as he or she is not listed as a dependent on the tax form of his or her parent(s). Each program announces the rationale and choice of methodology for determining low-income levels in program guidance.

Low-income levels are adjusted annually based on HHS's poverty guidelines. HHS's poverty guidelines are based on poverty thresholds published by the U.S. Census Bureau, adjusted annually for changes in the Consumer Price Index. The income figures below have been updated to reflect the Department's 2020 poverty guidelines as published in 85 FR 12 (January 17, 2020).

LOW INCOME LEVELS BASED ON THE 2020 POVERTY GUIDELINES FOR THE 48 CONTIGUOUS STATES AND THE DISTRICT OF COLUMBIA

| Persons in family/household * | Income level ** |
|---|---|
| 1 | $25,520 |
| 2 | 34,480 |
| 3 | 43,440 |
| 4 | 52,400 |
| 5 | 61,360 |
| 6 | 70.320 |
| 7 | 79,280 |
| 8 | 88,240 |

For families with more than 8 persons, add $8,960 for each additional person.

* Includes only dependents listed on federal income tax forms.

** Adjusted gross income for calendar year 2019.

LOW INCOME LEVELS BASED ON THE 2020 POVERTY GUIDELINES FOR ALASKA

| Persons in family/household * | Income level ** |
|---|---|
| 1 | $31,900 |
| 2 | 43,100 |
| 3 | 54,300 |
| 4 | 65,500 |
| 5 | 76,700 |
| 6 | 87,900 |
| 7 | 99,100 |
| 8 | 110,300 |

For families with more than 8 persons, add $11,200 for each additional person.

* Includes only dependents listed on federal income tax forms.

** Adjusted gross income for calendar year 2019.

LOW INCOME LEVELS BASED ON THE 2020 POVERTY GUIDELINES FOR HAWAII

| Persons in family/household * | Income level ** |
|---|---|
| 1 | $29,360 |
| 2 | 39,660 |
| 3 | 49,960 |
| 4 | 60,260 |
| 5 | 70,560 |
| 6 | 80,860 |
| 7 | 91,160 |
| 8 | 101,460 |

For families with more than 8 persons, add $10,300 for each additional person.

* Includes only dependents listed on federal income tax forms.

** Adjusted gross income for calendar year 2019.

Separate poverty guidelines figures for Alaska and Hawaii reflect Office of Economic Opportunity administrative practice beginning in the 1966–1970 period since the U.S. Census Bureau poverty thresholds do not have separate figures for Alaska and Hawaii. The poverty guidelines are not defined for Puerto Rico or other outlying jurisdictions. Puerto Rico and other outlying jurisdictions shall use income guidelines for the 48 Contiguous States and the District of Columbia.

Dated: February 18, 2020.

**Thomas J. Engels,**

*Administrator.*

[FR Doc. 2020–03590 Filed 2–21–20; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Information Collection Request Title: The Division of Independent Review Application Reviewer Recruitment Form, OMB No. 0915–0295—Extension

**AGENCY:** Health Resources and Services Administration (HRSA), Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, HRSA has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA's ICR only after the 30 day comment period for this notice has closed.

**DATES:** Comments on this ICR should be received no later than March 25, 2020.

**ADDRESSES:** Submit your comments to *paperwork@hrsa.gov* or mail the HRSA Information Collection Clearance Officer, Room 14N136B, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Information Collection Clearance Officer, Lisa Wright-Solomon, at (301) 443–1984.

**SUPPLEMENTARY INFORMATION:**

*Information Collection Request Title:* The Division of Independent Review Application Reviewer Recruitment Form, OMB No. 0915–0295—Extension.

*Abstract:* HRSA's Division of Independent Review (DIR) is responsible for administering the review of eligible applications submitted for grants under HRSA competitive announcements. DIR ensures that the objective review process is independent, efficient, effective, economical, and complies with the applicable statutes, regulations, and policies. Applications are reviewed by subject matter experts knowledgeable in health and public health disciplines for which support is requested. Review findings are advisory to HRSA programs responsible for making award decisions.

This ICR is for continuation of a web-based data collection system, the Reviewer Recruitment Module (RRM), used to gather critical reviewer information. The RRM uses standardized categories of information in drop down menu format for data such as the following: Degree, specialty, occupation, work setting, and in select instances affiliations with organizations and institutions that serve special populations. Some program regulations require that objective review panels contain consumers of health services. Other demographic data may be voluntarily provided by a potential reviewer. Defined data elements assist HRSA in finding and selecting expert reviewers for objective review committees.

HRSA maintains a roster of approximately 9,000 qualified individuals who have actively served on HRSA objective review committees. The web-based RRM simplifies reviewer registration entry using a user-friendly Graphical User Interface (GUI) with a few data drop down menu choices, a search engine that supports key word queries in the actual resume or Curriculum Vitae text and also permits reviewers to access and update their information at will and as needed. The RRM is 508 compliant and accessible by the general public via a link on the HRSA ''Grants'' internet site, or by keying the RRM URL into their browser. The RRM is accessible using any of the commonly used internet browsers.

A 60-day notice published in the **Federal Register** on December 6, 2019, vol. 84, No. 235; pp. 66920–21. There were no public comments.

*Need and Proposed Use of the Information:* HRSA currently utilizes the RRM to collect information from individuals who wish to volunteer as objective review committee participants for the Agency's discretionary and competitive grant or cooperative agreement funding opportunities. The RRM provides HRSA with an effective search and communication functionality with which to identify and contact qualified potential reviewers. The RRM has an enhanced search and reporting capability to help DIR ensure that the HRSA reviewer pool has the necessary skills, education and diversity to meet the ever-evolving need for qualified reviewers. If DIR identifies either an expertise or demographic that is under-represented in the RRM pool, DIR is able to recruit specifically to address those needs as expertise is always the primary determinant in selecting potential reviewers for any specific grant review. No reviewer is required to provide demographic information to join the reviewer pool or be selected as a reviewer for any competition.

All HRSA reviewers must possess the technical skill and ability to access the internet on a secure desktop laptop or touch pad, and either a land line or Voice Over internet Protocol capability in order to participate in HRSA objective review committees. Reviewers are professionals with expertise and experience consistent with the HRSA mission. Certain legislation requires HRSA programs to include consumers of specific health care services in the objective review committee.

*Likely Respondents:* Potential respondents are subject matter professionals with expertise and experience in the social, cultural, and health care fields that are consistent with the HRSA mission and competitive program needs to address the availability and delivery of quality health care to all Americans.

*Burden Statement:* Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

| Form name | Number of respondents | Number of responses per respondent | Total responses | Average burden per response (in hours) | Total burden hours |
|---|---|---|---|---|---|
| New reviewer | 1,194 | 1 | 1194 | .166 | 198 |
| Updating reviewer information | 7,953 | 1 | 7953 | .333 | 2,648 |
| Total | 9,147 | | 9147 | | 2,846 |

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**Maria G. Button,**

*Director, Executive Secretariat.*

[FR Doc. 2020–03587 Filed 2–21–20; 8:45 am]

**BILLING CODE 4165–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of General Medical Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory General Medical Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory General Medical Sciences Council.

*Date:* May 21, 2020.

*Open:* 8:30 a.m. to 12:00 p.m.

*Agenda:* To review and evaluate for the discussion of program policies and issues; opening remarks; report of the Director, NIGMS; and other business of the Council.

*Place:* National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 45 Center Drive, Bethesda, MD 20892.

*Closed:* 12:00 p.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Natcher Building, Conference Rooms E1 & E2, 45 Center Drive, Bethesda, MD 20892.

*Contact Person:* Erica L. Brown, Ph.D., Acting Associate Director for Extramural Activities, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 2AN24F, Bethesda, MD 20892, (301) 594–4499, *erica.brown@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nigms.nih.gov/About/Council,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: February 18, 2020.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2020–03542 Filed 2–21–20; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Implementation of the Updated American Veterinary Medical Association Guidelines for the Euthanasia of Animals: 2020 Edition

**AGENCY:** National Institutes of Health, HHS.

**ACTION:** Notice.

**SUMMARY:** The National Institutes of Health (NIH) is providing guidance to Public Health Service (PHS) awardee institutions on implementation of the American Veterinary Medical Association (AVMA) Guidelines for the Euthanasia of Animals: 2020 Edition (''Guidelines''). The NIH is seeking input from the public on any concerns they may have regarding the updated Guidelines.

**DATES:** Public concerns regarding the updated AVMA Guidelines for the Euthanasia of Animals: 2020 Edition must be submitted electronically at *https://grants.nih.gov/grants/rfi/rfi.cfm?ID=105* by 11:59:59 p.m. EDT on April 29, 2020, in order to be considered.

**FOR FURTHER INFORMATION CONTACT:** Patricia Brown, Director, Office of Laboratory Animal Welfare, Office of Extramural Research, National Institutes of Health, 6700B Rockledge Drive, Suite 2500, Bethesda, MD 20892–6910, phone: 301–496–7163, email: *olaw@od.nih.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Background

The NIH Office of Laboratory Animal Welfare (OLAW) oversees PHS-funded animal activities by the authority of the Health Research Extension Act of 1985 and the PHS Policy on Humane Care and Use of Laboratory Animals (Policy). The PHS Policy, IV.C.1.g., requires that Institutional Animal Care and Use Committees (IACUCs) reviewing PHS-conducted or supported research projects, determine if methods of euthanasia used in projects will be consistent with the recommendations of the AVMA Panel on Euthanasia, unless a deviation is justified for scientific reasons in writing by the investigator.

PHS-Assured institutions are encouraged to begin using the 2020 Guidelines as soon as possible when reviewing research projects, and full implementation is expected after October 1, 2020. Previously approved projects undergoing continuing review according to PHS Policy, *IV.C.5.,* which requires a complete review at least once every 3 years, must be reviewed using the 2020 Guidelines after October 1, 2020.

## II. Electronic Access

The AVMA has posted the AVMA Guidelines for the Euthanasia of Animals: 2020 Edition at *https://www.avma.org/KB/Policies/Documents/euthanasia.pdf* (PDF).

Dated: February 18, 2020.

**Francis S. Collins,**

*Director, National Institutes of Health.*

[FR Doc. 2020–03607 Filed 2–21–20; 8:45 am]

BILLING CODE 4140–01–P

# DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Substance Abuse and Mental Health Services Administration

## Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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.

**Proposed Project: Program Evaluation for Prevention Contract (PEPC)—Strategic Prevention Framework for Prescription Drugs (SPF–Rx) Evaluation (OMB No. 0930–0377)—Revision**

The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Behavioral Health Statistics and Quality (CBHSQ) aims to complete a cross-site evaluation of SAMHSA's Strategic Prevention Framework for Prescription Drugs (SPF–Rx). SPF–Rx is designed to address nonmedical use of prescription drugs as well as opioid overdoses by raising awareness about the dangers of sharing medications and by working with pharmaceutical and medical communities on the risks of overprescribing. The SPF–Rx program aims to promote collaboration between states/tribes and pharmaceutical and medical communities to understand the risks of overprescribing to youth ages 12–17 and adults 18 years of age and older. The program also aims to enhance capacity for, and access to, Prescription Drug Monitoring Program (PDMP) data for prevention purposes. This request for data collection includes a revision from previously approved OMB instruments.

The SPF–Rx program's indicators of success are reductions in opioid overdoses, reduction in prescription drug misuse and improved use of PDMP data. Data collected through the tools described in this statement will be used for the national cross-site evaluation of SAMHSA's SPF–Rx program. This package covers continued data collection through 2023. The PEPC team will systematically collect and maintain an Annual Implementation Instrument (AII) and Grantee and Community Level Outcomes data modules submitted by SPF–Rx grantees through the online Data Management System (DMS).

SAMHSA is requesting approval for data collection for the SPF–Rx cross-site evaluation with the following instruments:

*Annual Implementation Instrument (AII)*—The AII is a survey instrument collected yearly to monitor state, tribal entity, and community-level performance, and to evaluate the effectiveness of the SPF–Rx program. This tool is completed by grantees and sub-recipient community project directors, and provides process data related to funding use and effectiveness, organizational capacity, collaboration with community partners, data infrastructure, planned intervention targets, intervention implementation, evaluation, contextual factors, training and technical assistance (T/TA) needs, and sustainability.

*Grantee- and Community-Level Outcomes Modules*—These modules collect data on key SPF–Rx program outcomes, including opioid prescribing patterns and provider use of PDMP. Grantees will provide outcomes data at the grantee level for their state, tribal area, or jurisdiction, as well as at the community level for each of their sub-recipient communities.

*Grantee-Level Interview*—This qualitative interview will be administered at the end of the evaluation to obtain information from the grantee project directors on their programs, staffing, populations of focus, infrastructure, capacity, lessons learned, and collaboration.

ANNUALIZED DATA COLLECTION BURDEN BY YEAR

| Instrument | Number of respondents | Responses per respondent | Total number of responses | Hours per response | Total burden hours |
|---|---|---|---|---|---|
| Annual Implementation Instrument | 148 | 1 | 148 | 4 | 592 |
| Grantee-Level Outcomes Module | 25 | 1 | 25 | 2.5 | 62.5 |
| Community-Level Outcomes Module | 25 | 4.92 | 123 | 1.25 | 153.75 |
| Grantee-Level Interview | 25 | 1 | 25 | 1.5 | 37.5 |
| FY2021 | 223 | | 321 | | 845.75 |
| Annual Implementation Instrument | 148 | 1 | 148 | 4 | 592 |
| Grantee-Level Outcomes Module | 25 | 1 | 25 | 2.5 | 62.5 |
| Community-Level Outcomes Module | 25 | 4.92 | 123 | 1.25 | 154.75 |
| FY2022 | 198 | | 296 | | 808.25 |
| Annual Implementation Instrument | 39 | 1 | 39 | 4 | 156 |
| Grantee-Level Outcomes Module | 7 | 1 | 7 | 2.5 | 17.5 |
| Community-Level Outcomes Module | 7 | 4.57 | 32 | 1.25 | 40 |
| FY2023 | 53 | | 78 | | 213.5 |

Send comments to Carlos Graham, SAMHSA Reports Clearance Officer, 5600 Fishers Lane, Room 15E57–A, Rockville, Maryland 20857, OR email a copy to *carlos.graham@samhsa.hhs.gov.* Written comments should be received by April 24, 2020.

**Carlos Graham,**

*Social Science Analyst.*

[FR Doc. 2020–03559 Filed 2–21–20; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer at (240) 276–1243.

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 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.

**Proposed Project: Projects for Assistance in Transition From Homelessness (PATH) Program Annual Report (OMB No. 0930–0205)—Revision**

SAMHSA awards grants each fiscal year to each state, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands (hereafter referred to as states), from allotments authorized under the PATH program established by Public Law 101–645, 42 U.S.C. 290cc–21 *et seq.,* the Stewart B. McKinney Homeless Assistance Amendments Act of 1990 [Section 521 *et seq.* of the Public Health Service Act and the 21st Century Cures Act (Public Law 114–255), hereafter referred to as ''the Act'']. Section 522 of the Act, specifies that states must expend their payments solely for making grants to political subdivisions of the state, and to non-profit private entities (including community-based veterans' organizations and other community organizations) for the purpose of providing services specified in the Act. Available funding is allotted in accordance with the formula provision of Section 524 of the PHS Act.

This submission is for the revision to the approved PATH Annual Report Manual. Section 528 of the Act specifies, not later than January 31 of each fiscal year, a funded entity will ''prepare and submit to the Secretary a report in such form and containing such information as the Secretary determines to be necessary for: (1) Securing a record and a description of the purposes for which amounts received under Section 521 were expended during the preceding fiscal year and of the recipients of such amounts; and (2) determining whether such amounts were expended in accordance with the provisions of this part.''

The proposed revision to the PATH 2020 Annual Report Manual are as follows:

*Homelessness Management Information System (HMIS) Data Standards Updates*

When needed, field response options and questions have been updated or added to align with the most recent version of the Department of Housing and Urban Developments (HUD) HMIS Data Standards.

The HUD HMIS Data Standards have been updated and are effective October 1, 2019. The changes in the HUD HMIS Data Standards are reflected in the PATH Annual Report Manual, and include:

—Updates to response categories for Housing Outcomes

—Addition of an ''Unable to Locate Client'' response option to PATH Status

—Addition of a demographic question on history with domestic violence

The estimated annual burden for these reporting requirements is summarized in the table below.

| Respondents | Number of respondents | Responses per respondent | Burden per response (hrs.) | Total burden |
|---|---|---|---|---|
| States | 56 | 1 | 15 | 840 |
| Local provider agencies | 476 | 1 | 15 | 7,140 |
| Total | 532 | | | 7,980 |

Send comments to Carlos Graham, SAMHSA Reports Clearance Officer, 5600 Fishers Lane, Room 15E57–A, Rockville, MD OR email a copy at *carlos.graham@samhsa.hhs.gov.* Written comments should be received by April 24, 2020.

**Carlos Graham,**

*Social Science Analyst.*

[FR Doc. 2020–03558 Filed 2–21–20; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

**[Docket No. USCG–2019–0483]**

### National Chemical Transportation Safety Advisory Committee; Initial Solicitation for Members

**AGENCY:** Coast Guard, Department of Homeland Security.

**ACTION:** Request for applications.

**SUMMARY:** The Coast Guard is requesting applications from persons interested in membership on the National Chemical Transportation Safety Advisory Committee (''Committee''). This recently established Committee will advise the Secretary of the Department of Homeland Security on matters relating to the safe and secure marine transportation of hazardous materials. Please read this notice for a description of the Committee positions we are seeking to fill.

**DATES:** Your completed application should reach the Coast Guard on or before April 24, 2020.

**ADDRESSES:** Applicants should send a cover letter expressing interest in an appointment to the National Chemical Transportation Safety Advisory Committee and a resume detailing the applicant's experience. We will not accept a biography. Applications should be submitted via one of the following methods:

- *By Email: Jessica.P.Anderson@uscg.mil* (preferred).
- *By Mail:* Lieutenant Jessica Anderson, Alternate Designated Federal Officer, Commandant (CG–ENG–5), U.S. Coast Guard Stop 7509, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593–7509.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Jessica Anderson, Alternate Designated Federal Officer of the National Chemical Transportation Safety Advisory Committee; Telephone 202–372–1419; or Email at *Jessica.P.Anderson@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The National Chemical Transportation Safety Advisory Committee is a federal advisory committee. It will operate under the provisions of the *Federal Advisory Committee Act,* 5 United States Code, Appendix, and 46 U.S.C. 15101 and 15109. The Committee was established on December 4, 2018, by section 601 of the *Frank LoBiondo Coast Guard Authorization Act of 2018,* Public Law 115–282. The purpose of the Committee is to advise the Secretary of Homeland Security on matters relating to the safe and secure marine transportation of hazardous materials. In accordance with 46 U.S.C. 15101(c), the Committee is to be comprised of not more than 25 members, each of who has particular expertise, knowledge, and experience in matters relating to the function of the Committee. Each member of the Committee must represent one of the following: The chemical manufacturing entities, entities related to marine handling or transportation of chemicals, vessel design and construction entities, marine safety or security entities, or marine environmental protection entities. The number of members representing each category may vary with the needs of the Coast Guard.

In accordance with 46 U.S.C. 15109(a), the Committee is required to hold meetings at least once a year. We expect the Committee to meet at least twice a year, but it may meet more frequently. We generally plan to hold these meetings in cities that have a high concentration of chemical transportation-industry and related businesses. All members will serve at their own expense and receive no salary or other compensation from the Federal Government. In accordance with Federal Travel Regulations, members will not be reimbursed for travel or per diem. Under 46 U.S.C. 15109(f) (6), membership terms expire on December 31st of the third full year after the effective date of appointment. The Secretary may require an individual to have passed an appropriate security background examination before appointment to the Committee, 46 U.S.C. 15109(f) (4). Registered lobbyists are not eligible to serve on federal advisory committees in an individual capacity. See ''*Revised Guidance on Appointment of Lobbyists to Federal Advisory Committees, Boards and Commissions*'' (79 FR 47482, August 13, 2014). Registered lobbyists are ''lobbyists,'' as defined in 2 U.S.C. 1602, who are required by 2 U.S.C. 1603 to register with the Secretary of the Senate and the Clerk of the House of Representatives.

The Department of Homeland Security does not discriminate in selection of Committee members on the basis of race, color, religion, sex, national origin, political affiliation, sexual orientation, gender identity, marital status, disabilities and genetic information, age, membership in an employee organization, or any other non-merit factor. The Department of Homeland Security strives to achieve a widely diverse candidate pool for all of its recruitment selections.

If you are interested in applying to become a member of the Committee, send your cover letter and resume to Lieutenant Jessica Andersen, Alternate Designated Federal Officer of the National Chemical Transportation Safety Advisory Committee via one of the transmittal methods in the **ADDRESSES** section by the deadline in the **DATES** section of this notice. If you send your application to us via email, we will send you an email confirming receipt of your application.

Dated: February 14, 2020.

**Jeffrey G. Lantz,**

*Director of Commercial Regulations and Standards.*

[FR Doc. 2020–03581 Filed 2–21–20; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[Docket ID: FEMA–2020–0011; OMB No. 1660–0006]**

### Agency Information Collection Activities: Proposed Collection; Comment Request; National Flood Insurance Program Policy Forms

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this notice seeks comments concerning information collected for the selling and servicing of National Flood Insurance Program (NFIP) policies by FEMA's direct servicing agent, NFIP Direct.

**DATES:** Comments must be submitted on or before April 24, 2020.

**ADDRESSES:** To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *www.regulations.gov* under Docket ID FEMA–2020–0011. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Docket Manager, Office of Chief Counsel, DHS/FEMA, 500 C Street SW, 8NE, Washington, DC 20472–3100.

All submissions received must include the agency name and Docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the link in the footer of *www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:** Joycelyn Collins, Underwriting Branch Program Analyst, Federal Insurance Directorate, *Joycelyn.Collins@fema.dhs.gov,* 202–212–4716. You may contact the Records Management Division for copies of the proposed collection of information at email address: *FEMA-Information-Collections-Management@fema.dhs.gov.*

**SUPPLEMENTARY INFORMATION:** The NFIP is authorized by Public Law 90–448 (1968) and expanded by Public Law 93–234 (1973). The National Flood Insurance Act of 1968 requires that the Federal Emergency Management Agency (FEMA) provide flood insurance at full actuarial rates reflecting the complete flood risk to structures built or substantially improved on or after the effective date for the initial Flood Insurance Rate Map for the community, or after December 31, 1974, whichever is later, so that the risks associated with buildings in flood-prone areas are borne by those located in such areas and not by the taxpayers at large. In accordance with Public Law 93–234, the purchase of flood insurance is mandatory when Federal or federally related financial assistance is being provided for acquisition or construction of buildings located, or to be located, within FEMA-identified special flood hazard areas of communities that participate in the NFIP.

#### Collection of Information

*Title:* National Flood Insurance Program Policy Forms.

*Type of Information Collection:* Revision of a currently approved information collection.

*OMB Number:* 1660–0006.

*FEMA Forms:* FEMA Form 086–0–1, Flood Insurance Application; FEMA Form 086–0–2, Flood Insurance Cancellation/Nullification Request Form; FEMA Form 086–0–3, Flood Insurance General Change Endorsement; FEMA Form 086–0–4, V-Zone Risk Factor Rating Form and Instructions (discontinued October 16, 2019, due to insufficient use); and FEMA Form 086–0–5, Flood Insurance Preferred Risk Policy and Newly Mapped Application.

*Abstract:* In order to provide for the availability of policies for flood insurance, policies are marketed through the facilities of licensed insurance agents or brokers in the various States. Applications from agents or brokers are forwarded to a direct servicing agent designated as fiscal agent by the Federal Insurance and Mitigation Administration (FIMA), referred to as NFIP Direct. Upon receipt and examination of the application and required premium, the servicing company issues the appropriate Federal flood insurance policy.

*Affected Public:* Individuals or households; State, local or Tribal Government; Business or other for profit; Not-for-profit institutions; and Farms.

*Number of Respondents:* 409,781.

*Number of Responses:* 409,781.

*Estimated Total Annual Burden Hours:* 62,196.

*Estimated Total Annual Respondent Cost:* $2,268,288.

*Estimated Total Annual Cost to the Federal Government:* $9,356,398.

#### Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to: (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

**Maile Arthur,**

*Acting Records Management Branch Chief, Office of the Chief Administrative Officer, Mission Support, Federal Emergency Management Agency, Department of Homeland Security.*

[FR Doc. 2020–03610 Filed 2–21–20; 8:45 am]

**BILLING CODE 9110–11–P**

## DEPARTMENT OF THE INTERIOR

**[FWS–R4–ES–2020–N014; FVHC98220410150–XXX–FF04H00000]**

### Deepwater Horizon Oil Spill Final Restoration Plan #1.3 and Environmental Assessment: Rabbit Island Restoration and Shoreline Protection at Jean Lafitte Historical National Park and Preserve and Finding of No Significant Impact; Louisiana Trustee Implementation Group

**AGENCY:** Department of the Interior.

**ACTION:** Notice of availability.

**SUMMARY:** In accordance with the Oil Pollution Act of 1990 (OPA), the National Environmental Policy Act of 1969 (NEPA), the Final Programmatic Damage Assessment Restoration Plan and Final Programmatic Environmental Impact Statement (Final PDARP/PEIS), and the Consent Decree, the Federal and

State natural resource trustee agencies for the Louisiana Trustee Implementation Group (LA TIG) have prepared the *Louisiana Trustee Implementation Group Final Phase 2 Restoration Plan/Environmental Assessment #1.3:Rabbit Island Restoration and Shoreline Protection at Jean Lafitte Historical National Park and Preserve* (Phase 2 RP/EA #1.3) and *Finding of No Significant Impact* (FONSI), approving construction activities for the restoration of habitats on federally managed lands and birds injured in the Louisiana Restoration Area as a result of the *Deepwater Horizon* (DWH) oil spill. The Phase 2 RP/EA #1.3 analyzes restoration project design alternatives for two projects, which were approved for engineering and design (E&D) in a previous restoration plan. In the final Phase 2 RP/EA #1.3, the LA TIG selected and approved a design alternative for construction of each, at a total approximate cost of $36,048,500. The purpose of this notice is to inform the public of the availability of the final Phase 2 RP/EA #1.3 and FONSI.

**ADDRESSES:**

*Obtaining Documents:* You may download the Phase 2 RP/EA #1.3 from either of the following websites:

- *https://www.doi.gov/deepwaterhorizon.*
- *https://www.gulfspillrestoration.noaa.gov/restoration-areas/louisiana.*

Alternatively, you may request a CD of the Phase 2 RP/EA #1.3 (see **FOR FURTHER INFORMATION CONTACT**). A hard copy of the Phase 2 RP/EA #1.3 is also available for public review at the locations listed in the following table.

| Library | Address | City | Zip |
|---|---|---|---|
| St. Tammany Parish Library | 310 W 21st Avenue | Covington | 70433 |
| Terrebonne Parish Library | 151 Library Drive | Houma | 70360 |
| New Orleans Public Library, Louisiana Division | 219 Loyola Avenue | New Orleans | 70112 |
| East Baton Rouge Parish Library | 7711 Goodwood Boulevard | Baton Rouge | 70806 |
| Jefferson Parish Library, East Bank Regional Library | 4747 W Napoleon Avenue | Metairie | 70001 |
| Jefferson Parish Library, West Bank Regional Library | 2751 Manhattan Boulevard | Harvey | 70058 |
| Plaquemines Parish Library | 8442 Highway 23 | Belle Chasse | 70037 |
| St. Bernard Parish Library | 1125 E St. Bernard Highway | Chalmette | 70043 |
| St. Martin Parish Library | 201 Porter Street | St. Martinville | 70582 |
| Alex P. Allain Library | 206 Iberia Street | Franklin | 70538 |
| Vermilion Parish Library | 405 E St. Victor Street | Abbeville | 70510 |
| Martha Sowell Utley Memorial Library | 314 St. Mary Street | Thibodaux | 70301 |
| South Lafourche Public Library | 16241 E Main Street | Cut Off | 70345 |
| Calcasieu Parish Public Library Central Branch | 301 W Claude Street | Lake Charles | 70605 |
| Iberia Parish Library | 445 E Main Street | New Iberia | 70560 |
| Mark Shirley, LSU AgCenter | 1105 West Port Street | Abbeville | 70510 |

**FOR FURTHER INFORMATION CONTACT:** Nanciann Regalado, via email at *nanciann_regalado@fws.gov,* via telephone at 678–296–6805, or via the Federal Relay Service at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

## Introduction

On April 20, 2010, the mobile offshore drilling unit *Deepwater Horizon,* which was being used to drill a well for BP Exploration and Production, Inc. (BP), in the Macondo prospect (Mississippi Canyon 252–MC252), experienced a significant explosion, fire, and subsequent sinking in the Gulf of Mexico, resulting in an unprecedented volume of oil and other discharges from the rig and from the wellhead on the seabed. The DWH oil spill is the largest offshore oil spill in U.S. history, discharging millions of barrels of oil over a period of 87 days. In addition, well over 1 million gallons of dispersants were applied to the waters of the spill area in an attempt to disperse the spilled oil. An undetermined amount of natural gas was also released into the environment as a result of the spill.

The Trustees conducted the natural resource damage assessment (NRDA) for the DWH oil spill under the Oil Pollution Act 1990 (OPA; 33 U.S.C. 2701 *et seq.*). Pursuant to OPA, Federal and State agencies act as trustees on behalf of the public to assess natural resource injuries and losses and to determine the actions required to compensate the public for those injuries and losses. The OPA further instructs the designated trustees to develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured natural resources under their trusteeship to baseline (the resource quality and conditions that would exist if the spill had not occurred). This includes the loss of use and services provided by those resources from the time of injury until the completion of restoration.

The DWH Trustees are:

- U.S. Department of the Interior (DOI), as represented by the National Park Service, U.S. Fish and Wildlife Service, and Bureau of Land Management;
- National Oceanic and Atmospheric Administration (NOAA), on behalf of the U.S. Department of Commerce;
- U.S. Department of Agriculture (USDA);
- U.S. Environmental Protection Agency (EPA);
- State of Louisiana Coastal Protection and Restoration Authority, Oil Spill Coordinator's Office, Department of Environmental Quality, Department of Wildlife and Fisheries, and Department of Natural Resources;
- State of Mississippi Department of Environmental Quality;
- State of Alabama Department of Conservation and Natural Resources and Geological Survey of Alabama;
- State of Florida Department of Environmental Protection and Fish and Wildlife Conservation Commission; and
- State of Texas: Texas Parks and Wildlife Department, Texas General Land Office, and Texas Commission on Environmental Quality.

On April 4, 2016, the United States District Court for the Eastern District of Louisiana entered a Consent Decree resolving civil claims by the Trustees against BP arising from the DWH oil spill: *United States* v. *BPXP et al.,* Civ. No. 10–4536, centralized in MDL 2179, In re: Oil Spill by the Oil Rig ''Deepwater Horizon'' in the Gulf of Mexico, on April 20, 2010 (E.D. La.) (*http://www.justice.gov/enrd/deepwater-horizon*). Pursuant to the Consent Decree, restoration projects in the Louisiana Restoration Area are chosen and managed by the LA TIG. The LA TIG is composed of the following Trustees: State of Louisiana Coastal Protection and Restoration Authority,

Oil Spill Coordinator's Office, Departments of Environmental Quality, Wildlife and Fisheries, and Natural Resources; DOI; NOAA; EPA; and USDA.

**Background**

The Final PDARP/PEIS provides for TIGs to propose phasing restoration projects across multiple restoration plans. A TIG may propose in a draft restoration plan conceptual projects to fund for an information-gathering planning phase, such as E&D (phase 1). This allows TIGs to develop information needed to fully consider a subsequent implementation phase in a later restoration plan (phase 2). In the final Phase 1 RP #1, the LA TIG selected six conceptual projects for E&D, using funds from the wetlands, coastal and nearshore habitats; birds; and habitat projects on federally managed lands restoration types, as provided for in the DWH Consent Decree. Two of those projects that were selected for E&D in the final Phase I RP #1 are the Rabbit Island Restoration project (Rabbit Island project), under the birds restoration type, and the Shoreline Protection at Jean Lafitte Historical National Park and Preserve (Jean Lafitte project) under the habitat projects on federally managed lands restoration type. When E&D for those projects reached a stage where enough information was available to conduct OPA and NEPA analyses on the alternatives, a Phase 2 plan was drafted. Notice of availability of the draft Phase 2 RP/EA #1.3 was published in the **Federal Register** on November 13, 2019 (84 FR 61636). Public comment was encouraged and accepted until December 20, 2019. The LA TIG hosted a public webinar on December 2, 2019, to facilitate public review and comment. The LA TIG considered the public comments received and finalized the Phase 2 RP/EA #1.3. A summary of the public comments received and the LA TIG's responses to those comments are presented in Section 7 of the final Phase 2 RP/EA #1.3.

**Overview of the LA TIG Draft Phase 2 RP/EA #1.3**

The final Phase 2 RP/EA #1.3 is being released in accordance with OPA NRDA regulations found in the Code of Federal Regulations (CFR) at 15 CFR part 990, NEPA and its implementing regulations found at 40 CFR parts 1500–1508, the Final PDARP/PEIS, and the Consent Decree. The Phase 2 RP/EA #1.3 provides OPA and NEPA analyses for a reasonable range of design alternatives for the Rabbit Island Restoration and Jean Lafitte Shoreline Restoration projects, and identifies the LA TIG's preferred design alternatives, those which the LA TIG believes best meet the objectives of the two projects. In accordance with NEPA, as part of the final Phase 2 RP/EA #1.3, the Trustees issued a FONSI. The FONSI is available in Appendix E of the Phase 2 RP/EA #1.3.

The Rabbit Island Restoration project meets the goal of restoring and conserving birds by restoring 87.8 acres of the island's original 200-acre footprint for bird habitat. This would be done by raising the elevation of Rabbit Island using dredged fill material from the Calcasieu Ship Channel as the borrow source area. Total cost for this project is approximately $15,600,000.

The Jean Lafitte Shoreline Protection project implements a nearly continuous rock breakwater, with rock elbows protecting fish gaps along the eastern shorelines of Lake Cataouche, Lake Salvador, and Bayou Bardeaux in the Jean Lafitte National Historical Park and Preserve. Implementation is proposed in two increments, the northern and the southern portions of the project area. In the final Phase 2 RP/EA #1.3, the LA TIG approves to fund only the southern portion of the project at this time. The northern portion may be funded at a later date. Total cost for this project is approximately $20,448,500.

**Administrative Record**

The documents comprising the Administrative Record for the Phase 2 RP/EA #1.3 can be viewed electronically at *https://www.doi.gov/deepwaterhorizon/adminrecord.*

**Authority**

The authority for this action is the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.*), its implementing Natural Resource Damage Assessment regulations found at 15 CFR part 990, and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and its implementing regulations found at 40 CFR parts 1500–1508.

**Mary Josie Blanchard,**

*Department of the Interior, Director of Gulf of Mexico Restoration.*

[FR Doc. 2020–03554 Filed 2–21–20; 8:45 am]

BILLING CODE 4333–15–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[LLNVW00000.L5110000. GN0000. LVEMF1805980.18X .MO#4500142520]

## Notice of Availability of the Final Environmental Impact Statement for the Proposed POA11 Project—Modification to the Plan of Operations for the Coeur Rochester and Packard Mines, Pershing County, Nevada

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of availability.

**SUMMARY:** In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended, the Bureau of Land Management (BLM) Humboldt River Field Office, Winnemucca, Nevada has prepared a Final Environmental Impact Statement (EIS) and by this notice is announcing its availability.

**DATES:** The BLM will not issue a final decision on the proposal for a minimum of 30 days after the date that the Environmental Protection Agency publishes its Notice of Availability in the **Federal Register**.

**ADDRESSES:** Copies of Coeur Rochester and Packard Mines POA11 Project Plan of Operations and EIS are available for public inspection at the Winnemucca District BLM Office, 5100 East Winnemucca Boulevard, Winnemucca, Nevada. Interested persons may also review the Final EIS on the internet at *https://go.usa.gov/xPdjC.*

**FOR FURTHER INFORMATION CONTACT:** Kathleen Rehberg, Project Lead, telephone: (775) 623–1500; address: 5100 East Winnemucca Boulevard, Winnemucca, NV 89445. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS 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 applicant, Coeur Rochester Inc., has requested to modify its approved Plan of Operations at the Rochester and Packard mines by expanding its operations. The mine is located approximately 26 miles northeast of Lovelock, Nevada. The mine is currently authorized disturbance up to 2203.1 acres (approximately 164.6 acres of private land and 2038.5 acres of public land),

which was permitted under a series of EISs and Environmental Assessments from the initial Plan of Operations in 1986 through the latest EIS in 2015. Coeur Rochester, Inc. is proposing to expand and optimize its current operations. It proposes to expand mining in both of its current pits (the Rochester and Packard pits) and move, relocate, or expand heap leach pads, waste rock dumps, haul roads, access road, water pipeline, and processing facilities. The proposal would increase disturbance by 2,815.4 acres (435.2 acres on private land and 2380.2 acres on public land).

Mining of the Rochester Pit would extend below the groundwater resulting in a permanent pit lake after closure. Additional, potentially acid-generating material would be excavated and would be processed as ore or stored according to its Waste Rock Storage Plan. The plan would also necessitate an upgrade in power distribution lines and a substation. With the proposed expansion, mine life would be extended to 2033, and would be followed by mine closure and reclamation.

The EIS describes and analyzes the proposed Project's direct, indirect, and cumulative impacts on all affected resources. In addition to the Proposed Action, the following alternatives are also analyzed in the document: Alternative 1, which is an alternate method to manage and store potentially acid generating material; Alternative 2 which was developed to address and manage pit lake development and water quality; and the No Action Alternative.

A Notice of Availability (NOA) of the Draft EIS for the proposed POA11 Project was published in the **Federal Register** on October 18, 2019 (FR Doc No: 2019–55979). Two open house public meetings were held during the comment period. The BLM received seven letters with public comments during the 45-day comment period. Six of the letters contained 18 individual substantive comments which included concerns on potential impacts to grazing allotments, storage and management of potentially acid-generating waste rock, mine closure, groundwater quality, pit lake quality, springs, and potential impacts to community wells for the town of Lovelock, Nevada. These comments were considered and addressed in Appendix F (Draft Environmental Impact Statement Public Comments and BLM Responses) of the Final EIS.

Comments on the Draft EIS received from the public and internal BLM review were considered and incorporated, as appropriate, into the Final EIS. Public comments resulted in the addition of clarifying text or corrections, but did not significantly change the proposed action.

(Authority: 40 CFR 1501.7)

**David Kampwerth,**

*Field Manager, Humboldt River Field Office.*

[FR Doc. 2020–03608 Filed 2–21–20; 8:45 am]

BILLING CODE 4310–HC–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

**[RR02054000, 19XR0687NA, RX.18527901.3000000]**

### Central Valley Project Improvement Act 2020 Criteria for Evaluating Water Management Plans Standard Criteria

**AGENCY:** California-Great Basin—Interior Region 10, Bureau of Reclamation, Department of the Interior.

**ACTION:** Notice of availability.

**SUMMARY:** The Bureau of Reclamation has made available to the public the draft 2020 Criteria for Evaluating Water Management Plans (Standard Criteria) for public review and comment. Reclamation is publishing this notice in order to allow the public an opportunity to review the draft 2020 Standard Criteria.

**DATES:** Submit written comments on the preliminary determinations on or before March 25, 2020.

**ADDRESSES:** Send written comments to Ms. Charlene Stemen, Bureau of Reclamation, 2800 Cottage Way, CGB–400, Sacramento, CA 95825; or via email at *cstemen@usbr.gov.*

**FOR FURTHER INFORMATION CONTACT:** To be placed on a mailing list for any subsequent information, please contact Ms. Charlene Stemen at *cstemen@usbr.gov* or at 916–978–5218 (TDD 978–5608).

**SUPPLEMENTARY INFORMATION:** Section 3405(e) of the Central Valley Project Improvement Act (Title 34 Pub. L. 102–575) requires the Secretary of the Interior to, among other things, ''develop criteria for evaluating the adequacy of all water conservation plans'' developed by certain contractors. According to Section 3405(e)(1), these criteria must promote ''the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices.'' In accordance with this legislative mandate, the Bureau of Reclamation developed and published the Standard Criteria, which is updated every 3 years.

We invite the public to comment on our preliminary (*i.e.,* draft) 2020 Standard Criteria.

A copy of the draft 2020 Standard Criteria will be available for review at Reclamation's office in Sacramento, California, located at 2800 Cottage Way, CGB–410, Sacramento, CA 95825. If you wish to review a copy of the draft 2020 Standard Criteria or receive an electronic copy via email, please contact Ms. Stemen or visit *https://www.usbr.gov/mp/watershare.*

**Richard Woodley,**

*Regional Resources Manager, Bureau of Reclamation, California-Great Basin—Interior Region 10.*

[FR Doc. 2020–03540 Filed 2–21–20; 8:45 am]

BILLING CODE 4332–90–P

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

**[S1D1S SS08011000 SX064A000 201S180110; S2D2S SS08011000 SX064A000 20XS501520; OMB Control Number 1029–0024]**

### Agency Information Collection Activities; Procedures and Criteria for Approval or Disproval of State Program Submissions

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

**ACTION:** Notice of information collection; request for comment.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, we, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are proposing to renew an information collection.

**DATES:** Interested persons are invited to submit comments on or before April 24, 2020.

**ADDRESSES:** Send your comments on this information collection request (ICR) by mail to the Mark Gehlhar, Office of Surface Mining Reclamation and Enforcement, 1849 C. Street NW, Room 4556–MIB, Washington, DC 20240; or by email to *mgehlhar@osmre.gov.* Please reference OMB Control Number 1029–0024 in the subject line of your comments.

**FOR FURTHER INFORMATION CONTACT:** To request additional information about this ICR, contact Mark Gehlhar by email at *mgehlhar@osmre.gov,* or by telephone at 202–208–2716.

**SUPPLEMENTARY INFORMATION:** In accordance with the Paperwork Reduction Act of 1995, we provide the general public and other Federal

agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of the OSMRE; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the OSMRE enhance the quality, utility, and clarity of the information to be collected; and (5) how might the OSMRE 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:* Part 732 establishes the procedures and criteria for approval and disapproval of State program submissions. The information is used to evaluate whether State regulatory authorities are meeting the provisions of their approved programs.

*Title of Collection:* Procedures and Criteria for Approval or Disapproval of State Program Submissions.

*OMB Control Number:* 1029–0024.

*Form Number:* None.

*Type of Review:* Extension of a currently approved collection.

*Respondents/Affected Public:* State and tribal regulatory authorities.

*Total Estimated Number of Annual Respondents:* 33.

*Total Estimated Number of Annual Responses:* 33.

*Estimated Completion Time per Response:* Varies from 5 hours to 350 hours, depending on activity.

*Total Estimated Number of Annual Burden Hours:* 4,765.

*Respondent's Obligation:* Retain a Benefit.

*Frequency of Collection:* Annually.

*Total Estimated Annual Nonhour Burden Cost:* None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Mark J. Gehlhar,**

*Information Collection Clearance Officer, Division of Regulatory Support.*

[FR Doc. 2020–03591 Filed 2–21–20; 8:45 am]

**BILLING CODE 4310–05–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. DEA–593]**

### Bulk Manufacturer of Controlled Substances Application: Scottsdale Research Institute

**ACTION:** Notice of application.

**DATES:** Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before April 24, 2020.

**ADDRESSES:** Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 1301.33(a), this is notice that on October 31, 2019, Scottsdale Research Institute, 5436 E Tapekim Road, Cave Creek, Arizona 85331 applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

| Controlled substance | Drug code | Schedule |
|---|---|---|
| Psilocybin | 7437 | I |
| Psilocyn | 7438 | I |

The company plans to bulk manufacture the above controlled substances to provide consistent medical grade active pharmaceutical ingredient (API) and reference standards for distribution to their research customers.

Dated: January 31, 2020.

**William T. McDermott,**

*Assistant Administrator.*

[FR Doc. 2020–03611 Filed 2–21–20; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Jaime C. David, M.D.; Decision and Order

On September 26, 2017, the Acting Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, Government), issued an Order to Show Cause (hereinafter, OSC) to Jaime C. David, M.D. (hereinafter, Registrant) of Apple Valley, California. OSC, at 1. The OSC proposed the revocation of Registrant's Certificate of Registration No. BD9798818. *Id.* It alleged that Registrant is without ''authority to handle controlled substances in the State of California, the state in which [Registrant is] registered with the DEA.'' *Id.* (citing 21 U.S.C. 823(f) and 824(a)(3)).

Specifically, the OSC alleged that the Medical Board of California (hereinafter, Board) issued an Order on August 24, 2016 revoking Registrant's medical license effective September 23, 2016, and that such Order remains in effect. *Id.* The OSC further alleged that because the Board revoked Registrant's medical license, Registrant lacks the authority to handle controlled substances in the State of California. *Id.*

The OSC notified Registrant of the right to request a hearing on the allegations or to submit a written statement, while waiving the right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.* at 2 (citing 21 CFR 1301.43). The OSC also notified Registrant of the opportunity to submit a corrective action plan. *Id.* at 3 (citing 21 U.S.C. 824(c)(2)(C)).

**Adequacy of Service**

In a Declaration dated April 13, 2018, a Diversion Investigator (hereinafter, DI) assigned to the Riverside Resident Office of the Los Angeles Field Division in Riverside, California, detailed her attempts to serve the OSC to Registrant. Request for Final Agency Action (hereinafter, RFAA) Ex. 3. The DI stated that she attempted to serve Registrant in person at his last known residence, 41145 Ridgegate Lane, Palmdale, California 93551 (hereinafter, the residence). *Id.* at 2. The DI obtained this address from a report written by the

prior Diversion Investigator that reflected that the address was listed on the Medical Board of California's online profile of Registrant and was previously used by DEA to send correspondence to him. *Id.* At the residence, the DI stated that a man answered the door and told her that ''he was [Registrant's] nephew and that [Registrant] had returned to the Philippines with no intention of returning to the United States.'' *Id.* The man declined to accept a copy of the OSC but said he would inform Registrant that the DEA had been to the residence. *Id.*

On September 28, 2017, the DI attempted to send notification of the OSC to Registrant via email using the email address that the DEA had on file, but ''[t]he delivery of the email that [she] sent was returned 'failed.' '' *Id.* On October 26, 2017, the DI sent copies of the OSC by first class mail and certified mail to (1) Registrant's residence, and (2) his DEA registered location of 18419 Highway 18, Suite 6, Apple Valley, California 92307. *Id.* The DI stated that neither of the letters sent by first class mail were returned to the DEA, but that the certified letters sent to the Registrant's residence and registered location were returned as ''refused'' and ''vacant,'' respectively. *Id.*

The Government forwarded its RFAA, along with the evidentiary record, to this office on April 18, 2018. In its RFAA, the Government contends that it made all reasonable actions to serve Registrant—attempting to serve him by email, in-person, and by mail—and that actual service on Registrant is not required. RFAA, at 3–4. The Government requests a final order revoking Registrant's DEA Certificate of Registration because Registrant ''lacks state authority to handle controlled substance in the State of California, the state where [Registrant] is registered.'' *Id.* at 1.

Based on the DI's Declaration, the Government's written representations, and my review of the record, I find that the Government's attempts to serve Registrant were legally sufficient. Due process does not require actual notice. *Jones* v. *Flowers,* 547 U.S. 220, 226 (2006). ''[I]t requires only that the Government's effort be reasonably calculated to apprise a party of the pendency of the action.'' *Dusenbery* v. *United States,* 534 U.S. 161, 170 (2002) (internal quotations omitted). Here, the Government mailed the OSC by first-class mail and certified mail to Registrant's address of record and last-known residence, emailed the OSC to the email address that Registrant had provided to the Government, and visited Registrant's last-known residence where an occupant of the residence who purported to be Registrant's nephew declined to accept the OSC and said that Registrant had left the United States. RFAA Ex. 3. ''[T]he Due Process Clause does not require . . . heroic efforts by the Government'' to find Registrant. *Id.* I find, therefore, that under the circumstances, the Government's efforts to notify Registrant of the OSC were reasonable and satisfied due process.

I also find that more than thirty days have now passed since the Government accomplished service of the OSC. Further, based on the Government's written representations, I find that neither Registrant, nor anyone purporting to represent the Registrant, requested a hearing, submitted a written statement while waiving Registrant's right to a hearing, or submitted a corrective action plan. Accordingly, I find that Registrant has waived the right to a hearing and the right to submit a written statement and corrective action plan. 21 CFR 1301.43(d) and 21 U.S.C. 824(c)(2)(C). I, therefore, issue this Decision and Order based on the record submitted by the Government, which constitutes the entire record before me. 21 CFR 1301.43(e).

## Findings of Fact

### Registrant's DEA Registration

Registrant is the holder of DEA Certificate of Registration No. BD9798818 at the registered address of 18419 Highway 18, Suite 6, Apple Valley, California 92307. RFAA Ex. 1. Pursuant to this registration, Registrant was authorized to dispense controlled substances in schedules II through V as a practitioner. *Id.* Registrant's registration expired on June 30, 2018. *Id.*[1]

### The Status of Registrant's State License

On August 24, 2016, the Medical Board of California issued a Decision After Non-Adoption and Order (''Order''). RFAA Ex. 3, Attach. A. According to the Order, Registrant prescribed a controlled substance to himself, ''used dangerous drugs to an extent or in a manner dangerous or injurious to himself, to another person, or to the public,'' ''used dangerous drugs to an extent that his use impairs his ability to practice medicine safely,'' and ''engaged in unprofessional conduct.'' *Id.* at 15–16. The Order further stated that Registrant's ''ability to practice medicine safely is impaired due to mental illness affecting his competence as a result of his heavy use of controlled substances and dangerous drugs.'' *Id.* at 16. The Order concluded that as a result of Registrant's ''multiple, serious violations and absence of rehabilitation, the public health, safety, and welfare [could not] be protected by any discipline short of revocation'' and revoked Registrant's license to practice medicine effective September 23, 2016. *Id.* at 17. The Medical Board of California's online records, of which I take official notice, document that Registrant's license is still revoked.[2] Medical Board of California License Verification, *https://www.mbc.ca.gov/Breeze/License_Verification.aspx* (last visited Jan. 31, 2020).

Accordingly, I find that Registrant currently is not licensed to engage in the practice of medicine in California, the state in which Registrant is registered with the DEA.

## Discussion

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the CSA ''upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances.'' With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper, M.D.,* 76 FR 71,371 (2011), *pet. for rev. denied,* 481 Fed. Appx. 826 (4th Cir. 2012); *Frederick*

[1] The fact that a Registrant allows his registration to expire during the pendency of an OSC does not impact my jurisdiction or prerogative under the Controlled Substances Act (hereinafter, CSA) to adjudicate the OSC to finality. *Jeffrey D. Olsen, M.D.,* 84 FR 68,474 (2019).

[2] Under the Administrative Procedure Act, an agency ''may take official notice of facts at any stage in a proceeding—even in the final decision.'' United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), ''[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.'' Accordingly, Registrant may dispute my finding by filing a properly supported motion for reconsideration within fifteen calendar days of the date of this Order. Any such motion shall be filed with the Office of the Administrator and a copy shall be served on the Government. In the event Registrant files a motion, the Government shall have fifteen calendar days to file a response. Any such motion and response may be filed and served by email (*dea.addo.attorneys@dea.usdoj.gov*) or by mail to Office of the Administrator, Attn: ADDO, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, VA 22152.

*Marsh Blanton, M.D.,* 43 FR 27,616, 27,617 (1978).

This rule derives from the text of two provisions of the CSA. First, Congress defined the term ''practitioner'' to mean ''a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice.'' 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that ''[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices.'' 21 U.S.C. 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James L. Hooper,* 76 FR at 71,371–72; *Sheran Arden Yeates, M.D.,* 71 FR 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.,* 58 FR 51,104, 51,105 (1993); *Bobby Watts, M.D.,* 53 FR 11,919, 11,920 (1988); *Frederick Marsh Blanton,* 43 FR at 27,617.

According to California statute, ''[n]o person other than a physician . . . shall write or issue a prescription.'' Cal. Health & Safety Code § 11150 (Westlaw 2019). Further, ''physician,'' as defined by California statute, is a person who is ''licensed to practice'' in California. *Id.* § 11024.

Here, the undisputed evidence in the record is that Registrant currently lacks authority to practice medicine in California. As already discussed, a physician must be a licensed practitioner to dispense a controlled substance in California. Thus, because Registrant lacks authority to practice medicine in California and, therefore, is not authorized to handle controlled substances in California, Registrant is not eligible to maintain a DEA registration. Accordingly, I will order that Registrant's DEA registration be revoked.

## Order

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. BD9798818 issued to Jaime C. David, M.D. This Order is effective March 25, 2020.

Dated: January 31, 2020.

**Uttam Dhillon,**

*Acting Administrator.*

[FR Doc. 2020–03626 Filed 2–21–20; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

## Drug Enforcement Administration

**[Docket No. DEA–584]**

## Bulk Manufacturer of Controlled Substances Application: Synthcon, LLC

**ACTION:** Notice of application.

**DATES:** Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before April 24, 2020.

**ADDRESSES:** Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 1301.33(a), this is notice that on December 9, 2019, Synthcon, LLC, 770 Wooten Road, Suite 101, Colorado Springs, Colorado 80915–3538 applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

| Controlled substance | Drug code | Schedule |
|---|---|---|
| Amphetamine | 1100 | II |
| Methamphetamine | 1105 | II |
| 3-Fluoro-N-methylcathinone (3-FMC) | 1233 | I |
| Cathinone | 1235 | I |
| Methcathinone | 1237 | I |
| 4-Fluoro-N-methylcathinone (4-FMC) | 1238 | I |
| Pentedrone (α-methylaminovalerophenone) | 1246 | I |
| Mephedrone (4-Methyl-N-methylcathinone) | 1248 | I |
| 4-Methyl-N-ethylcathinone (4-MEC) | 1249 | I |
| Naphyrone | 1258 | I |
| N-Ethylamphetamine | 1475 | I |
| N,N-Dimethylamphetamine | 1480 | I |
| Aminorex | 1585 | I |
| 4-Methylaminorex (cis isomer) | 1590 | I |
| Gamma Hydroxybutyric Acid | 2010 | I |
| Methaqualone | 2565 | I |
| Mecloqualone | 2572 | I |
| JWH-250 (1-Pentyl-3-(2-methoxyphenylacetyl) indole) | 6250 | I |
| ADB-PINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide) | 7035 | I |
| JWH-018 (also known as AM678) (1-Pentyl-3-(1-naphthoyl)indole) | 7118 | I |
| JWH-073 (1-Butyl-3-(1-naphthoyl)indole) | 7173 | I |
| JWH-200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole) | 7200 | I |
| JWH-203 (1-Pentyl-3-(2-chlorophenylacetyl) indole) | 7203 | I |
| Alpha-ethyltryptamine | 7249 | I |
| Ibogaine | 7260 | I |
| CP-47,497 (5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl-phenol) | 7297 | I |
| CP-47,497 C8 Homologue (5-(1,1-Dimethyloctyl)-2-[(1R,3S)3-hydroxycyclohexyl-phenol) | 7298 | I |
| Lysergic acid diethylamide | 7315 | I |
| 2,5-Dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7) | 7348 | I |
| Tetrahydrocannabinols | 7370 | I |
| Mescaline | 7381 | I |
| 2-(4-Ethylthio-2,5-dimethoxyphenyl) ethanamine (2C-T-2 ) | 7385 | I |

| Controlled substance | Drug code | Schedule |
|---|---|---|
| 3,4,5-Trimethoxyamphetamine | 7390 | I |
| 4-Bromo-2,5-dimethoxyamphetamine | 7391 | I |
| 4-Bromo-2,5-dimethoxyphenethylamine | 7392 | I |
| 4-Methyl-2,5-dimethoxyamphetamine | 7395 | I |
| 2,5-Dimethoxyamphetamine | 7396 | I |
| JWH-398 (1-Pentyl-3-(4-chloro-1-naphthoyl) indole) | 7398 | I |
| 2,5-Dimethoxy-4-ethylamphetamine | 7399 | I |
| 3,4-Methylenedioxyamphetamine | 7400 | I |
| 5-Methoxy-3,4-methylenedioxyamphetamine | 7401 | I |
| N-Hydroxy-3,4-methylenedioxyamphetamine | 7402 | I |
| 3,4-Methylenedioxy-N-ethylamphetamine | 7404 | I |
| 3,4-Methylenedioxymethamphetamine | 7405 | I |
| 4-Methoxyamphetamine | 7411 | I |
| 5-Methoxy-N-N-dimethyltryptamine | 7431 | I |
| Alpha-methyltryptamine | 7432 | I |
| Bufotenine | 7433 | I |
| Diethyltryptamine | 7434 | I |
| Dimethyltryptamine | 7435 | I |
| Psilocybin | 7437 | I |
| Psilocyn | 7438 | I |
| 5-Methoxy-N,N-diisopropyltryptamine | 7439 | I |
| N-Ethyl-1-phenylcyclohexylamine | 7455 | I |
| 1-(1-Phenylcyclohexyl)pyrrolidine | 7458 | I |
| 1-Phenylcyclohexylamine | 7460 | II |
| 1-[1-(2-Thienyl)cyclohexyl]piperidine | 7470 | I |
| Phencyclidine | 7471 | II |
| 1-[1-(2-Thienyl)cyclohexyl]pyrrolidine | 7473 | I |
| N-Ethyl-3-piperidyl benzilate | 7482 | I |
| N-Methyl-3-piperidyl benzilate | 7484 | I |
| N-Benzylpiperazine | 7493 | I |
| 4-Methyl-alphapyrrolidinopropiophenone (4-MePPP) | 7498 | I |
| 2-(2,5-Dimethoxy-4-methylphenyl) ethanamine (2C-D) | 7508 | I |
| 2-(2,5-Dimethoxy-4-ethylphenyl) ethanamine (2C-E ) | 7509 | I |
| 2-(2,5-Dimethoxyphenyl) ethanamine (2C-H) | 7517 | I |
| 2-(4-iodo-2,5-dimethoxyphenyl) ethanamine (2C-I) | 7518 | I |
| 2-(4-Chloro-2,5-dimethoxyphenyl) ethanamine (2C-C) | 7519 | I |
| 2-(2,5-Dimethoxy-4-nitro-phenyl) ethanamine (2C-N) | 7521 | I |
| 2-(2,5-Dimethoxy-4-(n)-propylphenyl) ethanamine (2C-P) | 7524 | I |
| 2-(4-Isopropylthio)-2,5-dimethoxyphenyl) ethanamine (2C-T-4 ) | 7532 | I |
| MDPV (3,4-Methylenedioxypyrovalerone) | 7535 | I |
| 2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25B-NBOMe) | 7536 | I |
| 2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25C-NBOMe) | 7537 | I |
| 2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25I-NBOMe) | 7538 | I |
| Methylone (3,4-Methylenedioxy-N-methylcathinone) | 7540 | I |
| Butylone | 7541 | I |
| Pentylone | 7542 | I |
| alpha-pyrrolidinopentiophenone ($\alpha$-PVP) | 7545 | I |
| alpha-pyrrolidinobutiophenone ($\alpha$-PBP) | 7546 | I |
| AM-694 (1-(5-Fluoropentyl)-3-(2-iodobenzoyl) indole) | 7694 | I |
| 4-Anilino-N-phenethyl-4-piperidine (ANPP) | 8333 | II |
| Phenylacetone | 8501 | II |
| 1-Piperidinocyclohexanecarbonitrile | 8603 | II |
| Alphaprodine | 9010 | II |
| Anileridine | 9020 | II |
| Cocaine | 9041 | II |
| Etorphine (except HCl) | 9056 | I |
| Diphenoxylate | 9170 | II |
| Ecgonine | 9180 | II |
| Heroin | 9200 | I |
| Levorphanol | 9220 | II |
| Meperidine | 9230 | II |
| Meperidine intermediate-A | 9232 | II |
| Meperidine intermediate-B | 9233 | II |
| Meperidine intermediate-C | 9234 | II |
| Dextropropoxyphene, bulk (non-dosage forms) | 9273 | II |
| Morphine | 9300 | II |
| Normorphine | 9313 | I |
| Acetorphine | 9319 | I |
| U-47700 (3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide) | 9547 | I |
| AH-7921 (3,4-dichloro-N-[(1-dimethylamino)cyclohexylmethyl]benzamide)) | 9551 | I |
| Acetylmethadol | 9601 | I |
| Allylprodine | 9602 | I |
| Alphacetylmethadol except levo-alphacetylmethadol | 9603 | I |
| Alphameprodine | 9604 | I |

| Controlled substance | Drug code | Schedule |
|---|---|---|
| Alphamethadol | 9605 | I |
| Benzethidine | 9606 | I |
| Betacetylmethadol | 9607 | I |
| Clonitazene | 9612 | I |
| Diampromide | 9615 | I |
| Diethylthiambutene | 9616 | I |
| Dimethylthiambutene | 9619 | I |
| Ketobemidone | 9628 | I |
| Levo-alphacetylmethadol | 9648 | II |
| 1-Methyl-4-phenyl-4-propionoxypiperidine | 9661 | I |
| 1-(2-Phenylethyl)-4-phenyl-4-acetoxypiperidine | 9663 | I |
| Alfentanil | 9737 | II |
| Remifentanil | 9739 | II |
| Sufentanil | 9740 | II |
| Carfentanil | 9743 | II |
| Tilidine | 9750 | I |
| Tapentadol | 9780 | II |
| Fentanyl | 9801 | II |
| Para-Fluorofentanyl | 9812 | I |
| 3-Methylfentanyl | 9813 | I |
| Alpha-methylfentanyl | 9814 | I |
| Acetyl-alpha-methylfentanyl | 9815 | I |
| Acetyl Fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide) | 9821 | I |
| Beta-hydroxyfentanyl | 9830 | I |
| Beta-hydroxy-3-methylfentanyl | 9831 | I |
| Alpha-methylthiofentanyl | 9832 | I |
| 3-Methylthiofentanyl | 9833 | I |
| Furanyl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylfuran-2-carboxamide) | 9834 | I |
| Thiofentanyl | 9835 | I |
| N-(1-phenethylpiperidin-4-yl)-N-phenyltetrahydrofuran-2-carboxamide | 9843 | I |
| Cyclopropyl Fentanyl | 9845 | I |
| Fentanyl related-compounds as defined in 21 CFR 1308.11&h) | 9850 | I |

The company plans to manufacture the above-listed controlled substances as analytical reference standards for distribution to its customers. No other activities for these drug codes are authorized for this registration.

Dated: February 3, 2020.

**William T. McDermott,**

*Assistant Administrator.*

[FR Doc. 2020–03616 Filed 2–21–20; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. DEA–580]**

### Bulk Manufacturer of Controlled Substances Application: Stepan Company

**ACTION:** Notice of application.

**DATES:** Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before April 24, 2020.

**ADDRESSES:** Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 1301.33(a), this is notice that on December 18, 2019, Stepan Company, 100 West Hunter Avenue, Maywood, New Jersey 07607–1021 applied to be registered as a bulk manufacturer of the following basic class of controlled substances:

| Controlled substance | Drug code | Schedule |
|---|---|---|
| Cocaine | 9041 | II |
| Ecgonine | 9180 | II |

The company plans to manufacture the above-listed controlled substances in bulk for distribution to its customers.

Dated: February 3, 2020.

**William T. McDermott,**

*Assistant Administrator.*

[FR Doc. 2020–03618 Filed 2–21–20; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. DEA–586]**

### Importer of Controlled Substances Application: Research Triangle Institute

**ACTION:** Notice of application.

**DATES:** Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before March 25, 2020. Such persons may also file a written request for a hearing on the application on or before March 25, 2020.

**ADDRESSES:** Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All request for a hearing should also be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration,

Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 1301.34(a), this is notice that on December 06, 2019, Research Triangle Institute, 3040 East Cornwallis Road, Herman Building—Room 106, Research Triangle Park, North Carolina 27709–2194 applied to be registered as an importer of the following basic classes of controlled substances:

| Controlled substance | Drug code | Schedule |
|---|---|---|
| 3-Fluoro-N-methylcathinone (3-FMC) | 1233 | I |
| Cathinone | 1235 | I |
| Methcathinone | 1237 | I |
| 4-Fluoro-N-methylcathinone (4-FMC) | 1238 | I |
| Pentedrone (α-methylaminovalerophenone) | 1246 | I |
| Mephedrone (4-Methyl-N-methylcathinone) | 1248 | I |
| 4-Methyl-N-ethylcathinone (4-MEC) | 1249 | I |
| Naphyrone | 1258 | I |
| N-Ethylamphetamine | 1475 | I |
| N,N-Dimethylamphetamine | 1480 | I |
| Fenethylline | 1503 | I |
| Aminorex | 1585 | I |
| 4-Methylaminorex (cis isomer) | 1590 | I |
| Gamma Hydroxybutyric Acid | 2010 | I |
| Methaqualone | 2565 | I |
| Mecloqualone | 2572 | I |
| JWH-250 (1-Pentyl-3-(2-methoxyphenylacetyl) indole) | 6250 | I |
| SR-18 (Also known as RCS-8) (1-Cyclohexylethyl-3-(2-methoxyphenylacetyl) indole) | 7008 | I |
| ADB-FUBINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide) | 7010 | I |
| 5-Fluoro-UR-144 and XLR11 [1-(5-Fluoro-pentyl)1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone | 7011 | I |
| AB-FUBINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide) | 7012 | I |
| FUB-144 (1-(4-Fluorobenzyl)-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone) | 7014 | I |
| JWH-019 (1-Hexyl-3-(1-naphthoyl)indole) | 7019 | I |
| MDMB-FUBINACA (Methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate) | 7020 | I |
| FUB-AMB, MMB-FUBINACA, AMB-FUBINACA Methyl (2-(1-(4-fluorobenzyl)-1Hindazole-3-carboxamido)-3-methylbutanoate). | 7021 | I |
| AB-PINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole3-carboxamide) | 7023 | I |
| THJ-2201 [1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone | 7024 | I |
| 5F-AB-PINACA (*N*-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluropentyl)-1*H*-indazole-3-carboximide) | 7025 | I |
| AB-CHMINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)1H-indazole-3-carboxamide | 7031 | I |
| MAB-CHMINACA (N-(1-amino-3,3dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide) | 7032 | I |
| 5F-AMB (Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate) | 7033 | I |
| 5F-ADB, 5F-MDMB-PINACA (Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate) | 7034 | I |
| ADB-PINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide) | 7035 | I |
| 5F-EDMB-PINACA (Ethyl 2-(1-(5-fluoropentyl)-1*H*-indazole-3-carboxamido)-3,3-dimethylbutanoate) | 7036 | I |
| 5F-MDMB-PICA (Methyl 2-(1-(5-fluoropentyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate) | 7041 | I |
| MDMB-CHMICA, MMB-CHMINACA (Methyl 2-(1-(cyclohexylmethyl)-1*H*-indole-3-carboxamido)-3,3-dimethylbutanoate). | 7042 | I |
| MMB-CHMICA, AMB-CHMICA (methyl 2-(1-(cyclohexylmethyl)-1*H*-indole-3-carboxamido)-3-methylbutanoate) | 7044 | I |
| FUB-AKB48, FUB-APINACA, AKB48 N-(4-FLUOROBENZYL) (*N*-(adamantan-1-yl)-1-(4-fluorobenzyl)-1*H*-indazole-3-carboximide). | 7047 | I |
| APINACA and AKB48 N-(1-Adamantyl)-1-pentyl-1H-indazole-3-carboxamide | 7048 | I |
| 5F-APINACA, 5F-AKB48 (N-(adamantan-1-yl)-1-(5-fluoropentyl)-1*H*-indazole-3-carboxamide) | 7049 | I |
| JWH-081 (1-Pentyl-3-(1-(4-methoxynaphthoyl) indole) | 7081 | I |
| 5F-CUMYL-PINACA, SGT-25 (1-(5-fluoropentyl)-*N*-(2-phenylpropan-2-yl)-1*H*-indazole-3-carboxamide) | 7083 | I |
| 5F-CUMYL-P7AICA (1-(5-fluoropentyl)-*N*-(2-phenylpropan-2-yl)-1*H*-pyrrolo[2,3-b]pyridine-3-carboxamide) | 7085 | I |
| 4-CN-CUML-BUTINACA, 4-cyano-CUMYL-BUTINACA, 4-CN-CUMYL BINACA, CUMYL-4CN-BINACA, SGT-78 (1-(4-cyanobutyl)-*N*-(2-phenylpropan-2-yl)-1*H*-indazole-3-carboxamide). | 7089 | I |
| SR-19 (Also known as RCS-4) (1-Pentyl-3-[(4-methoxy)-benzoyl] indole | 7104 | I |
| JWH-018 (also known as AM678) (1-Pentyl-3-(1-naphthoyl)indole) | 7118 | I |
| JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl) indole) | 7122 | I |
| UR-144 (1-Pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone | 7144 | I |
| JWH-073 (1-Butyl-3-(1-naphthoyl)indole) | 7173 | I |
| JWH-200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole) | 7200 | I |
| AM2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl) indole) | 7201 | I |
| JWH-203 (1-Pentyl-3-(2-chlorophenylacetyl) indole) | 7203 | I |
| NM2201, CBL2201 (Naphthalen-1-yl 1-(5-fluoropentyl)-1*H*-indole-3-carboxylate | 7221 | I |
| PB-22 (Quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate) | 7222 | I |
| 5F-PB-22 (Quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate) | 7225 | I |
| Alpha-ethyltryptamine | 7249 | I |
| Ibogaine | 7260 | I |
| CP-47,497 (5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl-phenol) | 7297 | I |
| CP-47,497 C8 Homologue (5-(1,1-Dimethyloctyl)-2-[(1R,3S)3-hydroxycyclohexyl-phenol) | 7298 | I |
| Lysergic acid diethylamide | 7315 | I |
| 2,5-Dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7) | 7348 | I |
| Marihuana Extract | 7350 | I |
| Parahexyl | 7374 | I |
| Mescaline | 7381 | I |

| Controlled substance | Drug code | Schedule |
|---|---|---|
| 2-(4-Ethylthio-2,5-dimethoxyphenyl) ethanamine (2C-T-2 ) | 7385 | I |
| 3,4,5-Trimethoxyamphetamine | 7390 | I |
| 4-Bromo-2,5-dimethoxyamphetamine | 7391 | I |
| 4-Bromo-2,5-dimethoxyphenethylamine | 7392 | I |
| 4-Methyl-2,5-dimethoxyamphetamine | 7395 | I |
| 2,5-Dimethoxyamphetamine | 7396 | I |
| JWH-398 (1-Pentyl-3-(4-chloro-1-naphthoyl) indole) | 7398 | I |
| 2,5-Dimethoxy-4-ethylamphetamine | 7399 | I |
| 3,4-Methylenedioxyamphetamine | 7400 | I |
| 5-Methoxy-3,4-methylenedioxyamphetamine | 7401 | I |
| N-Hydroxy-3,4-methylenedioxyamphetamine | 7402 | I |
| 3,4-Methylenedioxy-N-ethylamphetamine | 7404 | I |
| 3,4-Methylenedioxymethamphetamine | 7405 | I |
| 4-Methoxyamphetamine | 7411 | I |
| Peyote | 7415 | I |
| 5-Methoxy-N-N-dimethyltryptamine | 7431 | I |
| Alpha-methyltryptamine | 7432 | I |
| Bufotenine | 7433 | I |
| Diethyltryptamine | 7434 | I |
| Dimethyltryptamine | 7435 | I |
| Psilocybin | 7437 | I |
| Psilocyn | 7438 | I |
| 5-Methoxy-N,N-diisopropyltryptamine | 7439 | I |
| N-Ethyl-1-phenylcyclohexylamine | 7455 | I |
| 1-(1-Phenylcyclohexyl)pyrrolidine | 7458 | I |
| 1-[1-(2-Thienyl)cyclohexyl]piperidine | 7470 | I |
| 1-[1-(2-Thienyl)cyclohexyl]pyrrolidine | 7473 | I |
| N-Ethyl-3-piperidyl benzilate | 7482 | I |
| N-Methyl-3-piperidyl benzilate | 7484 | I |
| N-Benzylpiperazine | 7493 | I |
| 4-Methyl-alphapyrrolidinopropiophenone (4-MePPP) | 7498 | I |
| 2-(2,5-Dimethoxy-4-methylphenyl) ethanamine (2C-D) | 7508 | I |
| 2-(2,5-Dimethoxy-4-ethylphenyl) ethanamine (2C-E ) | 7509 | I |
| 2-(2,5-Dimethoxyphenyl) ethanamine (2C-H) | 7517 | I |
| 2-(4-iodo-2,5-dimethoxyphenyl) ethanamine (2C-I) | 7518 | I |
| 2-(4-Chloro-2,5-dimethoxyphenyl) ethanamine (2C-C) | 7519 | I |
| 2-(2,5-Dimethoxy-4-nitro-phenyl) ethanamine (2C-N) | 7521 | I |
| 2-(2,5-Dimethoxy-4-(n)-propylphenyl) ethanamine (2C-P) | 7524 | I |
| 2-(4-Isopropylthio)-2,5-dimethoxyphenyl) ethanamine (2C-T-4 ) | 7532 | I |
| MDPV (3,4-Methylenedioxypyrovalerone) | 7535 | I |
| 2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25B-NBOMe) | 7536 | I |
| 2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25C-NBOMe) | 7537 | I |
| 2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine (25I-NBOMe) | 7538 | I |
| Methylone (3,4-Methylenedioxy-N-methylcathinone) | 7540 | I |
| Butylone | 7541 | I |
| Pentylone | 7542 | I |
| N-Ethypentylone, ephylone (1-(1,3-benzodioxol-5-yl)-2-(ethylamino)-pentan-1-one) | 7543 | I |
| alpha-pyrrolidinopentiophenone ($\alpha$-PVP) | 7545 | I |
| alpha-pyrrolidinobutiophenone ($\alpha$-PBP) | 7546 | I |
| AM-694 (1-(5-Fluoropentyl)-3-(2-iodobenzoyl) indole) | 7694 | I |
| Acetyldihydrocodeine | 9051 | I |
| Benzylmorphine | 9052 | I |
| Codeine-N-oxide | 9053 | I |
| Cyprenorphine | 9054 | I |
| Desomorphine | 9055 | I |
| Etorphine (except HCl) | 9056 | I |
| Codeine methylbromide | 9070 | I |
| Dihydromorphine | 9145 | I |
| Difenoxin | 9168 | I |
| Heroin | 9200 | I |
| Hydromorphinol | 9301 | I |
| Methyldesorphine | 9302 | I |
| Methyldihydromorphine | 9304 | I |
| Morphine methylbromide | 9305 | I |
| Morphine methylsulfonate | 9306 | I |
| Morphine-N-oxide | 9307 | I |
| Myrophine | 9308 | I |
| Nicocodeine | 9309 | I |
| Nicomorphine | 9312 | I |
| Normorphine | 9313 | I |
| Pholcodine | 9314 | I |
| Thebacon | 9315 | I |
| Acetorphine | 9319 | I |
| Drotebanol | 9335 | I |

| Controlled substance | Drug code | Schedule |
|---|---|---|
| U-47700 (3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide) | 9547 | I |
| AH-7921 (3,4-dichloro-N-[(1-dimethylamino)cyclohexylmethyl]benzamide)) | 9551 | I |
| MT-45 (1-cyclohexyl-4-(1,2-diphenylethyl)piperazine)) | 9560 | I |
| Acetylmethadol | 9601 | I |
| Allylprodine | 9602 | I |
| Alphacetylmethadol except levo-alphacetylmethadol | 9603 | I |
| Alphameprodine | 9604 | I |
| Alphamethadol | 9605 | I |
| Benzethidine | 9606 | I |
| Betacetylmethadol | 9607 | I |
| Betameprodine | 9608 | I |
| Betamethadol | 9609 | I |
| Betaprodine | 9611 | I |
| Clonitazene | 9612 | I |
| Dextromoramide | 9613 | I |
| Diampromide | 9615 | I |
| Diethylthiambutene | 9616 | I |
| Dimenoxadol | 9617 | I |
| Dimepheptanol | 9618 | I |
| Dimethylthiambutene | 9619 | I |
| Dioxaphetyl butyrate | 9621 | I |
| Dipipanone | 9622 | I |
| Ethylmethylthiambutene | 9623 | I |
| Etonitazene | 9624 | I |
| Etoxeridine | 9625 | I |
| Furethidine | 9626 | I |
| Hydroxypethidine | 9627 | I |
| Ketobemidone | 9628 | I |
| Levomoramide | 9629 | I |
| Levophenacylmorphan | 9631 | I |
| Morpheridine | 9632 | I |
| Noracymethadol | 9633 | I |
| Norlevorphanol | 9634 | I |
| Normethadone | 9635 | I |
| Norpipanone | 9636 | I |
| Phenadoxone | 9637 | I |
| Phenampromide | 9638 | I |
| Phenoperidine | 9641 | I |
| Piritramide | 9642 | I |
| Proheptazine | 9643 | I |
| Properidine | 9644 | I |
| Racemoramide | 9645 | I |
| Trimeperidine | 9646 | I |
| Phenomorphan | 9647 | I |
| Propiram | 9649 | I |
| 1-Methyl-4-phenyl-4-propionoxypiperidine | 9661 | I |
| 1-(2-Phenylethyl)-4-phenyl-4-acetoxypiperidine | 9663 | I |
| Tilidine | 9750 | I |
| Acryl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacrylamide) | 9811 | I |
| Para-Fluorofentanyl | 9812 | I |
| 3-Methylfentanyl | 9813 | I |
| Alpha-methylfentanyl | 9814 | I |
| Acetyl-alpha-methylfentanyl | 9815 | I |
| N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)propionamide | 9816 | I |
| Acetyl Fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide) | 9821 | I |
| Butyryl Fentanyl | 9822 | I |
| Para-fluorobutyryl fentanyl | 9823 | I |
| 4-Fluoroisobutyryl fentanyl (N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide) | 9824 | I |
| 2-methoxy-N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide | 9825 | I |
| Para-chloroisobutyryl fentanyl | 9826 | I |
| Isobutyryl fentanyl | 9827 | I |
| Beta-hydroxyfentanyl | 9830 | I |
| Beta-hydroxy-3-methylfentanyl | 9831 | I |
| Alpha-methylthiofentanyl | 9832 | I |
| 3-Methylthiofentanyl | 9833 | I |
| Furanyl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylfuran-2-carboxamide) | 9834 | I |
| Thiofentanyl | 9835 | I |
| Beta-hydroxythiofentanyl | 9836 | I |
| Para-methoxybutyryl fentanyl | 9837 | I |
| Ocfentanil | 9838 | I |
| Valeryl fentanyl | 9840 | I |
| N-(1-phenethylpiperidin-4-yl)-N-phenyltetrahydrofuran-2-carboxamide | 9843 | I |
| Cyclopropyl Fentanyl | 9845 | I |
| Cyclopentyl fentanyl | 9847 | I |

| Controlled substance | Drug code | Schedule |
|---|---|---|
| Fentanyl related-compounds as defined in 21 CFR 1308.11(h) | 9850 | I |
| Phenmetrazine | 1631 | II |
| Methylphenidate | 1724 | II |
| Amobarbital | 2125 | II |
| Pentobarbital | 2270 | II |
| Secobarbital | 2315 | II |
| Glutethimide | 2550 | II |
| Dronabinol in an oral solution in a drug product approved for marketing by the U.S. Food and Drug Administration | 7365 | II |
| Nabilone | 7379 | II |
| 1-Phenylcyclohexylamine | 7460 | II |
| Phencyclidine | 7471 | II |
| 4-Anilino-N-phenethyl-4-piperidine (ANPP) | 8333 | II |
| Phenylacetone | 8501 | II |
| 1-Piperidinocyclohexanecarbonitrile | 8603 | II |
| Alphaprodine | 9010 | II |
| Anileridine | 9020 | II |
| Coca Leaves | 9040 | II |
| Cocaine | 9041 | II |
| Etorphine HCl | 9059 | II |
| Dihydrocodeine | 9120 | II |
| Diphenoxylate | 9170 | II |
| Ecgonine | 9180 | II |
| Ethylmorphine | 9190 | II |
| Levomethorphan | 9210 | II |
| Levorphanol | 9220 | II |
| Isomethadone | 9226 | II |
| Meperidine | 9230 | II |
| Meperidine intermediate-A | 9232 | II |
| Meperidine intermediate-B | 9233 | II |
| Meperidine intermediate-C | 9234 | II |
| Metazocine | 9240 | II |
| Metopon | 9260 | II |
| Dextropropoxyphene, bulk (non-dosage forms) | 9273 | II |
| Dihydroetorphine | 9334 | II |
| Opium tincture | 9630 | II |
| Opium, powdered | 9639 | II |
| Opium, granulated | 9640 | II |
| Phenazocine | 9715 | II |
| Thiafentanil | 9729 | II |
| Piminodine | 9730 | II |
| Racemethorphan | 9732 | II |
| Racemorphan | 9733 | II |
| Alfentanil | 9737 | II |
| Remifentanil | 9739 | II |
| Sufentanil | 9740 | II |
| Carfentanil | 9743 | II |
| Tapentadol | 9780 | II |
| Bezitramide | 9800 | II |
| Moramide-intermediate | 9802 | II |

The company plans to import small quantities of the listed controlled substances for the National Institute on Drug Abuse for research activities. The company plans to import analytical reference standards for distribution to its customers for research and analytical purposes.

Dated: February 6, 2020.

**William T. McDermott,**

*Assistant Administrator.*

[FR Doc. 2020–03619 Filed 2–21–20; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. DEA–588]**

### Bulk Manufacturer of Controlled Substances Application: Bulk Manufacturers of Marihuana: Irvine Labs, Inc.

**ACTION:** Notice of application.

**SUMMARY:** The Drug Enforcement Administration (DEA) is providing notice of an application it has received from an entity applying to be registered to manufacture in bulk basic classes of controlled substances listed in schedule I. Prior to making decisions on this and other pending applications, DEA intends to promulgate regulations that govern the program of growing marihuana for scientific and medical research under DEA registration.

**DATES:** Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before April 24, 2020.

**ADDRESSES:** Written comments should be sent to: Drug Enforcement Administration, Attention: DEA **Federal Register** Representative/DPW 8701 Morrissette Drive, Springfield, Virginia 22152. To ensure proper handling of comments, please reference Docket No. DEA–588 in all correspondence, including attachments.

**SUPPLEMENTARY INFORMATION:** The Controlled Substances Act (CSA) prohibits the cultivation and distribution of marihuana except by persons who are registered under the CSA to do so for lawful purposes. In accordance with the purposes specified in 21 CFR 1301.33(a), DEA is providing notice that the entity identified below has applied for registration as a bulk manufacturer of schedule I controlled substances. In response, registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections of the requested registration, as provided in this notice. This notice does not constitute any evaluation or determination of the merits of the application submitted.

The applicant plans to manufacture bulk active pharmaceutical ingredients (APIs) for product development and distribution to DEA registered researchers. If its application for registration is granted, the registrant would not be authorized to conduct other activity under this registration aside from those coincident activities specifically authorized by DEA regulations. DEA will evaluate the application for registration as a bulk manufacturer for compliance with all applicable laws, treaties, and regulations and to ensure adequate safeguards against diversion are in place.

As this applicant has applied to become registered as a Bulk Manufacturer of Marihuana, the application will be evaluated under the criteria of 21 U.S.C. 823(a) as described in 84 FR 44920, published on August 27, 2019.

In accordance with 21 CFR 1301.33(a), DEA is providing notice that on May 30, 2019, Irvine Labs, Inc., 1864 Swan Circle, Costa Mesa, California 92626–4739 applied to be registered as a bulk manufacturer of the following basic class of controlled substances:

| Controlled substance | Drug code | Schedule |
|---|---|---|
| Marihuana Extract | 7350 | I |
| Marihuana | 7360 | I |
| Tetrahydrocannabinols. | 7370 | I |

The applicant noticed above applied to become registered with DEA to grow marihuana as bulk manufacturer subsequent to a 2016 DEA policy statement that provided information on how it intended to expand the number of registrations, and described in general terms the way it would oversee those additional growers. Before DEA completes the evaluation and registration process for applicants to grow marihuana, DEA intends to propose regulations in the near future that would supersede the 2016 policy statement and govern persons seeking to become registered with DEA to grow marihuana as bulk manufacturers, consistent with applicable law, as described in 84 FR 44920.

Dated: February 3, 2020.

**William T. McDermott,**

*Assistant Administrator.*

[FR Doc. 2020–03623 Filed 2–21–20; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. DEA–585]**

### Bulk Manufacturer of Controlled Substances Application: Patheon Pharmaceuticals, Inc.

**ACTION:** Notice of application.

**DATES:** Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before April 24, 2020.

**ADDRESSES:** Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 1301.33(a), this is notice that on December 23, 2019, Patheon Pharmaceuticals, Inc., 2100 E Galbraith Road, Cincinnati, Ohio 45237–1625 applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance:

| Controlled substance | Drug code | Schedule |
|---|---|---|
| Gamma Hydroxybutyric Acid. | 2010 | I |

The Gamma Hydroxbutyric Acid will be produced during the process of converting gamma-butyrolactone into a new product for development. The company plans to manufacture the above-listed controlled substance as Active Pharmaceutical Ingredient (API) that will be further synthesized into dosage forms of a new product. No other activities for this drug code are authorized for this registration.

Dated: January 31, 2020.

**William T. McDermott,**

*Assistant Administrator.*

[FR Doc. 2020–03617 Filed 2–21–20; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. DEA–595]**

### Bulk Manufacturer of Controlled Substances Application: Chemtos, LLC

**ACTION:** Notice of application.

**DATES:** Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before April 24, 2020.

**ADDRESSES:** Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 1301.33(a), this is notice that on January 9, 2020, Chemtos, LLC, 16713 Picadilly Court, Round Rock, Texas 78664–8544 applied to be registered as a bulk manufacturer of the following basic classes of controlled substances:

| Controlled substance | Drug code | Schedule |
|---|---|---|
| 3-Fluoro-N-methylcathinone (3–FMC) | 1233 | I |
| Cathinone | 1235 | I |
| Methcathinone | 1237 | I |
| 4-Fluoro-N-methylcathinone (4–FMC) | 1238 | I |
| Pentedrone (α-methylaminovalerophenone) | 1246 | I |
| Mephedrone (4-Methyl-N-methylcathinone) | 1248 | I |
| 4-Methyl-N-ethylcathinone (4–MEC) | 1249 | I |

| Controlled substance | Drug code | Schedule |
|---|---|---|
| Naphyrone | 1258 | I |
| N-Ethylamphetamine | 1475 | I |
| N,N-Dimethylamphetamine | 1480 | I |
| Fenethylline | 1503 | I |
| Aminorex | 1585 | I |
| 4-Methylaminorex (cis isomer) | 1590 | I |
| Gamma Hydroxybutyric Acid | 2010 | I |
| Methaqualone | 2565 | I |
| Mecloqualone | 2572 | I |
| JWH–250 (1-Pentyl-3-(2-methoxyphenylacetyl) indole) | 6250 | I |
| SR–18 (Also known as RCS–8) (1-Cyclohexylethyl-3-(2-methoxyphenylacetyl) indole) | 7008 | I |
| ADB–FUBINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide) | 7010 | I |
| 5-Fluoro-UR–144 and XLR11 [1-(5-Fluoro-pentyl)1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone | 7011 | I |
| AB–FUBINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide) | 7012 | I |
| FUB–144 (1-(4-fluorobenzyl)-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone) | 7014 | I |
| JWH–019 (1-Hexyl-3-(1-naphthoyl)indole) | 7019 | I |
| MDMB–FUBINACA (Methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate) | 7020 | I |
| FUB–AMB, MMB-FUBINACA, AMB–FUBINACA (2-(1-(4-fluorobenzyl)-1Hindazole-3-carboxamido)-3-methylbutanoate) | 7021 | I |
| AB–PINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide) | 7023 | I |
| THJ–2201 [1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone | 7024 | I |
| 5F–AB–PINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluropentyl)-1H-indazole-3-carboximide) | 7025 | I |
| AB–CHMINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide | 7031 | I |
| MAB–CHMINACA (N-(1-amino-3,3dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide) | 7032 | I |
| 5F–AMB (Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate) | 7033 | I |
| 5F–ADB; 5F–MDMB–PINACA (Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate) | 7034 | I |
| ADB–PINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide) | 7035 | I |
| 5F–EDMB–PINACA (ethyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate) | 7036 | I |
| 5F–MDMB–PICA (methyl 2-(1-(5-fluoropentyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate) | 7041 | I |
| MDMB–CHMICA, MMB–CHMINACA (Methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate) | 7042 | I |
| MMB–CHMICA, AMB–CHMICA (methyl 2-(1-(cyclohexylmethyl)-1*H*-indole-3-carboxamido)-3-methylbutanoate) | 7044 | I |
| FUB–AKB48, FUB–APINACA, AKB48 N-(4–FLUOROBENZYL) (N-(adamantan-1-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboximide). | 7047 | I |
| APINACA and AKB48 N-(1-Adamantyl)-1-pentyl-1H-indazole-3-carboxamide | 7048 | I |
| 5F–APINACA, 5F–AKB48 (N-(adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide) | 7049 | I |
| JWH–081 (1-Pentyl-3-(1-(4-methoxynaphthoyl) indole) | 7081 | I |
| 5F–CUMYL–PINACA, 5GT–25 (1-(5-fluoropentyl)-*N*-(2-phenylpropan-2-yl)-1*H*-indazole-3-carboxamide) | 7083 | I |
| 5F–CUMYL–P7AICA (1-(5-fluoropentyl)-*N*-(2-phenylpropan-2-yl)-1*H*-pyrrolo[2,3-b]pyridine-3-carboxamide) | 7085 | I |
| 4–CN–CUML–BUTINACA, 4-cyano-CUMYL–BUTINACA, 4–CN–CUMYL BINACA, CUMYL–4CN–BINACA, SGT–78 (1-(4-cyanobutyl)-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboxamide). | 7089 | I |
| SR–19 (Also known as RCS–4) (1-Pentyl-3-[(4-methoxy)-benzoyl] indole | 7104 | I |
| JWH–018 (also known as AM678) (1-Pentyl-3-(1-naphthoyl)indole) | 7118 | I |
| JWH–122 (1-Pentyl-3-(4-methyl-1-naphthoyl) indole) | 7122 | I |
| UR–144 (1-Pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone | 7144 | I |
| JWH–073 (1-Butyl-3-(1-naphthoyl)indole) | 7173 | I |
| JWH–200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole) | 7200 | I |
| AM2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl)indole) | 7201 | I |
| JWH–203 (1-Pentyl-3-(2-chlorophenylacetyl)indole) | 7203 | I |
| NM2201, CBL2201 (Naphthalen-1-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate | 7221 | I |
| PB–22 (Quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate) | 7222 | I |
| 5F–PB–22 (Quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate) | 7225 | I |
| 4–MEAP (4-Methyl-alpha-ethylaminopentiophenone) | 7245 | I |
| N-Ethylhexedrone | 7246 | I |
| Alpha-ethyltryptamine | 7249 | I |
| Ibogaine | 7260 | I |
| CP–47,497 (5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl-phenol) | 7297 | I |
| CP–47,497 C8 Homologue (5-(1,1-Dimethyloctyl)-2-[(1R,3S)3-hydroxycyclohexyl-phenol) | 7298 | I |
| Lysergic acid diethylamide | 7315 | I |
| 2,5-Dimethoxy-4-(n)-propylthiophenethylamine (2C–T–7) | 7348 | I |
| Marihuana Extract | 7350 | I |
| Marihuana | 7360 | I |
| Parahexyl | 7374 | I |
| Mescaline | 7381 | I |
| 2-(4-Ethylthio-2,5-dimethoxyphenyl) ethanamine (2C–T–2 ) | 7385 | I |
| 3,4,5-Trimethoxyamphetamine | 7390 | I |
| 4-Bromo-2,5-dimethoxyamphetamine | 7391 | I |
| 4-Bromo-2,5-dimethoxyphenethylamine | 7392 | I |
| 4-Methyl-2,5-dimethoxyamphetamine | 7395 | I |
| 2,5-Dimethoxyamphetamine | 7396 | I |
| JWH–398 (1-Pentyl-3-(4-chloro-1-naphthoyl) indole) | 7398 | I |
| 2,5-Dimethoxy-4-ethylamphetamine | 7399 | I |
| 3,4-Methylenedioxyamphetamine | 7400 | I |
| 5-Methoxy-3,4-methylenedioxyamphetamine | 7401 | I |
| N-Hydroxy-3,4-methylenedioxyamphetamine | 7402 | I |

| Controlled substance | Drug code | Schedule |
|---|---|---|
| 3,4-Methylenedioxy-N-ethylamphetamine | 7404 | I |
| 3,4-Methylenedioxymethamphetamine | 7405 | I |
| 4-Methoxyamphetamine | 7411 | I |
| 5-Methoxy-N–N-dimethyltryptamine | 7431 | I |
| Alpha-methyltryptamine | 7432 | I |
| Bufotenine | 7433 | I |
| Diethyltryptamine | 7434 | I |
| Dimethyltryptamine | 7435 | I |
| Psilocybin | 7437 | I |
| Psilocyn | 7438 | I |
| 5-Methoxy-N,N-diisopropyltryptamine | 7439 | I |
| 4'-Chloro-alpha-pyrrolidinovalerophenone | 7443 | I |
| MPHP, 4'-Methyl-alpha-pyrrolidinohexiophenone | 7446 | I |
| N-Ethyl-1-phenylcyclohexylamine | 7455 | I |
| 1-(1-Phenylcyclohexyl)pyrrolidine | 7458 | I |
| 1-[1-(2-Thienyl)cyclohexyl]piperidine | 7470 | I |
| 1-[1-(2-Thienyl)cyclohexyl]pyrrolidine | 7473 | I |
| N-Ethyl-3-piperidyl benzilate | 7482 | I |
| N-Methyl-3-piperidyl benzilate | 7484 | I |
| N-Benzylpiperazine | 7493 | I |
| 4-Methyl-alphapyrrolidinopropiophenone (4-MePPP) | 7498 | I |
| 2-(2,5-Dimethoxy-4-methylphenyl)ethanamine (2C–D) | 7508 | I |
| 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C–E ) | 7509 | I |
| 2-(2,5-Dimethoxyphenyl)ethanamine (2C–H) | 7517 | I |
| 2-(4-iodo-2,5-dimethoxyphenyl)ethanamine (2C–I) | 7518 | I |
| 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C–C) | 7519 | I |
| 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (2C–N) | 7521 | I |
| 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (2C–P) | 7524 | I |
| 2-(4-Isopropylthio)-2,5-dimethoxyphenyl)ethanamine (2C–T–4 ) | 7532 | I |
| MDPV (3,4-Methylenedioxypyrovalerone) | 7535 | I |
| 2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25B–NBOMe) | 7536 | I |
| 2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25C–NBOMe) | 7537 | I |
| 2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl)ethanamine (25I–NBOMe) | 7538 | I |
| Methylone (3,4-Methylenedioxy-N-methylcathinone) | 7540 | I |
| Butylone | 7541 | I |
| Pentylone | 7542 | I |
| N-Ethypentylone, ephylone (1-(1,3-benzodioxol-5-yl)-2-(ethylamino)-pentan-1-one) | 7543 | I |
| $\alpha$-PHP, alpha-Pyrrolidinohexanophenone | 7544 | I |
| alpha-pyrrolidinopentiophenone ($\alpha$-PVP) | 7545 | I |
| alpha-pyrrolidinobutiophenone ($\alpha$-PBP) | 7546 | I |
| AM–694 (1-(5-Fluoropentyl)-3-(2-iodobenzoyl)indole) | 7694 | I |
| Acetyldihydrocodeine | 9051 | I |
| Benzylmorphine | 9052 | I |
| Codeine-N-oxide | 9053 | I |
| Cyprenorphine | 9054 | I |
| Desomorphine | 9055 | I |
| Etorphine (except HCl) | 9056 | I |
| Codeine methylbromide | 9070 | I |
| Dihydromorphine | 9145 | I |
| Difenoxin | 9168 | I |
| Heroin | 9200 | I |
| Hydromorphinol | 9301 | I |
| Methyldesorphine | 9302 | I |
| Methyldihydromorphine | 9304 | I |
| Morphine methylbromide | 9305 | I |
| Morphine methylsulfonate | 9306 | I |
| Morphine-N-oxide | 9307 | I |
| Myrophine | 9308 | I |
| Nicocodeine | 9309 | I |
| Nicomorphine | 9312 | I |
| Normorphine | 9313 | I |
| Pholcodine | 9314 | I |
| Thebacon | 9315 | I |
| Acetorphine | 9319 | I |
| Drotebanol | 9335 | I |
| U–47700 (3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide) | 9547 | I |
| AH–7921 (3,4-dichloro-N-[(1-dimethylamino)cyclohexylmethyl]benzamide)) | 9551 | I |
| MT–45 (1-cyclohexyl-4-(1,2-diphenylethyl)piperazine)) | 9560 | I |
| Acetylmethadol | 9601 | I |
| Allylprodine | 9602 | I |
| Alphacetylmethadol except levo-alphacetylmethadol | 9603 | I |
| Alphameprodine | 9604 | I |
| Alphamethadol | 9605 | I |

| Controlled substance | Drug code | Schedule |
|---|---|---|
| Benzethidine | 9606 | I |
| Betacetylmethadol | 9607 | I |
| Betameprodine | 9608 | I |
| Betamethadol | 9609 | I |
| Betaprodine | 9611 | I |
| Clonitazene | 9612 | I |
| Dextromoramide | 9613 | I |
| Diampromide | 9615 | I |
| Diethylthiambutene | 9616 | I |
| Dimenoxadol | 9617 | I |
| Dimepheptanol | 9618 | I |
| Dimethylthiambutene | 9619 | I |
| Dioxaphetyl butyrate | 9621 | I |
| Dipipanone | 9622 | I |
| Ethylmethylthiambutene | 9623 | I |
| Etonitazene | 9624 | I |
| Etoxeridine | 9625 | I |
| Furethidine | 9626 | I |
| Hydroxypethidine | 9627 | I |
| Ketobemidone | 9628 | I |
| Levomoramide | 9629 | I |
| Levophenacylmorphan | 9631 | I |
| Morpheridine | 9632 | I |
| Noracymethadol | 9633 | I |
| Norlevorphanol | 9634 | I |
| Normethadone | 9635 | I |
| Norpipanone | 9636 | I |
| Phenadoxone | 9637 | I |
| Phenampromide | 9638 | I |
| Phenoperidine | 9641 | I |
| Piritramide | 9642 | I |
| Proheptazine | 9643 | I |
| Properidine | 9644 | I |
| Racemoramide | 9645 | I |
| Trimeperidine | 9646 | I |
| Phenomorphan | 9647 | I |
| Propiram | 9649 | I |
| 1-Methyl-4-phenyl-4-propionoxypiperidine | 9661 | I |
| 1-(2-Phenylethyl)-4-phenyl-4-acetoxypiperidine | 9663 | I |
| Tilidine | 9750 | I |
| Acryl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacrylamide) | 9811 | I |
| Para-Fluorofentanyl | 9812 | I |
| 3-Methylfentanyl | 9813 | I |
| Alpha-methylfentanyl | 9814 | I |
| Acetyl-alpha-methylfentanyl | 9815 | I |
| N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)propionamide | 9816 | I |
| Acetyl Fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide) | 9821 | I |
| Butyryl Fentanyl | 9822 | I |
| Para-fluorobutyryl fentanyl | 9823 | I |
| 4-Fluoroisobutyryl fentanyl (N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide) | 9824 | I |
| 2-methoxy-N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide | 9825 | I |
| Para-chloroisobutyryl fentanyl | 9826 | I |
| Isobutyryl fentanyl | 9827 | I |
| Beta-hydroxyfentanyl | 9830 | I |
| Beta-hydroxy-3-methylfentanyl | 9831 | I |
| Alpha-methylthiofentanyl | 9832 | I |
| 3-Methylthiofentanyl | 9833 | I |
| Furanyl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylfuran-2-carboxamide) | 9834 | I |
| Thiofentanyl | 9835 | I |
| Beta-hydroxythiofentanyl | 9836 | I |
| Para-methoxybutyryl fentanyl | 9837 | I |
| Para-methoxybutyryl fentanyl | 9838 | I |
| Valeryl fentanyl | 9840 | I |
| N-(1-phenethylpiperidin-4-yl)-N-phenyltetrahydrofuran-2-carboxamide | 9843 | I |
| Cyclopropyl Fentanyl | 9845 | I |
| Cyclopentyl fentanyl | 9847 | I |
| Fentanyl related-compounds as defined in 21 CFR 1308.11(h) | 9850 | I |
| Amphetamine | 1100 | II |
| Methamphetamine | 1105 | II |
| Lisdexamfetamine | 1205 | II |
| Phenmetrazine | 1631 | II |
| Methylphenidate | 1724 | II |
| Amobarbital | 2125 | II |

| Controlled substance | Drug code | Schedule |
|---|---|---|
| Pentobarbital | 2270 | II |
| Secobarbital | 2315 | II |
| Glutethimide | 2550 | II |
| Nabilone | 7379 | II |
| 1-Phenylcyclohexylamine | 7460 | II |
| Phencyclidine | 7471 | II |
| 4-Anilino-N-phenethyl-4-piperidine (ANPP) | 8333 | II |
| Phenylacetone | 8501 | II |
| 1-Piperidinocyclohexanecarbonitrile | 8603 | II |
| Alphaprodine | 9010 | II |
| Anileridine | 9020 | II |
| Cocaine | 9041 | II |
| Codeine | 9050 | II |
| Etorphine HCl | 9059 | II |
| Dihydrocodeine | 9120 | II |
| Oxycodone | 9143 | II |
| Hydromorphone | 9150 | II |
| Diphenoxylate | 9170 | II |
| Ecgonine | 9180 | II |
| Ethylmorphine | 9190 | II |
| Hydrocodone | 9193 | II |
| Levomethorphan | 9210 | II |
| Levorphanol | 9220 | II |
| Isomethadone | 9226 | II |
| Meperidine | 9230 | II |
| Meperidine intermediate-A | 9232 | II |
| Meperidine intermediate-B | 9233 | II |
| Meperidine intermediate-C | 9234 | II |
| Metazocine | 9240 | II |
| Methadone | 9250 | II |
| Methadone intermediate | 9254 | II |
| Metopon | 9260 | II |
| Dextropropoxyphene, bulk (non-dosage forms) | 9273 | II |
| Morphine | 9300 | II |
| Oripavine | 9330 | II |
| Thebaine | 9333 | II |
| Dihydroetorphine | 9334 | II |
| Levo-alphacetylmethadol | 9648 | II |
| Oxymorphone | 9652 | II |
| Noroxymorphone | 9668 | II |
| Phenazocine | 9715 | II |
| Thiafentanil | 9729 | II |
| Piminodine | 9730 | II |
| Racemethorphan | 9732 | II |
| Racemorphan | 9733 | II |
| Alfentanil | 9737 | II |
| Remifentanil | 9739 | II |
| Sufentanil | 9740 | II |
| Carfentanil | 9743 | II |
| Tapentadol | 9780 | II |
| Bezitramide | 9800 | II |
| Fentanyl | 9801 | II |
| Moramide-intermediate | 9802 | II |

The company plans to manufacture small quantities of the listed controlled substances in bulk for distribution to its customers.

Dated: February 3, 2020.

**William T. McDermott,**

*Assistant Administrator.*

[FR Doc. 2020–03612 Filed 2–21–20; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. DEA–589]**

### Importer of Controlled Substances Application: PerkinElmer, Inc.

**ACTION:** Notice of application.

**DATES:** Registered bulk manufacturers of the affected basic classes, and applicants therefore, may file written comments on or objections to the issuance of the proposed registration on or before March 25, 2020. Such persons may also file a written request for a hearing on the application on or before March 25, 2020.

**ADDRESSES:** Written comments should be sent to: Drug Enforcement Administration, Attention: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing must be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: (1) Drug

Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 1301.34(a), this is notice that on January 13, 2020, PerkinElmer, Inc., 120 E Dedham Street, Boston, Massachusetts 02118–2852 applied to be registered as an importer of the following basic classes of controlled substances:

| Controlled substance | Drug code | Schedule |
|---|---|---|
| Lysergic acid diethylamide | 7315 | I |
| Thebaine | 9333 | II |

The company plans to import the listed controlled substances in bulk for manufacturing wherein the controlled substances will be labeled with a radioactive tracer compound and sold for research purposes to its customers. Thebaine (9333) will be used to manufacture the derivative Diprenorphine.

Dated: January 31, 2020.

**William T. McDermott,**

*Assistant Administrator.*

[FR Doc. 2020–03620 Filed 2–21–20; 8:45 am]

**BILLING CODE 4410–09–P**

## DEPARTMENT OF JUSTICE

**[OMB Number 1190–0008]**

### Agency Information Collection Activities, Proposed eCollection eComments Requested Extension Without Change, of a Previously Approved Collection; Federal Coordination and Compliance Section (FCS); FCS Complaint and Consent Form

**AGENCY:** Civil Rights Division, Department of Justice.

**ACTION:** 30-Day notice.

**SUMMARY:** The Department of Justice (DOJ), Civil Rights Division, Federal Coordination and Compliance Section, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** The Department of Justice encourages public comment and will accept input until March 25, 2020.

**FOR FURTHER INFORMATION CONTACT:** If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Christine Stoneman, Acting Chief, Federal Coordination and Compliance Section, 950 Pennsylvania Avenue NW–4CON, Washington, DC 20002 (phone: 202–307–2222).

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

### Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Complaint and Consent Form.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is 1190–0008. The applicable component within the Department of Justice is the Federal Coordination and Compliance Section, in the Civil Rights Division.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* General public.

Information is used to find jurisdiction to investigate the alleged discrimination, to seek whether a referral to another agency is necessary and to provide information needed to initiate investigation of the complaint. Respondents are individuals.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 4000 respondents will complete each form within approximately 30 minutes.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 2000 total annual burden hours associated with this collection.

*If additional information is required contact:* Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, Room 3E.405A, Washington, DC 20530.

Dated: February 18, 2020.

**Melody Braswell,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2020–03544 Filed 2–21–20; 8:45 am]

**BILLING CODE 4410–13–P**

## DEPARTMENT OF JUSTICE

**[OMB Number 1122–0034]**

### Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection

**AGENCY:** Office on Violence Against Women, Department of Justice.

**ACTION:** 60-Day notice.

**SUMMARY:** The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted for 60 days until April 24, 2020.

**FOR FURTHER INFORMATION CONTACT:** Written comments and/or suggestion regarding the items contained in this notice, especially the estimated public

burden and associated response time, should be directed to Cathy Poston, Office on Violence Against Women, at 202–514–5430 or *Catherine.poston@usdoj.gov*.

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(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 submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* STOP Formula Grant Program Match Documentation Worksheet.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0034. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes STOP formula grantees (50 states and the District of Columbia The STOP Violence Against Women Formula Grant Program was authorized through the Violence Against Women Act of 1994 and reauthorized and amended by the Violence Against Women Act of 2000, the Violence Against Women Act of 2005 and the Violence Against Women Act of 2013. The purpose of the STOP Formula Grant Program is to promote a coordinated, multi-disciplinary approach to improving the criminal justice system's response to violence against women. It envisions a partnership among law enforcement, prosecution, courts, and victim advocacy organizations to enhance victim safety and hold offenders accountable for their crimes of violence against women. The Department of Justice's Office on Violence Against Women (OVW) administers the STOP Formula Grant Program funds which are awarded to states and territories to enhance the capacity of local communities to develop and strengthen effective law enforcement and prosecution strategies to combat violent crimes against women and to develop and strengthen victim services in cases involving violent crimes against women. Each state and territory must allocate 25 percent for law enforcement, 25 percent for prosecutors, 30 percent for victim services (of which at least 10 percent must be distributed to culturally specific community-based organizations), 5 percent to state and local courts, and 15 percent for discretionary distribution. VAWA provides for a 25 percent match requirement imposed on grant funds under the STOP Formula Grant Program. Thus, a grant made under this program may not cover more than 75 percent of the total costs of the project being funded. Under VAWA 2005, the state cannot require matching funds for a grant or subgrant for any tribe, territory, or victim service provider, regardless of funding allocation category. The state is exempted from matching the portion of the state award that goes to a victim service provider for victim services or that goes to tribes. Territories are also exempted in full. States can receive additional waiver of match based on a petition to OVW and a demonstration of financial need. OVW will look at the time of closeout at the entities and purposes of funds and base the required match on that.

The purpose of this new information collection is to provide a worksheet for documenting the amount of matching funds required at the closeout of a specific fiscal year award under the STOP Formula Grant Program. The type of questions on the worksheet will include award number, award amount, amount of funds sub-awarded to victim service providers for victim services or to tribes.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: It is estimated that it will take the approximately 51 respondents approximately ten minutes to complete a STOP Formula Grant Program match documentation worksheet.

(6) An estimate of the total public burden (in hours) associated with the collection: The total annual hour burden to complete the data collection forms is 8.5 hours, that is 51 STOP State Administrators completing an assessment tool one time with an estimated completion time being ten minutes.

If additional information is required contact: Melody Braswell, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E, 405B, Washington, DC 20530.

Dated: February 19, 2020.

**Melody Braswell,**

*Department Clearance Officer, PRA, U.S. Department of Justice.*

[FR Doc. 2020–03601 Filed 2–21–20; 8:45 am]

BILLING CODE 4410–BA–P

## DEPARTMENT OF JUSTICE

**[OMB Number 1122–0003]**

## Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection

**AGENCY:** Office on Violence Against Women, Department of Justice.

**ACTION:** 60-Day notice.

**SUMMARY:** The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted for 60 days until April 24, 2020.

**FOR FURTHER INFORMATION CONTACT:** Written comments and/or suggestion regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Cathy Poston, Office on Violence Against Women, at 202–514–5430 or *Catherine.poston@usdoj.gov.*

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(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 submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Annual Progress Report for the STOP Formula Grants Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0003. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the 56 STOP state administrators (from 50 states, the District of Columbia and five territories and commonwealths (Guam, Puerto Rico, American Samoa, Virgin Islands, Northern Mariana Islands)) and their subgrantees. The STOP Violence Against Women Formula Grants Program was authorized through the Violence Against Women Act of 1994 (VAWA) and reauthorized and amended by the Violence Against Women Act of 2000 (VAWA 2000) and by the Violence Against Women Act of 2005 (VAWA 2005). Its purpose is to promote a coordinated, multi-disciplinary approach to improving the criminal justice system's response to violence against women. The STOP Formula Grants Program envisions a partnership among law enforcement, prosecution, courts, and victim advocacy organizations to enhance victim safety and hold offenders accountable for their crimes of violence against women. OVW administers the STOP Formula Grants Program. The grant funds must be distributed by STOP state administrators to subgrantees according to a statutory formula (as amended by VAWA 2000 and by VAWA 2005).

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: It is estimated that it will take the 56 respondents (STOP administrators) approximately one hour to complete an annual progress report. It is estimated that it will take approximately one hour for roughly 2500 subgrantees [1] to complete the relevant portion of the annual progress report. The Annual Progress Report for the STOP Formula Grants Program is divided into sections that pertain to the different types of activities that subgrantees may engage in and the different types of subgrantees that receive funds, *i.e.* law enforcement agencies, prosecutors offices, courts, victim services agencies, etc.

(6) An estimate of the total public burden (in hours) associated with the collection: The total annual hour burden to complete the annual progress report is 2,556 hours.

If additional information is required contact: Melody Braswell, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E, 405B, Washington, DC 20530.

Dated: February 19, 2020.

**Melody Braswell,**

*Department Clearance Officer, PRA, U.S. Department of Justice.*

[FR Doc. 2020–03602 Filed 2–21–20; 8:45 am]

**BILLING CODE 4410–BA–P**

[1] Each year the number of STOP subgrantees changes. The number 2,500 is based on the number of reports that OVW has received in the past from STOP subgrantees.

## DEPARTMENT OF LABOR

### Wage and Hour Division

### Agency Information Collection Activities; Announcement of OMB Approvals

**AGENCY:** Wage and Hour Division, Department of Labor.

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, Wage and Hour Division announces that the Office of Management and Budget (OMB) has approved certain collections of information listed in the **SUPPLEMENTARY INFORMATION** below, following the Wage and Hour Division's submission of requests for approvals under the Paperwork Reduction Act of 1995 (PRA). This notice describes the information collections that have been approved or re-approved, the corresponding OMB Control Numbers, and their current expiration dates.

**FOR FURTHER INFORMATION CONTACT:** Robert Waterman, Compliance Specialist, Division of Regulations, Legislation, and Interpretation, Wage and Hour, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Copies of this notice may be obtained in alternative formats (Large Print, Braille, Audio Tape, or Disc), upon request, by calling (202) 693–0023 (not a toll-free number). TTY/TTD callers may dial toll-free (877) 889–5627 to obtain information or request materials in alternative formats.

**SUPPLEMENTARY INFORMATION:** The PRA and its implementing regulations require Federal agencies to display OMB control numbers and inform respondents of their legal significance after OMB has approved an agency's information collections. In accordance with those requirements, WHD hereby notifies the public that the following information collections have been re-approved by OMB following WHD's submission of an information collection request (ICR) for approval or extension of a prior approval:

- OMB Control No. 1235–0001, Fair Labor Standards Act Special Employment Provisions. The expiration date for this information collection is September 30, 2021.
- OMB Control No. 1235–0002, Disclosures to Workers Under the Migrant and Seasonal Agricultural Worker Protection Act. The expiration date for this information collection is August 31, 2020.
- OMB Control No. 1235–0003, Family and Medical Leave Act of 1993, As Amended. The expiration date for this information collection is August 31, 2021.
- OMB Control No. 1235–0005, Application of the Employee Polygraph Protection Act. The expiration date for this information collection is August 31, 2020.
- OMB Control No. 1235–0006, Housing Occupancy Certificate—Migrant and Seasonal Agricultural Worker Protection Act. The expiration date for this information collection is August 31, 2020.
- OMB Control No. 1235–0007, Labor Standards for Federal Service Contracts. The expiration date for this information collection is January 31, 2023.
- OMB Control No. 1235–0008, Davis-Bacon Certified Payroll. The expiration date for this information collection is April 30, 2021.
- OMB Control No. 1235–0013, Requirements of a Bona Fide Thrift or Savings Plan and Requirements of a

Bona Fide Profit-Sharing Plan or Trust. The expiration date for this information collection is June 30, 2021.

• OMB Control No. 1235–0015, Report of Construction Contractor's Wage Rates. The expiration date for this information collection is June 30, 2020.

• OMB Control No. 1235–0016, Application for a Farm Labor Contractor or Farm Labor Contractor Employee Certificate of Registration. The expiration date for this information collection is March 31, 2020.

• OMB Control No. 1235–0018, Records to be kept by Employers—Fair Labor Standards Act. The expiration date for this information collection is November 30, 2022.

• OMB Control No. 1235–0021, Employment Information Form. The expiration date for this information collection is November 30, 2022.

• OMB Control No. 1235–0023, Requests to Approve Conformed Wage Classifications and Unconventional Fringe Benefit Plans Under the Davis-Bacon and Related Acts and Contract Work Hours and Safety Standards Act. The expiration date for this information collection is October 31, 2022.

• OMB Control No. 1235–0024, Work-Study Program of the Child Labor Regulations. The expiration date for this information collection is June 30, 2022.

• OMB Control No. 1235–0025, Nondisplacement of Qualified Workers Under Service Contracts, Executive Order 13495. The Department submitted a request to discontinue this collection. This is due to the corresponding final rule published by the Department in the **Federal Register** on January 31, 2020 (85 FR 5567). On February 13, 2020, OMB issued a Notice of Action approving the discontinuation of this collection.

• OMB Control No. 1235–0029, Government Contractor Paid Sick Leave. The expiration date for this information collection is January 31, 2023.

Dated: February 18, 2020.

**Amy DeBisschop,**

*Director, Division of Regulation, Legislation, and Interpretation.*

[FR Doc. 2020–03606 Filed 2–21–20; 8:45 am]

**BILLING CODE 4510–27–P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meetings

**TIME AND DATE:** Notice is hereby given, pursuant to the provisions of the Government in Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission Investor Advisory Committee will hold a meeting on Thursday, February 27, 2020 at 9:30 a.m. (ET).

**PLACE:** The meeting will be held in Multi-Purpose Room LL–006 at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

**STATUS:** This meeting will begin at 9:30 a.m. (ET) and will be open to the public. Seating will be on a first-come, first-served basis. Doors will open at 9:00 a.m. Visitors will be subject to security checks. The meeting will be webcast on the Commission's website at *www.sec.gov.*

**MATTERS TO BE CONSIDERED:** On February 3, 2020, the Commission issued notice of the Committee meeting (Release No. 33–10752), indicating that the meeting is open to the public (except during that portion of the meeting reserved for an administrative work session during lunch), and inviting the public to submit written comments to the Committee. This Sunshine Act notice is being issued because a quorum of the Commission may attend the meeting. The agenda for the meeting includes: Welcome remarks; an update for investors regarding accounting and auditing trends; a discussion regarding the potential impact of the LIBOR transition on investors; subcommittee reports; and a nonpublic administrative work session during lunch.

**CONTACT PERSON FOR MORE INFORMATION:** For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Dated: February 19, 2020.

**Vanessa A. Countryman,**

*Secretary.*

[FR Doc. 2020–03677 Filed 2–20–20; 11:15 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–88229; File No. SR–NYSEAMER–2020–08]**

### Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE American Equities Price List and the NYSE American Options Fee Schedule Related to Co-Location Services

February 18, 2020.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder, [3] notice is hereby given that, on February 4, 2020, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend the NYSE American Equities Price List (the ''Equities Price List'') and the NYSE American Options Fee Schedule (the ''Options Fee Schedule,'' and together with the Price List, the ''Fee Schedules'') related to co-location services to (a) update the text of General Note 1 to include reference to NYSE Chicago, Inc. (''NYSE Chicago'') and (b) make non-substantive changes to the text of General Note 4. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

Overview

The Exchange proposes to amend its Fee Schedules related to co-location [4]

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (''Commission'') in 2010. *See* Securities Exchange Act Release No. 62961 (September 21, 2010), 75 FR

Continued

services to (a) update the text of General Note 1 to include reference to NYSE Chicago, and (b) make non-substantive changes to the text of General Note 4. General Note 1 and General Note 4 appear in both the Equities Price List and the Options Fee Schedule, and the Exchange proposes to amend them in both locations, as follows.

Proposed Change to General Note 1

General Note 1 currently provides that a User[5] that incurs co-location fees for a particular co-location service would not be subject to co-location fees for the same co-location service charged by the New York Stock Exchange LLC (''NYSE''), NYSE Arca, Inc. (''NYSE Arca''), and NYSE National, Inc. (''NYSE National'' and together, the ''Affiliate SROs'').[6] General Note 1 currently lists the Exchange's affiliates as NYSE, NYSE Arca, and NYSE National.

In late 2019, NYSE Chicago filed rule changes with the Commission establishing its co-location services.[7] The Exchange now proposes to add NYSE Chicago to General Note 1 in the Equities Price List, as follows (additions underlined):

BILLING CODE 8011–01–P

A User that incurs co-location fees for a particular co-location service pursuant to the NYSE American Equities Price List shall not be subject to co-location fees for the same co-location service charged pursuant to the NYSE American Options Fee Schedule or by the Exchange's affiliates New York Stock Exchange LLC (NYSE), NYSE Arca, Inc. (NYSE Arca), NYSE Chicago, Inc. (NYSE Chicago), and NYSE National, Inc. (NYSE National).

The Exchange also proposes to add NYSE Chicago to General Note 1 in the Options Fee Schedule, as follows (additions underlined):

A User that incurs co-location fees for a particular co-location service pursuant to this Fee Schedule shall not be subject to co-location fees for the same co-location service charged pursuant to the NYSE American Equities Price List or by the Exchange's affiliates New York Stock Exchange LLC (NYSE), NYSE Arca, Inc. (NYSE Arca), NYSE Chicago, Inc. (NYSE Chicago), and NYSE National, Inc. (NYSE National).

BILLING CODE 8011–01–C

By including the proposed reference to NYSE Chicago, General Note 1 would provide that the fees a User pays for co-location services would not depend on whether the User connects to none, one, some, or all of the Exchange, the Affiliate SROs, and NYSE Chicago.

The proposed change would be consistent with General Note 1 under ''Co-location'' in the Fee Schedule of NYSE Chicago (the ''NYSE Chicago Fee Schedule''), which similarly provides that a User that incurs fees for co-location services under that fee schedule is not subject to fees for the same co-location services charged by the Exchange, NYSE, NYSE Arca, or NYSE National.

Proposed Changes to General Note 4

General Note 4 currently provides that, when a User purchases access to the Liquidity Center Network (''LCN'') or the internet protocol (''IP'') network, the two local area networks available in the data center,[8] a User would receive (a) the ability to access the trading and execution systems of the Exchange and Affiliate SROs (''Exchange Systems'') as well as of Global OTC (the ''Global OTC System'') and (b) connectivity to any of the listed data products (''Included Data Products'') that it selects.

The Exchange now proposes to make three non-substantive changes to the text of the first sentence of General Note 4. First, the Exchange proposes to delete the full name of ''NYSE Chicago, Inc.'' from General Note 4, since that term would be defined earlier in proposed General Note 1 as ''NYSE Chicago.''

59299 (September 27, 2010) (SR–NYSEAmex–2010–80). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, a ''User'' shall mean any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76009 (September 29, 2015), 80 FR 60213 (October 5, 2015) (SR–NYSEMKT–2015–67).

[6] *See* Securities Exchange Act Release No. 70176 (August 13, 2013), 78 FR 50471 (August 19, 2013) (SR–NYSEMKT–2013–67).

[7] *See* Securities Exchange Act Release No. 87408 (October 28, 2019), 84 FR 58778 (November 1, 2019) (SR–NYSECHX–2019–12).

[8] *See* Securities Exchange Act Release No. 79728 (January 4, 2017), 82 FR 3035 (January 10, 2017) (SR–NYSEMKT–2016–126).

Second, the Exchange proposes to delete the quotation marks around the term ''Global OTC System,'' because the other General Notes generally do not include quotation marks around defined terms. Third, the Exchange proposes to add a serial comma after the term ''NYSE National'' near the end of the first sentence of General Note 4, as follows (additions underlined, deletions in brackets):

When a User purchases access to the LCN or IP network, it receives the ability to access the trading and execution systems of the NYSE, NYSE American, NYSE Arca, NYSE Chicago[, Inc. (NYSE Chicago)], and NYSE National (together, the Exchange Systems) as well as of Global OTC (the [“]Global OTC System[”]), subject, in each case, to authorization by the NYSE, NYSE American, NYSE Arca, NYSE Chicago, NYSE National, or Global OTC, as applicable.

BILLING CODE 8011–01–C

These changes are typographical in nature and are not intended to change the substance or meaning of the text of the Fee Schedules.

The proposed changes are not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed changes.[9]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Sections 6(b)(5) of the Act,[11] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed change would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the amendments would update General Note 1 to reflect NYSE Chicago's provision of co-location services. By including the proposed reference to NYSE Chicago, General Note 1 would clarify that NYSE Chicago is included among the affiliates of the Exchange referenced in the statement that a User paying for co-location services will not be subject to co-location fees for the same co-location services charged by any of the Exchange's affiliates. The proposed change would make the Fee Schedules consistent with General Note 1 under ''Co-location'' in the Fee Schedule of NYSE Chicago, alleviating any possible market participant confusion.

The Exchange believes that the non-substantive changes to General Note 4 would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the amendment would clarify Exchange rules, making the Fee Schedules easier to read and understand and alleviating any possible market participant confusion caused by the current text of the note.

The Exchange also believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[12] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers. This is true because the proposed amendments to General Note 1 would simply clarify that a User that incurs co-location fees for a particular co-location service pursuant to the Fee Schedules will not be subject to co-location fees for the same co-location services charged by any of the Exchange's affiliates, including NYSE Chicago. The Exchange also believes that the proposed amendments to General Note 1 provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers because they clarify that the Exchange, NYSE Chicago, and the other Affiliate SROs do not receive the proceeds from multiple fees despite providing a service only once.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, in addition to the use of co-location services being completely voluntary, they are available to all Users on an equal basis (*i.e.,* the same range of products and services are available to all Users).

The Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change would not change the services and fees to which market participants already have access. Rather, it seeks simply to clarify that a User that

[9] Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2020–09, SR–NYSEArca–2020–13, and SR–NYSENAT–2020–06.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(4).

incurs co-location fees for a particular co-location service pursuant to the Fee Schedules will not be subject to co-location fees for the same co-location services charged by any of the Exchange's affiliates, including NYSE Chicago.

In addition, the Exchange believes that the proposed non-substantive changes to General Note 4 would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because it would have no impact on pricing or existing services. Rather, the changes would clarify Exchange rules, making the Fee Schedules easier to understand and alleviating any possible market participant confusion caused by the current text of the note.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[15]

A proposed rule change filed under Rule 19b–4(f)(6) [16] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[17] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes that waiver of the operative delay is consistent with the protection of investors and the public interest because NYSE Chicago offers co-location services, and the waiver of the operative delay would alleviate the possibility of confusion among members, the public, and the Commission that could be caused by inconsistencies between the Exchange's Fee Schedules and the NYSE Chicago Fee Schedule. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[18]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [19] of the Act to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2020–08 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2020–08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2020–08 and should be submitted on or before March 16, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2020–03534 Filed 2–21–20; 8:45 am]

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[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78s(b)(2)(B).

[20] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–88233; File No. SR–NYSEAMER–2020–07]**

## Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend Its Price List

February 18, 2020.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

notice is hereby given that, on February 3, 2020, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend its Price List to (1) offer new credits for displayed orders, and revise the credits for non-displayed orders, that add liquidity to the Exchange; (2) revise the fees for non-displayed orders that remove liquidity from the Exchange; and (3) offer a one-time credit for quoting in UTP Securities. The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its Price List to (1) offer new credits for displayed orders, and revise the credits for non-displayed orders, that add liquidity to the Exchange; (2) revise the fees for non-displayed orders that remove liquidity from the Exchange; and (3) offer a one-time credit for quoting in UTP Securities.[4]

The proposed change responds to the current competitive environment where order flow providers have a choice of where to direct orders by offering further incentives for Equity Trading Permit (''ETP'') Holders[5] to send additional displayed liquidity to the Exchange.

The Exchange proposes to implement the rule change on February 3, 2020.

Competitive Environment

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.''[6]

As the Commission itself recognized, the market for trading services in NMS stocks has become ''more fragmented and competitive.''[7] Indeed, equity trading is currently dispersed across 13 exchanges,[8] 31 alternative trading systems,[9] and numerous broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange has more than 20% market share (whether including or excluding auction volume).[10] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange's market share of trading in Tapes A, B and C securities combined is less than 1%.

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. With respect to non-marketable order flow that would provide liquidity on an Exchange, ETP Holders can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange transaction fees that relate to orders that would provide liquidity on an exchange.

In response to this competitive environment, the Exchange proposes to introduce incentives for its ETP Holders who submit orders that provide liquidity on the Exchange in displayed and non-displayed securities and for ETP Holders that remove liquidity from the Exchange. In addition, the Exchange proposes a credit for each ETP Holder's Market Participant Identifier (''MPID'') that meets certain quoting requirements in UTP Securities, up to a maximum amount, designed to encourage ETP Holders to quote on the Exchange in UTP Securities. In short, the proposed fee change is designed to attract additional order flow to the Exchange and to encourage quoting and trading on the Exchange.

Proposed Rule Change

Liquidity Adding Displayed Order Fees

For transactions in securities priced at or above $1.00, other than transactions by Electronic Designated Market Makers (''eDMM'') in assigned securities, the Exchange currently does not charge a fee for executions on the Exchange of displayed orders that add liquidity to the Exchange.

The Exchange proposes to offer the following credits for displayed orders that add liquidity to the Exchange:

- For displayed orders and Mid-Point Liquidity Orders (''MPL Order'')[11] with an average daily volume (''ADV'') of at least 750,000 shares that add liquidity to the Exchange (''Adding ADV''),[12] the Exchange proposes a $0.0025 credit per displayed and MPL share.
- For displayed orders and MPL Orders that add liquidity to the Exchange that do not have an Adding ADV of at least 750,000 shares, the Exchange proposes a $0.0024 credit per displayed and MPL share.
- For orders that add displayed liquidity to the Exchange and that set a new best bid or offer (''BBO'') on NYSE American,[13] the Exchange proposes a $0.0026 per share credit.

The purpose of this proposed change is to incentivize ETP Holders to increase

[4] *See* Rule 1.1E(ii) (definition of UTP Security).

[5] *See id.* at (m) (definition of ETP) & (n) (definition of ETP Holder).

[6] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37495, 37499 (June 29, 2005) (S7–10–04) (Final Rule) (''Regulation NMS'').

[7] *See* Securities Exchange Act Release No. 51808, 84 FR 5202, 5253 (February 20, 2019) (File No. S7–05–18) (Transaction Fee Pilot for NMS Stocks Final Rule) (''Transaction Fee Pilot'').

[8] *See* Cboe Global Markets, U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[9] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[10] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[11] *See* Rule 7.31E(d)(3) (description of MPL Order).

[12] The Exchange proposes to add a fourth bullet under the first heading in the Price List titled ''Pillar Trading Platform'' that would provide that capitalized terms have the same meaning as in Rules 1.1E and 7E and that ''Adding ADV'' means an ETP Holder's average daily volume of shares executed on the Exchange that provided liquidity.

[13] *See* Rule 1.1E(h) (definition of BBO).

the liquidity-providing orders they send to the Exchange, which would support the quality of price discovery on the Exchange and provide additional liquidity for incoming orders. As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable orders, which add liquidity to the Exchange. The Exchange believes that the proposed credits for orders the meeting the Adding ADV requirement, for orders that don't meet the Adding ADV requirements and for orders that set a new Exchange BBO would provide incentives for ETP Holders to send additional liquidity and improve quoting on the Exchange in order to qualify for a credit.

The Exchange does not know how much order flow ETP Holders choose to route to other exchanges or to off-exchange venues. The Exchange did not previously offer credits for displayed orders that add liquidity to the Exchange, but 5 ETP Holders currently qualify for the tiered credits, and all ETP Holders could qualify for the proposed $0.0026 credit for setting a new BBO if they so choose. However, without having a view of ETP Holder's activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any ETP Holder directing orders to the Exchange in order to qualify for the new credits.

Liquidity Adding Non-Displayed Order Fees

For securities priced at or above $1.00, other than transactions by eDMMs in assigned securities, the Exchange currently charges $0.0002 per share for executions on the Exchange of non-displayed orders that add liquidity to the Exchange. The Exchange proposes a credit for executions on the Exchange of non-displayed orders that add liquidity to the Exchange of $0.0020 per share.

For securities priced at or above $1.00 on transactions by eDMMs in assigned securities, the Exchange currently does not offer a credit for executions of non-displayed orders that add liquidity to the Exchange. The Exchange proposes to offer a $0.0020 per share credit to eDMMs for executions of non-displayed orders that add liquidity to the Exchange.[14]

The purpose of this proposed change is to incentivize ETP Holders to increase the liquidity-providing orders they send to the Exchange, which would support the quality of price discovery on the Exchange and provide additional liquidity for incoming orders. As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable orders, which add liquidity to the Exchange. The Exchange believes that the proposed credits would provide incentives for ETP Holders to send additional liquidity to the Exchange.

The Exchange does not know how much order flow ETP Holders choose to route to other exchanges or to off-exchange venues. The Exchange believes all ETP Holders and eDMMs could qualify for the credits if they so choose. However, without having a view of ETP Holder's and eDMM's activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any ETP Holder or eDMM directing orders to the Exchange in order to qualify for the new credits.

Liquidity Removing Order Fees

For securities priced at or above $1.00, other than transactions by eDMMs in assigned securities, the Exchange currently charges $0.0002 per share for all executions that remove liquidity from the Exchange.

The Exchange proposes to revise the current fee for removing liquidity to $0.0026 per share where an ETP Holder has an Adding ADV of at least 10,000 shares. Where an ETP Holder does not have an Adding ADV of at least 10,000 shares, the Exchange proposes to charge $0.0030 per share for all executions that remove liquidity from the Exchange.

For priced at or above $1.00 in transactions applicable to eDMMs in assigned securities that remove liquidity from the Exchange, the Exchange currently charges $0.0002 per share for all executions that remove liquidity from the Exchange. The Exchange proposes to revise this fee for removing liquidity in transactions applicable to eDMMs in assigned securities to $0.0026 per share.

The Exchange does not know how much order flow ETP Holders choose to route to other exchanges or to off-exchange venues. There are currently 25 ETP Holders that qualify for the current fees for removing liquidity based on their current trading profile on the Exchange. However, without having a view of ETP Holder's activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any ETP Holder directing orders to the Exchange in order to qualify for the lower fees.

Monthly Quoting Credit

The Exchange proposes to offer a credit in addition to the transaction fees and credits specified in Section I.B of the Price List to encourage quoting on the Exchange in UTP Securities. Specifically, the Exchange proposes that each ETP Holder's MPID quoting at the national best bid or offer (''NBBO'')[15] an average of at least 10% of the time in 750 securities or more UTP Securities in the billing month would be eligible for a credit of $10,000 per qualifying MPID in the first month that an MPID qualifies for the credit for the first time, up to a maximum of $50,000 per ETP Holder for all of the ETP Holder's MPIDs.

For example, assume that ETP Holder A has 6 MPIDs and that ETP Holder A's first MPID quotes at least 10% at the NBBO in 800 UTP Securities in the first month while the remaining 5 MPIDs quote at least 10% in less than 750 UTP Securities each. The first MPID would qualify for the $10,000 credit in the first month. Assume that in the second month all of ETP Holder A's MPIDs quote at least 10% in at least 750 UTP Securities each. In the second month, ETP Holder A's first MPID would not qualify for the credit since it already received the $10,000 credit in the first month. ETP Holder A would accordingly receive a credit for $40,000 in the second month because the five of the remaining MPIDs met the quoting requirements but the combined credit is capped at $50,000 per ETP Holder. Because ETP Holder A would have received a combined credit of $50,000 over the first two months, ETP Holder A would not be eligible for any additional monthly quoting credits.

As noted, the purpose of this proposed change is to provide ETP Holders with an incentive to increase quoting on the Exchange in UTP Securities, which would support the quality of price discovery on the Exchange and provide additional liquidity for incoming orders. As noted, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable orders, which add liquidity to the Exchange. The Exchange believes that incentivizing ETP Holders to quote at the NBBO in UTP Securities more frequently could attract additional orders to the Exchange and contribute to price discovery, especially in less liquid securities that may quote but not trade. In addition,

[14] The Exchange proposes to delete the stray comma following ''(displayed)'' in the first entry under ''Adding Liquidity'' in Section II, A of the Price List.

[15] *See* Rule 1.1E(dd) (definition of NBBO, Best Protected Bid, Best Protected Offer, Protected Best Bid and Offer (PBBO)).

additional liquidity-providing quotes benefit all market participants because they provide greater execution opportunities on the Exchange and improve the public quotation.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any problems that ETP Holders would have in complying with the proposed change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[16] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[17] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposal is Reasonable

As discussed above, the Exchange operates in a highly fragmented and competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [18]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. With respect to non-marketable order flow that would provide liquidity on an Exchange, ETP Holders can choose from any one of the 13 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange transaction fees that relate to orders that would provide liquidity on an exchange. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

Given this competitive environment, the proposal represents a reasonable attempt to attract additional order flow to, and to increase quoting on, the Exchange. As noted, the Exchange's market share of trading in Tapes A, B and C securities combined is under 1%.

Specifically, the Exchange believes that offering new credits for displayed orders, and revising the credits for non-displayed orders, that add liquidity to the Exchange would provide incentives for ETP Holders to send additional liquidity providing orders to the Exchange. As noted above, the Exchange operates in a highly competitive environment, particularly for attracting non-marketable order flow that provides liquidity on an exchange.

Since the credits for displayed orders that add liquidity to the Exchange would be new, no ETP Holder currently qualifies for the proposed credits. As previously noted, there are a number of ETP Holders that could qualify for the proposed credits for displayed and non-displayed orders that add liquidity to the Exchange but without a view of ETP Holder activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether the proposed rule change would result in any ETP Holder qualifying for the proposed credits. The Exchange believes the proposed credits are reasonable as they would provide an incentive for ETP Holders to direct order flow to the Exchange and provide meaningful added levels of liquidity in order to qualify for the credits, thereby contributing to depth and market quality on the Exchange. The Exchange notes that the proposed credits remain in line with credits currently offered on other markets to attract displayed and non-displayed liquidity. For example, Cboe BZX and Nasdaq offer non-tier credits for adding liquidity of $0.0020.[19]

The Exchange further believes that the proposed revised fees for orders that remove liquidity from the Exchange are reasonable because they would incentivize ETP Holders to remove additional liquidity from the Exchange, thereby increasing the number of orders adding liquidity executed on the Exchange and improving overall liquidity on a public exchange, resulting in lower costs for ETP Holders that qualify for the rates. The Exchange notes that the proposed fees, although higher than current levels, are significantly less than comparable fees offered on other markets. For example, Cboe BZX and Nasdaq both offer a non-tier fee for removing liquidity of $0.0030.[20]

Without having a view of an ETP Holder's activity on other markets and off-exchange venues, the Exchange believes that the proposed higher fees to remove liquidity would provide an incentive for ETP Holders to remove additional liquidity from the Exchange. As previously noted, a number of ETP Holders qualify for the proposed fees and additional ETP Holders could qualify for the fees if they choose to direct order flow to, and increase quoting on, the Exchange.

The Exchange believes that the proposed credit for quoting on the Exchange in UTP Securities is reasonable. The proposed credit would provide ETP Holders with an additional incentive to increase quoting on the Exchange in UTP Securities, and particularly in less active securities, which would support the quality of price discovery on the Exchange and provide additional liquidity for incoming orders. The Exchange believes that incentivizing ETP Holders on the Exchange to quote at the NBBO more frequently could attract additional orders to the Exchange and contribute to price discovery. In addition, additional liquidity-providing quotes benefit all market participants because they provide greater execution opportunities on the Exchange and improve the public quotation.

Finally, the Exchange also believes the proposed non-substantive changes are reasonable and would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased clarity and transparency on the Price List, thereby reducing potential confusion.

Given the competitive environment in which the Exchange currently operates, the proposed rule change accordingly constitutes a reasonable attempt to increase liquidity on the Exchange and improve the Exchange's market share relative to its competitors.

The Proposal Is an Equitable Allocation of Fees

The Exchange believes the proposal equitably allocates its fees among its market participants by fostering liquidity provision and stability in the marketplace. Moreover, the proposal is

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(4) & (5).

[18] *See* Regulation NMS, 70 FR at 37499.

[19] *See* Cboe BZX U.S. Equities Exchange Fee Schedule, Fee Codes and Associated Fees, available at *https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/;* Nasdaq Price List, Rebate to Add Displayed Designated Retail Liquidity, available at *http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2.*

[20] *See* Cboe BZX Fee Schedule, Fee Codes and Associated Fees, available at *https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/;* Nasdaq Price List, Fees to Remove Liquidity, available at *http://nasdaqtrader.com/Trader.aspx?id=PriceListTrading2.*

an equitable allocation of fees because it would reward ETP Holders for increasing their quoting on the Exchange in UTP Securities. As such, it is equitable to offer ETP Holders an additional credit for quoting in UTP Securities up to a maximum amount.

The Exchange believes that the new credits for displayed orders, and revising the credits for non-displayed orders, that add liquidity to the Exchange are equitable because the proposed credits are not unreasonably high in comparison to the credits paid by other exchanges for displayed and non-displayed orders that provide liquidity.[21] The Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more liquidity to the Exchange, thereby improving market wide quality and price discovery.

Currently, 5 ETP Holders qualify for the proposed credits for displayed orders that add liquidity to the Exchange. As previously noted, there are a number of other ETP Holders that could qualify for the proposed credits for displayed and non-displayed orders that add liquidity to the Exchange but without a view of ETP Holder activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether the proposed rule change would result in any ETP Holder qualifying for the proposed credits. The Exchange believes the proposed credits are reasonable as they would provide an incentive for ETP Holders to direct order flow to the Exchange and provide meaningful added levels of liquidity in order to qualify for the credits, thereby contributing to depth and market quality on the Exchange.

The proposal neither targets nor will it have a disparate impact on any particular category of market participant. All ETP Holders would be eligible to qualify for the proposed credits by directing displayed and non-displayed order flow to the Exchange. Similarly, all ETP Holders would be eligible to qualify for the one-time credit for quoting on the Exchange in UTP Securities. ETP Holders must have an assigned MPID to quote and trade on the Exchange, and are thus all ETP Holders would be equally eligible to receive the same proposed credit. As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable orders, which add liquidity to the Exchange. The Exchange believes that offering credits for liquidity-providing displayed and non-displayed orders would provide incentives for ETP Holders to send additional liquidity to the Exchange, thereby providing additional price improvement opportunities on the Exchange and benefiting investors generally. Similarly, the Exchange believes that offering a one-time credit for quoting on the Exchange in UTP Securities would provide an added incentive to increase quoting on the Exchange in UTP Securities, and particularly in less active securities, which would support the quality of price discovery on the Exchange and provide additional liquidity for incoming orders.

The Exchange believes that, for the reasons discussed above, the proposed changes to the liquidity-removing order fees would incentivize ETP Holders to add additional liquidity from the Exchange to qualify for the lower removing fee of $0.0026, thereby increasing the number of orders adding liquidity that are executed on the Exchange and improving overall liquidity on a public exchange. As previously noted, a number of ETPs are qualifying for the current fees for removing liquidity based on their current trading profile on the Exchange. Based on the profile of liquidity-removing firms generally, the Exchange believes additional ETP Holders could qualify for the new rates if they choose to direct order flow to, and increase quoting on, the Exchange, given the low level of 10,000 shares ADV.

The Proposal Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, ETP Holders are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value.

The Exchange believes it is not unfairly discriminatory to provide higher credits for displayed orders and non-displayed orders as well as a one-time credit based on enhanced quoting at the NBBO in UTP Securities insofar as the proposed credits would be provided on an equal basis to all similarly situated ETP Holders that add liquidity to the Exchange, who would all be eligible for the same credits if they meet the quoting and other requirements on an equal basis. Moreover, the proposed cap per ETP Holder of $50,000 for the one-time credit for enhanced quoting at the NBBO in UTP Securities would also be provided on equal basis to all ETP Holders. ETP Holders must have an assigned MPID to quote and trade on the Exchange, and are thus all ETP Holders would be equally eligible to receive the same proposed credit.

The revised fees for orders that remove liquidity from the Exchange are also not unfairly discriminatory because the ADV requirement to qualify for the fee would be applied to all similarly situated ETP Holders who would all be eligible for the same fee on an equal basis. Accordingly, no ETP Holder already operating on the Exchange would be disadvantaged by this allocation of fees. Further, the Exchange believes the proposal would provide an incentive for ETP Holders to remove additional liquidity from the Exchange, to the benefit of all market participants.

The proposal does not permit unfair discrimination to provide a lower fee for removing liquidity and higher credits for adding displayed and non-displayed liquidity as the proposed fee and credits would be provided on an equal basis to all similarly situated ETP Holders who would all be eligible for the same credit on an equal basis. Accordingly, no ETP Holder already operating on the Exchange would be disadvantaged by this allocation of fees.

The Exchange also believes that the proposed change is not unfairly discriminatory because it is reasonably related to the value to the Exchange's market quality associated with higher volume. The Exchange believes the proposed credits would incentivize ETP Holders to send more orders to the Exchange and to increase quoting on the Exchange in order to qualify for the proposed credits, which would support the quality of price discovery on the Exchange and provide additional liquidity for incoming orders. Further, the submission of orders to the Exchange is optional for member organizations in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with Section 6(b)(8) of the Act,[22] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes

[21] *See* note 19, *supra*.

[22] 15 U.S.C. 78f(b)(8).

that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for ETP Holders. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [23]

*Intramarket Competition.* The proposed changes are designed to attract additional order flow to the Exchange. The Exchange believes that the proposed changes would continue to incentivize market participants to direct order flow to the Exchange. Greater liquidity benefits all market participants on the Exchange by providing more trading opportunities and encourages member organizations to send orders, thereby contributing to robust levels of liquidity, which benefits all market participants on the Exchange. The proposed credits would be available to all similarly-situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

*Intermarket Competition.* The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As noted, the Exchange's market share of trading in Tapes A, B and C securities combined is less than 1%. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

[23] Regulation NMS, 70 FR at 37498–99.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [24] of the Act and subparagraph (f)(2) of Rule 19b–4 [25] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [26] of the Act to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2020–07 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2020–07. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2020–07 and should be submitted on or before March 16, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2020–03546 Filed 2–21–20; 8:45 am]

**BILLING CODE 8011–01–P**

[24] 15 U.S.C. 78s(b)(3)(A).

[25] 17 CFR 240.19b–4(f)(2).

[26] 15 U.S.C. 78s(b)(2)(B).

[27] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–88225; File No. SR–MSRB–2019–13]**

## Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of a Proposed Rule Change To Amend the Information Facility of the MSRB's Electronic Municipal Market Access (EMMA) System

February 18, 2020.

**I. Introduction**

On November 19, 2019, the Municipal Securities Rulemaking Board (the ''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (the ''SEC'' or ''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 amend the information facility of the MSRB's Electronic Municipal Market Access (''EMMA'') [3] system (the ''EMMA IF'') to provide for (1) the automated calculation and static display of the number of days between

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] EMMA is a registered trademark of the MSRB.

(i) the annual fiscal period end date for an issuer or obligated person and (ii) the date an annual financial disclosure is submitted to the EMMA system for such annual fiscal period (the ''Submission Calculator'') and (2) the reconfiguration of certain information shown on the EMMA public website (*emma.msrb.org*) (the ''EMMA Portal'') to more prominently display an issuer's or obligated person's annual financial disclosures and related information (the ''proposed rule change''). The proposed rule change was published for comment in the **Federal Register** on November 27, 2019.[4]

The Commission received five comment letters on the proposed rule change.[5] On February 6, 2020, the MSRB responded to those comments.[6] This order approves the proposed rule change.

## II. Description of Proposed Rule Change

As described further below and in the Notice of Filing, the MSRB proposes to amend the EMMA IF to provide for (1) the Submission Calculator and (2) the reconfiguration of certain information shown on the EMMA Portal to more prominently display an issuer's or obligated person's annual financial disclosures and related information.[7] The MSRB has stated that it believes the proposed rule change would further promote transparency and efficiency in the municipal securities market without imposing significant additional burdens on brokers, dealers, and municipal securities dealers (collectively, ''dealers''), municipal issuers, or obligated persons.[8]

### *A. Submission Calculator*

The proposed rule change would amend the EMMA IF to provide for the Submission Calculator. The MSRB states that the Submission Calculator would automatically calculate and statically display the elapsed number of days between (1) the end date of the annual fiscal period covered by an annual financial disclosure (the ''Fiscal Period End Date'') for an issuer or obligated person, as such date is entered by a submitter through the process of publishing an annual financial disclosure on the EMMA Portal, and (2) the time and date of the submission of the annual financial disclosure to the EMMA system (the ''Posted Date'') of an annual financial disclosure submitted to the EMMA system for such annual fiscal period, both of which dates are currently visible on the EMMA Portal.[9] The MSRB notes that the Submission Calculator would be based on the existing information required to be provided by a submitter, calculating the number of days elapsed based solely on the entry of the Fiscal Period End Date and the Posted Date for an annual financial disclosure.[10] The day of the Posted Date would be included in the calculation, as further described in the Notice of Filing, and this number of days elapsed would be displayed on the EMMA Portal at the individual security details level.[11] Importantly, the MSRB notes that it would not evaluate the substantive content of the documents and information submitted, and the Submission Calculator would not analyze the relevant content to evaluate an issuer's or obligated person's compliance with the terms of an applicable continuing disclosure agreement or any applicable law, regulation, or other legal obligation.[12] The MSRB states that, consistent with the EMMA system's current functionality, if a submitter enters an erroneous Fiscal Period End Date for an annual financial disclosure, the Submission Calculator would perform its calculation based on the erroneous Fiscal Period End Date entered by the submitter.[13]

To illustrate how the Submission Calculator would operate, the MSRB provided several examples in the Notice of Filing, including a single submission of annual financial information, a multi-year series of submissions of annual financial information, sequential submissions of portions of an issuer's annual financial information for a single fiscal period, and sequential submissions of annual financial information for a single issue of municipal securities with multiple obligated persons.[14]

### *B. Changes to the EMMA Display*

The proposed rule change would amend the EMMA IF to reconfigure certain information shown on the EMMA Portal to more prominently display an issuer's or obligated person's annual financial disclosures and related information.[15] More specifically, the MSRB states that the revised EMMA Portal would more prominently display the information reported about an annual financial disclosure for a municipal security, including the Fiscal Period End Date, the Posted Date, and the results of the Submission Calculator.[16] The MSRB states that the proposed rule change also would increase the prominence of the links provided by any issuer through its customized homepage to other websites containing relevant information.[17] With these changes to the EMMA Portal and the implementation of the Submission Calculator, the MSRB notes that the security details page for a municipal security generally would provide the information shown in *Figure 1* below, which is shown as processed with the hypothetical facts and resulting calculation from the first example provided in the Notice of Filing.[18]

[4] Securities Exchange Act Release No. 87583 (Nov. 21, 2019) (the ''Notice of Filing''), 84 FR 65436 (Nov. 27, 2019).

[5] *See* Letter to Secretary, Commission, from Scott Andreson, Chair, National Federation of Municipal Analysts (''NFMA''), dated December 13, 2019 (the ''NFMA Letter''); Letter to Secretary, Commission, from Emily Swenson Brock, Director, Federal Liaison Center, Government Finance Officers Association (''GFOA''), dated December 18, 2019 (the ''GFOA Letter''); Letter to Secretary, Commission, from Chuck Samuels, General Counsel, National Association of Health and Educational Facilities Finance Authorities (''NAHEFFA''), dated December 18, 2019 (the ''NAHEFFA Letter''); Letter to Secretary, Commission, from Kenton Tsoodle, Assistant City Manager, Oklahoma City, GFOA Representative, David Erdman, Capital Finance Director, State of Wisconsin—Department of Administration, GFOA Representative, Cynthia Evangelisti, Treasurer, Chicago Park District, GFOA Representative, The Honorable Fiona Ma, Treasurer, State of California, National Association of State Treasurers Representative, Dennis Reilly, Executive Director, Wisconsin Health & Educational Facilities Authority, NAHEFFA Representative, Staci Henshaw, Deputy Auditor, Virginia Auditor of Public Accounts, National Association of State Auditors, Comptrollers and Treasurers Representative, Christine Crowley, Municipal Advisor, Fiscal Advisors & Marketing, Inc., National Association of Municipal Advisors (''NAMA'') Representative, Brian Reilly, Senior Municipal Advisor, Ehlers, Inc., NAMA Representative, Stacey Lewis, Partner, Pacifica Law Group LLP, National Association of Bond Lawyers (''NABL'') Representative, Bradley Patterson, Shareholder, Gilmore & Bell, P.C., NABL Representative, and Teri Guarnaccia, Partner, Ballard Spahr LLP, NABL Representative (collectively, the ''Issuer Representatives Workgroup''), dated December 18, 2019 (the ''Issuer Representatives Workgroup Letter''); and Letter to Secretary, Commission, from Vicki Hellenbrand, President, Baker Tilly Municipal Advisors, LLC (''Baker Tilly''), dated December 19, 2019 (the ''Baker Tilly Letter'').

[6] *See* Letter to Secretary, Commission, from Gail Marshall, Chief Compliance Officer, Municipal Securities Rulemaking Board (''MSRB''), dated February 6, 2020 (the ''MSRB Response Letter'').

[7] *See* Notice of Filing, 84 FR at 65437.

[8] *Id.* at 65439.

[9] *Id.*

[10] *Id.*

[11] The EMMA Portal's security details pages enable users to access documents and information associated with a particular municipal security, such as an official statement, continuing disclosure document, and/or trade report.

[12] *See* Notice of Filing, 84 FR at 65439.

[13] *Id.*

[14] *Id.* at 65440.

[15] *Id.* at 65441.

[16] *Id.*

[17] *Id.*

[18] *Id.*

FIGURE 1

Timing of Annual Financial Disclosure
Fiscal Period End Date: 06/30/2020
Posted Date: 12/23/2020
Timing of Disclosure: 176 Days
Hyperlink to Disclosure Document PDF(s)
Hyperlink(s) to Other Website(s) if Provided

The MSRB states that, although each of these data points, other than the Submission Calculator results shown as the Timing of Disclosure in *Figure 1,* are currently available on the EMMA Portal, the proposed rule change is intended to improve users' awareness of this information, and that nothing about this proposed display would be evaluative of an issuer's or obligated person's compliance with the applicable terms of a continuing disclosure agreement.[19] The MSRB further states that proposed rule change would not modify how submitters provide this information to the EMMA system, nor require submitters to input any new data, but it would augment the display of information reported to the EMMA system to make it more apparent to users.[20]

*C. Proposed Changes to Text of EMMA IF*

The proposed rule change would amend the text of the EMMA IF to provide for the development and otherwise describe the operation of the Submission Calculator. More specifically, the MSRB states that the proposed rule change would amend the EMMA IF to define the term ''EMMA metrics'' to mean the calculations, data, and metrics derived from municipal securities disclosure documents and related information submitted to the EMMA system, thereby including the calculations, data, and metrics generated by the Submission Calculator would be in the definition.[21] The MSRB notes that this revised definition is intended to provide greater clarity regarding the various types of information that may be disseminated by the EMMA system in light of the Submission Calculator's new functionality, including more precisely delineating the distinctions between disclosure documents, related information, indexing information, and EMMA metrics.[22]

**III. Summary of Comments Received and MSRB's Responses to Comments**

As noted previously, the Commission received five comment letters on the proposed rule change, as well as the MSRB Response Letter.

*A. Stakeholder Consultation and Education*

Four commenters expressed concerns that, prior to filing the proposed rule change with the Commission, the MSRB did not formally invite market participants to provide input through a public request for comment or through other MSRB-organized stakeholder consultation, such as beta-testing and user focus groups,[23] with three of such commenters recommending that the proposed rule change be withdrawn until such consultation could occur.[24] The MSRB stated that although it believes that engaging in such stakeholder outreach can be valuable, the legal standard under the Act for Commission approval of a proposed rule change does not require such engagement prior to the filing of a proposed rule change with the Commission, and therefore the lack of any such engagement should not be a basis for disapproval by the Commission of the proposed rule change.[25]

The MSRB stated that it appreciates the willingness of commenters to provide constructive feedback on the proposed rule change, and that it would value the opportunity for stakeholders to preview the proposed changes to the EMMA Portal contemplated by the proposed rule change in advance of the date such changes would become visible to the public, as well as for stakeholders to provide input on possible future MSRB education initiatives and market transparency enhancements.[26] Further, the MSRB stated that, subject to the Commission's approval of the proposed rule change, the MSRB believes that it can, and intends to, provide the sort of stakeholder consultation requested by the commenters during the period between the publication of the Commission's approval order and the date the proposed enhancements become visible to the public on the EMMA Portal.[27]

*B. Potential for Erroneous Submissions*

Five commenters raised concerns about the potential for erroneous submissions to EMMA to result in erroneous displays of information in the Submission Calculator.[28] For example, one such commenter stated, ''submission errors, including classification errors and incorrect dates, that are frequent in today's EMMA system, pose a high risk that a meaningful number of calculations will be based on inaccurate information.''[29] Another commenter expressed concerns that the Submission Calculator could itself generate errors.[30]

The MSRB stated that it appreciates commenters' concerns about improving the accuracy and completeness of information displayed on the EMMA Portal. The MSRB noted that, as stated in the Notice of Filing, the changes to the EMMA Portal contemplated by the proposed rule change would not alter the process for users to submit annual financial disclosures to EMMA nor change the type of information collected in the publication of such disclosures.[31] The MSRB further noted that the information that would be used in the proposed changes—including the calculation generated by the Submission Calculator—is presently being input by users and published for public view on the EMMA Portal.[32] In this sense, the MSRB stated that it believes that commenters' assertions about the inevitability and frequency of submission errors are more aptly characterized as market behaviors that would be expected to persist regardless of the proposed rule change, rather than outcomes that will specifically result from the proposed rule change.[33]

Consequently, to the degree that the Submission Calculator and the other proposed enhancements would provide new prominence to the information submitted, the MSRB stated that it believes that submitters would have an additional incentive to properly categorize and describe annual financial disclosures, and the incidences of submissions with erroneous information would be expected to marginally decline from current rates.[34] Similarly, to the degree that submitters exert greater diligence in completing the disclosure submission process in response to the proposed rule change, the MSRB stated that it believes that any additional burden created by this change in market behavior is exceeded by the benefits of greater market transparency through the improved

[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] *See* GFOA Letter, NAHEFFA Letter, Issuer Representatives Workgroup Letter, Baker Tilly Letter.
[24] *See* GFOA Letter, NAHEFFA Letter, Issuer Representatives Workgroup Letter.
[25] *See* MSRB Response Letter.
[26] *Id.*
[27] *Id.*
[28] *See* GFOA Letter, NAHEFFA Letter, Issuer Representatives Workgroup Letter, Baker Tilly Letter, NFMA Letter.
[29] *See* NFMA Letter.
[30] *See* Baker Tilly Letter.
[31] *See* MSRB Response Letter.
[32] *Id.*
[33] *Id.*
[34] *Id.*

availability and understanding of market information displayed on the EMMA Portal.[35] Accordingly, the MSRB concluded, commenters' assertions about the consequences of erroneous submissions do not change the MSRB's determinations about the overall benefits of the Submission Calculator.[36]

With respect to comments that the MSRB undertake ''greater oversight of the submission process'' [37] or otherwise prevent ''inconsistent and unclear data,'' [38] the MSRB stated that it believes that submitters should retain ultimate responsibility for the accuracy and completeness of the content they submit for publication on the EMMA Portal, including identification of the applicable disclosure category (or categories) of an annual financial disclosure, and comments about the need for improved data quality and greater MSRB oversight of information input by disclosure submitters do not alter the MSRB's determinations in this regard.[39]

With respect to the potential for the Submission Calculator to malfunction and display incorrect calculations, the MSRB stated that it has established policies and procedures to maintain the performance of the EMMA system.[40]

*C. Correction of Submission Mistakes*

Two commenters sought clarity regarding whether disclosure submitters will be able to correct submission mistakes.[41] The MSRB stated that the EMMA system currently provides issuers and obligated persons the ability to modify prior continuing disclosure submissions, including by selecting different categories, adding or replacing submitted files, editing dates and descriptive information, adding or removing securities associated with a submission, and changing the contact information for the submission.[42] The MSRB noted that it is already pursuing several user interface and functionality improvements to EMMA independent of the proposed rule change.[43] The MSRB further noted that one commenter had requested several additional technological improvements to EMMA that are unrelated to the Submission Calculator,[44] which the MSRB believes are outside the scope of the proposed rule change.[45]

*D. Potential for Investor Confusion*

Four commenters expressed concerns about how investors might use the information provided by the Submission Calculator, including whether it could be used erroneously to compare the timing of disclosures for different types of municipal securities or municipal issuers.[46] One commenter stated that, ''[t]here is no apples to apples comparison between issuers that can be represented by this calculator,'' and that ''some issuers could be unfairly judged by investors that information may not be 'timely' when in fact it is submitted as quickly as possible—and within the timeframe noted in a [continuing disclosure agreement]—pending the completion of audited financials.'' [47] Another commenter similarly expressed a concern about pooled financings and other municipal securities with multiple obligated persons, stating, ''we do not understand how such financings with borrowers who may have different fiscal periods will be handled without providing significantly misleading information.'' [48] Another commenter stated its view that the Submission Calculator should only perform a calculation on filings marked as audited financial filings, not for unaudited annual financial filings, because there would be an ''opportunity for manipulation'' of the calculation, and also expressed concern about investors being misled by the display of a calculation based on out-of-date annual financial disclosures.[49] Another commenter suggested that the proposed rule change could alter market behavior by encouraging quick but ''inadequate'' filings.[50]

The MSRB stated that although it does not disagree with the observations underlying many of these comments, it believes that the comments do not necessarily demonstrate flaws unique to the proposed rule change, but are more generally representative of the variation and complexity of disclosure practices in the municipal securities market.[51] The MSRB further stated its belief that it can, and intends to, mitigate some potential investor confusion by making various investor education resources available on the EMMA Portal in conjunction with the proposed rule change.[52] Moreover, the MSRB stated, it continues to believe that the design of the Submission Calculator adequately accounts for the broad variety of common disclosure practices in the municipal securities market and promotes greater transparency, including by making financial information more readily apparent to investors, market professionals, and the general public through the EMMA Portal.[53]

The MSRB further noted that, as described in the Notice of Filing,[54] the Board evaluated various alternatives to and iterations of the Submission Calculator.[55] After significant deliberation and review of the data currently reported to the EMMA system, the MSRB determined that the Submission Calculator would be superior to other alternatives because it could account for the lack of common uniformity in the reporting of financial information characteristic to the municipal securities market, while also creating no new burdens on issuers and obligated persons submitting information to the EMMA Portal.[56] Nevertheless, in consideration of the comments to the proposed rule change, the MSRB emphasized that it is committed to work with stakeholders on future enhancements to the EMMA Portal.[57]

## IV. Discussion and Commission Findings

The Commission has carefully considered the proposed rule change, the comment letters received, and the MSRB Response Letter. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB.

The Commission believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which provides in part that the MSRB's rules shall:

> be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities and municipal financial products, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and municipal financial

[35] *Id.*
[36] *Id.*
[37] *See* NFMA Letter.
[38] *See* Issuer Representatives Workgroup Letter.
[39] *See* MSRB Response Letter.
[40] *Id.*
[41] *See* GFOA Letter, NAHEFFA Letter.
[42] *See* MSRB Response Letter.
[43] *Id.*
[44] *See* NFMA Letter.
[45] *See* MSRB Response Letter.
[46] *See* GFOA Letter, NAHEFFA Letter, NFMA Letter, Baker Tilly Letter.
[47] *See* GFOA Letter.
[48] *See* NAHEFFA Letter.
[49] *See* NFMA Letter.
[50] *See* Baker Tilly Letter.
[51] *See* MSRB Response Letter.
[52] *Id.*
[53] *Id.*
[54] *See* Notice of Filing, 84 FR at 65442.
[55] *See* MSRB Response Letter.
[56] *Id.*
[57] *Id.*

products, and, in general, to protect investors, municipal entities, obligated persons, and the public interest.[58]

For the reasons set forth below, the Commission believes that the proposed rule change would promote the protection of investors and the public interest, and prevent fraudulent and manipulative acts and practices, and is therefore consistent with Section 15B(b)(2)(C) of the Act.

The Commission has long been concerned with disclosure in both the primary and secondary markets for municipal securities, and has regularly encouraged municipal issuers to provide timely and accurate information to investors and the trading markets.[59] For example, in the 1994 Interpretive Release, the Commission observed that ''[t]he timeliness of financial information is a major factor in its usefulness.'' [60] In the 2008 Adopting Release, through which the Commission designated EMMA as the sole repository for issuer and obligated person continuing disclosures, the Commission noted that its ''objective of encouraging greater availability of municipal securities information remains unchanged.'' [61] More recently, the Commission has noted that, among other things, timeliness of disclosures is a major challenge in the secondary market for municipal securities.[62]

The Commission believes that the changes to the EMMA Portal contemplated by the proposed rule change would promote the protection of investors and the public interest by increasing their awareness and understanding of the type and timing of financial information available in the municipal securities market, which could enable investors to make more informed investment decisions. The Commission believes that the changes to the EMMA Portal contemplated by the proposed rule change also would enable investors and others to more readily locate and access the financial information available on the EMMA Portal and provide investors and others with additional tools to evaluate an issuer's disclosure practices.

The Commission further believes that the proposed rule change would promote the prevention of fraudulent and manipulative acts and practices by fostering a better understanding among investors and other market participants of the type and timing of annual financial information available in the municipal securities market by making the type and timing of financial information more readily apparent on the EMMA Portal. In the Commission's view, the proposed rule change could mitigate certain information asymmetries that may exist in the market and thereby enable investors to make more informed investment decisions and protect themselves from fraud.

In approving the proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation.[63] Section 15B(b)(2)(C) of the Act [64] requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Commission does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, because it would not require issuers and other submitters of information to EMMA to provide any additional information in their submissions. Furthermore, the Commission believes that the potential for increased transparency and awareness regarding the timing of financial information available on the EMMA Portal could improve competition by assisting investors in their analysis of a municipal security's financial information by clearly and prominently displaying a measure of the timing of that information.

The Commission has reviewed the record for the proposed rule change and notes that the record does not contain any information to indicate that the proposed rule change would have a negative effect on capital formation. The Commission believes that the proposed rule change includes provisions that help promote efficiency. By promoting transparency and awareness of the timing of annual financial information, the proposed rule change could enable more efficient analysis by investors and others of the age of the financial information available about an issuer and its securities.

As noted above, the Commission received five comment letters on the filing. The Commission believes that the MSRB, through its responses, has addressed commenters' concerns. For the reasons noted above, the Commission believes that the proposed rule change is consistent with the Act.

## V. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,[65] that the proposed rule change (SR–MSRB–2019–13) be, and hereby is, approved.

For the Commission, pursuant to delegated authority.[66]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2020–03531 Filed 2–21–20; 8:45 am]

BILLING CODE 8011–01–P

[58] 15 U.S.C. 78*o*–4(b)(2)(C).

[59] *See* Exchange Act Release No. 34961 (November 10, 1994), 59 FR 59590 (November 17, 1994); Exchange Act Release No. 33741 (March 9, 1994), 59 FR 12748 (March 17, 1994) (the ''1994 Interpretive Release''); Exchange Act Release No. 59062 (December 5, 2008), 73 FR 76104, 76108 (December 15, 2008) (''2008 Adopting Release''); Securities and Exchange Commission, Report on the Municipal Securities Market (July 31, 2012) (''2012 Report''), *available at https://www.sec.gov/news/studies/2012/munireport073112.pdf;* Exchange Act Release No. 83885 (August 20, 2018), 83 FR 44700 (August 31, 2018).

[60] *See* 1994 Interpretive Release, 59 FR at 12753.

[61] *See* 2008 Adopting Release, 73 FR at 76108.

[62] *See* 2012 Report at 74.

[63] 15 U.S.C. 78c(f).

[64] 15 U.S.C. 78*o*–4(b)(2)(C).

[65] 15 U.S.C. 78s(b)(2).

[66] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–88232; File No. SR–CBOE–2020–010]**

## Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing of a Proposed Rule Change Relating To Adopt Flexible Exchange Options (''FLEX Options'') With a Contract Multiplier of One (''FLEX Micro Options'')

February 18, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 4, 2020, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to adopt flexible exchange options (''FLEX options'') with a contract multiplier of one (''FLEX Micro Options''). The text of the proposed rule change is provided in Exhibit 5.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The proposed rule change adopts FLEX Micro Options, which are FLEX Options with a contract multiplier of one. Rule 4.21(b) provides that a FLEX Trader [3] must include all terms of a FLEX Option series when submitting a FLEX Order.[4] Currently, the contract multiplier for all FLEX Options is 100.[5] The proposed rule change amends Rule 4.21(b)(1) to state that when identifying the underlying security or index, the FLEX Trader must also include whether the contract multiplier is one or 100, and defines FLEX Options with a multiplier of one as FLEX Micro Options. In other words, 100 FLEX Micro Options are equivalent to one standard FLEX Option.[6] Because non-FLEX Options have multipliers of 100, FLEX Micro Options will not be fungible with any non-FLEX Options, and thus will only be available for trading pursuant to FLEX trading procedures in Chapter 5, Section F of the Rules.[7]

For example, on January 28, 2020, the S&P 500 Index was at 3273.76 intraday. Therefore, at that time, one S&P 500 Index option (''SPX option'') contract had a notional value of $327,376 (100 times 3273.76). The SPX Feb 3300 call option was trading at $30.20, making the cost of the standard contract overlying 100 units of the index was be $3,020. Proportionately equivalent FLEX Micro Option contracts on SPX would provide investors with the ability to manage and hedge their positions and portfolio risk on their underlying investment, at a price of $30.20 per contract. The table below demonstrates the proposed differences between a FLEX Micro Options contract and a standard FLEX Option contract with an exercise price of $3025 and a bid or offer of $3.20:

| Term | Standard | Micro |
|---|---|---|
| Contract Multiplier | 100 | 1 |
| Strike Price | 3025 | 3025 |
| Bid/offer | 3.20 | 3.20 |
| Total Value of Deliverable | $302,500 | $3,025 |
| Total Value of Contract | $320 | $3.20 |

The Exchange believes there is a demand from investors for FLEX Micro Options, and that the proposed rule change will expand investors' choices and flexibility with respect to the trading of FLEX Options. These options will provide investors with additional granularity with respect to the prices at which they may execute and exercise their FLEX Options on the Exchange, as investors may execute and exercise over-the-counter options with this smaller contract multiplier. The Exchange believes this additional granularity will appeal to investors, as it will provide them with an additional tool to manage their positions based on notional value, which currently may equal a fraction of a standard contract.

For example, suppose a FLEX Trader holds a security portfolio of $10,000,000. The FLEX Trader desires to hedge its portfolio with FLEX SPX Options. Assume the current value of the S&P 500 Index is 3,253.82. With a 100 multiplier, a standard FLEX SPX Option contract would have a notional value of $325,382.00. In order to hedge the entire portfolio, the FLEX Trader would need to trade 30.73 contracts ($10,000,000/$325,382). The nearest whole number of contracts would 31 contracts, which would have a total notional value of $10,086,842. As a result, the FLEX Trader could only hedge within $86,842 of its portfolio value with standard FLEX Options. With a one multiplier, a FLEX SPX Micro Option contract would have a notional value of $3,253.82. In order to hedge the entire $10,000,000 portfolio, the FLEX Trader would need to trade 3,073.3 ($10,000,000/$3,253.82). The nearest whole number of contracts would be 3,073 FLEX Micro SPX Option contracts, which would have a total notional value of $9,998,988.86.[8] This will allow the FLEX Trader to hedge within $1,011.14 of its portfolio value. Therefore, the availability of FLEX Micro Options would permit this FLEX Trader to hedge its portfolio with far greater precision ($85,830.86).

FLEX Micro Options will be traded in the same manner as all other FLEX Options pursuant to Chapter 5, Section F of the Rules. As demonstrated above, there are two important distinctions between standard FLEX Options and

[3] A ''FLEX Trader'' is a Trading Permit Holder the Exchange has approved to trade FLEX Options on the Exchange.

[4] These terms include the underlying equity security or index, the type of options (put or call), exercise style, expiration date, settlement type, and exercise price. *See* Rule 4.21(b). A FLEX'' Order'' is an order submitted in FLEX Options. The submission of a FLEX Order makes the FLEX Option series in that order eligible for trading. *See* Rule 5.72(b).

[5] Rule 4.21(b)(1). The proposed rule change clarifies in Rule 4.21(b)(1) that the contract multiplier for both FLEX Equity and Index Options is 100, as the current rule only provides that the index multiplier is 100 for FLEX Index Options. This is not a substantive change and merely a clarification in the Rules regarding the current multiplier for FLEX Options.

[6] The proposed rule change also amends Rule 5.74(a)(4) to provide that the minimum size of an agency order for a FLEX solicitation auction mechanism (''SAM'') will be 50,000 FLEX Micro Option contracts, which is equivalent to 500 standard FLEX option contracts, the current minimum size of agency orders for SAM auctions. This corresponds to the minimum size of 5,000 mini-options.

[7] *See* proposed Rule 4.22(d).

[8] The FLEX Trader could also trade 30 standard FLEX SPX Option contracts (for a total notional value of $9,761,460) and 73 FLEX SPX Micro Option contracts (for a total notional value of $237,528.86), which would have the same total notional value.

FLEX Micro Options due to the difference in multipliers. The proposed rule change amends certain Rules describing the exercise prices and bids and offers of FLEX Options to reflect these distinctions. The proposed rule change amends Rule 4.21(b)(6) to describe the difference between the meaning of the exercise price of a standard FLEX Option and a FLEX Micro Option. Specifically, the proposed rule change states that exercise prices for FLEX Micro Options are set at the same level as they are for standard FLEX Options. For example, a standard FLEX Equity Option series with an exercise price to deliver 100 shares of the underlying security at $50 has a total deliverable value of $5,000, and would have an exercise price of 50. This is true today, and merely adds an example to the rule regarding the exercise price of a standard FLEX Option series, the deliverables for which are equal to the exercise price times the 100 contract multiplier to determine the deliverable dollar value. The proposed rule change also adds how the deliverable dollar value will be determined for a FLEX Micro Option. A FLEX Micro Equity Option series with an exercise price to deliver one share of the underlying security at $50 has a total deliverable value of $50, and would have an exercise price of 50.[9] Because a FLEX Micro Option has a multiplier of 1/100 of the multiplier of a standard FLEX Option, the value of a FLEX Micro Option's deliverable as a result is 1/100 of the value of a standard FLEX Option's deliverable.

Similarly, the proposed rule change amends Rule 5.3(e)(3) to describe the difference between the meaning of bids and offers for standard FLEX Options and FLEX Micro Options. Currently, that rule states that bids and offers for FLEX Options must be expressed in (a) U.S. dollars and decimals if the exercise price for the FLEX Option series is a fixed price, or (b) a percentage, if the exercise price for the FLEX Option series is a percentage of the closing value of the underlying equity security or index on the trade date, per unit. As noted above, a standard FLEX Option contract unit consists of 100 shares of the underlying security or 100 times the value of the underlying index, as they currently have a 100 contract multiplier.[10] The proposed rule change clarifies that bids and offers are expressed per unit, if a standard FLEX Option, and adds an example. Specifically, the proposed rule change states that for a standard FLEX Option with an exercise price expressed as U.S. dollars and decimals, a bid of ''0.50'' represents a bid of $50 (0.50 times 100). The proposed rule change also adds to Rule 5.3(e)(3) the meaning of FLEX Micro Option bids and offers. Specifically, bids and offers for FLEX Micro Options must be expressed in (a) U.S. dollars and decimals if the exercise price for the FLEX Option series is a fixed price, or (b) a percentage, if the exercise price for the FLEX Option series is a percentage of the closing value of the underlying equity security or index on the trade date, per 1/100th unit of the underlying security or index, as applicable.[11] Additionally, the proposed rule change states that for a FLEX Micro Option, a bid of ''0.50'' represents a bid of $0.50 (0.50 times one). The Exchange believes this approach identifies a clear, transparent description of the differences between standard FLEX Options and FLEX Micro Options. Additionally, the Exchange believes the proposed terms of FLEX Micro Options are consistent with the terms of the Options Disclosure Document.[12]

The proposed rule change amends Rule 8.35(a) regarding position limits for FLEX Options to describe how FLEX Micro Options will be counted for purposes of determining compliance with position limits. Because 100 FLEX Micro Options are equivalent to one standard FLEX Option due to the difference in contract multipliers, proposed Rule 8.35(a)(7) states that for purposes of determining compliance with the position limits under Rule 8.35, 100 FLEX Micro Option contracts equal one standard FLEX Option contract with the same underlying security or underlying index.[13] The proposed rule change adds paragraph (g) to Rule 8.42 to make a corresponding statement regarding the application of exercise limits to FLEX Micro Options. The margin requirements set forth in Chapter 10 of the Rules will apply to FLEX Micro Options (as they currently do to all FLEX Options).

The proposed rule change also corrects an administrative error in Rule 8.35(a). Currently, there are two subparagraphs numbered as (a)(5). The proposed rule change amends paragraph (a) to renumber the second subparagraph (a)(5) to be subparagraph (a)(6).

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the potential additional traffic associated with the listing and trading of FLEX Micro Options. The Exchange also understands that the Options Clearing Corporation will be able to accommodate the listing and trading of FLEX Micro Options.[14]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[15] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[16] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable

[9] This corresponds to the calculation of exercise prices for other types of options with reduced multiplier. For example, Rule 4.5, Interpretation and Policy .18(b) provides that strike prices (*i.e.,* exercise prices) for mini-options (which have multipliers of 10 rather than 100, as set forth in Rule 4.5, Interpretation and Policy .18(a)) are set at the same level as for standard options. For example, a call series strike price to deliver 10 shares of stock at $125 per share has a total deliverable value of $1,250 (10 × 125) if the strike is 125. A standard non-FLEX option with a strike price of 125 would have a total deliverable value of $12,500 (100 × 125).

[10] *See* current Rule 4.21(b)(1).

[11] This corresponds to the meaning of bids and offers for other types of options with reduced multiplier. For example, Rule 5.3(c) provides that bids and offers for an option contract overlying 10 shares (*i.e.,* mini-options) must be expressed in terms of dollars per 1/10th part of the total value of the contract (for example, an offer of 0.50 represents an offer of $5.00 for an option contract having a unit of trading consisting of 10 shares, as opposed to $50 for a standard option contract having a unit of trading consisting of 100 shares).

[12] The Options Disclosure Document (''ODD'') is available at *https://www.theocc.com/about/publications/character-risks.jsp.* The ODD states that the exercise price of a stock option is multiplied by the number of shares underlying the option to determine the aggregate exercise price and aggregate premium of that option. *See* ODD at 18. Similarly, the ODD states that the total exercise price for an index option is the exercise price multiplied by the multiplier, and the aggregate premium is the premium multiplied by the multiplier. *See* ODD at 8, 9, and 125. Per the ODD, the amount of the underlying interest may be a variable term with respect to flexibly structured options (*i.e.,* FLEX Options).

[13] The proposed rule change makes a corresponding change to Rule 8.35(b) to clarify that, like reduced-value FLEX contracts, FLEX Micro Option contracts will be aggregated with full-value contracts and counted by the amount by which they equal a full-value contract for purposes of the reporting obligation in that provision (*i.e.,* 100 FLEX Micro Options will equal one standard FLEX Option overlying the same index).

[14] FLEX Micro Options will be listed with different trading symbols than FLEX Options with the same underlying to reduce any potential confusion. For example, a standard FLEX Option for class ABC may have symbol 4ABC, while a FLEX Micro Option for class ABC may have symbol 4ABC9.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [17] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes the proposed rule change will benefit investors by expanding investors' choices and flexibility with respect to the trading of FLEX Options. These options will provide investors with additional granularity with respect to the prices at which they may execute and exercise their FLEX Options on the Exchange, as investors may execute and exercise over-the-counter options with this smaller contract multiplier. The Exchange believes this additional granularity will provide investors with an additional tool to manage more efficiently their positions based on notional value so that they equal whole contracts, as opposed to fractions of a standard contract as currently may happen. Given the various trading and hedging strategies employed by investors, this additional granularity may provide them with more control over the trading of their FLEX strategies.

FLEX Micro Options will trade in the same manner as all other FLEX Options, with premiums (*i.e.,* bids and offers) and exercise prices adjusted proportionately to reflect the difference in multiplier, and thus the difference in the deliverable value of the underlying. The Exchange believes the proposed rule change adds transparency and clarity to the Rules regarding the distinctions between standard FLEX Options and FLEX Micro Options due to the different multipliers will benefit investors. These proposed rule changes include (1) providing examples of the meaning of the exercise prices and premiums (*i.e.,* bids and offers) of both standard FLEX Options and FLEX Micro Options, (2) stating that FLEX Micro Options will not be fungible with any non-FLEX Options, as they cannot have the same terms as any non-FLEX Options (as no non-FLEX Options have multipliers of one), and (3) including the corresponding minimum size for a FLEX SAM Agency Order consisting of FLEX Micro Options. This proposal is similar to rules regarding other reduced-value options.[18]

The Exchange believes the proposed rule change regarding the treatment of FLEX Micro Options with respect to determining compliance with position and exercise limits is designed to prevent fraudulent and manipulative acts and practices and promote just and equitable principles of trade, as FLEX Micro Options will be counted for purposes of those limits in a proportional manner to standard FLEX Options. This is similar to limits imposed on other reduced-value options.[19] The Exchange believes its enhanced surveillances continue to be designed to deter and detect violations of Exchange Rules, including position and exercise limits and possible manipulative behavior, and those surveillance will apply to FLEX Micro Options.

By permitting FLEX Options to trade with the same multiplier currently available to customized options in the OTC market, the Exchange believes the proposed rule change will remove impediments to and perfects the mechanism of a free and open market and a national market system by further improving a comparable alternative to the OTC market in customized options. By enhancing our FLEX trading platform to provide additional flexible terms available in the OTC market but not currently available in the listed options market, the Exchange believes it may be a more attractive alternative to the OTC market. The Exchange believes market participants benefit from being able to trade customized options in an exchange environment in several ways, including but not limited to the following: (1) Enhanced efficiency in initiating and closing out positions; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of The Options Clearing Corporation (''OCC'') as issuer and guarantor of FLEX Options.

The Exchange believes the proposed nonsubstantive changes (to clarify the current contract multiplier for standard FLEX Options in Rule 4.21(b) and to correct the numbering of subparagraphs in Rule 8.35(a)) will protect investors, as they enhance transparency and clarity in the Rules. Additionally, the correction to subparagraph numbering will enable investors to more easily reference rule provisions in different subparagraphs.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because all FLEX Micro Options will be available for all underlying securities and indexes currently eligible for FLEX trading, and all FLEX Traders may trade FLEX Micro Options. FLEX Micro Options will trade in the same manner as all standard FLEX Options, with certain terms proportionately adjusted to reflect the different contract multipliers. The Exchange does not believe the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, because the proposed rule change relates solely to products that may be listed for trading on the Exchange. Other options exchanges may offer flexible options, including with a different contract multiplier. To the extent the proposed rule change makes the Exchange a more attractive trading venue for market participants on other exchanges, those market participants may elect to become Exchange market participants.

The Exchange believes that the proposed rule change may relieve any burden on, or otherwise promote, competition. The Exchange believes this is an enhancement to a comparable alternative to the OTC market in customized options. By enhancing our FLEX trading platform to provide additional contract granularity that available in the OTC market but not currently available in the listed options market, the Exchange believes it may be a more attractive alternative to the OTC market. The Exchange believes market participants will benefit from being able to trade customized options in an exchange environment in several ways, including but not limited to the

[17] *Id.*

[18] *See, e.g.,* Rules 4.5, Interpretation and Policy .18 (description of strike prices for mini-options, which have a multiplier of 10), 5.3(c) (description of bids and offers for mini-options), and 5.74(a)(4) (description of minimum size of FLEX Agency Order for mini-options). Just as terms for mini-options, which have a multiplier of 1/10th the size of standard options, equal 1/10th of the same terms for standard options, the proposed terms for FLEX Micro Options, which have a multiplier 1/100th the size of standard FLEX Options equal 1/100th of the same terms as standard FLEX Options.

[19] *See, e.g.,* Rule 8.30, Interpretation and Policy .08 (describing position limits for mini-options).

following: (1) Enhanced efficiency in initiating and closing out position; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of OCC as issuer and guarantor of FLEX Options.

The proposed nonsubstantive changes (to clarify the current contract multiplier for standard FLEX Options in Rule 4.21(b) and to correct the numbering of subparagraphs in Rule 8.35(a)) will have no impact on competition, as they merely clarify or correct, as applicable, information in the Rules and make no changes to how FLEX Options trade.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2020–010 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2020–010. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2020–010, and should be submitted on or before March 16, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2020–03532 Filed 2–21–20; 8:45 am]

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[20] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–88230; File No. SR–NYSEARCA–2020–13]**

## Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Equities Fees and Charges and the NYSE Arca Options Fees and Charges Related to Co-Location Services

February 18, 2020.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on February 4, 2020, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange proposes to amend the NYSE Arca Equities Fees and Charges (the ''Equities Fee Schedule'') and the NYSE Arca Options Fees and Charges (the ''Options Fee Schedule'' and, together with the Equities Fee Schedule, the ''Fee Schedules'') related to co-location services to (a) update the text of General Note 1 to correct a typographical error, make a non-substantive change, and to include reference to NYSE Chicago, Inc. (''NYSE Chicago'') and (b) make non-substantive changes to the text of General Note 4. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

Overview

The Exchange proposes to amend its Fee Schedules related to co-location[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (''Commission'') in 2010. *See* Securities Exchange Act Release No. 63275 (November 8, 2010), 75 FR 70048 (November 16, 2010) (SR–NYSEArca–2010–100). The Exchange operates a data center in

Continued

services to (a) update the text of General Note 1 to include reference to NYSE Chicago, and (b) make non-substantive changes to the text of General Note 4. General Note 1 and General Note 4 appear in both the Equities Fee Schedule and the Options Fee Schedule, and the Exchange proposes to amend them in both locations, as follows.

Proposed Change to General Note 1

General Note 1 currently provides that a User[5] that incurs co-location fees for a particular co-location service would not be subject to co-location fees for the same co-location service charged by the New York Stock Exchange LLC (''NYSE''), NYSE American LLC (''NYSE American''), and NYSE National, Inc. (''NYSE National'' and together, the ''Affiliate SROs'').[6] General Note 1 currently does not include NYSE Chicago among the Affiliate SROs.

The Exchange proposes to make three changes to the version of General Note 1 that currently appears in the Equities Fee Schedule. First, the current version of General Note 1 in the Equities Fee Schedule contains a typographical error, in that it refers to the Equities Fee Schedule instead of the Options Fee Schedule. The Exchange proposes to correct that error by substituting the word ''Options'' for ''Equities.'' This is not a substantive change, and will have no effect on the Exchange's actual billing practices for co-location services; it simply clarifies that the Exchange will not charge a User co-location fees for any co-location service already being charged to the User under the NYSE Arca Options Fee Schedule.

Second, the current General Note 1 lists the Exchange's affiliate, NYSE, in the middle of the list of exchanges, instead of at the start of the list, as is the Exchange's general practice. The Exchange proposes to reorder the list of affiliate exchanges to put NYSE at the start of the list.

Third, in late 2019, NYSE Chicago filed rule changes with the Commission establishing its co-location services.[7] The Exchange now proposes to add NYSE Chicago to General Note 1 of the Equities Fee Schedule. All three changes are indicated below (deletions bracketed, additions underlined):

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A User that incurs co-location fees for a particular co-location service pursuant to this Fee Schedule shall not be subject to co-location fees for the same co-location service charged pursuant to the NYSE Arca [Equities] Options Fee Schedule or by the Exchange's affiliates New York Stock Exchange LLC (NYSE), NYSE American LLC (NYSE American), [New York Stock Exchange LLC (NYSE) and] NYSE Chicago, Inc. (NYSE Chicago), and NYSE National, Inc. (NYSE National).

The Exchange also proposes to reorder the list of exchanges and to add NYSE Chicago to General Note 1 in the Options Fee Schedule, as follows (deletions bracketed, additions underlined):

A User that incurs co-location fees for a particular co-location service pursuant to this Fee Schedule shall not be subject to co-location fees for the same co-location service charged pursuant to the NYSE Arca Equities Fee Schedule or by the Exchange's affiliates New York Stock Exchange LLC (NYSE), NYSE American, Inc. (NYSE American), [New York Stock Exchange LLC (NYSE)] NYSE Chicago, Inc. (NYSE Chicago), and NYSE National, Inc. (NYSE National).

Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, a ''User'' shall mean any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76010 (September 29, 2015), 80 FR 60197 (October 5, 2015) (SR–NYSEArca–2015–82).

[6] *See* Securities Exchange Act Release No. 70173 (August 13, 2013), 78 FR 50459 (August 19, 2013) (SR–NYSEArca–2013–80).

[7] *See* Securities Exchange Act Release No. 87408 (October 28, 2019), 84 FR 58778 (November 1, 2019) (SR–NYSECHX–2019–12).

By including the proposed reference to NYSE Chicago, General Note 1 would provide that the fees a User pays for co-location services would not depend on whether the User connects to none, one, some, or all of the Exchange, the Affiliate SROs, and NYSE Chicago.

The proposed change to add NYSE Chicago to General Note 1 would be consistent with General Note 1 under ''Co-location'' in the Fee Schedule of NYSE Chicago (the ''NYSE Chicago Fee Schedule''), which similarly provides that a User that incurs fees for co-location services under that fee schedule is not subject to fees for the same co-location services charged by the Exchange, NYSE, NYSE American, or NYSE National.

Proposed Changes to General Note 4

General Note 4 currently provides that, when a User purchases access to the Liquidity Center Network (''LCN'') or the internet protocol (''IP'') network, the two local area networks available in the data center,[8] a User would receive (a) the ability to access the trading and execution systems of the Exchange and Affiliate SROs (''Exchange Systems'') as well as of Global OTC (the ''Global OTC System'') and (b) connectivity to any of the listed data products (''Included Data Products'') that it selects.

The Exchange now proposes to make three non-substantive changes to the text of the first sentence of General Note 4. First, the Exchange proposes to delete the full name of ''NYSE Chicago, Inc.'' from General Note 4, since that term would be defined earlier in proposed General Note 1 as ''NYSE Chicago.'' Second, the Exchange proposes to delete the quotation marks around the term ''Global OTC System,'' because the other General Notes generally do not include quotation marks around defined terms. Third, the Exchange proposes to add a serial comma after the term ''NYSE National'' near the end of the first sentence of General Note 4, as follows (additions underlined, deletions in brackets):

When a User purchases access to the LCN or IP network, it receives the ability to access the trading and execution systems of the NYSE, NYSE American, NYSE Arca, NYSE Chicago[, Inc. (NYSE Chicago)], and NYSE National (together, the Exchange Systems) as well as of Global OTC (the [“]Global OTC System[”]), subject, in each case, to authorization by the NYSE, NYSE American, NYSE Arca, NYSE Chicago, NYSE National, or Global OTC, as applicable.

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These changes are typographical in nature and are not intended to change the substance or meaning of the text of the Fee Schedules.

The proposed change is not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed change.[9]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Sections 6(b)(5) of the Act,[11] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed change to add NYSE Chicago to General Note 1 would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the amendments would update General Note 1 to reflect NYSE Chicago's provision of co-location services. By including the proposed reference to NYSE Chicago, General Note 1 would clarify that NYSE Chicago is included among the affiliates of the Exchange referenced in the statement that a User paying for co-location services will not be subject to co-location fees for the same co-location services charged by any of the Exchange's affiliates. The proposed change would make the Fee Schedules consistent with General Note 1 under ''Co-location'' in the Fee Schedule of NYSE Chicago, alleviating any possible market participant confusion.

The Exchange believes that the other changes to General Note 1 and the non-substantive changes to General Note 4 would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the amendments would clarify Exchange rules, making the Fee Schedules easier to read and understand and alleviating any possible market participant confusion caused by the current text of the note.

The Exchange also believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[12] in particular, because it provides for the

[8] *See* Securities Exchange Act Release No. 79729 (January 4, 2017), 82 FR 3061 (January 10, 2017) (SR–NYSEArca–2016–172).

[9] Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2020–09, SR–NYSEAmer–2020–08, and SR–NYSENAT–2020–06.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(4).

equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers. This is true because the proposed amendments to General Note 1 would simply clarify that a User that incurs co-location fees for a particular co-location service pursuant to the Fee Schedules will not be subject to co-location fees for the same co-location services charged by any of the Exchange's affiliates, including NYSE Chicago. The Exchange also believes that the proposed amendments to General Note 1 provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers because they clarify that the Exchange, NYSE Chicago, and the other Affiliate SROs do not receive the proceeds from multiple fees despite providing a service only once.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, in addition to the use of co-location services being completely voluntary, they are available to all Users on an equal basis (*i.e.,* the same range of products and services are available to all Users).

The Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change would not change the services and fees to which market participants already have access. Rather, it seeks simply to clarify that a User that incurs co-location fees for a particular co-location service pursuant to the Fee Schedules will not be subject to co-location fees for the same co-location services charged by any of the Exchange's affiliates, including NYSE Chicago.

In addition, the Exchange believes that the proposed non-substantive changes to General Note 4 would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because it would have no impact on pricing or existing services. Rather, the changes would clarify Exchange rules, making the Fee Schedules easier to understand and alleviating any possible market participant confusion caused by the current text of the note.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[15]

A proposed rule change filed under Rule 19b–4(f)(6) [16] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[17] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes that waiver of the operative delay is consistent with the protection of investors and the public interest because NYSE Chicago offers co-location services, and the waiver of the operative delay would alleviate the possibility of confusion among members, the public, and the Commission that could be caused by inconsistencies between the Exchange's Fee Schedules and the NYSE Chicago Fee Schedule. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[18]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [19] of the Act to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEARCA–2020–13 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEARCA–2020–13. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78s(b)(2)(B).

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEARCA–2020–13 and should be submitted on or before March 16, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2020–03530 Filed 2–21–20; 8:45 am]

**BILLING CODE 8011–01–P**

[20] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–88227; File No. SR–NYSE–2020–09]**

## Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the New York Stock Exchange Price List Related to Co-location Services

February 18, 2020.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on February 4, 2020, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the New York Stock Exchange Price List (the ''Price List'') related to co-location services to (a) update the text of General Note 1 to include reference to NYSE Chicago, Inc. (''NYSE Chicago'') and (b) make non-substantive changes to the text of General Note 4. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

Overview

The Exchange proposes to amend its Price List related to co-location[4] services to (a) update the text of General Note 1 to include reference to NYSE Chicago, and (b) make non-substantive changes to the text of General Note 4.

Proposed Change to General Note 1

General Note 1 currently provides that a User[5] that incurs co-location fees for a particular co-location service would not be subject to co-location fees for the same co-location service charged by NYSE American LLC (''NYSE American''), NYSE Arca, Inc. (''NYSE Arca''), and NYSE National, Inc. (''NYSE National'' and together, the ''Affiliate SROs'').[6] General Note 1 currently does not include NYSE Chicago among the Affiliate SROs.

In late 2019, NYSE Chicago filed rule changes with the Commission establishing its co-location services.[7] The Exchange now proposes to add NYSE Chicago to General Note 1, as follows (additions underlined):

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[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (''Commission'') in 2010. *See* Securities Exchange Act Release No. 62960 (September 21, 2010), 75 FR 59310 (September 27, 2010) (SR–NYSE–2010–56). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, a ''User'' shall mean any market participant that requests to receive co-location services directly from the Exchange. *See* Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR–NYSE–2015–40).

[6] *See* Securities Exchange Act Release No. 70206 (August 15, 2013), 78 FR 51765 (August 21, 2013) (SR–NYSE–2013–59).

[7] *See* Securities Exchange Act Release No. 87408 (October 28, 2019), 84 FR 58778 (November 1, 2019) (SR–NYSECHX–2019–12).

A User that incurs co-location fees for a particular co-location service pursuant to this Price List shall not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates NYSE American LLC (NYSE American), NYSE Arca, Inc. (NYSE Arca), NYSE Chicago, Inc. (NYSE Chicago), and NYSE National, Inc. (NYSE National).

By including the proposed reference to NYSE Chicago, General Note 1 would provide that the fees a User pays for co-location services would not depend on whether the User connects to none, one, some, or all of the Exchange, the Affiliate SROs, and NYSE Chicago.

The proposed change would be consistent with General Note 1 under ''Co-location'' in the Fee Schedule of NYSE Chicago (the ''NYSE Chicago Fee Schedule''), which similarly provides that a User that incurs fees for co-location services under that fee schedule is not subject to fees for the same co-location services charged by the Exchange, NYSE American, NYSE Arca, or NYSE National.

Proposed Changes to General Note 4

General Note 4 currently provides that, when a User purchases access to the Liquidity Center Network (''LCN'') or the internet protocol (''IP'') network, the two local area networks available in the data center,[8] a User would receive (a) the ability to access the trading and execution systems of the Exchange and Affiliate SROs (''Exchange Systems'') as well as of Global OTC (the ''Global OTC System'') and (b) connectivity to any of the listed data products (''Included Data Products'') that it selects.

The Exchange now proposes to make three non-substantive changes to the text of the first sentence of General Note 4. First, the Exchange proposes to delete the full name of ''NYSE Chicago, Inc.'' from General Note 4, since that term would be defined earlier in proposed General Note 1 as ''NYSE Chicago.'' Second, the Exchange proposes to delete the quotation marks around the term ''Global OTC System,'' because the other General Notes generally do not include quotation marks around defined terms. Third, the Exchange proposes to add a serial comma after the term ''NYSE National'' near the end of the first sentence of General Note 4, as follows (additions underlined, deletions in brackets):

When a User purchases access to the LCN or IP network, it receives the ability to access the trading and execution systems of the NYSE, NYSE American, NYSE Arca, NYSE Chicago[, Inc. (NYSE Chicago)], and NYSE National (together, the Exchange Systems) as well as of Global OTC (the [''']Global OTC System['''']), subject, in each case, to authorization by the NYSE, NYSE American, NYSE Arca, NYSE Chicago, NYSE National, or Global OTC, as applicable.

**BILLING CODE 8011–01–C**

These changes are typographical in nature and are not intended to change the substance or meaning of the text of the Price List.

The proposed changes are not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed changes.[9]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Sections 6(b)(5) of the Act,[11] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed change would remove impediments to, and perfect the mechanisms of, a free and open market

[8] *See* Securities Exchange Act Release No. 79730 (January 4, 2017), 82 FR 3045 (January 10, 2017) (SR–NYSE–2016–92).

[9] Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSEAmer–2020–08, SR–NYSEArca–2020–13, and SR–NYSENAT–2020–06.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

and a national market system and, in general, protect investors and the public interest because the amendments would update General Note 1 to reflect NYSE Chicago's provision of co-location services. By including the proposed reference to NYSE Chicago, General Note 1 would clarify that NYSE Chicago is included among the affiliates of the Exchange referenced in the statement that a User paying for co-location services will not be subject to co-location fees for the same co-location services charged by any of the Exchange's affiliates. The proposed change would make the Price List consistent with General Note 1 under ''Co-location'' in the Fee Schedule of NYSE Chicago, alleviating any possible market participant confusion.

The Exchange believes that the non-substantive changes to General Note 4 would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the amendment would clarify Exchange rules, making the Price List easier to read and understand and alleviating any possible market participant confusion caused by the current text of the note.

The Exchange also believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[12] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers. This is true because the proposed amendments to General Note 1 would simply clarify that a User that incurs co-location fees for a particular co-location service pursuant to the Price List will not be subject to co-location fees for the same co-location services charged by any of the Exchange's affiliates, including NYSE Chicago. The Exchange also believes that the proposed amendments to General Note 1 provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers because they clarify that the Exchange, NYSE Chicago, and the other Affiliate SROs do not receive the proceeds from multiple fees despite providing a service only once.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, in addition to the use of co-location services being completely voluntary, they are available to all Users on an equal basis (*i.e.,* the same range of products and services are available to all Users).

The Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change would not change the services and fees to which market participants already have access. Rather, it seeks simply to clarify that a User that incurs co-location fees for a particular co-location service pursuant to the Price List will not be subject to co-location fees for the same co-location services charged by any of the Exchange's affiliates, including NYSE Chicago.

In addition, the Exchange believes that the proposed non-substantive changes to General Note 4 would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because it would have no impact on pricing or existing services. Rather, the changes would clarify Exchange rules, making the Price List easier to understand and alleviating any possible market participant confusion caused by the current text of the note.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[15]

A proposed rule change filed under Rule 19b–4(f)(6)[16] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[17] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes that waiver of the operative delay is consistent with the protection of investors and the public interest because NYSE Chicago offers co-location services, and the waiver of the operative delay would alleviate the possibility of confusion among members, the public, and the Commission that could be caused by inconsistencies between the Exchange's Price List and the NYSE Chicago Fee Schedule.

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[18]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[19] of the Act to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2020–09 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2020–09. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2020–09 and should be submitted on or before March 16, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2020–03535 Filed 2–21–20; 8:45 am]

**BILLING CODE 8011–01–P**

[18] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78s(b)(2)(B).

[20] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–88231; File No. SR–NYSENAT–2020–06]**

## Self-Regulatory Organizations; NYSE National, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Schedule of Fees and Rebates Related to Co-Location Services

February 18, 2020.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on February 4, 2020, NYSE National, Inc. (''NYSE National'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's Schedule of Fees and Rebates (the ''Price List'') related to co-location services to (a) update the text of General Note 1 to include reference to NYSE Chicago, Inc. (''NYSE Chicago'') and (b) make non-substantive changes to the text of General Note 4. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change*

1. Purpose

Overview

The Exchange proposes to amend its Price List related to co-location[4] services to (a) update the text of General Note 1 to include reference to NYSE Chicago, and (b) make non-substantive changes to the text of General Note 4.

Proposed Change to General Note 1

General Note 1 currently provides that a User[5] that incurs co-location fees for a particular co-location service would not be subject to co-location fees for the same co-location service charged by the New York Stock Exchange LLC (''NYSE''), NYSE American LLC (''NYSE

[4] The Exchange initially filed rule changes relating to its co-location services with the Securities and Exchange Commission (''Commission'') in 2018. *See* Securities Exchange Act Release No. 83351 (May 31, 2018), 83 FR 26314 (June 6, 2018) (SR–NYSENAT–2018–07). The Exchange operates a data center in Mahwah, New Jersey (the ''data center'') from which it provides co-location services to Users.

[5] For purposes of the Exchange's co-location services, a ''User'' shall mean any market participant that requests to receive co-location services directly from the Exchange. *See id., supra* note 4, at note 10.

American''), and NYSE Arca, Inc. (''NYSE Arca'' and together, the ''Affiliate SROs'').[6] General Note 1 currently does not include NYSE Chicago among the Affiliate SROs.

In late 2019, NYSE Chicago filed rule changes with the Commission establishing its co-location services.[7] The Exchange now proposes to add NYSE Chicago to General Note 1, as follows (additions underlined):

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A User that incurs co-location fees for a particular co-location service pursuant to this Price List shall not be subject to co-location fees for the same co-location service charged by the Exchange's affiliates New York Stock Exchange LLC (NYSE), NYSE American LLC (NYSE American), NYSE Arca, Inc. (NYSE Arca), and NYSE Chicago, Inc. (NYSE Chicago).

By including the proposed reference to NYSE Chicago, General Note 1 would provide that the fees a User pays for co-location services would not depend on whether the User connects to none, one, some, or all of the Exchange, the Affiliate SROs, and NYSE Chicago.

The proposed change would be consistent with General Note 1 under ''Co-location'' in the Fee Schedule of NYSE Chicago (the ''NYSE Chicago Fee Schedule''), which similarly provides that a User that incurs fees for co-location services under that fee schedule is not subject to fees for the same co-location services charged by the Exchange, NYSE, NYSE American, or NYSE Arca.

Proposed Changes to General Note 4

General Note 4 currently provides that, when a User purchases access to the Liquidity Center Network (''LCN'') or the internet protocol (''IP'') network, the two local area networks available in the data center,[8] a User would receive (a) the ability to access the trading and execution systems of the Exchange and Affiliate SROs (''Exchange Systems'') as well as of Global OTC (the ''Global OTC System'') and (b) connectivity to any of the listed data products (''Included Data Products'') that it selects.

The Exchange now proposes to make three non-substantive changes to the text of the first sentence of General Note 4. First, the Exchange proposes to delete the full name of ''NYSE Chicago, Inc.'' from General Note 4, since that term would be defined earlier in proposed General Note 1 as ''NYSE Chicago.'' Second, the Exchange proposes to delete the quotation marks around the term ''Global OTC System,'' because the other General Notes generally do not include quotation marks around defined terms. Third, the Exchange proposes to add a serial comma after the term ''NYSE National'' near the end of the first sentence of General Note 4, as follows (additions underlined, deletions in brackets):

When a User purchases access to the LCN or IP network, it receives the ability to access the trading and execution systems of the NYSE, NYSE American, NYSE Arca, NYSE Chicago[, Inc. (NYSE Chicago)], and NYSE National (together, the Exchange Systems) as well as of Global OTC (the [''']Global OTC System[''']), subject, in each case, to authorization by the NYSE, NYSE American, NYSE Arca, NYSE Chicago, NYSE National, or Global OTC, as applicable.

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These changes are typographical in nature and are not intended to change the substance or meaning of the text of the Price List.

The proposed changes are not otherwise intended to address any other issues relating to co-location services and/or related fees, and the Exchange is not aware of any problems that Users would have in complying with the proposed changes.[9]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Sections 6(b)(5) of the Act,[11] in particular,

[6] *See id., supra* note 4, at note 12.

[7] *See* Securities Exchange Act Release No. 87408 (October 28, 2019), 84 FR 58778 (November 1, 2019) (SR–NYSECHX–2019–12).

[8] *See* 83 FR 26314, *supra* note 4, at 26315.

[9] Each Affiliate SRO has submitted substantially the same proposed rule change to propose the changes described herein. *See* SR–NYSE–2020–09, SR–NYSEAmer–2020–08, and SR–NYSEArca–2020–13.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed change would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the amendments would update General Note 1 to reflect NYSE Chicago's provision of co-location services. By including the proposed reference to NYSE Chicago, General Note 1 would clarify that NYSE Chicago is included among the affiliates of the Exchange referenced in the statement that a User paying for co-location services will not be subject to co-location fees for the same co-location services charged by any of the Exchange's affiliates. The proposed change would make the Price List consistent with General Note 1 under ''Co-location'' in the Fee Schedule of NYSE Chicago, alleviating any possible market participant confusion.

The Exchange believes that the non-substantive changes to General Note 4 would remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, protect investors and the public interest because the amendment would clarify Exchange rules, making the Price List easier to read and understand and alleviating any possible market participant confusion caused by the current text of the note.

The Exchange also believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[12] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers. This is true because the proposed amendments to General Note 1 would simply clarify that a User that incurs co-location fees for a particular co-location service pursuant to the Price List will not be subject to co-location fees for the same co-location services charged by any of the Exchange's affiliates, including NYSE Chicago. The Exchange also believes that the proposed amendments to General Note 1 provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers because they clarify that the Exchange, NYSE Chicago, and the other Affiliate SROs do not receive the proceeds from multiple fees despite providing a service only once.

For these reasons, the Exchange believes that the proposal is consistent with the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because, in addition to the use of co-location services being completely voluntary, they are available to all Users on an equal basis (*i.e.,* the same range of products and services are available to all Users).

The Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change would not change the services and fees to which market participants already have access. Rather, it seeks simply to clarify that a User that incurs co-location fees for a particular co-location service pursuant to the Price List will not be subject to co-location fees for the same co-location services charged by any of the Exchange's affiliates, including NYSE Chicago.

In addition, the Exchange believes that the proposed non-substantive changes to General Note 4 would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act because it would have no impact on pricing or existing services. Rather, the changes would clarify Exchange rules, making the Price List easier to understand and alleviating any possible market participant confusion caused by the current text of the note.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.[15]

A proposed rule change filed under Rule 19b–4(f)(6)[16] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[17] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange requests that the Commission waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange believes that waiver of the operative delay is consistent with the protection of investors and the public interest because NYSE Chicago offers co-location services, and the waiver of the operative delay would alleviate the possibility of confusion among members, the public, and the Commission that could be caused by inconsistencies between the Exchange's Price List and the NYSE Chicago Fee Schedule. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest.

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

Accordingly, the Commission waives the 30-day operative delay and designates the proposed rule change operative upon filing.[18]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[19] of the Act to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSENAT–2020–06 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSENAT–2020–06. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSENAT–2020–06 and should be submitted on or before March 16, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 2020–03529 Filed 2–21–20; 8:45 am]

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[18] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78s(b)(2)(B).

[20] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #16299; CALIFORNIA Disaster Number CA–00312 Declaration of Economic Injury]**

### Administrative Declaration of an Economic Injury Disaster for the State of California

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Economic Injury Disaster Loan (EIDL) declaration for the State of California, dated 02/13/2020.

*Incident:* Severe Storms and Flooding.

*Incident Period:* 11/27/2019 through 12/01/2019.

**DATES:** Issued on 02/13/2020.

*Economic Injury (EIDL) Loan Application Deadline Date:* 11/13/2020.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's EIDL declaration, applications for economic injury disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* San Bernardino.

Contiguous Counties:

California: Inyo, Kern, Los Angeles, Orange, Riverside.

Arizona: La Paz, Mohave.

Nevada: Clark.

The Interest Rates are:

| | Percent |
|---|---|
| Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere | 3.875 |
| Non-Profit Organizations without Credit Available Elsewhere | 2.750 |

The number assigned to this disaster for economic injury is 162990.

The States which received an EIDL Declaration # are California, Arizona, Nevada.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: February 13, 2020.

**Jovita Carranza,**

*Administrator.*

[FR Doc. 2020–03631 Filed 2–21–20; 8:45 am]

BILLING CODE 8026–03–P

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #16297 and #16298; TEXAS Disaster Number TX–00542]**

### Administrative Declaration of a Disaster for the State of Texas

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the State of Texas dated 02/13/2020.

*Incident:* Watson Grinding and Manufacturing Facility Explosion.

*Incident Period:* 01/24/2020.

**DATES:** Issued on 02/13/2020.

*Physical Loan Application Deadline Date:* 04/13/2020.

*Economic Injury (EIDL) Loan Application Deadline Date:* 11/13/2020.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the

Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* Harris

Contiguous Counties:

Texas: Brazoria, Chambers, Fort Bend, Galveston, Liberty, Montgomery, Waller.

The Interest Rates are:

| | Percent |
|---|---|
| *For Physical Damage:* | |
| Homeowners with Credit Available Elsewhere | 3.125 |
| Homeowners without Credit Available Elsewhere | 1.563 |
| Businesses with Credit Available Elsewhere | 7.500 |
| Businesses without Credit Available Elsewhere | 3.750 |
| Non-Profit Organizations with Credit Available Elsewhere | 2.750 |
| Non-Profit Organizations without Credit Available Elsewhere | 2.750 |
| *For Economic Injury:* | |
| Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere | 3.750 |
| Non-Profit Organizations Without Credit Available Elsewhere | 2.750 |

The number assigned to this disaster for physical damage is 16297 4 and for economic injury is 16298 0.

The State which received an EIDL Declaration # is Texas.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: February 13, 2020.

**Jovita Carranza,**

*Administrator.*

[FR Doc. 2020–03632 Filed 2–21–20; 8:45 am]

**BILLING CODE 8026–03–P**

## DEPARTMENT OF STATE

**[Public Notice: 11045]**

### Determination Pursuant to the Foreign Missions Act

Pursuant to the authority vested in the Secretary of State by the laws of the United States including the Foreign Missions Act (22 U.S.C. 4301 *et seq.*) and delegated by the Secretary to me in accordance with the Department of State's Delegation of Authority No. 214, dated September 20, 1994, I hereby determine that the representative offices in the United States of the following entities:

1. Xinhua
2. China Global Television Network
3. China Radio International
4. China Daily Distribution Corporation
5. Hai Tian Development USA

including their real property and personnel, are foreign missions within the meaning of 22 U.S.C. 4302(a)(3).

Furthermore, I hereby determine it to be reasonably necessary to protect the interests of the United States to require the representative offices in the United States of the above noted entities, and their agents or employees acting on their behalf, to comply with the terms and conditions specified by the Department of State's Office of Foreign Missions relating to the above noted entities' operations in the United States.

Finally, I determine that the requirements established by Designation 2019–5, dated October 15, 2019 (84 FR 56281) will not be applied to the above-named entities unless and until further notice.

**Stephen J. Akard,**

*Director, Office of Foreign Missions.*

[FR Doc. 2020–03519 Filed 2–21–20; 8:45 am]

**BILLING CODE 4710–43–P**

## SURFACE TRANSPORTATION BOARD

### 60-Day Notice of Intent To Seek Extension of Approval: Household Goods Movers' Disclosure Requirements

**AGENCY:** Surface Transportation Board.

**ACTION:** Notice and request for comments.

**SUMMARY:** As required by the Paperwork Reduction Act of 1995, the Surface Transportation Board (STB or Board) gives notice of its intent to seek approval from the Office of Management and Budget (OMB) for an extension of the information collection (here, third-party disclosures), as described below.

**DATES:** Comments on this information collection should be submitted by April 24, 2020.

**ADDRESSES:** Direct all comments to Chris Oehrle, Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001, or to *PRA@stb.gov.* When submitting comments, please refer to ''Paperwork Reduction Act Comments, Surface Transportation Board: Household Goods Movers' Disclosure Requirements.'' For further information regarding this collection, contact Michael Higgins, Deputy Director, Office of Public Assistance, Governmental Affairs, and Compliance, at (202) 245–0284 or *michael.higgins@stb.gov.* Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:** Comments are requested concerning: (1) The accuracy of the Board's burden estimates; (2) ways to enhance the quality, utility, and clarity of the information collected; (3) 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 when appropriate; and (4) whether the collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility. Submitted comments will be summarized and included in the Board's request for OMB approval.

**Description of Collection**

*Title:* Household Goods Movers' Disclosure Requirements.

*OMB Control Number:* 2140–0027.

*STB Form Number:* None.

*Type of Review:* Extension without change.

*Respondents:* Household goods movers that desire to offer a rate limiting their liability on interstate moves to anything less than replacement value of the goods.

*Number of Respondents:* 4,500 (approximate number of active household goods carriers in the United States according to the Federal Motor Carrier Safety Administration. *See* 2019 Pocket Guide to Large Truck and Bus Statistics (January 2020) section 1–7 Household Goods Carriers and Brokers Operating in the United States, 2014–2018)).

*Frequency:* On occasion.

*Total Burden Hours:* None. The change to the estimate form was a one-time, start-up cost, which was considered in the cost analysis of the Board's initial approval for this collection. The Board's initial request for approval estimated that 15 of the approximately 4,500 household goods movers were large firms that print their own forms and would have to produce modified forms to meet the new requirement. Further, any new large mover entrants would have to create forms based on other agency regulations—with or without the released rate disclosure—and, therefore, there is no hourly burden for this collection.

*Total ''Non-hour Burden'' Cost:* Movers may provide these forms to shippers electronically. Further, as with the burden hours above, the one-time, start-up costs that were previously considered will no longer apply to

existing movers, and new entrants will not incur any significant cost to add released rate information to the forms already required under other agency regulations. Therefore, there is no discernable, non-hourly cost burden for this collection.

*Needs and Uses:* In the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, § 4215, Public Law 109–59, 119 Stat. 1144, 1760 (2005), Congress directed the Board to review consumer protection regulations concerning the loss or damage that occurs during interstate household goods moves. In Docket No. RR 999, the Board required household goods motor carriers and freight forwarders wishing to offer a rate limiting their liability on interstate moves to anything less than replacement value of the goods to provide their customers with clear written information concerning the two available cargo-liability options (a full replacement-value protection option and a lower, released-rate protection option). Movers are required to provide this information on the standard written estimate form that the Federal Motor Carrier Safety Administration requires movers to provide to their household goods moving customers. *See* 49 CFR 375.213. This information allows for early notice to household goods moving customers regarding the two liability options, as well as adequate time and information to help consumers decide which option to choose. If the customer elects anything other than full-value protection, the mover must inform the customer of his or her rights and obtain a signed waiver, as provided on the form. In doing so, this collection enables the Board to meet its statutory duty.

Under the PRA, a federal agency that conducts or sponsors a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Under 44 U.S.C. 3506(c)(2)(A), federal agencies are required to provide, prior to an agency's submitting a collection to OMB for approval, a 60-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: February 19, 2020.

**Jeffrey Herzig,**

*Clearance Clerk.*

[FR Doc. 2020–03594 Filed 2–21–20; 8:45 am]

**BILLING CODE 4915–01–P**

## SURFACE TRANSPORTATION BOARD

### 60-Day Notice of Intent To Seek Extension of Approval: Dispute Resolution Procedures Under the Fixing America's Surface Transportation Act

**AGENCY:** Surface Transportation Board.

**ACTION:** Notice and request for comments.

**SUMMARY:** As required by the Paperwork Reduction Act of 1995 (PRA), the Surface Transportation Board (STB or Board) gives notice of its intent to seek approval from the Office of Management and Budget (OMB) for an extension of the collection of Dispute Resolution Procedures, as described below.

**DATES:** Comments on this information collection should be submitted by April 24, 2020.

**ADDRESSES:** Direct all comments to Chris Oehrle, Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001, or to *PRA@stb.gov.* When submitting comments, please refer to ''Paperwork Reduction Act Comments, Dispute Resolution Procedures.'' For further information regarding this collection, contact Michael Higgins, Deputy Director, Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC), at (202) 245–0284 or *michael.higgins@stb.gov.* Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:** Comments are requested concerning: (1) The accuracy of the Board's burden estimates; (2) ways to enhance the quality, utility, and clarity of the information collected; (3) 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, when appropriate; and (4) whether the collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility. Submitted comments will be summarized and included in the Board's request for OMB approval.

**Description of Collection**

*Title:* Dispute Resolution Procedures.

*OMB Control Number:* 2140–0036.

*STB Form Number:* None.

*Type of Review:* Extension without change.

*Respondents:* Parties seeking the Board's informal assistance under Fixing America's Surface Transportation Act, Public Law 114–94 (signed Dec. 4, 2015) (FAST Act).

*Number of Respondents:* Approximately three.

*Estimated Time Per Response:* One hour.

*Frequency:* On occasion.

*Total Burden Hours* (annually including all respondents): Three hours (estimated hours per response (1) × total number of responses (3)).

*Total Annual ''Non-hour Burden'' Cost (such as start-up and mailing costs):* There are no non-hourly burden costs for this collection.

*Needs and Uses:* Title XI of the FAST Act, entitled ''Passenger Rail Reform and Investment Act of 2015,'' gives the Board jurisdiction to resolve cost allocation and access disputes between the National Railroad Passenger Corporation (Amtrak), the states, and potential non-Amtrak operations of intercity passenger rail service. The FAST Act directs the Board to establish procedures for the resolution of these disputes, ''which may include the provision of professional mediation services.'' 49 U.S.C. 24712(c)(2), 24905(c)(4). Under 49 CFR 1109.5, the Board provides that parties to a dispute involving the State-Sponsored Route Committee or the Northeast Corridor Committee may, by a letter submitted to OPAGAC, request the Board's informal assistance in securing outside professional mediation services. The letter shall include a concise description of the issues for which outside professional mediation services are sought. The collection by the Board of these request letters enables the Board to meet its statutory duty under the FAST Act.

Under the PRA, a federal agency that conducts or sponsors a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Under 44 U.S.C. 3506(c)(2)(A), federal agencies are required to provide, prior to an agency's submitting a collection to OMB for approval, a 60-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: February 19, 2020.

**Jeffrey Herzig,**

*Clearance Clerk.*

[FR Doc. 2020–03595 Filed 2–21–20; 8:45 am]

**BILLING CODE 4915–01–P**

## SURFACE TRANSPORTATION BOARD

### 60-Day Notice of Intent To Seek Extension of Approval: Petitions for Declaratory Order and Petitions for Relief Not Otherwise Specified

**AGENCY:** Surface Transportation Board.

**ACTION:** Notice and request for comments.

**SUMMARY:** As required by the Paperwork Reduction Act of 1995 (PRA), the Surface Transportation Board (STB or Board) gives notice of its intent to seek approval from the Office of Management and Budget (OMB) for extensions of the collections regarding petitions for declaratory order and petitions for relief not otherwise specified, as described below.

**DATES:** Comments on this information collection should be submitted by April 24, 2020.

**ADDRESSES:** Direct all comments to Chris Oehrle, Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001, or to *PRA@stb.gov.* When submitting comments, please refer to ''Paperwork Reduction Act Comments, Petitions for Declaratory Orders and Petitions for Relief Not Otherwise Specified.'' For further information regarding this collection, contact Michael Higgins, Deputy Director, Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0284 or *michael.higgins@stb.gov.* Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:** For each collection, comments are requested concerning: (1) The accuracy of the Board's burden estimates; (2) ways to enhance the quality, utility, and clarity of the information collected; (3) 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, when appropriate; and (4) whether the collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility. Submitted comments will be summarized and included in the Board's request for OMB approval.

**Description of Collections**

*Collection Number 1*

*Title:* Petitions for declaratory order.

*OMB Control Number:* 2140–0031.

*STB Form Number:* None.

*Type of Review:* Extension without change.

*Respondents:* Affected shippers, railroads, communities, and other stakeholders that choose to seek a declaratory order from the Board to terminate a controversy or remove uncertainty.

*Number of Respondents:* Approximately 10.

*Estimated Time per Response:* 183 hours.

*Frequency:* On occasion. In calendar years 2017–2019, approximately 10 petitions for declaratory order were filed with the Board per year.

*Total Burden Hours* (annually including all respondents): 1,830 hours (estimated hours per petition (183) × total number of petitions (10)).

*Total ''Non-hour Burden'' Cost:* $12,360 (estimated non-hour burden cost per petition ($1,236) × total number of petitions (10)).

*Needs and Uses:* Under 5 U.S.C. 554(e) and 49 U.S.C. 1321, the Board may issue a declaratory order to terminate a controversy or remove uncertainty. Because petitions for declaratory order can encompass a broad range of issues and types of requests, the Board does not prescribe specific instructions for their filing. The collection by the Board regarding petitions for declaratory order that parties choose to file enables the Board to meet its statutory duty to regulate the rail industry.

*Collection Number 2*

*Title:* Petitions for relief not otherwise provided.

*OMB Control Number:* 2140–0030.

*STB Form Number:* None.

*Type of Review:* Extension without change.

*Respondents:* Affected shippers, railroads, communities, and other stakeholders that seek to address issues under the Board's jurisdiction that are not otherwise specifically provided for under the Board's other regulatory provisions.

*Number of Respondents:* Approximately four.

*Estimated Time per Response:* 25 hours.

*Frequency:* On occasion. In calendar years 2017–2019, approximately four petitions of this type were filed with the Board per year.

*Total Burden Hours* (annually including all respondents): 100 hours (estimated hours per petition (25) × total number of petitions (4)).

*Total ''Non-hour Burden'' Cost:* $280 (estimated non-hour burden cost per petition ($70) × total number of petitions (four)).

*Needs and Uses:* Under 49 U.S.C. 1321 and 49 CFR part 1117 (the Board's catch-all petition provision), shippers, railroads, and the public in general may seek relief (such as waiver of the Board's regulations) not otherwise specifically provided for under the Board's other regulatory provisions. Under section 1117.1, such petitions should contain three items: (a) A short, plain statement of jurisdiction, (b) a short, plain statement of petitioner's claim, and (c) request for relief. The collection by the Board of these petitions that parties choose to file enables the Board to more fully meet its statutory duty to regulate the rail industry.

Under the PRA, a federal agency that conducts or sponsors a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Under 44 U.S.C. 3506(c)(2)(A), federal agencies are required to provide, prior to an agency's submitting a collection to OMB for approval, a 60-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: February 19, 2020.

**Jeffrey Herzig,**

*Clearance Clerk.*

[FR Doc. 2020–03597 Filed 2–21–20; 8:45 am]

**BILLING CODE 4915–01–P**

## SURFACE TRANSPORTATION BOARD

**[Docket No. AB 55 (Sub–No. 798X)]**

### CSX Transportation, Inc.—Discontinuance of Service Exemption—in Raleigh County, W. Va.

CSX Transportation, Inc. (CSXT), has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue service over an approximately 4.4-mile rail line on its Florence Division, Coal River Subdivision, from milepost CLQ 3.0 to milepost CLQ 7.4, in Raleigh County, W. Va. (the Line). The Line traverses U.S. Postal Service Zip Code 25140.

CSXT has certified that: (1) No local or overhead traffic has moved over the Line for at least two years; (2) any overhead traffic on the Line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line is pending either with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the two-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance of service shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) [1] to subsidize continued rail service has been received, this exemption will be effective on March 25, 2020, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA to subsidize continued rail service under 49 CFR 1152.27(c)(2) [2] must be filed by March 5, 2020.[3] Petitions for reconsideration must be filed by March 16, 2020, with the Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to CSXT's representative, Louis E. Gitomer, Law Offices of Louis E. Gitomer, LLC, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

If the verified notice contains false or misleading information, the exemption is void ab initio.

[1] Persons interested in submitting an OFA to subsidize continued rail service must first file a formal expression of intent to file an offer, indicating the intent to file an OFA for subsidy and demonstrating that they are preliminarily financially responsible. *See* 49 CFR 1152.27(c)(2)(i).

[2] The filing fee for OFAs can be found at 49 CFR 1002.2(f)(25).

[3] Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Because there will be an environmental review during abandonment, this discontinuance does not require environmental review.

Board decisions and notices are available at *www.stb.gov.*

Decided: February 18, 2020.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

**Regena Smith-Bernard,**

*Clearance Clerk.*

[FR Doc. 2020–03609 Filed 2–21–20; 8:45 am]

BILLING CODE 4915–01–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Docket No. 2120–0543]**

### Agency Information Collection Activities: Requests for Comments; Clearance of [a Renewed] Approval of Information Collection: Pilots Convicted of Alcohol or Drug-Related Motor Vehicle Offenses Subject to State Motor Vehicle Administrative Procedure

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The collection involves receiving and maintaining correspondence required to be sent to the FAA from pilots who have been involved in a drug or alcohol related motor vehicle action. The information to be collected will be used to and/or is necessary because the FAA is concerned about those airmen abusing or dependent on drugs or alcohol in regard to the safety of the National Airspace System.

**DATES:** Written comments should be submitted by April 24, 2020.

**ADDRESSES:** Please send written comments:

*By Electronic Docket: www.regulations.gov* (Enter docket number into search field).

*By mail:* Christopher Marks, P.O. Box 25810, Oklahoma City, OK 73125.

*By fax:* 405–954–4989.

**FOR FURTHER INFORMATION CONTACT:** Christopher Marks by email at: *Christopher.Marks@faa.gov;* phone: 405–954–2789.

**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:* 2120–0543.

*Title:* Pilots Convicted of Alcohol or Drug-Related Motor Vehicle Offenses Subject to State Motor Vehicle Administrative Procedure.

*Form Numbers:* No official form numbers used.

*Type of Review:* Renewal of an information collection.

*Background:* After a study and audit conducted from the late 1970's through the 1980's by the Department of Transportation, Office of the Inspector General, (DOT/OIG), the DOT/OIG recommended the FAA find a way to track alcohol abusers and those dependent on the substance that may pose a threat to the National Airspace (NAS). Through a Congressional act issued in November of 1990, the FAA established a Driving Under the Influence (DUI) and Driving While Intoxicated (DWI) Investigations Branch. The final rule for this program is found in Title 14 Code of Federal Regulations (CFR)—part 61 § 61.15.

This regulation calls for pilots certificated by the FAA to send information regarding Driving Under the Influence (or similar charges) of alcohol and/or drugs to the FAA within 60 days from either an administrative action against their driver's license and/or criminal conviction. Part of the regulation also calls for the FAA to seek certificate action should an airman be involved in multiple, separate drug/alcohol related motor vehicle incidents within a three-year period. Information sent by the airmen is used to confirm or refute any violations of these regulations, as well as by the Civil Aerospace Medical Institute (CAMI) for medical qualification purposes. Collection by CAMI is covered under a separate OMB control number 2120–0034.

An airman is required to provide a letter via mail or facsimile, with the following information: Name, address, date of birth, pilot certificate number, the type of violation which resulted in the conviction or administrative action, and the state which holds the records or action.

*Respondents:* FAA airmen with drug and alcohol related motor vehicle actions.

*Frequency:* An average of 862 per year over the last 3 years.

*Estimated Average Burden per Response:* 20 Minutes.

*Estimated Total Annual Burden:* 20 minutes per respondent and 287 hours for all respondents annually.

Issued in Oklahoma City, OK, on February 13, 2020.

**Christopher Marks,**

*Security Specialist, Office of Security & Hazardous Materials Safety/Enforcement Standards & Policy Division, AXE–900.*

[FR Doc. 2020–03528 Filed 2–21–20; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Release of Land Affecting Federal Grant Assurance Obligations at Hayward Executive Airport, Hayward, Alameda County, California

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of request to release airport land.

**SUMMARY:** The Federal Aviation Administration (FAA) is considering a proposal and invites public comment to change a portion of the airport from aeronautical use to non-aeronautical use at Hayward Executive Airport (HWD), Hayward, Alameda County, California. The proposal consists of two parcels, containing a total of 3.18 acres of airport land, located southwest of Taxiway Z, between Taxiways Z and C.

These parcels were originally acquired from the federal government as surplus land, via quitclaim deed issued by the War Assets Administration on April 16, 1947. Land adjacent to the parcels was previously released for non-aeronautical revenue generation, for use as a regional fire training facility. The additional two parcels will be leased for non-aeronautical revenue generation, and incorporated into the regional fire training facility. The use of the land for a fire training facility represents a compatible land use that will not interfere with the airport or its operation, thereby protecting the interests of civil aviation. The airport will be compensated for the fair market value of the land.

**DATES:** Comments must be received on or before March 25, 2020.

**FOR FURTHER INFORMATION CONTACT:** Comments on the request may be mailed or delivered to the FAA at the following address: Ms. Laurie J. Suttmeier, Manager, San Francisco Airports District Office, Federal Aviation Administration, 1000 Marina Boulevard, Suite 220, Brisbane, California, 94005–1835. In addition, one copy of the comment submitted to the FAA must be mailed or delivered to Mr. Doug McNeeley, Airport Manager, 20301 Skywest Drive, Hayward, California 94541–4699.

**SUPPLEMENTARY INFORMATION:** In accordance with the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), Public Law 10–181 (Apr. 5, 2000; 114 Stat. 61), this notice must be published in the **Federal Register** 30 days before the DOT Secretary may waive any condition imposed on a federally obligated airport by surplus property conveyance deeds or grant agreements.

The following is a brief overview of the request:

The Hayward Executive Airport (HWD) requested a release from the provisions of the Grant Agreement Assurances to permit the non-aeronautical use of approximately 3.18 acres of land at Hayward Executive Airport, Hayward, Alameda County, California, to accommodate the construction of a regional fire training facility. HWD will be compensated for the fair market value for the property. The San Francisco Airports District Office issued a Categorical Exclusion on January 15, 2020, that concluded the construction of the regional fire training center and associated land release were categorically excluded from detailed evaluation under the National Environmental Policy Act. The proposed use of the land is a compatible land use that will not interfere with or impede the operations and development of the airport. Based on the benefits of fair compensation and enhanced public safety, the interests of civil aviation will be properly served.

Issued in El Segundo, California, on February 11, 2020.

Original signed by:

**Brian Q. Armstrong,**

*Manager, Safety and Standards Branch, Airports Division, Western-Pacific Region.*

[FR Doc. 2020–03663 Filed 2–21–20; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. 2020–06]**

### Petition for Exemption; Summary of Petition Received; Hylio Inc.

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

**ACTION:** Notice.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number and must be received on or before March 16, 2020.

**ADDRESSES:** Send comments identified by docket number FAA–2020–0035 using any of the following methods:

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

*Privacy:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

*Docket:* Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Jake Troutman, (202) 683–7788, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on February 18, 2020.

**Brandon Roberts,**

*Deputy Executive Director, Office of Rulemaking.*

**Petition for Exemption**

*Docket No.:* FAA–2020–0035.

*Petitioner:* Hylio Inc.

*Section(s) of 14 CFR Affected:* §§ 61.3(a)(1)(i); 91.7(a); 91.113(b); 91.119; 91.121; 91.151(b); 91.405(a); 91.407(a)(1); 91.409(a)(1) & (2); 91.417(a) & (b); 107.29; 107.35; 107.36; 137.19(c), (d), (e)(2)(ii), (e)(2)(iii), (e)(2)(iv) & (e)(2)(v); 137.31(a) & (b); 137.33(a) & (b); 137.41(c); 137.42; 137.53(c)(2); & 175.9(b)(1) of 49 CFR.

*Description of Relief Sought:* The proposed exemption, if granted, would allow the petitioner to operate its Hylio AG–116 unmanned aircraft systems (UAS), with a takeoff weight under 125 pounds, for the commercial purpose of conducting commercial agricultural services, to include: carriage and release of hazardous materials; multi-UAS operations; and nighttime operations. The petitioner plans to coordinate with individual growers, researchers, universities, and other interested parties to advance the safe operation of agricultural UAS in the United States.

[FR Doc. 2020–03664 Filed 2–21–20; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### Agency Information Collection Activities: Information Collection Renewal; Comment Request; Appraisals for Higher-Priced Mortgage Loans

**AGENCY:** Office of the Comptroller of the Currency (OCC), Treasury.

**ACTION:** Notice and request for comment.

**SUMMARY:** The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection as required by the Paperwork Reduction Act of 1995 (PRA). In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting comment concerning renewal of its information collection titled, ''Appraisals for Higher-Priced Mortgage Loans.''

**DATES:** Comments must be submitted on or before April 24, 2020.

**ADDRESSES:** Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, 1557–0313, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

*Instructions:* You must include ''OCC'' as the agency name and ''1557–0313'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this information collection beginning on the date of publication of the second notice for this collection [1] by any of the following methods:

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Click on the ''Information Collection Review'' tab. Underneath the ''Currently under Review'' section heading, from the drop-down menu select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0313'' or ''Appraisals for Higher-Priced Mortgage Loans.'' Upon finding the appropriate information collection, click on the related ''ICR Reference Number.'' On the next screen, select ''View Supporting Statement and Other Documents'' and then click on the link to any comment listed at the bottom of the screen.
- For assistance in navigating *www.reginfo.gov,* please contact the Regulatory Information Service Center at (202) 482–7340.
- *Viewing Comments Personally:* You may personally inspect comments at the OCC, 400 7th Street SW, Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect comments.

**FOR FURTHER INFORMATION CONTACT:** Shaquita Merritt, (202) 649–5490 or, for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of title 44 requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of the proposed collection of information set forth in this document.

*Title:* Appraisals for Higher-Priced Mortgage Loans.

*Description:* This information collection relates to section 1471 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which added a new section 129H to the Truth in Lending Act (TILA) establishing special appraisal requirements for ''higher-risk mortgages.'' For certain mortgages with an annual percentage rate that exceeds the average prime offer rate by a specified percentage, creditors must obtain an appraisal or appraisals meeting certain specified standards, provide applicants with a notification regarding the use of the appraisals, and give applicants a copy of the written appraisals used. The statute permits the OCC to issue a rule to include exemptions from these requirements.

The information collection requirements are found in 12 CFR 34.203(c)(1), (c)(2), (d), (e) and (f). This information is required to protect

[1] Following the close of this notice's 60-day comment period, the OCC will publish a second notice with a 30-day comment period.

consumers and promote the safety and soundness of creditors making higher-priced mortgage loans (HPMLs) subject to 12 CFR part 34, subpart G. This information is used by creditors to evaluate real estate collateral securing HPMLs subject to 12 CFR 1026.35(c) and by consumers entering these transactions. The collections of information are mandatory for creditors making HPMLs subject to 12 CFR part 34, subpart G.

Under 12 CFR 34.203(e) and (f), a creditor must, no later than the third business day after the creditor receives a consumer's application for an HPML, provide the consumer with a disclosure that informs the consumer that the creditor may order an appraisal to determine the value of the property and charge the consumer for that appraisal, that the creditor will provide the consumer with a copy of any appraisal, and that the consumer may choose to have an additional appraisal conducted at the expense of the consumer. If a loan is an HPML subject to 12 CFR 34.203(c), then, under 12 CFR 34.203(c)(1) and (2), the creditor is required to obtain a written appraisal prepared by a certified or licensed appraiser who conducts a physical visit of the interior of the property that will secure the transaction (Written Appraisal) and provide a copy of the Written Appraisal to the consumer. Under 12 CFR 34.203(d)(1), a creditor is required to obtain an additional appraisal (Additional Written Appraisal) for an HPML that is subject to 12 CFR part 34, subpart G if: (1) The seller acquired the property securing the loan 90 or fewer days prior to the date of the consumer's agreement to acquire the property and the price in the consumer's agreement to acquire the property exceeds the seller's acquisition price by more than 10 percent; or (2) the seller acquired the property securing the loan 91 to 180 days prior to the date of the consumer's agreement to acquire the property and the price in the consumer's agreement to acquire the property exceeds the seller's acquisition price by more than 20 percent.

Under 12 CFR 34.203(d)(3) and (4), the Additional Written Appraisal must meet the requirements described in 12 CFR 34.203(c)(1) and also include an analysis of: (1) The difference between the price at which the seller acquired the property and the price the consumer is obligated to pay to acquire the property; (2) changes in market conditions between the date the seller acquired the property and the date of the consumer's agreement to acquire the property; and (3) any improvements made to the property between the date the seller acquired the property and the date of the consumer's agreement to acquire the property. Under 12 CFR 34.203(f), a creditor is required to provide the consumer with a copy of any Additional Written Appraisal.

*Affected Public:* Businesses or other for-profit.

*Type of Submission:* Regular.

*Burden Estimates:*

*Estimated Number of Respondents:* 1,134.

*Estimated Total Annual Burden:* 292 hours.

*Frequency of Response:* On occasion.

*Comments:* Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the information collection burden;

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

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

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: February 14, 2020.

**Theodore J. Dowd,**

*Deputy Chief Counsel, Office of the Comptroller of the Currency.*

[FR Doc. 2020–03520 Filed 2–21–20; 8:45 am]

**BILLING CODE 4810–33–P**

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## DEPARTMENT OF THE TREASURY

### Office of Foreign Assets Control

### Notice of OFAC Sanctions Actions

**AGENCY:** Office of Foreign Assets Control, Department of the Treasury.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing an update to the identifying information of one entity currently included on OFAC's list of Specially Designated Nationals and Blocked Persons.

**DATES:** See **SUPPLEMENTARY INFORMATION** section for the date on which the update becomes effective.

**FOR FURTHER INFORMATION CONTACT:** OFAC: Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

**SUPPLEMENTARY INFORMATION:**

#### Electronic Availability

The Specially Designated Nationals and Blocked Persons List (SDN List) and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

#### Notice of OFAC Actions

On February 19, 2020, OFAC updated the SDN List for the following entity, whose property and interests in property continue to be blocked under the Foreign Narcotics Kingpin Designation Act.

*Entity*

1. INVERSIONES CONTINENTAL, S.A. DE C.V. (a.k.a. GRUPO FINANCIERO CONTINENTAL; a.k.a. ''GRUPO FINANCIERO''), Entre la 9 y 10 Avenida, 1ra Calle, Boulevard Morazan, CC Nova, San Pedro Sula, Honduras; National ID No. 0101999501331 (Honduras); RTN 1019995013319 (Honduras) [SDNTK]

The listing for the entity now appears as follows:

1. INVERSIONES CONTINENTAL, S.A. DE C.V. (a.k.a. GRUPO FINANCIERO CONTINENTAL; a.k.a. ''GRUPO FINANCIERO''), Entre la 9 y 10 Avenida, 1ra Calle, Boulevard Morazan, CC Nova, San Pedro Sula, Honduras; National ID No. 0501999514659 (Honduras); RTN 05019995146590 (Honduras) [SDNTK]

Dated: February 19, 2020.

**Gregory T. Gatjanis,**

*Associate Director, Office of Global Targeting.*

[FR Doc. 2020–03573 Filed 2–21–20; 8:45 am]

**BILLING CODE 4810–AL–P**

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## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0021]**

### Agency Information Collection Activity: VA Loan Electronic Reporting Interface (VALERI) System

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the

Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before April 24, 2020.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0021'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:** Danny S. Green, (202) 421–1354 or email *Danny.Green2@va.gov.* Please refer to ''OMB Control No. 2900–0021'' in any correspondence.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Authority:* Public Law 104–13; 44 U.S.C. 3501–3521.

*Title:* VA Loan Electronic Reporting Interface (VALERI) System.

*OMB Control Number:* 2900–0021.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* VA provides the authority for VA-guaranteed mortgage servicers to assist veteran borrowers and their families experiencing financial difficulty. VA then provides oversight of the servicers' actions by collecting specific documentation and data. In today's environment, this collection is done via the VALERI application. Federal Regulations under 38 CFR 36.4300 require specific, critical information be provided to VA and without the collection of such documentation and data, the number of foreclosures of VA-guaranteed loans and homeless veterans would potentially increase.

*Affected Public:* Business or other for profit.

*Estimated Annual Burden:* 70 hours.

*Estimated Average Burden per Respondent:* 1 minute.

*Frequency of Response:* One time.

*Estimated Number of Respondents:* 967.

By direction of the Secretary.

**Danny S. Green,**

*VA PRA Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.*

[FR Doc. 2020–03541 Filed 2–21–20; 8:45 am]

BILLING CODE 8320–01–P

# FEDERAL REGISTER

Vol. 85 Monday,

No. 36 February 24, 2020


Part II

## Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 510

Medicare Program: Comprehensive Care for Joint Replacement Model Three-Year Extension and Changes to Episode Definition and Pricing; Proposed Rule

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Medicare & Medicaid Services**

**42 CFR Part 510**

**[CMS–5529–P]**

**RIN 0938–AU01**

# Medicare Program: Comprehensive Care for Joint Replacement Model Three-Year Extension and Changes to Episode Definition and Pricing

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would revise certain aspects of the Comprehensive Care for Joint Replacement (CJR) model including the episode of care definition, the target price calculation, the reconciliation process, the beneficiary notice requirements and the appeals process. In addition, for proposed performance years 6 through 8, it would eliminate the 50 percent cap on gainsharing payments, distribution payments, and downstream distribution payments for certain recipients. This proposed rule would also extend the additional flexibilities provided to hospitals related to certain Medicare program rules consistent with the revised episode of care definition. Additionally, the proposed rule would allow time to test the proposed changes by extending the length of the CJR model for an additional 3 years, through December 31, 2023, for certain participant hospitals. Finally, it solicits comment on how we might best conceptualize and design a future bundled payment model focused on lower extremity joint replacements (LEJR) procedures performed in the ambulatory surgical center (ASC) setting.

**DATES:** To be assured consideration, comments on this proposed rule must be received at one of the addresses provided in the **ADDRESSES** section no later than 5 p.m. EST on April 24, 2020.

**ADDRESSES:** In commenting, please refer to file code CMS–5529–P. 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–5529–P, P.O. Box 8013, Baltimore, MD 21244–1850.

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–5529–P, 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:** Nora Fleming, (410) 786–6908.

**SUPPLEMENTARY INFORMATION:** *Inspection of Public Comments:* All comments received before the close of the comment period shall be made available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We will 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. Purpose*

The Comprehensive Care for Joint Replacement (CJR) model, which was implemented on April 1, 2016, aims to support better and more efficient care for beneficiaries undergoing the most common inpatient surgeries for Medicare beneficiaries: Hip and knee replacements (also called lower extremity joint replacements or LEJR). This model tests bundled payment and quality measurement for an episode of care associated with hip and knee replacements to encourage hospitals, physicians, and post-acute care providers to work together to improve the quality and coordination of care from the initial hospitalization through recovery. As discussed in greater detail in section I.C. of this proposed rule, the CJR model was established through notice and comment rulemaking. While initial evaluation results for the first and second year of the CJR model [1] indicate that the CJR model is having a positive impact on lowering episode costs when CJR participant hospitals are compared to non-CJR hospitals (with no negative impacts on quality of care), changes in program payment policy and national care delivery patterns have occurred since the CJR model began. In order to better evaluate the model with these changes addressed, this rule proposes to change and extend the CJR model for an additional 3 performance years. First, we propose to change the definition of a CJR 'episode' in order to address changes to the inpatient-only (IPO) list, which is a list published annually in the Outpatient Prospective Payment System (OPPS) rule that contains procedure codes that will only be reimbursed by Medicare when performed in the inpatient setting. Specifically, in response to the change in the calendar year (CY) 2018 OPPS rule (65 FR 18455) that removed the Total Knee Arthroplasty (TKA) procedure code from the IPO list, and the change in the CY 2020 OPPS rule (84 FR 61353) that removed Hip Arthroplasty (THA) procedure code from the IPO list, we are proposing to change the definition of an 'episode of care' to include outpatient (OP) procedures for TKAs (OP TKAs) and to include outpatient procedures for THAs (OP THAs).

We are also proposing to make a number of changes to the target price calculation. Specifically, we are proposing to change the basis for the target price from 3 years of claims data to the most recent one year of claims data, to remove the national update factor and twice yearly update to the target prices that accounts for prospective payment system and fee schedule updates, to remove anchor factors and weights, and to change the high episode spending cap calculation methodology. Additionally, we are proposing a number of changes to the reconciliation process. Specifically, we are proposing to move from 2 reconciliation periods (conducted 2 and 14 months after the close of each performance year) to one reconciliation period that would be conducted 6 months after the close of each performance year, to add an additional episode-level risk adjustment beyond fracture status, to change the high episode spending cap calculation methodology used at reconciliation, to add a retrospective market trend adjustment factor, and to the change the quality (effective or applicable) discount factors applicable to participants with excellent and good quality scores to better recognize high quality care. Although the improvements we are

[1] See evaluation reports section posted on the CJR model website at: *https://innovation.cms.gov/initiatives/cjr.*

proposing to make to the target price calculation and reconciliation process could potentially improve the accuracy of CJR episode pricing in performance year (PY) 5, we are not proposing that these changes apply to PY 5 because this proposed rule would not be finalized and effective until close to the end of PY 5.

Since we are proposing to change the definition of an 'episode of care' to include outpatient procedures, for which the beneficiary would not be admitted to the participant hospital, we are also proposing a change to the beneficiary notification requirements (which are currently tied to admission) such that CJR participant hospitals are also required to notify the beneficiary of his or her inclusion in the CJR model if the procedure takes place in an outpatient setting. We are also proposing to make changes to the dates of publicly-reported data used for quality measures and patient-reported outcomes (PRO) for the three additional performance years. We propose to advance the Complications and Hospital Consumer Assessment of Healthcare Providers and Systems (HCAHPS) performance periods in alignment with the performance periods used for performance years 1 through 5. For PRO, we are also proposing to advance the performance periods in alignment with previous performance periods as well as increase the thresholds for successful submission. Additionally, for the 3 additional performance years, we are proposing to eliminate the 50 percent cap on gainsharing payments, distribution payments, and downstream distribution payments when the recipient of these payments is a physician, non-physician practitioner, physician group practice (PGP), or non-physician practitioner group practice (NPPGP). We are also proposing to make changes to the appeals process in order to clarify the reconsideration review (second level appeal) process. Finally, in conjunction with the proposed change to include specific outpatient procedures in the CJR episode definition, we are also proposing to extend the waiver of the Skilled Nursing Facility (SNF) 3-day rule and the waiver of direct supervision requirements for certain post-discharge home visits to hospitals furnishing services to CJR beneficiaries in the outpatient setting as well. To allow time for us to evaluate the impact of these changes, we are proposing to extend the CJR model for an additional 3 years, performance years 6 through 8, for participant hospitals located in the 34 mandatory metropolitan statistical areas (MSAs) (except for rural hospitals and low-volume hospitals). We are proposing conforming changes to the CJR regulations at 42 CFR part 510.

Lastly, noting that TKA procedures will be covered by Medicare in the ambulatory surgical center (ASC) setting beginning January 1, 2020 (84 FR 61253) and that certain other LEJR procedures may eventually also be covered by Medicare in the ASC setting, we are also soliciting comment on the design of a potential future bundled payment model for LEJR procedures in the ASC.

*B. Summary of Costs and Benefits*

As shown in our impact analysis in section IV. of this proposed rule, we estimate that the CJR model changes we are proposing will save the Medicare program approximately $269 million over the additional 3 model years. We note that our impact analysis has some degree of uncertainty and makes assumptions as further discussed in section IV. of this proposed rule. In addition to these estimated impacts, the goal of CMS' Center for Medicare and Medicaid Innovation (Innovation Center) models are to reduce expenditures while preserving or enhancing the quality of care. In addition, many participants are attempting to enhance their infrastructure to support better care management and reducing costs. We anticipate there will continue to be a broader focus on care coordination and quality improvement through the CJR model among hospitals and other providers and suppliers within the Medicare program that may lead to better care management and improved quality of care for beneficiaries.

*C. Statutory Authority and Background*

Under the authority of section 1115A of the Social Security Act (the Act), through notice-and-comment rulemaking, the Innovation Center established the CJR model in a final rule titled ''Medicare Program; Comprehensive Care for Joint Replacement Payment Model for Acute Care Hospitals Furnishing Lower Extremity Joint Replacement Services'' published in the November 24, 2015 **Federal Register** (80 FR 73274) (referred to in this proposed rule as the ''November 2015 final rule''). The CJR model is a Medicare Part A and B payment model in which acute care hospitals in certain selected geographic areas receive retrospective bundled payments for episodes of care for lower extremity joint replacement or reattachment of a lower extremity (collectively referred to as LEJR). The CJR model holds participant hospitals financially accountable for the quality and cost of a CJR episode of care and incentivizes increased coordination of care among hospitals, physicians, and post-acute care providers. All related care covered by Medicare Parts A and B within 90 days of hospital discharge from the LEJR procedure is included in the episode of care. The first CJR model performance period began April 1, 2016. At that time, the CJR model required hospitals located in the 67 MSAs selected for participation to participate in the model through December 31, 2020 unless the hospital was an episode initiator for an LEJR episode in the risk-bearing phase of Models 2 or 4 of the Bundled Payments for Care Improvement (BPCI) initiative. Hospitals located in one of the 67 MSAs that participated in Model 1 of the BPCI initiative, which ended on December 31, 2016, were required to begin participating in the CJR model when their participation in the BPCI initiative ended.

In the March 4, 2016 **Federal Register** (81 FR 11449), we published a final rule titled ''Medicare Program; Comprehensive Care for Joint Replacement Payment Model for Acute Care Hospitals Furnishing Lower Extremity Joint Replacement Services; Corrections and Correcting Amendments'', that corrected a limited number of technical and typographical errors identified in the November 2015 final rule. On January 3, 2017, we published a final rule (82 FR 180), titled ''Medicare Program; Advancing Care Coordination Through Episode Payment Models (EPMs); Cardiac Rehabilitation Incentive Payment Model; and Changes to the Comprehensive Care for Joint Replacement Model (CJR)'' (referred to as the ''January 2017 final rule''), to implement the creation and testing of three EPMs and to make certain refinements to better align the CJR model with the new EPMs, to make minor technical improvements to the CJR model and to create an Advanced Alternate Payment Model (Advanced APM track within the CJR model. On May 19, 2017, we published a final rule (82 FR 22895) titled ''Medicare Program; Advancing Care Coordination Through Episode Payment Models (EPMs); Cardiac Rehabilitation Incentive Payment Model; and Changes to the Comprehensive Care for Joint Replacement Model (CJR); Delay of Effective Date'' which finalized May 20, 2017 as the effective date of the January 2017 final rule (82 FR 180). The May 2017 final rule also finalized a delay to the effective date of certain CJR regulations from July 1, 2017 to January

1, 2018. On December 1, 2017, we published another final rule (82 FR 57066), titled ''Medicare Program; Cancellation of Advancing Care Coordination Through Episode Payment and Cardiac Rehabilitation Incentive Payment Models; Changes to Comprehensive Care for Joint Replacement Payment Model: Extreme and Uncontrollable Circumstances Policy for the Comprehensive Care for Joint Replacement Payment Model'' (referred to in this proposed rule as the ''December 2017 final rule''), that implemented further revisions to the CJR model, including giving rural and low volume hospitals selected for participation in the CJR model as well as those hospitals located in 33 of the 67 MSAs a one-time option to choose whether to continue their participation in the model through December 31, 2020. The December 2017 final rule also finalized further technical refinements and clarifications for certain payment, reconciliation and quality provisions, and implemented a change to increase the pool of eligible clinicians that qualify as affiliated practitioners under the Advanced APM track.

An interim final rule with comment period was also issued in conjunction with the December 2017 final rule (82 FR 57092) in order to address the need for a policy to provide some flexibility in the determination of episode costs for providers located in areas impacted by extreme and uncontrollable circumstances. This extreme and uncontrollable circumstances policy was adopted as final in the June 8, 2018 final rule (83 FR 26604), titled ''Medicare Program; Changes to the Comprehensive Care for Joint Replacement Payment Model (CJR): Extreme and Uncontrollable Circumstances Policy for the CJR Model,'' and effective on July 9, 2018.

## II. Provisions of the Proposed Rule

### *A. Episode Definition*

#### 1. Background

The CJR model began on April 1, 2016. The CJR model is currently nearing completion of the fourth performance year, which includes episodes ending on or after January 1, 2019 and on or before December 31, 2019. The fifth performance year, which includes all episodes ending on or after January 1, 2020 and on or before December 31, 2020, would necessarily incorporate episodes that began before January 1, 2020. As previously discussed in section I.C. of this proposed rule, the CJR model was created to bundle care for beneficiaries of Medicare Part A and Part B undergoing LEJR procedures, and in so doing, to decrease the cost and improve the quality of that care (80 FR 73274). When the CJR model was initially finalized in the November 2015 final rule, the LEJR procedures on which the model is focused, specifically, those procedures for TKA, THA, and Total Ankle Replacement (TAR), were all listed on the IPO list. This meant that Medicare would only pay providers for these procedures when they were performed in the inpatient setting and billed through the Inpatient Prospective Payment System (IPPS). For this reason, CJR model episodes were defined to include inpatient procedures only. These TKA, THA, and TAR procedures all mapped onto either Medicare Severity-Diagnosis Related Group (MS–DRG) 469 (LEJR with complications and/or comorbidities) or MS–DRG 470 (LEJR without complications and/or comorbidities). Subsequently, in acknowledgement of the fact that TAR procedures are almost always more complex and expensive to perform than TKAs or THAs, CMS finalized a policy in the FY 2017 IPPS final rule to ensure that TARs would always map to MS–DRG 469, which reimburses at a higher rate than MS–DRG 470, to compensate for complications and comorbidities (81 FR 56815).

When the TKA procedure described by CPT Code 27447 was removed from the IPO List in the CY 2018 OPPS final rule (82 FR 59382), effective January 1, 2018, Medicare beneficiaries undergoing OP TKA procedures were, by default, excluded from the CJR model. When the change to the IPO list to remove TKA procedures was proposed, CJR participants raised concerns that the less complex TKA cases would move to the outpatient setting and the remaining inpatient population would represent a more complex and costly case mix than the population used to calculate the target price. As such, many commenters on the proposed OPPS 2018 rule (82 FR 59384) expressed their concern that the target prices for the remaining inpatient CJR episodes would be too low and would not reflect the shift in inpatient patient population. While we noted the commenters' concerns, due to the lack of historical outpatient episode spending claims data on which to base a target price, we were not able to recalculate target prices to reflect the movement of procedures from the inpatient to the outpatient setting at that time. We stated in the CY 2018 OPPS final rule with comment period (82 FR 59384) that we did not expect a significant volume of TKA cases that would previously have been performed in the hospital inpatient setting to shift to the hospital outpatient setting as a result of removing TKA from the IPO list. However, we also acknowledged that as providers' knowledge and experience in the delivery of hospital outpatient TKA treatment developed, there could be a greater migration of cases over time to the hospital outpatient setting. We further stated our intention to monitor the overall volume and intensity of TKA cases performed in the hospital outpatient department to determine whether any future refinements to the CJR model would be warranted.

As of May 2019, since TKAs have been performed in the outpatient setting for the full calendar year of 2018, we have one full year of national spending data (including time for claims run out) with which to assess the early impact of TKAs being offered to Medicare beneficiaries in the outpatient setting. Our analysis of this 2018 claim data shows that approximately 25 percent of TKAs are being performed in the outpatient setting, annually. These data also allowed us to explore spending differences between the least resource-intensive inpatient episodes and episodes based on an outpatient procedure. We used resource-intensity of inpatient episodes, as indicated by MS–DRG, as a proxy for identifying which patients may have been appropriate candidates for OP TKA, since the clinical information physicians use to make this judgment (for example, the patient's body mass index, smoking history, blood pressure among other clinical information) is not available on claims. Since we expected that the OP TKA procedures would only be performed on relatively healthy patients, without complications or comorbidities and would have mapped to the MS–DRG 470 without hip fracture category had they been performed in the inpatient setting, we compared spending patterns between inpatient MS–DRG 470 without hip fracture episodes and OP TKA episodes (created using the same criteria as CJR episodes, with the exception that they would have been triggered by the OP TKA [[[CPT code 27447]).]).] Given that inpatient TKA procedures receive an MS–DRG payment while outpatient TKA procedures are paid at a lower rate as part of payment for the APC to which they are assigned, we removed the payments associated with the episode initiating DRG and/or CPT code for TKA, specifically CPT code 27447, and focused on the remaining episode costs for any post-acute spending for these patients who we expected to be

clinically similar. As we expected, post-acute spending patterns were highly similar between the inpatient MS–DRG 470/no fracture episodes and the outpatient TKA episodes. This supported our belief that the outpatient TKA episodes were sufficiently comparable to MS–DRG 470/no fracture inpatient CJR episodes that we should find a way to change the existing CJR episode definition to encompass outpatient LEJR episodes as well as inpatient LEJR episodes.

2. Changes to Episode Definition To Include OP TKA/THA

Given stakeholders' interest in opportunities to treat LEJR patients in the outpatient setting as part of a bundled payment model, we explored ways to integrate OP TKA into the CJR model, as well as THA, in light of the recent change in the CY 2020 OPPS final rule to remove THA from the IPO list, which was recently finalized (84 FR 61353). (We remind readers that the removal of any procedure from the IPO list does not mandate that all cases be performed on an outpatient basis. Rather, such removal allows for Medicare payment to be made to the hospital when the procedure is performed in the hospital outpatient department setting. The decision to admit a patient is a complex medical judgment that is made by the treating physician.) We do not anticipate that TARs will be removed from the IPO list due to their complexity. If we continued to exclude OP TKAs and OP THAs from the CJR model and did not allow CJR hospitals the incentive to coordinate and improve care for OP episodes, it is possible that this policy decision could create an unintentional financial incentive to perform a proportion of these procedures in a more expensive inpatient setting than would otherwise be medically necessary, thereby increasing costs to the Medicare program. Continuing to exclude OP TKAs and OP THAs would also potentially reduce the generalizability of future results from the CJR model evaluation, as CJR hospitals would be less comparable to control group non-CJR hospitals that did not have the same incentive to keep TKA and THA episodes in the inpatient setting, rather than moving appropriate episodes into the outpatient setting. Therefore, to assure that our evaluation findings are as robust and generalizable as possible, we aim to incorporate OP LEJR procedures in such a way that we do not incentivize participants to choose a setting based on financial considerations rather than a given patient's particular level of need.

Consistent with our goal for site neutrality, as evidenced, for example, in the CY 2019 OPPS final rule (83 FR 58818) where we finalized our policy to pay for clinic visits furnished at excepted off-campus provider-based hospital departments at an amount equal to the site-specific physician fee schedule payment rate for the clinic visit service furnished by a non-excepted off-campus provider-based hospital department, as well as in the CY 2020 OPPS final rule (84 FR 61365) where we continued the two-year phase-in of this site neutral payment policy, we do not want to create separate prices for inpatient and outpatient CJR episodes. We also want to be consistent with the BPCI Advanced voluntary bundled payment model, which will be offering a site-neutral LEJR episode beginning January 1, 2020. These considerations, in conjunction with our finding that post-acute care costs were markedly similar for inpatient short stay TKAs, identified as those DRG 470 claims with lengths of stay of 2 or fewer days, and outpatient TKAs, with much of the difference in overall episode prices accounted for by the MS–DRG payment for inpatient episodes versus the outpatient procedure rate paid through OPPS, supported our belief that we could create a site neutral episode that would include both OP TKAs and the least complicated, short stay inpatient TKAs, which would group to the MS–DRG 470 without hip fracture category. However, given the remaining difference in post-acute spending, as well as the higher amount paid by Medicare for an inpatient procedure billed under the IPPS as opposed to an outpatient procedure billed under the OPPS, we recognize that simply providing the same target price for both inpatient TKA episodes and outpatient TKA episodes, based on historical spending for the two episode types blended together, would mean that the single blended target price could potentially underestimate spending on some inpatient episodes and likewise, could potentially overestimate spending on some outpatient episodes. This would theoretically average out across all MS–DRG 470 without hip fracture episodes at the regional level during reconciliation, but given the fact that hospitals' ratio of inpatient-to-outpatient cases will vary, we believe an additional episode-specific risk adjustment to the target price is needed to account for beneficiary-specific factors other than the presence of a hip fracture. We discuss our proposal to risk-adjust episodes in more detail in section II.C.4. of this proposed rule. We believe that our episode-specific risk adjustment methodology will incentivize clinicians to continue performing LEJR procedures in the appropriate clinical setting, particularly since performing these procedures on sicker patients in the outpatient setting could increase the risk of post-acute complications and lead to higher overall episode spending.

Therefore, beginning with our proposed PY 6, we are proposing to revise the definition of an 'episode of care' in the CJR model to include permitted OP TKA/THA procedures. This revised definition would apply to episodes initiated by an anchor procedure furnished on or after October 4, 2020, because the 90-day episode would end on or after January 1, 2021, which would be the first day of PY 6. Further, we are proposing to group the OP TKA procedures together with the MS–DRG 470 without hip fracture historical episodes in order to calculate a single, site-neutral target price for this category of episodes, given that spending on OP TKA episodes most closely resembles spending on MS–DRG 470 without hip fracture episodes. Prices for the other three categories (MS–DRG 469 with hip fracture, MS–DRG 469 without hip fracture, and MS–DRG 470 with hip fracture) would continue to be calculated based on historical inpatient episodes only.

Since the proposal to remove THAs from the IPO List has recently been finalized, we also propose to include outpatient THA procedures with MS–DRG 470 episodes in order to calculate a target price. Although we do not have Medicare claims data for OP THA at this time, as we currently do for OP TKA, we note that the costs for TKA and THA tend to be similar, which is why the inpatient procedures are priced together in MS–DRGs 469 and 470. OP THAs have been assigned to the same Comprehensive Ambulatory Payment System (C–APC) 5115 (Level 5 Musculoskeletal Procedure) as OP TKA (84 FR 61253). Therefore, we believe that the site-neutral MS–DRG 470 price that we propose to calculate (which would be based on a blend of inpatient TKA, inpatient THA, OP TKA, and OP THA episodes) would also be appropriate for OP THA episodes. However, in the case of THA, we would include any OP THA episodes without hip fractures in the MS–DRG 470 without hip fracture episode pricing and we would include any OP THA episodes with hip fractures in the MS–DRG 470 with hip fracture episode pricing. Compared to TKAs, which we expect would rarely be performed on an outpatient basis in the presence of a hip

fracture due to the added complexity of treating the hip fracture while performing the TKA, we believe that THAs with hip fractures would be more likely to be performed on an outpatient basis, since the THA could be treatment for the hip fracture. We note that most hip fracture cases involving a THA surgery typically present emergently and involve an inpatient admission, so we do not anticipate that any OP THA cases will involve hip fractures. However, we acknowledge the possibility that medical advances in the next 3 years could cause this to change. Therefore, we believe it is appropriate to separate OP THA into with and without hip fracture episodes that would be grouped into MS–DRG 470 with hip fracture and MS–DRG 470 without hip fracture episodes, respectively, because we expect that spending for OP THA with hip fracture and without hip fracture episodes would resemble spending for MS–DRG 470 with hip fracture and MS–DRG without hip fracture episodes, respectively.

Given that we are proposing that OP TKA and THA would initiate CJR episodes, we are similarly proposing that an OP TKA or THA, if furnished at a participant hospital during an ongoing 90-day CJR episode, would cancel the ongoing episode and initiate a new episode. When an episode is cancelled, this means that the services associated with the cancelled episode continue to be paid normally under Medicare FFS, but the cancelled episode is not included in the annual reconciliation calculation. This is consistent with our current policy that inpatient hospitalizations for MS–DRG 469 or 470 that occur at a participating hospital during an ongoing CJR episode cancel the ongoing episode and initiate a new episode. We are proposing to extend that policy to OP TKA and THA episodes. In conclusion, then, an active CJR episode initiated by a prior admission to an acute care hospital for DRG 470 or 469, would be cancelled, and a new CJR episode would be initiated, if either an inpatient LEJR procedure or an OP TKA or THA were furnished to an eligible beneficiary at a participating hospital during the ongoing episode initiated by the first joint procedure hospitalization. Similarly, a CJR episode initiated by a first anchor procedure (OP TKA or THA) would be cancelled, and a new CJR episode would be initiated, if either an inpatient LEJR procedure or an OP TKA or THA were furnished to an eligible beneficiary at a participating hospital during the ongoing episode initiated by the first anchor procedure.

3. Freezing Hip Fracture List and Episode Exclusions List

In the November 2015 final rule we finalized our proposal to establish a sub-regulatory process to update both the hip fracture list ((indicating the International Classification of Diseases, 9th Revision, Clinical Modification (ICD–9–CM) and ICD–10–CM codes that would designate a hip fracture for purposes of risk adjustment in the baseline period and performance period, respectively (80 FR 73544)) and the episode exclusions list (indicating which services would be considered unrelated to the episode, and therefore excluded from episode spending totals in both the baseline period and performance period) (80 FR 73305)). At that time, Medicare had recently transitioned from the use of ICD–9–CM codes to ICD–10–CM codes (as of October 2015), and the ICD–10–CM code list was being expanded on an annual basis. For this reason, we finalized our proposal to update both the hip fracture list and the exclusions list without rulemaking on at least a yearly basis to reflect annual changes to ICD–CM coding, annual changes to the MS–DRGs under the IPPS, and any other issues that were brought to our attention by the public throughout the course of the model test (80 FR 73305). Our first set of revisions, applicable as of October 1, 2016, added 40 additional codes within the M84 category to the original 1,152 codes on the hip fracture list and 60 additional code categories to the original 574 code categories on the episode exclusions list.

Now that Medicare has used the ICD–10–CM coding system for over 3 years, the rate of annual coding changes has stabilized, which has resulted in fewer, if any, changes to either the hip fracture or episode exclusions list in recent years of CJR. For FY 2018, the hip fracture list remained unchanged, while 28 categories were added to the episode exclusions list. For FY 2019, we did not identify any changes to the ICD–10–CM codes that would impact the hip fracture list or episode exclusions list, so they were not updated. The stability of ICD–10–CM codes has meant that MS–DRGs 469 and 470 have also experienced minimal change in recent years in terms of codes designating hip fracture and codes representing excluded services. Given the recent stabilization of the coding systems used in CJR, we are proposing to discontinue our annual sub-regulatory process to update the hip fracture list and episode exclusions list. We seek comment on our proposal and whether there are any circumstances in which updates may still be needed.

*B. Target Price Calculation*

1. Background

Currently in the CJR model, participant hospitals are provided with prospective episode target prices for four MS–DRG/hip fracture combinations (MS–DRG 469 with hip fracture, MS–DRG 469 without hip fracture, MS–DRG 470 with hip fracture, and MS–DRG 470 without hip fracture), based on historical episode spending. Participant hospitals have the opportunity to achieve a reconciliation payment if their performance year spending is below the applicable target price, or they may owe a repayment if their spending is above the applicable target price. More specifically, we finalized in the November 2015 final rule (80 FR 73338) the method for establishing episode target prices based on 3 years of standardized historical episode spending. This historical spending is updated by trending forward the older 2 years of historical data to the most recent of the 3 being used to set target prices (80 FR 73342). We calculate and apply different national trend factors for each combination of anchor MS–DRG (469 vs. 470) and hip fracture status (with hip fracture vs. without hip fracture). While the CJR model began with a blend of regional (''region'' defined as one of the nine U.S. Census divisions [2]) and hospital-specific spending for performance years 1 through 3, episode target prices were based on 100 percent regional spending beginning performance year 4. Under current regulations, high episode spending is capped at 2 standard deviations above the mean regional episode payment, and target prices are trended forward at reconciliation to represent performance period dollars. To increase historical CJR episode volume and set more stable target prices, CJR episodes are pooled together and anchored by MS–DRGs 469 and 470 (80 FR 73352) factors calculated at the regional- and hospital-specific levels. Target prices are then prospectively updated to account for ongoing Medicare payment system updates (that is, Inpatient Rehabilitation Facility Prospective Payment System (IRF PPS), Physician Fee Schedule (PFS), IPPS, OPPS, and SNF PPS) to the historical episode data (80 FR 73342). Medicare

[2] There are four census regions—Northeast, Midwest, South, and West. Each of the four census regions is divided into two or more ''census divisions.'' Source: *https://www.census.gov/geo/reference/gtc/gtc_census_divreg.html.* Accessed on September 27, 2019.

payment systems do not update their rates at the same time during the year. For example, the IPPS, the IRF PPS, and the SNF PPS apply annual updates to their rates effective October 1, while the hospital OPPS and Medicare PFS apply annual updates effective January 1. To ensure we appropriately account for the different Medicare payment system updates that go into effect on January 1 and October 1, we finalized a policy to update historical episode payments for Medicare payment system updates and calculate target prices separately for episodes initiated between January 1 and September 30 versus October 1 and December 31 of each performance year. After target prices are updated for these system updates, local wage factors are used to convert standardized prices back to actual prices, and a 3 percent discount is applied to represent Medicare savings.

2. Overview of Proposed Changes To Target Price Calculation

Since the CJR model was implemented in 2016, both TKA and THA have been removed from the IPO list, as discussed in section II.A. of this proposed rule. In addition, there have been several other Medicare payment policy changes, such as changes to the SNF payment system to move from Resource Utilization Groups (RUGs) to the Patient Driven Payment Model (PDPM). Additionally, recent analysis by the Office of the Actuary has shown that national expenditures for LEJR procedures sand associated post-acute care services have been decreasing since 2016. While average episode payments declined for both CJR and control group episodes during the first two performance years of the model, payments declined more for CJR episodes. Average episode payments decreased by $997 more for CJR episodes than for control group episodes from the baseline to the intervention period ($p<0.01$). This relative reduction equates to a 3.7 percent decrease in average episode payments for CJR episodes from the baseline.[3]

Trend data now shows that the decrease in national expenditures observed by the CJR evaluation for CJR and non-CJR participants for the first 2 years of the model actually began prior to the implementation of the CJR model and has continued consistently, post 2016. This improved efficiency can be seen through shorter hospital stays and lower SNF usage. Table 1 shows the summarized Medicare claims data for LEJR per episode spending outside of the CJR model.

TABLE 1—AVERAGE LEJR SPENDING OUTSIDE OF THE CJR MODEL FROM MEDICARE CLAIMS DATA

| Program year | Average cost per episode | Cost trend (%) |
|---|---|---|
| 2014 | $26,444 | ..... |
| 2015 | 26,006 | −1.7 |
| 2016 | 24,925 | −4.2 |
| 2017 | 24,352 | −2.3 |

Excluding CJR participant hospitals, national per episode costs for hip and knee replacement procedures calculated using Medicare claims data dropped by about 8 percent from 2014 to 2017, largely due to reductions in the utilization of post-acute services. In analyzing Medicare claims data from the CMS Integrated Data Repository (IDR) as of April 2019, we constructed CJR episode costs for all IPPS providers and looked at average per episode spending by region for 2016, 2017, and 2018. While per episode costs generally decreased for all regions between 2016 and 2018, most regions had a slight increase in episode spending between 2017 and 2018, as shown in Table 2.

TABLE 2—AVERAGE PER EPISODE SPENDING FOR MS–DRG 469 AND MS–DRG 470 EPISODES IN 2016, 2017 AND 2018

[Includes all IPPS hospitals, not just CJR hospitals]

| Region | 2016 Average standardized price per episode | 2017 Average standardized price per episode | 2018 Average standardized price per episode | Percent change in per episode price 2016 to 2017 | Percent change in per episode price 2017 to 2018 | Percent change in per episode price 2016 to 2018 |
|---|---|---|---|---|---|---|
| New England | $23,627 | $22,770 | $22,525 | −3.6 | −1.1 | −4.7 |
| Middle Atlantic | 23,971 | 22,889 | 22,922 | −4.5 | 0.1 | −4.4 |
| East North Central | 22,856 | 21,968 | 22,155 | −3.9 | 0.9 | −3.1 |
| West North Central | 22,280 | 21,524 | 21,692 | −3.4 | 0.8 | −2.6 |
| South Atlantic | 22,859 | 22,029 | 22,275 | −3.6 | 1.1 | −2.6 |
| East South Central | 23,649 | 23,262 | 23,105 | −1.6 | −0.7 | −2.3 |
| West South Central | 25,037 | 24,354 | 24,649 | −2.7 | 1.2 | −1.5 |
| Mountain | 21,766 | 20,954 | 21,151 | −3.7 | 0.9 | −2.8 |
| Pacific | 22,158 | 21,487 | 21,891 | −3.0 | 1.9 | −1.2 |
| National | 23,118 | 22,316 | 22,482 | −3.5 | 0.7 | −2.8 |

Although the CJR target price methodology currently includes a DRG/hip fracture specific national trend update factor and twice yearly updates for changes in the Medicare prospective payment systems and fee schedules, those updates do not capture shifts in spending between the target price and the model performance year and consequently, the current target prices have not accounted for nationwide reductions in LEJR spending from shifting care settings and more efficient care delivery. Therefore, we are also proposing to change the target price

[3] See CJR Second Annual Report available on: *https://innovation.cms.gov/Files/reports/cjr-secondannrpt.pdf.*

update methodology to a use region/MS–DRG/hip fracture specific retrospective trend adjustments to ensure that target prices better capture spending trends and changes. We note that in considering changes to propose to the target price structure for CJR, we did consider an option of setting prices at the national, rather than regional level. While we did not elect to model this proposal for this proposed rule and are instead proposing to continue the regional pricing approach, we seek comment on the appropriateness of moving to national pricing approach in future years of the CJR model with the goal of removing price variation due to differences in regional care delivery patterns.

CJR target prices are set based on 3 years of baseline data, with the 3 year baseline data updated every other year. When this policy was established we were concerned that we would not have enough claim volume in 1 or 2 years of data to set reasonably accurate hospital-specific prices, especially for smaller hospitals. Our proposed approach to target price calculation differs from the current approach as it involves setting target prices based on one year (the most recently available year) of baseline claims data. The baseline claims data used to establish target prices would be updated each year.

We are proposing this change because our initial concern of insufficient episode volume stemmed from the fact that we incorporated hospital-specific pricing for the first 3 years of the CJR model. At this point in time, that concern has been mitigated as the baseline data used for target price calculations has moved from a blend of regional and historical baseline data (performance years 1 to 3) to 100 percent regional pricing (performance years 4 and 5). Additionally, since we are proposing to include OP TKA/THA procedures as well as inpatient admissions for MS–DRG 469 or 470 in the CJR episode definition, we have determined that the most recently available 1 year of data will in fact be a more appropriate baseline period on which to set target prices as it contains both inpatient and outpatient LEJR claims.

As described in section II.C.6. of this proposed rule, a trend factor adjustment applied during reconciliation would account for shifts in the trend of national per episode spending. To the extent that the trend, which is the percent difference between 2 years of data, decreases (as illustrated in Table 2 for 2016 relative to 2018), target prices would decrease. However, if the percent difference shows an increase (as illustrated in Table 2 for 2017 relative to 2018, noting that 2019 data is not yet available for analysis), target prices would increase. Using 1 year of data (rather than 3) removes the need for the national trend update factor we previously used to trend forward the older 2 years of historical data to the most recent of the 3 being used to set target prices (80 FR 73342); we are therefore proposing to remove the national trend update factor. We are also proposing not to update the target prices twice a year for changes to Medicare Prospective Payment Systems and Fee Schedules, as we believe the new reconciliation trend factor adjustment we are proposing in this rule in section II.C.6. of this proposed rule would capture any payment changes in addition to any spending trend shifts.

Acknowledging the proposed episode definition changes described in section II.A.2. of this proposed rule, for the purpose of calculating CJR episode target prices for performance years 6 through 8 we propose that Part A and B Medicare claims data for beneficiaries with CJR episodes (that is, beneficiaries with a claim for an MS–DRG 470 or MS–DRG 469, or a permitted OP TKA/THA procedure billed by a CJR participant hospital), would be grouped into 1 of the following types of CJR episodes:

- MS–DRG 470 with hip fracture (which would include OP THA episodes with hip fracture).
- MS–DRG 470 without hip fracture (which would include OP TKA episodes and OP THA episodes without hip fracture).
- MS–DRG 469 with hip fracture.
- MS–DRG 469 without hip fracture.

To then calculate target prices for performance years 6 through 8, these episodes would be stratified into the applicable nine geographic regions, where regional assignment for a given episode would be based on the region to which the MSA for the hospital maps under the CJR model. This would result in 36 separate episode groups, as there would be one group for each region, MS–DRG, and hip fracture combination. Within each of the 36 groups, we would then array the episode costs, and, consistent with our proposed new methodology for deriving the high episode spending cap amount, we would cap episode costs at the 99th percentile amount within each region/MS–DRG/hip fracture combination. We note that the proposed methodology of capping high episode spending at the 99th percentile would replace the current high episode spending cap methodology, which sets the cap at 2 standard deviations above the mean regional episode payment. We would then calculate the mean episode cost within each group of capped episodes, resulting in 36 average regional target prices. Starting in performance year 6, at the beginning of each performance year, these average regional target prices would be posted on the CJR website.

Finally, we note that we are proposing to remove the use of an anchor factor and regional- and hospital-specific anchor weights from the target price calculation that we established in the original November 2015 final rule (80 FR 73273). We originally included this step in the target price calculation to set more stable target prices using a greater volume of CJR episode data, which was more of a concern when the model began due to the hospital-specific pricing component. CJR episodes anchored by MS–DRGs 469 and 470 are pooled together during target price calculations to have a greater historical CJR episode volume and set more stable target prices, noting that the hospital-specific pooled calculations are later ''unpooled.'' Specifically, we set the MS–DRG 470 anchored episode target price equal to the target price resulting from the pooled calculations. We then multiply that MS–DRG 470 target price by, by the anchor factor to produce the MS–DRG 469 anchored target prices. The calculation of the hospital weights and the hospital-specific pooled historical average episode payments is comparable to how case mix indices are used to generate case mix-adjusted Medicare payments. The hospital weight essentially counts each MS–DRG 469 triggered episode as more than one episode (assuming MS–DRG 469 anchored episodes have higher average payments than MS–DRG 470 anchored episodes) so that the pooled historical average episode payment, and subsequently the target price, is not skewed by the hospital's relative breakdown of MS–DRG 469 versus MS–DRG 470 anchored historical episodes. However, since performance years 4 and 5 use only regional episode spending data to calculate target prices, and since we are proposing for performance years 6 to 8 to continue to use only regional episode spending data to calculate target prices and to utilize only the most recently available year of episode data for target price calculations, we do not believe volume issues will be a concern and thus we do not believe it is necessary to continue to perform these steps. Therefore, we are proposing to no longer use the regional and hospital anchor weighting steps from the original CJR target price calculation methodology.

3. Change to One Year of Baseline Data

The CJR model currently uses 3 years of baseline data to calculate initial target prices, with the 3 year baseline data updated every other year. As we stated when we finalized this policy, we chose 3 years because we wanted to ensure that we would have sufficient historical episode volume to reliably calculate target prices (80 FR 73340). We stated that our purpose for updating the baseline every other year was to achieve a balance between using the most recently available data to reflect changes in utilization and minimizing uncertainty in pricing for participant hospitals.

When we chose to use 3 years of historical data, we were specifically concerned that some hospitals might not have a sufficient volume of episodes to create a reliable target price, particularly for the less frequent MS–DRG 469 episodes, because target prices in performance years 1 through 3 incorporated hospital-specific data into target prices. Hospital-specific data was incorporated into target prices to more heavily weight a hospital's historical episode data in the first 2 years of the model (two-thirds hospital-specific, one-third regional) and provide a reasonable incentive for both historically efficient and less efficient hospitals to deliver high quality and efficient care in the early stages of model implementation. Therefore, it was important in the first 3 performance years to have 3 years of historical data to ensure that individual hospitals had an adequate volume of historical episode data upon which to base target prices. However, target prices beginning performance year 4 are based entirely on aggregated regional episode spending data, rather than a blend of both regional- and hospital-specific data. Our concerns relating to an adequate volume of historical episode data are therefore mitigated. We also note that we are proposing additional tools meant to ensure accuracy of target pricing, specifically, the trend factor discussed in section II.C.6. of this proposed rule and the risk adjustment discussed in section II.C.4. of this proposed rule, which further mitigates our concerns regarding target pricing uncertainty. Therefore, we believe that for the proposed CJR extension, 1 year of data will be sufficient to calculate target prices for all participant hospitals.

Furthermore, given the removal of TKA from the IPO list, along with the national shift in LEJR spending, we have determined that the most recently available one year of data will in fact be a more appropriate baseline period on which to set target prices. Specifically, the removal of TKA from the IPO List, which has led us to propose to allow OP TKA procedures to trigger CJR episodes (see section III.A. of this proposed rule), only became effective in CY 2018. As a result, CY 2018 is the earliest year for which we will have available data that includes both inpatient and outpatient TKAs, which will be needed to calculate a target price for a blended inpatient/outpatient TKA episode within the category of MS–DRG 470 without hip fracture.

Therefore, for the proposed performance years 6 through 8, we propose to use the most recently available one year of data available prior to the start of the performance year to calculate target prices rather than the 3 years of data currently used. Under the current methodology, target prices for performance years 1 and 2 were calculated with baseline data from 2012 to 2014, for performance years 3 to 4 were calculated with baseline data from 2014 to 2016, and for performance year 5 are calculated with baseline data from 2016 to 2018. We propose to base performance year 6 target prices on episode baseline data from 2019, performance year 7 target prices on episode baseline data from 2020, and performance year 8 target prices on episode baseline data from 2021. By using only 2019 data for performance year 6 target prices, we will be able to capture spending patterns associated with the movement of TKA into the outpatient setting, as well as other practice trends during that year. Therefore, we believe that using only the most recently available, 1 year of baseline data and updating that 1 year of baseline data annually, will provide the best available picture of spending patterns we would expect to see during the performance period, which will allow us to calculate more accurate target prices. We seek comment on this proposal.

4. Removal of Anchor Factor and Weights and Removal of the Prospective Payment System Target Pricing Updates

Since CJR target prices during performance years 1 to 3 were calculated using a blend of historical and regional episode costs, the primary intent of using anchor weights in the target price calculation was to increase the volume of data for statistical predictability purposes, particularly for MS–DRG 469 episodes, and to limit the degree to which a certain participant hospital's ratio of MS–DRG 469 episodes to 470 episodes would skew the pooled historical average episode payment, and subsequently the target price. We aimed to incentivize participant hospitals based on their hospital-specific inpatient and PAC delivery practices for LEJR episodes. However, to incentivize both historically efficient and less efficient hospitals to furnish high quality, efficient care in all years of the model, we transitioned from primarily hospital-specific to completely regional pricing over the course of the 5 performance years (80 FR 73337).

Since we are proposing for performance years 6 to 8 to use regional episode spending data only (no hospital-specific data) to calculate target prices, we no longer have the concern that a lack of volume of data for certain participant hospitals may limit the predictability of the target price calculation, as we did when hospital-specific data were incorporated into the target price calculation. Additionally, we no longer have the concern that a participant hospital's ratio of MS–DRG 469 to 470 episodes would skew the pooled historical average episode payment, because for performance years 4 to 5 we removed hospital-specific ratios of MS–DRG 469 to 470 episodes from the target price calculation. We propose to continue this in proposed performance years 6 to 8. Given that we no longer have these concerns, we also propose to stop using the national anchor factor calculation and the subsequent regional and hospital weighting steps in the CJR target price calculation method for performance years 6 to 8. Additionally, we propose not to continue the annual updates to the target prices that account for changes in the Medicare prospective payment systems and fee schedule rates. Since we are proposing (in section II.C.6. of this proposed rule) to add a market trend adjustment to the target prices at the time of reconciliation, which will adjust for the 2-year percent change in prices at the regional/MS–DRG/OP TKA/THA procedure/hip fracture level, we do not believe that the at least twice annual updates to the target prices continue to be necessary. To the extent that changes to these Medicare prospective payment systems and fee schedule rates influence episode costs, the percent difference in episode costs would account for that influence and therefore the annual updates would no longer be necessary. We seek comment on this proposal.

5. Changes to Methodology for Determining the High Episode Spending Cap Amount in Initial Target Price Calculation

The high episode spending cap policy was designed to prevent participant

hospitals from being held responsible for catastrophic episode spending amounts that they could not reasonably have been expected to prevent, by capping the costs for those episodes. At the time the CJR model was implemented, we proposed and finalized a policy to set this high cost episode cap at 2 standard deviations above the regional mean episode price, both for calculating the target price and for comparing actual episode payments during the performance year to the target prices. When comparing actual episode payments during the performance year to the target prices at reconciliation, episode costs exceeding the 2 standard deviation high episode spending cap are not included as actual episode payments in the calculation. For example, if the high episode cap was set at $30,000, an episode that had an actual episode cost of $45,000 would have its costs, for purposes of the model, reduced by $15,000 when the cap was applied and therefore, the cost for that episode would be held at $30,000. Consequently, assuming the target price applicable to the episode was $25,000, the provider would be responsible for repaying a specific percentage portion of a $5,000 difference rather than for repaying a specific percentage portion of a $20,000 difference (where difference is assessed by the cost, or capped cost, for the actual episode compared to the target price). When we established this policy, we assumed that the episode costs in the CJR model would be normally distributed (80 FR 73335). With a normal distribution of costs, 95 percent of episodes would have costs that are within 2 standard deviations of the mean cost. Under this assumption, episodes with costs exceeding 2 standard deviations from the mean, would qualify as statistical outliers for high episode spending and we therefore set our high episode spending cap at 2 standard deviations above the regional mean episode price.

However, in reviewing data from our CJR model experience thus far, we have observed three challenges that have limited the ability of our current 2 standard deviation methodology to appropriately cap high episode spending. First, we have observed that TKA and THA episode costs in the CJR model are not normally distributed; as such, less than 95 percent of episodes have costs that fall within 2 standard deviations of the mean. This means that TKA and THA episodes in the CJR model exceed the 2 standard deviation amount in their cost more often than other clinical episode costs that are distributed approximately normally. Second, given the reliance on only regional data for target price calculations in performances year 4 to 5 and proposed performance years 6 to 8, a participant hospital with higher-cost episodes relative to its region will benefit more from this capping method since there will be a higher probability that its episodes will be capped. This effect was not as much of a concern during performance years 1 through 3 since target prices were calculated using a blend of hospital-specific and regional costs. However, since many of the participant hospitals now participating in the CJR model (especially mandatory participants) have higher-cost episodes relative to their regions, and target prices are derived from regional-only episode data, their performance period episode costs would likely exceed the 2 standard deviation high episode spending cap amount more often than intended. In other words, assuming a normal distribution, we would expect 95 percent of episode costs to be within 2 standard deviations of the mean episode cost. As. As we discussed in the CJR final rule (80 FR 73336), our original intent in establishing the high cost episode capping policy was to mitigate the hospital responsibility for episodes with very high Medicare spending during the post-discharge 90 day episode period. However, as noted previously, TKA and THA episode prices are not normally distributed, and more than 2.5 percent of episode costs exceed the 2 standard deviation maximum threshold. Third, and similar to the first challenge that TKA and THA episode costs in the CJR model are not normally distributed or otherwise similar to other clinical episodes, CJR participant hospital performance period episode costs are not normally or otherwise similarly distributed compared to the costs used to derive CJR target prices. Specifically, while episode costs are closer to a normal distribution during the initial target price calculation as a result of the larger volume of data in the national summary of episode costs (that is, the episode data includes non-CJR participating hospitals), the episode costs are not normally distributed during reconciliation since episode costs at reconciliation are derived from only performance period episode costs (that is, only CJR participant hospitals).

Therefore, the current CJR model methodology that establishes a high episode spending cost cap at 2 standard deviations above the mean has not reliably produced an episode cost ceiling that applies only to very high cost episodes; rather, as a result of the episode distribution, the current methodology may result in the inappropriate capping of some episode costs. An internal analysis of CJR episode data by OACT showed that in 2016 and 2017 respectively 70 and 83 percent of CJR participants had at least 1 episode capped at the high cost episode cap. While we continue to want to protect participant hospitals from exposure to very high cost episodes, we need to balance that goal with the overarching goal of the CJR model to lower costs and increase quality for LEJR procedures.

As a result, we are proposing to change the methodology used in deriving the high episode spending cap amount during reconciliation, described further in section II.C.5. of this proposed rule. Since the current CJR model high episode spending cost capping methodology used during initial target price calculation is the same methodology used during reconciliation, we also propose to change the methodology used in deriving the high episode spending cap amount during the initial target price calculation to match the proposed methodology used during reconciliation. Specifically, we propose to change our method of deriving the high episode spending cap amount applied to initial target prices by setting the high episode spending cap at the 99th percentile of historical costs. Similar to the current methodology, the high episode spending cap calculation would utilize the national summary of episode data to calculate the 99th percentile of each MS–DRG and hip fracture combination for each region. Total episode costs above the 99th percentile would be capped at the 99th percentile amount prior to calculating target prices for each MS–DRG and hip fracture combination for each region. We expect that this method of calculation will result in high episode spending caps that more accurately represent the cost of infrequent and potentially non-preventable complications for each category of episode, which the participant hospital could not have reasonably controlled and for which we do not want to penalize the participant hospital. We seek comment on this approach.

*C. Reconciliation*

1. Background

Currently, for each performance year, CJR payments are reconciled twice; at 2 and then 14 months after the close of a performance year. At reconciliation, performance year episode costs are

computed for each participant hospital for each MS–DRG and hip fracture combination and these costs are then capped at 2 standard deviations above the regional mean episode price. Each participant hospital's composite quality score for combined performance on the CJR model quality measures, specifically, the total hip arthroplasty/total knee arthroplasty (THA/TKA) Complications measure and HCAHPS Survey measure, and voluntary submission of patient-reported outcomes and limited risk variable data, is then calculated. While all participant hospitals in the CJR model are assigned a target price with a quality discount factor of 3 percent, the quality discount applicable to a specific participant hospital at reconciliation may be lowered to 2 percent in instances where the hospital earns a quality category of good, or 1.5 percent in instances where the hospital earns a quality category of excellent. Based on reconciliation results from the first 2 performance years of CJR, roughly 18 percent of providers achieved quality scores of 'Excellent', around 60 percent achieved 'Good', around 12 percent achieved 'Acceptable and less than 10% were deemed 'Below Acceptable. An initial reconciliation is performed using claims data available 2 months after the end of the performance year, and a final reconciliation is performed 1 year later, using claims data available 14 months after the end of the performance year.

At reconciliation, all participant hospitals that achieved LEJR actual spending below the target price and achieved a minimum composite quality score were eligible to earn up to 5 percent of the difference between their target price and their actual episode costs in performance years 1 and 2; 10 percent of this difference in performance year 3; and 20 percent in performance years 4 and 5. The limits are referred to as ''stop-gain limits'' (80 FR 73401). Any net payment reconciliation amount (NPRA) greater than the proposed stop-gain limit would be capped at the stop-gain limit.

Conversely, participant hospitals with LEJR episode spending that exceeds the target price at reconciliation are financially responsible for the difference to Medicare up to a specified repayment, or a ''stop-loss limit.'' For most participant hospitals, the stop-loss limit was 5 percent of the difference between their target price and their actual episode costs in performance year 2; 10 percent for performance year 3; and 20 percent for both performance years 4 and 5. For participant hospitals that are rural hospitals, Medicare-dependent hospitals, rural referral centers, and sole community hospitals, the stop-loss limit was 3 percent for performance year 2; and 5 percent for performance years 3 through 5. Any reconciliation repayment amount that exceeds the proposed stop-loss limit would be capped at the stop-loss limit.

We implemented a parallel approach for the stop-gain and stop-loss limits to provide proportionately similar protections to CMS and to hospital participants, as well as to protect the health of beneficiaries. We believe it is appropriate that as participant hospitals increase their financial responsibility, they can similarly increase their opportunity for additional payments under this model. We also believe that these changes facilitate participants' ability to be successful under this model and allow for a more gradual transition to financial responsibility under the model.

2. Overview of Proposed Changes to Reconciliation Process

In this proposed rule, we are proposing changes to the CJR reconciliation process that are intended to reduce administrative burden, to adjust target prices for beneficiary-specific risk elements, to better recognize participant providers with good and excellent composite quality scores, and to improve our ability to account for changes in payment policy and market trends in utilization. Additionally, we are proposing changes to the reconciliation process that parallel the changes we propose to the target price calculations discussed in section II.B. of this proposed rule.

Beginning with performance year 6, we are proposing to conduct one reconciliation per CJR model performance year, which would be initiated 6 months following the end of a CJR model performance period. This change is intended to reduce the administrative burden of a second reconciliation for Medicare and CJR participant hospitals, and it is driven by internal analyses, discussed in section II.C.3. of this proposed rule, that indicate 6 months after an episode ends are sufficient time to capture episode spending data. However, we propose that the current CJR post-episode spending policy, codified at §§ 510.305(j)(2) and 510.2, would still apply during performance years 6 through 8. Additionally, we propose conforming changes to § 510.305 such that the performance year 4 and 5 stop-loss limits and stop-gain limits of 20 percent would continue in place for each of performance years 6 through 8.

Additionally, in an effort to recognize the greater needs of certain beneficiaries that are beyond a participant hospital's control, we are proposing to incorporate a risk adjustment factor for each episode's target price during reconciliation for performance years 6 through 8. Specifically, as discussed in section II.C.4. of this proposed rule, we would adjust the target price at reconciliation using two patient-level risk factors, the CMS–HCC condition count risk adjustment factor and the age bracket risk adjustment factor.

Further, as mentioned in section II.B.5. of this proposed rule, we are proposing to change the methodology used in deriving the high episode spending cap amount during reconciliation. For performance years 6 through 8 of the proposed extension, at reconciliation we would determine the high episode spending cap amount by calculating the 99th percentile of regional mean episode spending and cap episodes at that amount, in order to remove the effect of high-cost statistical outliers on average costs. We are proposing this change since we have observed that CJR episode costs are not normally distributed, as discussed in section II.B.5. of this proposed rule, and a greater number of CJR episodes have exceeded the high episode spending cap amount than we intended.

We are also proposing to add a market trend factor to adjust for recent variations in the underlying structure of the market. Specifically, we are proposing that the market trend factor would be the regional/MS–DRG/fracture mean cost for episodes occurring during the performance year divided by the regional/MS–DRG/fracture mean cost for episodes occurring during the target price base year. For example, at the first reconciliation for performance year 6 (calendar year 2021), which, as proposed, will occur in June of 2022, we would compute the regional/MS–DRG/fracture mean cost for episodes occurring during 2021 and would divide that by the regional/MS–DRG/fracture mean cost for episodes that occurred during calendar 2019 as the target prices for performance year 6 will be set using 2019 data.

Lastly, we are proposing changes to the effective discount factor and applicable discount factor in § 510.315, to better recognize participant providers in the 'Good' and 'Excellent' CJR composite quality score categories. For performance years 6 through 8, we are proposing to continue to use 3 percentage points as the discount factor applied during calculation of regional target prices. However, we are proposing to increase an individual participant hospital's potential quality incentive payment; that is, we are

proposing a larger reduction in the discount factor based on the composite quality score. The opportunity for this larger reduction in the discount factor is being proposed because we anticipate that the proposed changes to the target price methodology, discussed in section II.B. of this proposed rule, will better align the target prices with actual spending during a performance year. While more accurate initial target prices will enhance stability for participant hospitals at reconciliation, it also means the quality adjusted target price and actual episode spending will align more closely over time and we want to ensure that we continue to recognize high quality participant hospitals by giving them a larger portion of the achieved savings. As a result, for performance years 6 through 8, we are proposing a 1.5 percentage point reduction to the applicable discount factor for participant hospitals with ''good'' quality performance and a 3-percentage point reduction to the applicable discount factor for participant hospitals with ''excellent'' quality performance.

3. Changes to Frequency and Timing of Reconciliation

As noted in section II.B.1. of this proposed rule, following the completion of a performance year, participant hospitals that achieve episode spending below the applicable target price and achieved a minimum composite quality score were currently eligible to earn a reconciliation payment from Medicare for the difference between the target price and actual episode spending, up to a specified cap (see 80 FR 73337 for a detailed discussion of CJR episode pricing). The retrospective process reconciles a participant hospital's actual episode payments against the target price 2 months after the end of a performance year. More specifically, we use claims data that is available 2 months after the end of a performance year and carry out the NPRA calculation described in § 510.305 to make a reconciliation payment or repayment amount, as applicable. Fourteen months after the end of each performance year, CMS performs an additional calculation, using claims data available at that time, to account for final claims run-out and any additional episode cancelations due to overlap between the CJR model and other CMS models and programs, or for other reasons as specified in § 510.210(b). The subsequent reconciliation calculation is applied to the previous calculation of NPRA for a performance year to ensure the stop-loss and stop-gain limits are not exceeded for a given performance year. The difference between the initial and final reconciliation amount from this calculation, if different from zero, is calculated and added to the NPRA for the subsequent performance year in order to determine the net reconciliation payment or repayment amount.

We finalized the process to perform a reconciliation calculation 2 months after the conclusion of a performance year, with a subsequent reconciliation calculation 12 months later, under the assumption that it was necessary to allow sufficient time for routine monitoring, review, and adjustment (80 FR 73386). However, internal analyses and monitoring of CJR claims data from performance years 1 and 2 indicates that the full 14 months is not necessarily required to sufficiently capture claims run out and overlap with other models. For example, the number of episodes attributed to performance year 1 increased by slightly less than 1 percent from the initial to subsequent reconciliation and total reconciliation payments for performance year 1 decreased by about 6 percent between the initial and subsequent reconciliation. While the performance year 2 subsequent reconciliation process is still ongoing, initial estimates show a similar trend; that is the attributed episode count increased by about 1 percent and total reconciliation payments decreased by around 5 percent. While we are not able to accurately predict or quantify the dollar impact shifts between the initial and final reconciliations for individual CJR participants, anecdotally, based on reconciliations of the first 2 performance years of the CJR model, some CJR participants owed over $100,000 because their initial reconciliation payments were too high relative to their final reconciliation payments. Other providers who ultimately saw their reconciliation payments increase from initial to final reconciliations increased by amounts under $60,000. We recognize that shifting reconciliation amounts, especially those that result in unanticipated repayments, could be problematic for some providers. By allowing a longer period for claim run out prior to initiating the first and only reconciliation, we believe we could provide a more predictable and stable reconciliation process for CJR participants without significantly impacting the accuracy of the reconciliation payment and/or repayment amounts. Additionally, we do not anticipate the change to the frequency and timing of CJR reconciliation will create difficulties accounting for overlap with other CMS Innovation Center models and the Medicare Share Savings Program (SSP). Since the two-month, initial reconciliation data is not considered final, and overlap with other models and SSP is only accounted for using final reconciliation data from the 14-month subsequent reconciliation, the proposed changes to the frequency and timing of CJR reconciliation should actually enable overlap accounting to occur eight months earlier than in CJR performance years 1 to 5.

As a result, we are proposing to conduct one reconciliation for each of performance years 6 through 8, 6 months following the end of a performance year. For instance, for performance year 6 (which includes all CJR episodes ending on or after January 1, 2021 and on or before December 31, 2021), we propose to reconcile a participant hospital's CJR actual episode payments against the applicable target prices one time only, based on claims data available on July 1, 2022. As discussed previously, our internal analyses indicate the timing of this proposed reconciliation methodology will allow enough time to adequately capture episode costs. This methodology would also reduce the administrative burden associated with an extra reconciliation calculation on CMS and participant hospitals. Additionally, we believe this new methodology will enhance participant hospitals' ability to predict the outcome of reconciliation calculations, since they will no longer need to include unanticipated adjustments for prior year performance.

As noted previously, we propose that current CJR post-episode spending policy, codified at §§ 510.305(j)(2) and 510.2, would still apply during performance years 6 through 8. Specifically, we would maintain the policy that 30-day post-episode spending for episodes attributed to all IPPS hospitals would be calculated to determine the value that is 3 standard deviations greater than the regional average 30 day post-episode spend and to determine if a participant hospital has excessive average 30 day post-episode spending. The spending amount exceeding 3 standard deviations above the regional average post-episode payments for the same performance year is subtracted from the net reconciliation or added to the repayment amount for the subsequent performance year for years 1 through 4. Unlike the high cost episode spending cap policy, the 30-day post-episode spending policy only assesses episode costs 30 days following the end of an episode; this distribution is more ''normal'' than the high cost

episode cap distribution that assesses the full 90-day episode costs. There have been few issues with the post-episode spending methodology to date.

For performance year 5, under current CJR regulations, the spending amount is assessed independently for year 5. Under our proposed policies, we note that the final performance year 5 reconciliation will be conducted slightly before we initiate the performance year 6 reconciliation, and we are proposing to net the final performance year 5 amount against the performance year 6 amount prior to issuing a reconciliation payment or demanding a repayment amount.

4. Additional Episode-Level Risk Adjustment

When we originally proposed the CJR pricing methodology, we proposed to provide each hospital with a separate target price for episodes initiated by MS–DRG 469 versus MS–DRG–470, because MS–DRGs under the IPPS are designed to account for some of the clinical and resource variations that exist and that impact hospitals' costs of providing care (80 FR 73338). Specifically, MS–DRG 469, which focuses on costlier and complex hip and knee procedures involving patients with major complications and comorbidities, has a higher relative weight than MS–DRG 470, which ensures that the Medicare payment for MS–DRG 469 is higher than that for MS–DRG 470. However, in response to comments requesting further risk adjustment, we finalized a policy to risk adjust target prices based on the presence of hip fractures (80 FR 73339). We stated our belief that adding hip fracture status to our risk adjustment approach would capture a significant amount of patient-driven episode expenditure variation. Thus, we currently provide four separate target prices to each participant hospital based on the combination of the MS–DRG to which the IPPS admission was grouped (469 or 470) and whether or not the patient had a hip fracture.

Given our proposal to specify that permitted OP LEJR procedures can initiate a CJR episode, we recognize that additional risk adjustment is needed in order to account for variability within the four categories of target price. As we note previously in section III.A. of this proposed rule, we recognize that a single blended target price for the MS–DRG 470 category in particular could potentially underestimate spending on some inpatient episodes and likewise, could potentially overestimate spending on some outpatient episodes. This would theoretically average out across all MS–DRG 470 without hip fracture episodes at the regional level during reconciliation, but given the fact that participant hospitals' ratio of inpatient-to-outpatient cases will vary, we are proposing to make an episode-specific adjustment to each target price.

The CJR model currently includes adjustments to MS–DRG 469 and 470 target prices based on the presence of hip fracture. This policy allows us to include beneficiaries who receive LEJR procedures due to hip fractures in the CJR model, while acknowledging their typically greater health care needs by providing a target price that is based on payment for services furnished in the historical CJR episode data for Medicare beneficiaries with hip fractures in order to account for a significant amount of beneficiary-driven episode expenditure variation. With the same goal in mind of recognizing the greater needs of certain beneficiaries that are beyond a participant hospital's control, we are proposing an additional risk adjustment methodology for performance years 6 through 8. We note that in exploring options for a risk adjustment methodology, we considered a number of factors that are not included in the proposed methodology because they were not strong predictors of episode cost, might result in unintended provider efficiency disincentives, were overly complex to calculate or administer, had limited credibility or quality of the underlying data sources, and/or conflicted with overall bundled payment initiatives. The factors we considered include: Dual eligibility (that is, beneficiaries enrolled in Medicare Part A and/or Part B and receiving full Medicaid benefits), discharge status (that is, the care setting for the beneficiary post procedure), joint region (that is, hip, knee, or ankle), gender, CMS–HCC condition count, CMS–HCC risk scores (both community and institutional), rural/urban designation of the participant hospital, clinical setting (that is, inpatient or outpatient), rehospitalization rate (that is, presence of hospital admission post procedure), and indices of social determinants of health at the Zip Code level (for example, participant hospitals receiving a certain level of Medicare disproportionate share payments). After conducting a variety of analyses and regressions, we are proposing to incorporate the following additional risk adjustment into the CJR pricing based on CMS–HCC condition count and beneficiary age.

The first part of the proposed methodology takes into account the total number of clinical conditions per beneficiary by assessing the count of CMS–HCC conditions, referred to as the CMS–HCC condition count. This approach parallels the approach taken in Medicare Advantage, which is responsive to section 1853(a)(1)(I)(i)(I) of the Act (42 U.S.C. 1395w–23(a)(1)(I)(i)(I)), as added by section 17006(f) of the 21st Century Cures Act, which requires CMS to make improvements to risk adjustment for 2019 and subsequent years, and which states that, among other things, ''[t]he Secretary shall take into account the total number of diseases or conditions of an individual enrolled in an MA plan. The Secretary shall make an additional adjustment under such subparagraph as the number of diseases or conditions of an individual increases.''

Like the other variables in the CMS–HCC model, the count variables for the purposes of risk adjustment in CJR would be a series of binary, yes/no variables, meaning that a beneficiary does or does not meet the criteria for having a given number of CMS–HCC conditions. We propose to use five CMS–HCC condition count variables, representing beneficiaries with zero, one, two, three, or four or more CMS–HCC conditions. We propose to estimate a coefficient from the subgroup of beneficiaries in the sample with the specific count of conditions for each count variable (as described further later in this section). For example, all beneficiaries with two CMS–HCC conditions would receive a coefficient that is estimated independently of the coefficient for beneficiaries with zero, one, three or four conditions. The coefficient for the two CMS–HCC condition count variable would represent the expected marginal cost of having any two CMS–HCC conditions, as compared to having zero CMS–HCC conditions.

The second part of the proposed risk adjustment methodology is meant to account for average anticipated episode costs associated with the age of a CJR beneficiary. Similar to the strategy for incorporating CMS–HCC condition count, we would create binary, yes/no variables for beneficiaries that fall into certain age ranges. We propose four age variables for the risk adjustment methodology to represent beneficiaries aged less than 65 years, 65 to 74 years, 75 years to 84 years, and 85 years or more, based on the patient's age at the time the HCC files were created. We propose to estimate a coefficient from the subgroup of beneficiaries in the sample in each age range (as described further later in this section). We propose that, for applying the coefficient to a given reconciliation target price at reconciliation, we would select the age

bracket coefficient based on the patient's age on the date of admission for the anchor hospitalization or the date of the anchor procedure.

The CMS–HCC risk adjustment model is prospective; it uses a profile of major medical conditions in the base year, along with demographic information (for example, age, sex, Medicaid dual eligibility, disability status), to predict Medicare expenditures in the next year. It is calibrated on a population of FFS beneficiaries entitled to Part A and enrolled in Part B, because CMS has complete Medicare expenditure and diagnoses data for this population. The proposed risk adjustment method for CJR would also be prospective in that it would use the most recently available data to predict the average expected adjustment in target price relative to the two risk adjustment variables for future performance years. Given the timing of this rule and the time to receive and process CMS–HCC condition count data, we propose utilizing beneficiary CMS–HCC condition count and age data from a baseline of January 1, 2019 to December 31, 2019, to calculate coefficients for both risk adjustment variables for performance year 6. Similarly, we propose utilizing beneficiary CMS–HCC condition count and age data from January 1, 2020 to December 31, 2020, and from January 1, 2021 to December 31, 2021, to calculate coefficients for both risk adjustment variables for performance years 7 and 8, respectively. While this should appropriately capture CMS–HCC condition count data for almost all beneficiaries, for any beneficiaries with missing CMS–HCC condition count data, we would apply a CMS–HCC condition count risk adjustment coefficient of one, so that their missing CMS–HCC condition count would neither adjust risk up nor down from the average regional target price based in the calculation of the coefficient.

For PY 6 through 8, coefficients for the risk adjustment variables would be calculated prospectively, prior to the beginning of each performance year, using a linear regression model. In essence, this regression model approach would allow us to estimate the impact of CMS–HCC condition count and age bracket on the episode cost of an average beneficiary, based on typical spending patterns for a nationwide sample of beneficiaries with a given number of CMS–HCC conditions and within a given age bracket. We propose an exponential model, with the dependent variable equal to the ratio of the individual episode cost the regional target price, since it will make it less difficult and simpler to estimate the proportional increase or decrease for each independent variable that can be directly applied to adjust the regional target prices. In statistical terms, linear regression models assume a linear relationship between a dependent variable and one or more explanatory variables, and the associated statistical inference typically reflects an assumption of a normal distribution of the error variance (that is, the discrepancy between observed values of the dependent variable and what would be predicted by the model). As we stated in section II.B.5. of this proposed rule, when costs are normally distributed, 95 percent of the costs are truly within 2 standard deviations of the mean, with only 5 percent of episodes having costs that are much higher than the average cost or much lower than the average cost. As we have previously observed, TKA and THA episode costs in CJR are not normally distributed; that is, less than 95 percent of the costs fall within 2 standard deviations of the mean. This means that TKA and THA episode costs in CJR will inherently exceed the 2 standard deviation threshold more often than other clinical episode costs that are distributed normally.

Exponential models, such as the risk adjustment model we are proposing, are commonly estimated by transforming the equation to logs through logarithmic transformation. In transforming our proposed exponential model, the dependent variable becomes the difference in the logs of the individual episode costs and the applicable regional MS–DRG/Fracture target prices and the proportional increases or decreases for each independent variable are obtained by exponentiating the regression coefficients of the log-transformed model.

Estimating the logged version of such a model could be problematic when de-transforming the logged results to their original form (that is, dollars), but this concern is not relevant since we are simply proposing to utilize the ratios from the logged version of the model. Further, we believe that the MS–DRG/hip fracture target pricing differentiation already explains a portion of the cost differences in CJR episodes. Therefore, rather than using the log of the episode cost, we are proposing to use the differential between the log of the episode cost and the log of the episode target price so as to focus only on the cost difference not already reflected in the existing target prices.

Specifically, for each episode in the national sample, grouped into its appropriate category based on 36 combinations of the 9 regions and the 4 MS–DRG/permitted OP TKA/THA/hip fracture status categories, we would subtract the log transformed episode target price for that category from each log transformed standardized episode cost.[4] We note that prior to computing the log values of the episode costs, we ranked the episode costs and determined the 99th percentile (high episode cost cap) amount for each region/MS–DRG/hip fracture combination. We then replaced the actual cost amount for each episode that exceeded the applicable 99th percentile amount with that 99th percentile amount, consistent with our proposal to update the methodology used in deriving the high episode spending cap amount.[5] We note that we purposely applied the high cost episode cap prior to computing the regression as we are looking to compute a risk adjustment for the dollars involved in the model. Since we have a high episode cost cap such that no episode will ever cost more than the cap amount, we wanted to ensure the risk adjustment co-efficient explained the difference between the capped costs and the target price so we could adjust the targets appropriately. Then, we would regress, or determine the strength of the relationship between each risk adjustment factor and episode costs, these amounts (that is, the costs from episodes of care furnished to any eligible beneficiary in FFS Medicare from the applicable baseline calendar year who is entitled to Part A and enrolled in Part B and has an episode triggered by a claim for a MS–DRG 469, MS–DRG 470 or permitted OP TKA/THA HCPCS code) onto their CMS–HCC condition count and age bracket. The resulting coefficients associated with CMS–HCC condition count and age bracket (after exponentiating the coefficients in order to ''reverse'' the logarithmic transformation we performed earlier on episode costs for purposes of the regression calculation), would be referred to as the CMS–HCC condition count risk adjustment factor and the age bracket risk adjustment factor. Because the coefficients are calculated at the national level, the average risk score in a given region and MS–DRG/permitted OP TKA/THA/hip fracture status category may not be equal to 1. As a result, the target price for a beneficiary could have a positive or negative risk adjustment applied even if that beneficiary's risk score is equal to

[4] We request comment on specification checks that should be conducted and on revisions, such as a switch to a fixed effects model, that would facilitate such additional analysis.

[5] We request comment on the impact of this practice on the statistical validity of the model.

the average risk of the regional population on which their target price was based. We considered alternative approaches of calculating coefficients separately for each region or applying risk-standardization to the regional target price prior to applying the beneficiary-specific risk score. However, we did not pursue these alternatives in an effort to minimize complication. We solicit comment on whether additional calculations steps should be included in order to ensure that the average risk score in a given region and MS–DRG/permitted OP TKA/THA/hip fracture status category is equal to 1.

An example of the regression output from this model is provided in Table 3, which was calculated using national episode data from January 1, 2018, to December 31, 2018, for MS–DRG 469, MS–DRG 470, and the permitted OP TKA/THA HCPCS code. The ''Pr > |t|'' column indicates the probability value, or p-value, that the effect of the risk adjustment factor is explained by that risk adjustment factor alone. Small p-values, typically less than 0.05, indicate strong evidence that the effect can be attributed to the risk adjustment factor. As described later in this section, the high p-value for the Dual Eligibility factor influenced our decision to not choose that risk adjustment factor. Indicated by the ''$e^x$'' column, the risk adjustment coefficients represent the anticipated marginal cost associated with each specific risk adjustment factor. For example, the 1.116 value in Table 3 for beneficiaries Age 85+ indicates that beneficiaries 85 years and older are anticipated to increase marginal episode costs by 11.6 percent. These coefficients would be posted on the CMS website prior to each of performance years 6 through 8, along with the average regional target prices, as described in section II.B.2. of this proposed rule.

TABLE 3—REGRESSION OUTPUT FROM LOG LINEAR REGRESSION MODEL

| Parameters | Model estimates | Standard error | t Value | Pr > \|t\| | $e^x$ |
|---|---|---|---|---|---|
| Intercept | −0.08756 | 0.002127 | −41.17 | <.0001 | 0.916 |
| Age 85+ | 0.109515 | 0.002573 | 42.56 | <.0001 | 1.116 |
| Age 75 to 84 | 0.012587 | 0.00219 | 5.75 | <.0001 | 1.013 |
| Age 65 to 74 | −0.05192 | 0.002134 | −24.33 | <.0001 | 0.949 |
| Age Under 65 | | | | | 1 |
| Dual Eligibility[*] | 0.001991 | 0.002787 | 0.71 | 0.4748 | 1.002 |
| CMS–HCC Count = 4 | 0.226897 | 0.001721 | 131.81 | <.0001 | 1.255 |
| CMS–HCC Count = 3 | 0.140797 | 0.001893 | 74.4 | <.0001 | 1.151 |
| CMS–HCC Count = 2 | 0.095357 | 0.001534 | 62.16 | <0001 | 1.100 |
| CMS–HCC Count = 1 | 0.047497 | 0.001314 | 36.14 | <.0001 | 1.049 |
| CMS–HCC Count = 0 | | | | | 1 |

[* While we do not propose to include dual eligibility status in Medicare and Medicaid as a risk adjustment factor, it is included in this table to demonstrate the criteria we used to determine appropriate factors. The regression analysis was run without the Dual Eligibility variable, with no apparent impact on the other coefficient estimates.]

We are proposing to conduct this linear regression model on updated baseline data and post the coefficients on the CMS website prior to the start of each of the performance years (6 through 8). By re-running the linear regression model each year based on more recent, nationwide data (including both CJR and non-CJR episodes), we will more accurately account for changes in spending patterns that disproportionately impact certain subgroups within our two risk adjustment variables of CMS–HCC condition count and age bracket. For instance, if a new LEJR-related treatment were introduced during the baseline period, but it was only appropriate for use in patients under the age of 85, then the risk for increased episode costs relative to the regional mean episode cost associated with being in the age brackets for beneficiaries under age 85 would be impacted differently than the risk of being in the 85+ age bracket. By re-running the linear regression model each year and updating the risk adjustment coefficients, we would be able to more accurately risk adjust at the episode level for all categories of beneficiaries at reconciliation.

At reconciliation, after actual performance year episode costs are capped at the proposed 99th percentile consistent with our proposal to update the methodology used in deriving the high episode spending cap amount, the transformed risk adjustment coefficients for the two variables from the log-linear regression would be applied to beneficiary level target prices based on the applicable episode region, MS–DRG, and hip fracture status. However, since the age and the CMS–HCC condition count variables are inherently included in the regional target price, as regions with a higher proportion of older beneficiaries or beneficiaries with higher CMS–HCC condition counts tend to have higher average episode costs, we propose to apply a normalization factor to remove the overall impact of adjusting for age and CMS–HCC condition count on the national average target price. This normalization factor would be the national mean of the target price for all episode types divided by the national mean of the risk-adjusted target price. For example, if the average target price for all episodes (average of all 36 MS–DRG 470 no fracture, MS–DRG 470 fracture, MS–DRG 469 no fracture and MS–DRG 469 fracture applied to all episodes in a year) is $22,000 and the average of target prices for the same set of episodes once risk adjustments are applied is $23,158 then the normalization factor would be computed as 0.95 ($22,000 divided by $23,158). We would then apply the normalization factor to the previously calculated, beneficiary-level, risk adjusted target prices specific to each episode region, MS–DRG, and hip fracture status combination. These normalized target prices would then be further adjusted for market trends (as proposed at § 510.301) and quality performance (as specified at § 510.300), prior to being compared to the episode costs (after episode costs are reduced for high episode spending as specified at § 510.300 and/or extreme and uncontrollable conditions under § 510.305).

For example, a 70-year-old beneficiary with an HCC count of 4, located in the West North Central Division, region 4, has an MS–DRG 470 no fracture episode during performance year 6. Assume that the total actual cost for this episode was

$17,900, which for purposes of this example we will assume is under the high cost episode cap amount and thus no capping needs to be applied to the actual costs and that the beneficiary was treated at a CJR hospital with a composite quality score of 'Good' with a 1.5 percent withhold.

Assuming the target price for region 4 DRG 470 no fracture is $17,550 (reflects a 3 percent quality withhold), the normalization factor in effect for performance year 6 is 0.95, and the market trend factor is 1.023, the target price applied for reconciling this episode would be computed as follows:

Step 1. Risk adjust the target—Assuming the value shown in Table 4: Risk Factor Multipliers for CJR for All Age Bracket and HCC Count Combinations of this proposed rule are in effect for purposes of this example, locate the appropriate risk adjustment co-efficient combination for an HCC of 4 and age of 70 which is listed as 1.191 and multiply the target price of $17,550 by that value:

$17,550 * 1.191 = $20,902.05

Step 2. Normalize the risk adjusted target price by multiplying it by the normalization factor of 0.95:

$20,902.05 * .95 = $19,856.95

Step 3. Apply the market trend factor:

$19,856.95 * 1.023 = $20,313.66

Step 4. Adjust the price to reflect the hospital's composite quality score category of 'Good' (1.5% withhold rather than 3%) by restoring 3% and then adjusting to withhold 1.5%:

$20,313.66 * 100/97 = $20,941.91

$20,941.91 * .985 = $20,627.79

Once the applicable risk adjusted, normalized, trend adjusted and quality adjusted target price is computed, the actual episode costs of $17,900 would be compared to the target of $20,627.79 and this episode would therefore show a savings of $2,727.79. We previously considered making risk adjustments based on a participant hospital's average HCC score for patients with anchor hospitalizations (80 FR 73338). However, we did not propose this policy because the HCC score was developed for applications in generalized population health and might not be appropriate for use in predicting expenditures for specific clinical episodes over a shorter period of time. We are instead proposing to use the CMS–HCC condition count and age variables as risk adjustment factors, as we believe that these variables do improve the predictability to our target pricing, even though they are not as fully as comprehensive as the HCC score variable. As noted in the ''$e^x$'' column of Table 3, the risk adjustment coefficients vary across groups consistent with expected increases in severity, and the coefficients are monotonic with respect to expected severity (with the exception of the under-65 age group, which is expected to be relatively expensive due to the high volume of disabled beneficiaries in that age group). Additionally, we are proposing to use CMS-HCC condition count and age because based on internal regression analyses using the coefficients from Table 3, those factors contribute an additional 7.1 percent of statistically significant predictability to our target price calculation. This improved accuracy in target pricing is especially important since early evaluation results from CJR that indicate a higher proportion of episodes are exceeding the high-cost episode cap than initially anticipated. Using the values from Table 3, we constructed Table 4 to illustrate the risk factor permutations for each Age Bracket and HCC count category. For performance years 6, 7 and 8, we are proposing to publish updated versions of Tables 3 and 4 on the CMS website prior to the beginning of each performance year based on the data from the applicable baseline calendar year in order to communicate the specific risk factors applicable in a given performance year.

TABLE 4—RISK FACTOR MULTIPLIERS FOR CJR FOR ALL AGE BRACKET AND HCC COUNT COMBINATIONS

| Age bracket | CMS–HCC Count = 4 | CMS–HCC Count = 3 | CMS–HCC Count = 2 | CMS–HCC Count = 1 | CMS–HCC Count = 0 |
|---|---|---|---|---|---|
| Age 85+ | 1.401 | 1.285 | 1.228 | 1.171 | 1.116 |
| Age 75 to 85 | 1.271 | 1.166 | 1.114 | 1.063 | 1.013 |
| Age 65 to 74 | 1.191 | 1.092 | 1.044 | 0.996 | 0.949 |
| Age Under 65 | 1.255 | 1.151 | 1.1 | 1.049 | 1 |

Our intent with the proposed risk adjustment methodology is to reduce the need for application of the high-cost episode cap by more accurately setting and adjusting target prices, although our proposed new methodology for deriving the high episode spending cap amount may also reduce instances when the cap applies. This approach is responsive to commenters in past CJR proposed rules that indicated the accuracy of target prices benefits participants by increasing financial predictability of participation in the model.

We also considered proposing, as a risk adjustment variable, a beneficiary's dual-eligibility status in Medicare and Medicaid, or a variable to potentially control for social determinants of health and patient economic demographics. However, after including the CMS-HCC condition count and age variables in regression model, the subsequent addition of the dual-eligibility status variable was negligible in terms of enhancing ability of the methodology to accurately predict changes in target price (that is, as shown in Table 3 its p-value was 0.4748, demonstrating that there is weak evidence to suggest that the dual eligibility status variable alone has a statistically significant effect on episode costs). As previously noted, other variables considered but not chosen due to similar lack of additive predictive power were rural or urban designation of the participant hospital and ZIP Code level. While we are not proposing to include dual-eligibility status as a risk adjustment variable, we seek comment on the inclusion of this and other risk adjustment variables in the model to account for such patient characteristics. Additionally, we chose binary variables to represent the risk adjustment factors since it is a generally accepted common practice in similar regression analyses, and for simplicity purposes in our model. However, we seek comment on alternative methods for expressing these factors in our exponential risk adjustment model.

5. Changes to Methodology for Determining the High Episode Spending Cap Amount at Reconciliation

As discussed in section II.B.5. of this proposed rule, the high episode spending cap amount was designed to prevent providers from being held responsible for catastrophic spending amounts that they could not reasonably have been expected to prevent, such as post-acute care, related hospital readmissions, and other items and services related to the LEJR episode, by

capping costs for those episodes at 2 standard deviations above the regional mean episode price in calculating the target price and in comparing actual episode payments during the performance year to the target prices. However, the current methodology for setting the high episode spending cap amount has not been as successful when applied to actual performance period episode spending at reconciliation, illustrated by the fact that we have observed a high percentage of episodes exceed the cap during reconciliation, which indicates that the cap may not reflect true outlier costs. This may be partly explained by the fact that the TKA and THA procedure episode costs are not distributed normally. As discussed in section II.B.5. of this proposed rule, many LEJR episodes fall above 2 standard deviations from the mean at reconciliation (a much greater deviation than would occur if the costs were distributed normally). As a result, for performance years 6 through 8, we propose to change our method of calculating the high episode spending cap amount applied during reconciliation by calculating high episode spending cap amounts based on the 99th percentile of costs. Similar to the current methodology, the high episode spending cap amounts applied during reconciliation for each MS-DRG/permitted OP TKA/THA and hip fracture combination would be derived from performance year regional spending. Total episode costs above the 99th percentile would be capped at the 99th percentile amount, and these capped episode amounts would be used when comparing performance year costs to target prices during reconciliation. We expect that this method of calculation will result in high episode spending cap amounts that more accurately represent the cost of infrequent and potentially non-preventable complications for each category of episode, which the participant hospital could not have reasonably controlled and for which we do not want to penalize the participant hospital. We are proposing conforming changes to § 510.200.

6. Changes to Trend Factor Calculation

A limitation of the target price methodology we have discovered and are proposing to address as part of this change and extension is the absence of a trend factor calculation at reconciliation to incorporate and be responsive to ongoing practice changes in the joint replacement space. When we designed the original target price methodology, we did not anticipate the nationwide downward trend in use of post-acute care services. This decrease in use, corresponding to a decrease in average LEJR episode prices, was seen in both CJR and non-CJR hospitals, representing an underlying trend in LEJR episode spending patterns that was neither specific to, nor driven by, CJR participants. This generalized downward trend was not incorporated into CJR target prices, leading to artificially inflated target prices for CJR episodes. Our goal is to reward CJR participant hospitals for decreased spending based on improved coordination and quality of care related to their participation in the CJR model, not to reward decreases in spending that likely would have occurred even in the absence of the model, as evidenced by comparably decreased spending in non-CJR hospitals. If the CJR model were to continue to provide artificially inflated target prices, the model would not decrease Medicare spending over time.

Another major change that is not accounted for in CJR target price methodology is the recent restructuring of the SNF payment system in the FY 2019 SNF PPS final rule (83 FR 39162). The original CJR methodology assumed that the SNF payment system would retain the same structure, but would update prices on an annual basis, which would be reflected in the trend factor. However, effective October 1, 2018, we finalized a policy to change the case-mix methodology used to set payment rates for SNFs, which will be implemented starting on October 1, 2019 (83 FR 39162). The existing case-mix classification methodology, the Resource Utilization Group, Version IV (RUG–IV) model will be replaced by a new case-mix methodology called the Patient-Driven Payment Model (PDPM). The new case mix methodology is designed to focus on the patient's condition and resulting needs for care, rather than on the amount of care provided, in order to determine Medicare payment. This structural change to the SNF payment system means that, if we were to try to adapt the existing CJR trend factor methodology, prior year SNF spending can no longer be simply updated, but rather would need to be translated to reflect a different SNF payment methodology. A similar payment system change was finalized for the Home Health Prospective Payment System (HH PPS) in the CY 2019 HH PPS final rule (83 FR 56406) which updated the period of care and other methodological components of the HH PPS effective January 1, 2020. Similar to the FY 2019 SNF PPS updates, we anticipate the new strategy proposed in this section of this rule would account for these trends.

The inability to integrate both generalized spending trends not driven by CJR, and major payment system changes, in combination with the fact that OP TKA data were not available prior to 2018, have led us to propose a new way to account for trend in CJR target prices.

Rather than the national update factor and biannual Medicare prospective payment and fee schedule update methodology we currently apply to historical episode spending in order to trend target prices forward prospectively (80 FR 73342), we propose to calculate a market trend factor at the time of reconciliation by calculating the ratio of performance period spending to baseline period spending, and applying the resulting ratio to the target price.

Specifically, after the beneficiary-level, risk adjusted target prices are normalized, as described in section II.B.5. of this proposed rule, the next step before reconciling expenditures would be to apply a market trend factor to the target prices. The market trend factor would be the regional/MS–DRG/fracture mean cost for episodes occurring during the performance year divided by the regional/MS–DRG/fracture mean cost for episodes occurring during the target price base year. For example, the performance year 6 market trend factor for MS–DRG 470 without hip fracture in Region 1 would be calculated as the Region 1 mean episode costs for MS–DRG 470 without hip fracture episodes ending between January 1, 2021, to December 31, 2021, divided by the Region 1 mean episode costs for MS–DRG 470 without hip fracture episode ending between January 1, 2019, to December 31, 2019. As a result, we would calculate 36 market trend factors during reconciliation, one for each MS–DRG/fracture status and region combination. These market trend updates would then be applied to the normalized target prices discussed in section II.B.5. of this proposed rule. The resulting target prices would be the final target prices used when reconciling performance year episode costs. We proposed utilizing the regional mean episode costs as a basis for the market trend factor update calculation, but we seek comment on alternatively using the regional median episode costs for this calculation.

Combined with our proposal to use 1 year of baseline data to calculate CJR target prices for performance years 6 to 8 (discussed in section II.B.3. of this proposed rule), the proposed changes to

our trend factor calculation methodology will allow us to capture both trends in spending patterns and payment system updates in a simplified, retrospective manner.

7. Changes to Composite Quality Score Adjustment

When setting an episode target price for a participant hospital, we currently apply a 3 percentage point discount to establish the episode target price that applies to the participant hospital's episodes during that performance year. We established this policy because we expect participant hospitals to have significant opportunity to improve the quality and efficiency of care furnished during episodes in comparison with historical practice, because this model facilitates the alignment of financial incentives among providers caring for beneficiaries throughout the episode. This discount serves as Medicare's portion of reduced expenditures from the episode, with any episode expenditure below the target price potentially available as reconciliation payments to the participant hospital where the anchor hospitalization occurred.

For performance years 1 through 5, a one percentage point reduction is applied to the 3 percent discount factor for participant hospitals with good quality performance, defined as composite quality scores that are greater than or equal to 6.9 and less than or equal to 15.0. Additionally, for performance years 1 through 5, a 1.5 percentage point reduction is applied to the 3 percent discount factor for participant hospitals with excellent quality performance, defined as composite quality scores that are greater than 15.0.

While we are not proposing to change the 3 percentage point discount factor, we are proposing to increase a participant hospital's ability to reduce the discount factor as a result of its composite quality score. We propose this change in recognition that the proposed changes to the target price calculation (discussed in section II.B. of this proposed rule), intended to increase the accuracy of target prices compared to actual performance period spending may also narrow the potential for participant hospitals to earn reconciliation payments. For performance years 1 and 2, a large majority of CJR participant hospitals received a reconciliation payment: 44 percent of CJR participant hospitals received reconciliation payments in both performance years and an additional 33 percent received a reconciliation payment in one of the two performance years; 23 percent never received reconciliation payments.

Because of these more accurate target prices, and the fact that all participant hospitals would be at financial risk during performance years 6 through 8, we determined that a more generous composite quality score adjustment to the discount factor is appropriate. The composite quality score adjustment for performance years 1 through 5, with a maximum potential for a 1.5 percentage point reduction to the discount factor, could potentially force the target amounts calculated under the proposed methodology (discussed in section II.B. of this proposed rule) under an appropriate actual cost amount, which is not the intent of the model. While the discount factor was meant to serve as Medicare's portion of reduce expenditures from an episode, we determined that the proposed changes to the target price methodology are adequate to maintain an appropriate level of reduced expenditures for Medicare while rewarding participant hospitals with high composite quality score. For further information on the anticipated model savings as a result of the proposed target price changes, see section IV.C. of this proposed rule.

As a result, we are proposing that, for performance years 6 through 8, a 1.5 percentage point reduction be applied to the 3 percent discount factor for participant hospitals with good quality performance, defined as composite quality scores that are greater than or equal to 6.9 and less than or equal to 15.0. Additionally, we are proposing that a 3 percentage point reduction be applied to the 3 percent discount factor for participant hospitals with excellent quality performance, defined as composite quality scores that are greater than 15.0. That is, for participant hospitals with excellent quality performance, the 3 percentage point discount factor would effectively be eliminated for the applicable performance year.

*D. Three-Year Extension (PYs 6 Through 8)*

As noted in sections II. and III. of this proposed rule, we are proposing changes to the CJR target price methodology and the reconciliation process primarily to account for the removal of TKA and THA procedures from the IPO list and analysis of the reconciliation process for CJR performance years 1 to 2 that indicates the process is not functioning as initially intended (for example, a larger number of episodes are being capped by the high episode spending cap amount than we anticipated). We are proposing to extend the CJR model for an additional 3 years to run through December 31, 2023, to allow sufficient time to evaluate the impact of the changes we are proposing to resolve these concerns. CMS proposes that, while PY6 episodes would end on or after January 1, 2021, PY6 episodes would start as of the later of October 4, 2020 or the date on which the final rule becomes effective. We solicit comment on our proposed start date of PY 6. We have determined that this additional time is needed to complete the model test to generate the necessary evaluation findings for an expansion. Extending the model for 3 additional performance years will allow the Innovation Center to test and evaluate these the model while promoting the alignment of quality with financial accountability. We propose to change the regulations under 42 CFR part 510 to reflect this extension.

The changes and extension will apply only to those participant hospitals with a CMS Certification Number (CCN) primary address in the 34 mandatory MSAs, excluding participant hospitals in those mandatory MSAs that are ''low-volume hospitals'' or that have received a notification from CMS dated prior to October 4, 2020 that they have been designated as ''rural hospitals'' (each as defined in 42 CFR 510.2) and that voluntarily elected to participate in the CJR model for performance years 3 through 5. We are not proposing to provide any additional opt-in period for these hospitals (low-volume hospitals and rural hospitals with a CCN primary address in a mandatory MSA) or for any hospitals with a CCN primary address located in the 33 voluntary MSAs and therefore, participation of these hospitals in the model will end at the end of performance year 5. We originally designed the CJR model to require participation by hospitals in order to avoid the selection bias inherent to any model in which providers may choose whether to participate (80 FR 73278). Narrowing participation for hospitals in the 34 mandatory MSAs during the proposed 3 year extension will allow CMS to minimize selection bias while evaluating the impact of the changes proposed in this rule. In the December 2017 CJR final rule (82 FR 57074), CMS finalized a policy to exclude rural and low volume hospitals from the CJR model. Although we allowed for a one time voluntary opt-in for rural and low-volume hospitals for performance years 3 to 5, very few hospitals, 86 out of close to 400 eligible providers, opted to continue participating in years 3 to 5.

The cost to evaluate the small voluntary arm of the model for years 6–8 would be excessive relative to the information we could glean from the small sample size. We already have evaluation data on voluntary LEJR bundled payment model participation from the Bundled Payments for Care Improvement (BPCI) model, which ended on September 30, 2018 and we are actively gathering more data on LEJR bundles from both the current CJR model performance years 3 through 5 and from the BPCI Advanced Model which is currently running. All national hospitals were able to volunteer for Bundled Payments for Care Improvement Advanced (BCPI Advanced), a voluntary bundled payment model which tests the same DRG's as CJR. We believe that BPCI Advanced is an ideal fit for hospitals seeking to voluntarily participate in a clinical episode-based payment model for LEJR. Specifically, among other episodes it offers, BPCI Advanced offers a LEJR episode for BPCI Advanced which includes outpatient TKA procedures as of January 1, 2020. BPCI Advanced is also voluntary, and held its application period for participation as of January 1, 2020 during the spring and summer of 2019. This application period was open to acute care hospitals, physician group practices, and other entities such as post-acute care providers and while CJR participant hospitals could not elect LEJR participation for 2020, selecting to participate in at least one other BPCI Advanced bundled payment episode for 2020 would allow these providers to add LEJR episode participation at the end of CJR performance year 5. Since the CJR model, under our existing regulations, would end on December 31, 2020, we anticipate that any participant hospitals interested in pursuing voluntary participation in a bundled payment model already would have applied to participate in BPCI Advanced.

We have decided to use the notification date of the rural reclassification approval letter as the determining factor of participation in the CJR model for PY 6 through PY 8, since it is an objective factor for determining participation based on rural reclassification. Thus, for PY 6 through PY 8, hospitals who applied for rural reclassification pursuant to 42 CFR 412.103 and have been notified by CMS *before* October 4, 2020 that their application for rural status has been approved will no longer be participating in the model beginning PY 6 (that is, for any episodes beginning on or after October 4, 2020). Participant hospitals reclassified as rural that are notified that their application for rural status has been approved *on or after* October 4, 2020 (even if the effective date of the rural reclassification is retroactively effective to *before* October 4, 2020) will continue to participate in the CJR model for PY 6 through PY 8 and will remain the financially accountable entities for PY 6 through PY 8.

Rural reclassification requests that are submitted in accordance with § 412.103 could take several months to be reviewed and approved by the CMS Regional Office. The CMS model team will make every effort to post an accurate list of performance year 5participant hospitals identified as having rural status prior to October 4, 2020 on the CJR model page (*https://innovation.cms.gov/initiatives/cjr*) and will conduct email and/or phone outreach with these providers. Because the rural reclassification review process occurs on a rolling basis, we acknowledge that a delay in communication and notification may occur between the CMS Regional Office and the CJR model team. Accordingly, if hospitals who have been notified of their rural status before October 4, 2020 receive communications from the CJR model team that suggest their continued participation in the CJR model, it is only due to the delay in CMS internal communications between the CMS Regional Office and the CJR model team. The CJR model team will discontinue model communications to hospitals that were notified of rural status by CMS prior to October 4, 2020 as soon as the CJR model team is informed of the hospital's rural status. Any hospital who is notified of rural status prior to October 4, 2020 should disregard these CJR model communications as they do not suggest the hospital's continued participation in the model for proposed PY 6 through PY 8.

*E. Participant Hospital Detailed Notification and Discharge Planning Notice*

1. Participant Hospital Notification

Under current regulations, the participant hospital detailed notification informs Medicare beneficiaries of their inclusion in the CJR model and provides an in-paper, detailed explanation of the model, either upon admission to the participant hospital if the admission is not scheduled in advance, or as soon as the admission is scheduled. In this proposed rule, as discussed in section II.A.2. of this proposed rule, we are proposing to change the definition of an 'episode of care' to include outpatient procedures, for which the beneficiary would not be admitted to the participant hospital. We are also proposing to add the definition of 'anchor procedure' to mean a TKA or THA procedure that is permitted and reimbursable by Medicare when performed in the outpatient setting and billed through the OPPS. We believe that the beneficiary should be notified of his or her inclusion in the CJR model whether the procedure takes place in an inpatient or outpatient setting. Therefore, we propose changes for the participant hospital detailed notification at 42 CFR 510.405(b)(1) to clarify that if the anchor procedure or anchor hospitalization is scheduled in advance, then the participant hospital must provide notice as soon as the anchor procedure or anchor hospitalization is scheduled. Further, we propose if the anchor procedure or anchor hospitalization is not scheduled in advance, then the notification must be provided on the date of the anchor procedure or date of admission to the anchor hospitalization.

Lastly, we currently state that in circumstances where, due to the patient's condition, it is not feasible to provide the detailed notification when scheduled or upon admission, the notification must be provided to the beneficiary or his or her representative as soon as is reasonably practicable but no later than discharge from the participant hospital accountable for the CJR episode. We are proposing to clarify that this policy applies only to inpatient hospital admissions. The purpose of this policy is to promote hospital care for the beneficiary first if it is not reasonably practicable to provide the notification upon admission. For example, if a beneficiary requires emergent care, the focus of the hospital should not be on providing a notification, but on the beneficiary. In contrast, outpatient procedures are generally scheduled and non-emergent. Therefore, we not believe this policy is applicable to outpatient procedures, and do not propose to allow this type of beneficiary notification in cases of outpatient procedures.

We believe these proposals would require changes to the participant hospital detailed notification provided on the CJR web page and if these proposals are finalized, CMS would update the participant hospital notification provided accordingly.

2. Discharge Planning Notice

Under current regulations, a participant hospital must provide the beneficiary with a written notice of any potential financial liability associated with non-covered services recommended or presented as an option as part of discharge planning, no later

than the time that the beneficiary discusses a particular post-acute care option or at the time the beneficiary is discharged, whichever occurs earlier (42 CFR 510.405(b)(3)). Given our proposal in section II.A.2. of this proposed rule to change the definition of an 'episode of care' to include outpatient procedures, for which the beneficiary would not be admitted to the participant hospital, we propose to clarify the requirements of the discharge planning notice. We believe the beneficiary must be notified of his or her possible financial liability associated with non-covered post-acute care whether the procedure takes place in an inpatient or outpatient setting. Therefore, we propose that a participant hospital must provide the beneficiary with a written notice of any potential financial liability associated with non-covered services recommended or presented as an option as part of discharge planning, no later than the time that the beneficiary discusses a particular post-acute care option or at the time the beneficiary is discharged from an anchor procedure or anchor hospitalization, whichever occurs earlier.

*F. Quality Measures and Reporting*

The two quality measures included in the CJR model are the total hip arthroplasty and/or total knee arthroplasty (THA/TKA) Complications measure (NQF #1550) and the Hospital Consumer Assessment of Healthcare Providers and Systems (HCAHPS) Survey measure (NQF #0166). The model also incentivizes the submission of THA/TKA patient-reported outcomes (PRO) and limited risk variable data. We are proposing to advance the Complications and HCAHPS performance periods for model years 6 through 8 in alignment with the performance periods used for performance years 1 through 5. For PRO, we are also proposing to advance the performance periods in alignment with previous performance periods as well as make changes to the thresholds for successful submission. We propose to make these changes to the thresholds for successful submission as participant hospitals gain experience with PRO and to continue the trend of increased thresholds set by the earlier performance years of the model. These proposed changes are outlined in the table.

TABLE 5—PROPOSED POTENTIAL PERFORMANCE PERIODS FOR PRE- AND POST-OPERATIVE THA/TKA VOLUNTARY DATA SUBMISSION

| Model year | Performance period | Duration of the performance period (months) | Patient population eligible for THA/TKA voluntary data submission | Requirements for successful THA/TKA voluntary data submission |
|---|---|---|---|---|
| 2021 | July 1, 2019 through June 30, 2020. | 24 | All patients undergoing elective primary THA/TKA procedures performed between July 1, 2019 and June 30, 2020. | Submit POST-operative data on primary elective THA/TKA procedures for ≥80% or ≥200 procedures performed between July 1, 2019 and June 30, 2020. |
| 2021 | July 1, 2020 through June 30, 2021. | | All patients undergoing elective primary THA/TKA procedures performed between July 1, 2020 and June 30, 2021. | Submit PRE-operative data on primary elective THA/TKA procedures for ≥90% or ≥500 procedures performed between July 1, 2020 and June 30, 2021. |
| 2022 | July 1, 2020 through June 30, 2021. | 24 | All patients undergoing elective primary THA/TKA procedures performed between July 1, 2020 and June 30, 2021. | Submit POST-operative data on primary elective THA/TKA procedures for ≥90% or ≥500 procedures performed between July 1, 2020 and June 30, 2021. |
| 2022 | July 1, 2021 through June 30, 2022. | | All patients undergoing elective primary THA/TKA procedures performed between July 1, 2021 and June 30, 2022. | Submit PRE-operative data on primary elective THA/TKA procedures for 100% or ≥1,000 procedures performed between July 1, 2021 and June 30, 2022. |
| 2023 | July 1, 2021 through June 30, 2022. | 24 | All patients undergoing elective primary THA/TKA procedures performed between July 1, 2021 and June 30, 2022. | Submit POST-operative data on primary elective THA/TKA procedures for 100% or ≥1,000 procedures performed between July 1, 2021 and June 30, 2022. |
| 2023 | July 1, 2022 through June 30, 2023. | 24 | All patients undergoing elective primary THA/TKA procedures performed between July 1, 2022 and June 30, 2023. | Submit PRE-operative data on primary elective THA/TKA procedures for 100% or ≥1,000 procedures performed between July 1, 2022 and June 30, 2023. |

*G. Financial Arrangements: Elimination of 50 Percent Cap on Gainsharing Payments, Distribution Payments, and Downstream Distribution Payments*

Currently, participant hospitals may engage in financial arrangements under the CJR model. Starting with the November 2015 CJR final rule (80 FR 73412 through 73437) participant hospitals have been allowed to enter into sharing arrangements to make gainsharing payments to certain providers and suppliers with which they were collaboratively caring for CJR beneficiaries and to allow CJR collaborators that are physician group practices to enter into distribution arrangements to share those gainsharing payments with certain PGP members. In the EPM final rule (82 FR 180) we finalized a full replacement of the prior CJR regulations in order to revise and refine these requirements to allow for—(1) participant hospitals to enter into sharing arrangements with additional categories of CJR collaborators, including certain ACOs, hospitals, CAHs, non-physician provider group practices (NPPGPs) and therapy group practices (TGPs); (2) ACOs, PGPs, NPPCGs and TGPs that are CJR collaborators to enter into distribution arrangements with certain entities and individuals; and (3) PGPs, NPPGPs and TGPs that received distribution payments from ACOs to enter into downstream distribution arrangements to share distribution payments with certain of their members. We believe these opportunities outlined in the EPM final rule (82 FR 531 through 554) for the individuals and entities that engage in beneficiary care, care redesign and care management to share in the financial risk and rewards of the CJR

model promote accountability for the quality, cost, and overall care for CJR beneficiaries.

In order to ensure that goals of the CJR model are met, and to ensure program integrity and protection from abuse, the CJR model has many requirements for these financial arrangements. According to § 510.2 a gainsharing payment means a payment from a participant hospital to a CJR collaborator, under a sharing arrangement, composed of only reconciliation payments or internal cost savings or both; a distribution payment means a payment from a CJR collaborator that is an ACO, PGP, NPPGP, or TGP to a collaboration agent, under a distribution arrangement, composed only of gainsharing payments; and a downstream distribution payment means a payment from a collaboration agent that is both a PGP, NPPGP, or TGP and an ACO participant to a downstream collaboration agent, under a downstream distribution arrangement, composed only of distribution payments. Among other requirements, the CJR model has always included a cap on certain gainsharing payments and distribution payments to physicians, non-physician practitioners, and PGPs equal to 50 percent of the total Medicare approved amounts under the Physician Fee Schedule for items and services that are furnished to beneficiaries by that individual or entity during the performance year. As the CJR model has evolved, this cap has been retained and broadened to apply to gainsharing payments to NPPGPs, to distribution payments to non-physician practitioners, PGPs and NPPGPs, and to downstream distribution payments to non-physician practitioners and physicians. Accordingly, under the current regulations at § 510.500(c)(4)(i) and (ii), the total amount of gainsharing payments for a performance year paid to physicians, non-physician practitioners, physician group practices (PGPs), and non-physician practitioner group practices (NPPGPs) must not exceed 50 percent of the total Medicare approved amounts under the Physician Fee Schedule for items and services that are furnished to beneficiaries during episodes that occurred during the same performance year for which the CJR participant hospital accrued the internal cost savings or earned the reconciliation payment that comprises the gainsharing payment being made. Distribution payments to these individuals and entities are similarly limited as specified in § 510.505(b)(8)(i) and (ii), and downstream distribution payments are similarly limited as specified in § 510.506(b)(8). However, based on comments received over the course of this model, our experience over time and our desire to allow consistent flexibilities across models, we are proposing to eliminate these caps for episodes ending after December 31, 2020.

The need for the caps has been the subject of extensive comment since the start of the CJR model. In the initial CJR proposal in July 2015 (80 FR 41198) we emphasized that the payment arrangements must be actually and proportionally related to the care of the beneficiaries in the CJR model and proposed a cap on gainsharing payments to individual physicians, non-physician practitioners, and PGPs equal to 50 percent of the Medicare-approved amounts under the PFS for items and services billed by that individual or PGP and furnished to the participant hospital's CJR beneficiaries. As discussed in the November 2015 CJR final rule (80 FR 73420 through 73422), many commenters opposed the proposed cap on the total amount of gainsharing payments for a calendar year that could be paid to a PGP or an individual physician or non-physician practitioner who is a CJR collaborator, arguing that the 50 percent figure is arbitrary and should be removed. Other commenters asserted that a PGP that is a CJR collaborator should have the freedom to determine the most appropriate way to distribute gainsharing payments, given the multiple disciplines involved in patient care. Additionally, some commenters requested that internal cost savings be treated separately from reconciliation payments under the cap on gainsharing payments. Other commenters urged CMS to apply the same cap to the CJR model as is applied to Model 2 of the BPCI initiative. In our response, we acknowledged the many perspectives of the commenters on the proposed cap on gainsharing payments to physicians, non-physician practitioners, and PGPs in the CJR model. We stated that the purpose of the cap is to serve as a safeguard against the potential risks of stinting, steering, and denial of medically necessary care due to financial arrangements specifically allowed under the CJR model by providing an upper limit on the potential additional funds a physician, non-physician practitioner, or PGP can receive for their engagement with participant hospitals in caring for CJR model beneficiaries beyond the FFS payments that those suppliers are also paid and that are included in the actual episode spending calculation for the episodes. Moreover, we affirmed our intent to align the cap in CJR with the 50 percent cap on gainsharing payments to physicians and non-physician practitioners in the BPCI initiative, and noted that participants in BPCI had not voiced significant complaints that this moderate financial limitation had hampered their ability to engage physicians and non-physician practitioners in care redesign to improve episode quality and reduce costs. Accordingly, we concluded the 50 percent cap on gainsharing payments was an appropriate condition for the CJR model at that time. This final rule also established a framework for distribution payments and applied the cap to those payments as well.

In August 2016, when we proposed to expand the range of permissible financial arrangements to include additional parties and to allow for downstream distribution arrangements, we proposed to apply the 50 percent cap to those payment arrangements well. As discussed in the January 2017 EPM final rule (82 FR 458 through 460), commenters were again of mixed views on these caps. While several commenters, including MedPAC, supported the caps, most commenters either recommended that CMS eliminate the caps for PGPs, eliminate the caps altogether for PGPs, physicians, and non-physician practitioners, or apply the caps on a different basis than CMS' proposal of 50 percent of the Medicare-approved amounts under the PFS for items and services furnished by the physician or non-physician practitioner. In our response, we stated our continued belief that the caps served as a safeguard against the potential risks of stinting, steering, and denial of medically necessary care due to financial arrangements specifically allowed under the model. We again emphasized that we applied the 50 percent cap in both the CJR model and the BPCI initiative, and participants in neither model had voiced significant complaints that this financial limitation had hampered their ability to engage physicians, non-physician practitioners, and PGPs in care redesign to improve episode quality and reduce costs.

In our subsequent CJR rulemaking, we did not propose changes to the caps, but as described in the December 2017 final rule (82 FR 57083), we again received comments both for and against these policies. Several commenters supported the current 50 percent gainsharing cap. Other commenters offered a variety of recommendations for changing the gainsharing limitations. In our response, we stated that we would continue to consider the issues raised by

commenters as we moved forward with CJR and other models. Based on further consideration, we believe the commenters who opposed the caps presented the more compelling policy argument that these caps are arbitrary and limiting.

The burdens associated with caps in the CJR model outweigh the potential benefits of these payment limitations. The caps were adopted and retained based on the belief that these limits on the potential financial rewards available via gainsharing payments, distribution payments and downstream distribution payments were needed to prevent physicians and non-physician practitioners from stinting, steering, and denial of medically necessary care. However, as we have continued to monitor the CJR participant hospitals and CJR claims data we have not seen evidence suggesting that the financial arrangements in the CJR model have adversely impacted beneficiary access to care. We believe other limitations on the financial arrangements in the CJR model, including the express prohibitions in the CJR regulations on financial arrangements to induce clinicians to reduce or limit medically necessary services or restrict the ability of a clinician to make decisions in the best interests of its patients, are sufficient and more reasonably targeted restrictions to prevent financial arrangements from resulting in the harms the caps were intended to address.

Moreover, as commenters have consistently noted over the years, the caps in the CJR model constrain options to incentivize the clinicians who are supporting the care of CJR beneficiaries and participant hospitals and others incur administrative burden to monitor their compliance with these caps. Commenters previously argued that CJR collaborators should have the freedom to determine the most appropriate way to distribute gainsharing payments. Commenters contend the cap dampens the ability of gainsharing to support physician behavior change by reducing payments to a nominal amount. Accordingly, we believe maintaining these caps is unnecessary and unduly burdensome on the participant hospitals participating in the CJR model.

Additionally, we note that in 2018 we revised our policies for BPCI Advanced such that BPCI Advanced Participants may execute an amendment, which would, among other things, eliminate the 50 percent cap on NPRA Shared Payments and Partner Distribution Payments (*https://innovation.cms.gov/Files/x/bpciadvanced-my3-mutual-amendment.pdf*). Previously, commenters stated that having different policies between models could create the potential for an uneven playing field. Accordingly, the elimination of the caps in the CJR model would advance our longstanding policy goal of consistency across the CJR and BPCI Advanced models. We believe that if the CJR model and BPCI Advanced model do not align, a consequence may be confusion among participants and sharing arrangements may not be used therefore impeding the CJR model's goal to support better and more efficient care for beneficiaries undergoing hip and knee replacements.

We are proposing to eliminate the 50 percent cap on gainsharing payments, distribution payments, and downstream distribution payments when the recipient of these payments is a physician, non-physician practitioner, physician group practice (PGP), or non-physician practitioner group practice (NPPGP) for episodes that begin on or after January 1, 2021. We have proposed for these changes to apply to episodes on or after January 1, 2021 to align with the timing for the other policy changes in this proposed rule.

We seek comment on our proposals to eliminate the 50 percent cap on gainsharing payments, distribution payments, and downstream distribution payments when the recipient of these payments are a physician, non-physician practitioner, physician group practice (PGP), or non-physician practitioner group practice (NPPGP).

*H. Waivers of Medicare Program Rules*

In the November 2015 final rule (80 FR 73273), we stated that it may be necessary and appropriate to provide additional flexibilities to participant hospitals in the model, as well as other providers that furnish services to beneficiaries in CJR episodes. The purpose of such flexibilities is to increase CJR episode quality and decrease episode spending or internal costs or both of providers and suppliers that results in better, more coordinated care for beneficiaries and improved financial efficiencies for Medicare, providers, and beneficiaries. These additional flexibilities were implemented through our waiver authority under section 1115A of the Act, which affords broad authority for the Secretary to waive Medicare program requirements as may be necessary solely for purposes of carrying out section 1115A of the Act with respect to testing models.

Section 510.610 of the regulations waives the 3-day hospital stay requirement before a beneficiary may be discharged from a hospital to a qualified SNF, which we define as a SNF that is rated an overall of 3 stars or better for 7 of the last 12 months on the Nursing Home Compare website, but only if the SNF is identified on the applicable calendar quarter list of qualified SNFs at the time of the CJR beneficiary's admission to the SNF. The calendar quarter list of qualified SNFs is available under Participant Resources on the CJR model web page at *https://innovation.cms.gov/initiatives/CJR*. This waiver applies to episodes being tested under the CJR model beginning in performance year 2. All other Medicare rules for coverage and payment of Part A-covered SNF services continue to apply.

In the December 2017 final rule (82 FR 180), we added additional protections in the event a CJR beneficiary is discharged to a SNF without a qualifying 3-day inpatient stay, but the SNF is not on the qualified list as of the date of admission to the SNF, and the participant hospital has failed to provide a discharge planning notice, as specified in § 510.405(b)(3). We specified that in that situation, that CMS will make no payment to the SNF for such services; the SNF will not charge the beneficiary for the expenses incurred for such services; the SNF must return to the beneficiary any monies collected for such services; and the hospital must be responsible for the cost of the uncovered SNF stay.

In this proposed rule, we propose to extend these additional flexibilities to hospitals furnishing services to beneficiaries in the outpatient setting as well. As discussed in section II.A.2. of this proposed rule, we are proposing to change the definition of an 'episode of care' to include outpatient procedures. We are also proposing to add the definition of 'anchor procedure' to mean a TKA or THA procedure that is permitted and reimbursable by Medicare when performed in the outpatient setting and billed through the OPPS. Therefore, based upon this proposal, when we use the term ''discharge'' under the Medicare Program Rule waivers, we intend for this term to apply to both anchor hospitalizations and anchor procedures.

We do not anticipate that a beneficiary who receives a LEJR procedure in the outpatient setting will need a SNF stay. However, in the event that a participant hospital performs an LEJR procedure in the outpatient setting and due to unforeseen circumstances, the beneficiaries needs a SNF stay and has not had a qualifying 3-day inpatient stay, we do not want the beneficiary to be held financially liable for these costs. In accordance with section 1861(i) of

the Act, beneficiaries must have a prior inpatient hospital stay of no fewer than 3-consecutive days in order to be eligible for Medicare coverage of inpatient SNF care. We refer to this as the SNF 3-day rule. If this requirement is not met, then the beneficiary may be liable for the cost of the SNF stay. Additionally, we want to protect beneficiaries in the event that a participant hospital makes a choice that is based on billing, rather than on clinical needs. While this behavior is prohibited under the model and would actionable under § 510.410, we are proposing to add this additional safeguard so that a beneficiary would not be responsible for the expense. We propose to amend § 510.610 by redesignating paragraphs (a) as (a)(1) and (a)(2), (a)(1) as (a)(2) and (a)(2) as (a)(3) and amending paragraph (b)(1) to reflect these proposals.

Additionally, § 510.600 of the regulations waives the direct supervision requirement to allow clinical staff to furnish certain post-discharge home visits under the general, rather than direct, supervision of a physician or non-physician practitioners. This waiver allows a CJR beneficiary who does not qualify for home health benefits to receive up to 9 post-discharge visits in his or her home or place of residence any time during the episode. All other Medicare rules for coverage and payment of services incident to a physician's service continue to apply. We propose to update § 510.600 (b)(1) so that this program rule waiver applies for LEJR procedures performed in the outpatient setting as well. As mentioned previously, when we use the term ''discharge'' under the Medicare Program Rule waivers, we intend for this term to apply to both anchor hospitalizations and anchor procedures.

We seek comment on our proposals to apply CMS program rule waivers to LEJR procedures performed in the outpatient setting.

*I. Appeal Procedures*

In the November 2015 final rule (80 FR 73411), we finalized an appeal process for participant hospitals to dispute matters that are not precluded from administrative or judicial review. Under § 510.310(a), a participant hospital may appeal certain calculations related to payment by submitting a timely notice of calculation error. Participant hospitals must provide written notice of a calculation error within 45 days of the date the reconciliation report is issued if they believe a calculation error was made. A participant hospital may appeal CMS' response to the notice of a calculation error by requesting reconsideration review by a CMS official. The request for a reconsideration review must be received by CMS within 10 calendar days of the response to the notice of a calculation error. The reconsideration review request must provide a detailed explanation of the basis for the dispute and include supporting documentation for the participant hospital's assertion that CMS or its representatives did not accurately calculate the NPRA the reconciliation payment, or the repayment amount in accordance with § 510.305. The reconsideration review is an on-the-record review (a review of briefs and evidence only); it is not an in-person hearing. Under the process we finalized in 2015, a CMS reconsideration official notifies the hospital in writing within 15 calendar days of receiving the participant hospital's reconsideration review request of the date, time, and location of the review; the issues in dispute; the review procedures; and the procedures (including format and deadlines) for submission of evidence (the ''Scheduling Notice''). The CMS reconsideration official must take all reasonable efforts to schedule the review to occur no later than 30 calendar days after the date of the Scheduling Notice. The Medicare Shared Savings Program appeal provisions at § 425.804(b), (c), and (e) are applicable to reviews conducted pursuant to the reconsideration review process for CJR. The CMS reconsideration official issues a written determination within 30 days of the review. The determination is final and binding.

In this proposed rule, we propose to revise the § 510.310(b)(4) to clarify that the reconsideration review process is an on-the-record review, not an in-person review. The existing language at § 510.310(b)(4)(i) requires the reconsideration official to give hospitals the date, time, and location of the review. While we believe providing participant hospitals with information about the review is important, after careful review of the language we believe this language could cause confusion as to whether the participant hospital needs to attend the reconsideration review and whether the CJR model team will receive the Scheduling Notice and notice of the review procedures. Therefore, we are proposing to remove paragraph (b)(4)(i) and to revise the introductory text of paragraph (b)(4) to clarify that the reconsideration official must notify both CMS and the hospital of the issues in dispute, the review procedures, and the procedures for submission of briefs and evidence. Additionally, we propose to modify § 510.310(b)(4)(iv) (which will be renumbered § 510.310(b)(4)(iii)) to clarify that the parties may submit briefs and evidence in support of their positions. The reconsideration official will conduct an on-the-record review of the briefs and evidence provided by the parties. We propose to make conforming changes to delete § 510.310(b)(5) (as it references a scheduled review in accordance with § 510.310(b)(4)(i), which we are proposing to delete) and to revise § 510.310(b)(7) (which will be renumbered § 510.310(b)(6)) to state that the CMS reconsideration official issues a written determination within 30 days of the deadline for submission of all briefs and evidence.

We seek comment on our proposal.

*J. Request for Comment on New LEJR-Focused Models That Would Include ASCs and That Could Involve Shared Financial Accountability*

While we continue to believe that the CJR model is helping to improve care for joint replacements in the inpatient and outpatient hospital setting, we recognize that lower joint procedures are gradually being transitioned into Ambulatory Surgical Centers (ASCs). Specifically, in the CY 2020 OPPS/ASC final rule (84 FR 61253), CMS finalized a proposal to add TKAs to the ASC covered procedures list. Continued improvements and advances in medical technologies and surgical techniques may make ASCs an appropriate setting for THAs at a future point in time. Given that trends in care settings continue to transition in this direction, we are soliciting comment on how we might best conceptualize and design a future bundled payment model focused on LEJR procedures performed in the ASC setting. Further, while the CJR model established hospitals as the financially accountable entity, we seek comment on how a new model could better recognize the role of the surgeons and clinicians in LEJR episodes. Who should participate in the model and should the reconciliation payment and/or repayment obligations be shared between the facility and the rendering surgeon to better encourage collaboration? Are there any other clinicians who should share directly in the financial accountability? In general, would a prospective bundled payment or a retrospective target price benchmarked payment model approach work best? What types of quality measures would participants need to track and report? Should the model be ASC specific or site neutral such that

inpatient, outpatient and ASC service sites would be paid the same rate, regardless of where the procedure was performed?

*K. Coordination With Other Agencies*

Impacts created by payment changes under this model are entirely internal to HHS operations; coordination with other agencies is not required outside of the usual coordination involved in the publication of all HHS regulatory changes.

## III. Collection of Information Requirements

As stated in section 1115A(d)(3) of the Act, Chapter 35 of title 44, United States Code, shall not apply to the testing and evaluation of models under section 1115A of the Act. As a result, the information collection requirements contained in this proposed rule need not be reviewed by the Office of Management and Budget. However, we have summarized the anticipated information collection requirements in the Regulatory Impact Analysis section of this proposed rule.

## IV. Regulatory Impact Analysis

*A. Introduction*

We have examined the impacts of this proposed 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 Social Security 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) and the Congressional Review Act (CRA) (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). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This proposed rule proposes the change and extension of the CJR model; these provisions impact a subset of hospitals under the IPPS. The Office of Management and Budget has designated this proposed rule as an ''economically significant'' rule under E.O. 12866 and a ''major rule'' under the Congressional Review Act (CRA).

*B. Statement of Need*

Initial reports from the Innovation Center evaluation contractor as well as an independent study in the New England Journal of Medicine [6] indicate that the model in performance year 1 and 2 resulted in modest cost reductions with quality of care maintained and no increases in case complication. Specifically, for performance year 1, without considering net reconciliation payments earned under the CJR model, the Innovation Center evaluation contractor observed that the total episode payments decreased 3.3 percent, or $910 per episode, more for CJR episodes than control group episodes in the difference in difference analysis.[7] Further, the second annual CJR evaluation report, released on June 27, 2019, has found that CJR episode payments decreased by 3.7 percent more over the first 2 years of the CJR model. These decreases in payments have likely reduced Medicare program spending over the first two performance years of the model by an estimated $17.4 million (with a range of Medicare losses of $41.1 million to Medicare savings of $75.9 million, due to uncertainty in per episode savings).[8] From these observations, it appears that continuing to bundle lower joint payments will assist the Innovation Center in meeting its goal to reduce expenditures while preserving or enhancing the quality of care.

However, since these initial evaluation results, the traditional Medicare FFS program has shifted, and we have determined that the proposed changes are necessary for the following reasons. First, to address changes in the CY 2018 OPPS final rule (65 FR 18455) to the IPO list (published annually in OPPS rule) to remove the TKA procedure code, as well as the recent removal of the THA procedure code from the IPO list in the CY 2020 OPPS final rule (84 FR 61353), we are proposing to change the definition of an 'episode of care' to include outpatient procedures for TKAs and THAs. Additionally, we believe it is necessary to adjust target pricing to ensure that target prices better capture spending trends and changes, by using more recent historical spending data that includes outpatient TKA and inpatient TKA/THA claims, as well as outpatient THA claims that will become available beginning in CY 2020, and in order to parallel the proposed changes to the reconciliation process with the changes we propose to the target price calculations. We are also proposing to conduct one reconciliation per CJR performance year, which would be initiated 6 months following the end of a CJR performance period. This change is intended to reduce the administrative burden of an additional reconciliation for Medicare and CJR participant hospitals. In an effort to remain consistent with the new BPCI Advanced initiative, we are proposing to eliminate the 50 percent cap on gainsharing payments, distribution payments, and downstream distribution payments when the recipient of these payments is a physician, non-physician practitioner, physician group practice (PGP), or non-physician practitioner group practice (NPPGP) for episodes that begin on or after January 1, 2021 to remain consistent with the other policy changes made in this proposed rule. We believe that participant hospitals, CJR collaborators, collaboration agents, and downstream collaboration agents are now accustomed to the episode-based CJR payment methodology and that administrative burden should be reduced and further flexibility should be offered to allow hospitals to share internal savings or earned reconciliation payments by removing the gainsharing cap. We propose to adjust the composite quality score discount in recognition that the proposed changes to the target price calculation (discussed in section II.B. of this proposed rule), intended to increase the accuracy of target prices compared to actual performance period spending may also narrow the potential for participant hospitals to earn reconciliation payments. Because of these more accurate target prices, and the fact that all participant hospitals would be at financial risk during performance years 6 through 8, we determined that a more generous composite quality score adjustment to the discount factor is appropriate for hospitals ranked in the good and excellent CJR quality categories.

We believe a 3-year extension is necessary to allow for enough time and information to reasonably evaluate the

[6] Barnett, Wilcock, McWilliams, Epstein, et al. ''Two-Year Evaluation of Mandatory Bundled Payments for Joint Replacement'' see *https://www.nejm.org/doi/10.1056/NEJMsa1809010.*

[7] For the CJR first annual evaluation at a glance and full report see *https://innovation.cms.gov/Files/reports/cjr-fg-firstannrpt.pdf* and *https://innovation.cms.gov/Files/reports/cjr-firstannrpt.pdf.*

[8] For the CJR second annual evaluation at a glance and full report see *https://innovation.cms.gov/Files/reports/cjr-fg-secondannrpt.pdf* and *https://innovation.cms.gov/Files/reports/cjr-secondannrpt.pdf.*

proposed changes we discuss previously. Extending the model for a term of 3 years would allow the Innovation Center to test and evaluate the proposed changes while promoting the alignment of quality with financial accountability.

*C. Anticipated Effects*

In prior sections of this proposed rule, we discuss our proposals to amend the regulations governing the CJR model. We present the following estimated overall impact of the proposed changes during the 3-year proposed extension. Table 7 summarizes the estimated impact for the proposed changes to the CJR model for the proposed 3-year extension of the model from January 1, 2021 through December 31, 2023.

There are approximately 470 providers participating in CJR as of October 2019. By limiting participation to the non-rural, non-low volume providers physically located in the 34 mandatory MSAs, we expect approximately 350 participants in the CJR model for the proposed 3-year extension, dependent on changes in rural reclassification status or mergers. Specifically, we anticipate removing around 75 providers located in the 33 MSAs that were changed to voluntary and that we could also remove around 45 providers for rural reclassification status. For purposes of modeling this impact, using the 2018 Medicare claims data pulled from the Chronic Conditions Warehouse in April of 2019 and limiting the analysis to non-rural, non-low volume providers located in the 34 mandatory MSAs, we had 330 eligible providers with CJR episode claims data. Projected CJR episode volume increases follow Medicare enrollment assumptions included in the 2019 Medicare Trustees Report. Price updates for 2018 to 2020 follow FFS unit cost increases by service category for 2018 to 2020. The weights for each service category were developed using 2018 episode spending data. For 2021 to 2023, price updates were assumed to equal the market basket minus multifactor productivity (MFP) growth, or roughly the approximate price update that is built into the Trustees Report model.

We are assuming that participants would reduce episode spending by 1 percent in 2021 compared to their respective regions. In 2022 and 2023, we assume that participant hospitals' spending would grow at the same rate as their respective regions. We make these assumptions given that the most recent CJR evaluation report showed that participant hospitals reduced spending by 3.7 percent during the first 2 years of CJR. Specifically, we are assuming that participant hospitals will have more difficulty producing additional savings over time. Since LEJR episode costs have been declining, there is some uncertainty around how much more efficient participant hospitals, clinicians and the associated post-acute care providers can be in terms of further reducing the costs of LEJR episodes. However, as the CJR model shares the extra savings back to participant hospitals, we do not anticipate large changes in the impact analysis as a result of changes in the assumption that participant hospitals would have difficulty produce additional savings over time. We are assuming that if the CJR model were not extended, participant hospitals would increase their episode spending by 1.9 percent as a response to the model ending, which is half of the savings shown by the evaluation for the first 2 years of CJR.

We note that we did not make any assumptions about behavioral changes in the post-acute care space that may result from significant payment policy changes finalized in the FY 2019 SNF (83 FR 39162) and CY 2019 HH (83 FR 56406) rules for implementation with FY 2020 and CY 2020 respectively as we do not yet have any claims experience with these new methodologies in place. Behavioral changes stemming from these policies could have impacts upon our CJR savings estimate that we are unable to quantify at this time.

TKA procedures in the ambulatory surgery center (ASC) setting are eligible for Medicare payment as of January 1, 2020. Since ASC procedures are not included in the proposed CJR model extension, we note that the number of CJR TKA episodes could decrease as a result of this policy change. However, given that we had no claims experience from which to draw at the time we prepared this impact analysis, we did not have a basis from which to estimate this potential decrease in TKA episodes. Therefore, assumptions resulting from this payment change have not been included in this financial impact estimate. In the OPPS CY 2020 Final rule (84 FR 61388), we stated that we agreed with commenters who stated that the majority of Medicare beneficiaries would not be suitable candidates to receive TKA procedures in an ASC setting, noting that factors such as age, comorbidity, and body mass index are among the many factors that must be taken into account to determine if performing a TKA procedure in an ASC would be appropriate for a particular Medicare beneficiary. However,we further stated that we believe there are a small number of less medically complex beneficiaries that could appropriately receive the TKA procedure in an ASC setting and that we believe physicians should continue to play an important role in exercising their clinical judgment when making site-of-service determinations, including for TKA. Therefore, while we are unable to estimate volume changes due to the change to allow TKA procedures in the ASC setting, we anticipate that the volume, if any, would likely be small such that only the magnitude of this CJR impact estimate would change.

Total hip arthroplasty procedures were removed from the Inpatient Only List, effective January 1, 2020. We acknowledge that it is possible that this change could result in reductions in hip procedure costs should some percentage of inpatient THA procedures move into the OPPS setting over the next several years. We note that we did not make any specific assumptions about decreasing episode costs for any of the hip episodes used in this impact analysis. However, we also note that since target prices are subject to a retrospective trend adjustment, the effects of this payment change to allow THA procedures in the OPPS setting should be captured in the target price resulting in a minimal financial impact to the CJR model.

The calculations shown in Table 7 below estimated that, in total, the proposed changes to the CJR model would result in a net Medicare program savings of approximately $269 million over the 3 proposed performance years (2021 through 2023). We seek comment on our assumptions and approach.

The following table summarizes the anticipated qualitative impact of each of the discrete provisions of this proposed rule. Although we are unable to provide discrete estimates of costs, savings, and transfers associated with each of these provisions at this time, we will provide a more detailed cost-benefit impact analysis of these discrete provisions in the final rule. This table includes a qualitative estimate of the costs/savings imposed on non-federal entities (that is, participating medical facilities) as well as transfers of federal funds relative to the original CJR model provisions. The ''Notes'' column provides additional background when necessary.

TABLE 6—QUALITATIVE ANTICIPATED IMPACTS BY PROPOSED PROVISION RELATIVE TO ORIGINAL CJR MODEL POLICIES 2021–2023

| Provision | Costs/savings | Transfers | Notes |
|---|---|---|---|
| Changes to episode definition to include OP TKA/THA. | Cost | | The bulk of data used to set target prices under original CJR methodology would not include many OPPS knee episodes and would include no OPPS hip episodes until proposed PY7. Therefore, if we were to make no changes to the current CJR target price methodology and were only to add OP TKA/THA procedures to the CJR episode definition, targets would be based on inpatient hospitalization costs and subsequent post acute care and would likely be inappropriately high relative to OPPS episode costs. |
| Freezing hip fracture list and episode exclusions list. | Zero Impact | | We have not needed to update the fracture/episode exclusion list to any degree of significance for the first 5 years of CJR and do not anticipate changes in the next 3 years so we assume this will have a zero impact. |
| Capping high episode spending at the 99th percentile (rather than two standard deviation methodology). | Savings | | The 99th percentile high episode cap will be higher than the 2 standard deviations of mean episode cost such that more costs per episode will be considered relative to the target and reconciliation payments may decrease slightly while reconciliation obligations may increase slightly. |
| Use of the most recently available one year of data to calculate target prices (rather than most recent three years of data), removal of regional and hospital anchor weighting factor(s) from target price calculation, and discontinuing twice annual updates to the target prices to account for changes in the Medicare prospective payment systems and fee schedule rates. | Savings | | Updating the target price data set to use a time period closer to the model, removing anchor weighting and discontinuing the FFS updating (in favor of a trend update at reconciliation) should ensure the targets are better aligned to actual expected episode spending. |
| Applying a market trend factor (that is, the regional MS–DRG/fracture mean cost of episodes occurring during the performance year divided by the regional MS–DRG/fracture mean cost for episodes occurring during the target price base year). | Cost or Savings Trend Ratio. | | The trend factor will incorporate all differences in average episode costs between year used for target price and actual model so to the extent FFS payment updates have increased, the trend could be greater than 1 which could increase targets and the model cost; if, despite FFS increases overall, episode spending decreases then targets will decrease and savings will result. |
| Incorporating a risk adjustment for beneficiary specific CMS–HCC condition count and age bracket. | Zero Impact | | This risk adjustment is designed to increase target prices somewhat for beneficiaries with increasing age and/or HCCs; it will lower targets somewhat for younger beneficiaries with fewer or no HCCs. The presumption is that episode costs for older, more complex beneficiaries should be higher than average and for younger, less complex beneficiaries they should be lower than average so we anticipate a net impact of zero for this provision. |
| Increasing hospital quality incentive payments (that is, a 1.5 percentage point reduction to the applicable discount factor for participant hospitals with ''good'' quality performance and a 3 percentage point reduction to the applicable discount factor for participant hospitals with ''excellent'' quality performance). | Zero Impact | | We believe this provision will be redistributive among participants but that it will not have an overall impact on the model given the other changes we are proposing to the pricing methodology. |
| Excluding opt-in low-volume and rural hospitals with a CCN primary address in a mandatory MSA and excluding opt-in hospitals with a CCN primary address in a voluntary MSA. | Savings | | We assume that those participants who voluntarily opted to continue in CJR as of PY3 were doing well in the CJR model and that removing them from the model will likely result in a smaller reconciliation payout which will create some savings relative to current CJR reconciliation spending. |

Burden reductions should result from the three other proposals we are making in this rule. Specifically, our proposal to move from two to one reconciliation should effectively cut the level of effort participants and the agency need to

expend on reconciliation in half. Assuming a rate of $33.89 per hour for an accountant (*https://www.bls.gov/ooh/business-and-financial/accountants-and-auditors.htm*) and an average of 15 hours to review each report for each of the 474 participant hospitals at 2 months then again at 14 months could cost approximately $481,916. Moving to only one report for each performance year should reduce that cost by $240,958 to approximately $240,958. Likewise, accounting hours necessary to ensure that no physician received more than 50 percent of his or her total billing for Medicare-approved amounts under the PFS for items and services furnished by that physician or non-physician practitioner to the participant hospital's CJR beneficiaries during CJR episodes that occurred during the same performance year for which the participant hospital accrued internal cost savings or earned a reconciliation payment will no longer be necessary should our proposal to remove the 50 percent cap be finalized. Given our most recent review, 159 CJR participants have CJR collaborators that are physicians. Assuming an average of 10 collaborators per participant and 20 hours to review each collaborator's Part B claim totals by accountants at an hourly rate of $33.89, each participant could have spent approximately $6,778 on the reviews for a total of $1.1 million across all 159 participants with CJR collaborators. Our proposal to remove the 50 percent cap should therefore reflect a burden reduction around $1.1 million. While we are unable to quantify the burden reduction to be had by our proposals to modify beneficiary notice requirements for model inclusion, discharge planning notices, and our extension of waivers for Medicare program rules, we believe having uniform requirements regardless of procedure setting for CJR beneficiaries will help participants to streamline the administrative procedures they put in place for the CJR model and that this streamlining will reduce the effort participants need to expend in complying with the CJR model regulations.

TABLE 7—FINANCIAL IMPACT FOR THE PROPOSED CHANGES AND THREE-YEAR EXTENSION OF CJR

[Figures are in $ millions, negative values represent savings]

| Year | 2021 | 2022 | 2023 | Total |
|---|---|---|---|---|
| Episode Spending with Model | $1,505 | $1,582 | $1,661 | $4,748 |
| Episode Spending without Model | 1,533 | 1,623 | 1,703 | 4,859 |
| Reconciliation | −50 | −53 | −55 | −158 |
| Total Impact | −78 | −94 | −97 | −269 |

**Note:** Totals do not necessarily equal the sums of rounded components.

Our analysis presented the transfer payment effects of the proposed rule to the best of our ability.

The following table summarizes the financial impact of the proposal across three relevant years as well as two alternative scenarios: (1) If the CJR model were discontinued; and (2) if the CJR model were extended with changes to the episode definition to include OP TKA/THA but no other proposed changes. This table includes the full amount of FFS episode payments and any rows that show the model extending also includes any reconciliation payments related to the model. This table shows costs/savings (costs are represented as positive amounts and savings as negative amounts) imposed on non-federal entities (that is, participating medical facilities) as well as net transfers of federal funds (that is, increases in Medicare program expenditures are indicated as positive amounts and decreases in Medicare program expenditures are indicated as negative amounts).

TABLE 8—NET FINANCIAL IMPACTS UNDER PROPOSAL AND ALTERNATIVE SCENARIOS ($ IN MILLIONS) 2021–2023

| Scenario | Costs/benefits | Transfers |
|---|---|---|
| Net financial impact of extending CJR model with all proposed changes | 0 | 4,626 |
| Net financial impact of extending CJR model including OP TKA/THA in episode definition, but including no other proposed changes | 0 | 4,965 |
| Net financial impact of ending CJR model | 0 | 4,859 |

**Note:** Row 1 of Table 8 reflects the value shown in Table 7 row 1 (episode spending with model) less the reconciliation payment amount shown in row 3 of Table 7. Row 3 of Table 8 shows the total spend without the model as shown in Table 7.

*D. Effects on Beneficiaries*

We believe the refinements to the CJR model proposed in this proposed rule would not materially alter the potential effects of the model on beneficiaries. We believe the proposed changes would not alter the effects of the model on beneficiaries because the proposed changes predominantly alter how hospitals interact with the model, rather than how beneficiaries receive care. We do not expect that CJR hospitals will conduct a larger share of LEJR procedures in the outpatient setting than non-CJR hospitals. We believe that the combination of our proposed episode-level risk adjustment methodology, with the fact that sicker patients who are inappropriately treated in the outpatient setting would potentially have complications requiring readmissions or other expensive post-acute care as a result of the inappropriate care setting for the original procedure, will incentivize physicians to make the appropriate clinical judgment based on the individual beneficiary's needs.

*E. Effects on Small Rural Hospitals*

The change and extension are focused on high cost urban area MSAs and exclude participant hospitals that are rural hospitals as of December 31, 2020 from participation. We note that the hospitals with rural status that opted to continue to participate in the CJR model after February 1, 2018 were all rural based on urban to rural reclassifications governed by § 412.103 and were also qualified as rural referral centers (RRCs) (see § 412.96). RRCs are high-volume acute care hospitals that treat a large

number of complicated cases. Therefore, we do not believe this model will have an impact on small rural hospitals.

*F. Effects on Small Entities*

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. We estimated that most hospitals and most other providers and suppliers are small entities, either by virtue of their nonprofit status or by qualifying as small businesses under the Small Business Administration's size standards (revenues of less than $7.5 to $38.5 million in any 1 year; NAIC Sector-62 series). States and individuals are not included in the definition of a small entity. For details, see the Small Business Administration's website at *http://www.sba.gov/content/smallbusiness-size-standards.* For purposes of the RFA, we generally consider all hospitals and other providers and suppliers to be small entities. We believe that the provisions of this proposed rule relating to acute care hospitals will have some effects on a substantial number of other providers involved in these episodes of care including surgeons and other physicians, SNFs, physical therapists, and other providers. Although we acknowledge that many of the affected entities are small entities, and the analysis discussed throughout this proposed rule discusses aspects of the CJR model that may or would affect them, we have no reason to assume that these effects would reach the threshold level of 3 percent of revenues used by HHS to identify what are likely to be ''significant'' impacts. We assume that all or almost all of these entities will continue to serve these patients, and to receive payments commensurate with their cost of care. Hospitals currently experience frequent changes to payment (for example, as both hospital affiliations and preferred provider networks change) that may impact revenue, and we have no reason to assume that this will change significantly under the changes proposed in this proposed rule.

*G. Regulatory Review Costs*

If regulations impose administrative costs on private entities, such as the time needed to read and interpret this proposed rule, we should estimate the cost associated with regulatory review. Due to the uncertainty involved with accurately quantifying the number of entities that will review the proposed rule, we assume that at least one individual at most participant providers currently participating in CJR, that is approximately 470, will review this proposed rule. We acknowledge that this assumption may understate or overstate the costs of reviewing this proposed rule. It is possible that not all commenters will review the rule in detail, and it is also possible that some reviewers may not choose to comment on the proposed rule. However, for the purposes of our estimate we assume that each reviewer reads approximately 100 percent of the rule.

Using the wage information from the BLS for medical and health service managers (Code 11–9111), we estimate that the cost of reviewing this rule is $109.36 per hour, including overhead and fringe benefits *https://www.bls.gov/oes/current/oes_nat.htm.* Assuming an average reading speed, we estimate that it would take approximately 2.3 hours for the staff to review the proposed rule. For each entity that reviews the rule, the estimated cost is $251.53 (2.3 hours × $109.36). Therefore, we estimate that the total cost of reviewing this rule is $118,336 ($251.78 × 470 reviewers).

*H. Accounting Statement*

As required by OMB Circular A–4 under Executive Order 12866 (available at *https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/circulars/A4/a-4.pdf*) in Table 9, we have prepared an accounting statement showing the classification of transfers, benefits, and costs associated with the provisions in this proposed rule. The accounting statement is based on estimates provided in this regulatory impact analysis. As described in Table 7, we estimate the proposed 3-year extension and changes to the CJR model will result in savings to the federal government of $269 million over the 3 performance years of the model from 2021 to 2023. The following Table 9 shows the annualized change in (A) net federal monetary transfers, and (B) potential reconciliation payments to participating hospitals net of repayments from participant hospitals that is associated with the provisions of this proposed rule as compared to baseline. In Table 9, the annualized change in payments based on a 7-percent and 3-percent discount rate, results in net federal monetary transfer from the participant IPPS hospitals to the federal government of $83 million and $86 million respectively.

TABLE 9—ACCOUNTING STATEMENT ESTIMATED IMPACTS

[Estimate amounts are in $ millions]

| Category | Estimates | Units | | |
|---|---|---|---|---|
| | | Year dollar | Discount rate (%) | Period covered |
| Transfers: | | | | |
| Annualized Monetized ($million/year) | 83 | 2019 | 7 | 2121–2023 |
| | 86 | 2019 | 3 | 2121–2023 |
| From Whom to Whom | Participant IPPS to Federal Government | | | |

Section 202 of the Unfunded Mandates Reform Act of 1995 also 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. In 2018, that threshold is approximately $154 million. This rule will have no consequential effect on state, local, or tribal governments or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on state and local governments, preempts state law, or otherwise has Federalism implications. Since this regulation does not impose any costs on state or local governments, the requirements of Executive Order 13132 are not applicable.

Executive Order 13771 (January 30, 2017) requires that the costs associated with significant new regulations ''to the extent permitted by law, be offset by the elimination of existing costs associated with at least two prior regulations.'' The E.O. 13771 designation of this rule will be informed by public comments received.

*I. Analysis of Regulatory Alternatives*

As noted previously, Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives. In developing this proposed rule, we considered a number of regulatory alternatives. These include—

- Broadening or modifying the types of entities that may convene an episode under the CJR model;
- Calculating coefficients separately for each region or applying risk-standardization to the regional target price prior to applying the beneficiary-specific risk score (as noted earlier in section II.C.4. of this proposed rule ''Additional Episode-Level Risk Adjustment''); and
- Utilizing the regional median episode costs as a basis for the market trend factor update calculation, rather than the regional mean episode costs for this calculation (as noted earlier in section II.C.6. of this proposed rule ''Changes to Trend Factor Calculation'')

These regulatory alternatives and their potential costs and benefits are explored in more detail later in this section.

In developing this proposed rule, as we believe it would be good for the CMS innovation center to consider a wider range of participants for future LEJR models, we considered broadening and modifying the types of entities that may initiate an episode under the CJR model. However, the CJR model as established in notice and comment rulemaking, limited participants to hospitals. As the impetus for proposing this extension was that the active model is currently showing promise in terms of reducing costs while maintaining quality and we wished to continue that momentum, we were limited by timing. New participant types for the CJR model would require more lead time to put in place preparations for entering the model and this would necessitate a long delay between the end of performance year 5 and the initiation of performance year 6, which would really be performance year 1 for new participants. Further, we would likely have needed to reconsider and broaden the geographic scope of the model were we to extend participant types since the original model geography was based on hospital specific criteria. Further, we believe that broadening and modifying who may initiate an episode would unnecessarily complicate the evaluation and limit the generalizability of the results affecting the ability of this model being certified in the future. Therefore, we did not propose to include additional participants in this proposed CJR model extension but rather are soliciting comment in section II.J. of this proposed rule on how a future LEJR model that incorporated other entities in addition to hospitals might be structured.

In developing our risk adjustment methodology approach, although we are proposing to calculate coefficients at the national level, we also considered calculating coefficients separately for each region or applying risk-standardization to the regional target price prior to applying the beneficiary-specific risk score (as noted earlier in section II.C.4. of this proposed rule ''Additional Episode-Level Risk Adjustment''). As we believe regional differences in risk for HCC count and age should already be accounted for via our region/MS–DRG/hip fracture pricing strategy we are proposing the computationally less complex national approach although we are seeking comment on a regional calculation of coefficients.

Finally, in developing our proposed methodology for the market trend factor update calculation, we considered utilizing the regional median episode costs as a basis for the market trend factor update calculation, as medians are generally recognized as a better measure of central tendency. However, we did not propose to use the median in the market trend factor update as discussed in section II.C.6. of this proposed rule ''Changes to Trend Factor Calculation'' of this proposed rule because we thought it would be more appropriate to use the mean here such that the low and high data points of pricing were captured and reflected in the trend. Further, using the mean keeps the trend calculation aligned with the methodology for deriving the target prices for the model as the target prices use the mean rather than the median.

## V. 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.

**List of Subjects in 42 CFR Part 510**

Administrative Practice and Procedure, Health facilities, Health professions, Medicare, and Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV as follows:

## PART 510—COMPREHENSIVE CARE FOR JOINT REPLACEMENT MODEL

■ 1. The authority citation for part 510 is revised to read as follows:

**Authority:** 42 U.S.C. 1302, 1315(a), and 1395hh.

■ 2. Section 510.2 is amended by—

■ a. Adding definitions in alphabetical order for ''Age bracket risk adjustment factor'', ''Anchor procedure'', ''BPCI Advanced'', and ''CMS–HCC condition count risk adjustment factor'';

■ b. Revising the definition of ''Episode of care (or Episode)'' and ''Net payment reconcilation amount (NPRA)'';

■ c. Adding definitions in alphabetical order for ''OPPS'' and ''OP THA/OP TKA'';

■ d. Revising the definitions of ''Participant hospital'', ''Quality improvement points'', and ''Reconcilation payment''; and

■ e. Adding a definition in alphabetical order for ''Reconciliation target price''.

The additions and revisions read as follows:

**§ 510.2 Definitions.**

* * * * *

*Age bracket risk adjustment factor* means the coefficient of risk associated with a patient's age bracket, calculated as described in 510.301(a)(1).

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*Anchor procedure* means a Total Knee Arthroplasty (TKA) or Total Hip Arthroplasty (THA) procedure that is permitted and reimbursable by Medicare when performed in the outpatient setting and billed through the OPPS.

* * * * *

*BPCI Advanced* stands for the Bundled Payments for Care Improvement Advanced Model

* * * * *

*CMS–HCC condition count risk adjustment factor* means the coefficient of risk associated with a patient's total number of CMS Hierarchical Condition Categories, calculated as described in § 510.301(a)(1).

* * * * *

*Episode of care (or Episode)* means all Medicare Part A and B items and services described in § 510.200(b) (and

excluding the items and services described in § 510.200(d)) that are furnished to a beneficiary described in § 510.205 during the time period that begins with the beneficiary's admission to an anchor hospitalization or, on and after October 4, 2020, the date of admission to an anchor hospitalization or the date of the anchor procedure, as applicable, and ends on the 90th day after either of the following, as applicable:

(1) The date of discharge from the anchor hospitalization (with the day of discharge itself being counted as the first day of the 90-day post-discharge period).

(2) The date of service for the anchor procedure, as applicable.

* * * * *

*Net payment reconciliation amount (NPRA)* means the amount determined in accordance with § 510.305(e) and (m).

* * * * *

*OPPS* stands for the outpatient prospective payment system.

*OP THA/OP TKA* means a total hip arthroplasty or total knee arthroplasty, respectively, each as performed in the outpatient setting.

* * * * *

*Participant hospital* means one of the following:

(1) During performance years 1 and 2 of the CJR model and the period from January 1, 2018 to January 31, 2018 of performance year 3, a hospital (other than a hospital excepted under § 510.100(b)) with a CCN primary address located in one of the geographic areas selected for participation in the CJR model in accordance with § 510.105.

(2) Between February 1, 2018 and December 31, 2020, a hospital (other than a hospital excepted under § 510.100(b)) that is one of the following:

(i) A hospital with a CCN primary address located in a mandatory MSA as of February 1, 2018 that is not a rural hospital or a low-volume hospital on that date.

(ii) A hospital that is a rural hospital or low-volume hospital with a CCN primary address located in a mandatory MSA that makes an election to participate in the CJR model in accordance with § 510.115.

(iii) A hospital with a CCN primary address located in a voluntary MSA that makes an election to participate in the CJR model in accordance with § 510.115.

(3) Beginning January 1, 2021, a hospital (that is not a rural hospital or a low-volume hospital as defined in § 510.2 as of October 4, 2020 (based on the date of the CMS notification letter and not the effective date of the rural reclassification, if applicable)) with a CCN primary address located in a mandatory MSA.

* * * * *

*Quality improvement points* are points that CMS adds to a participant hospital's composite quality score for a measure if the hospital's performance percentile on an individual quality measure for performance years 2 through 8 increases from the previous performance year by at least 2 deciles on the performance percentile scale, as described in § 510.315(d). For performance year 1, CMS adds quality improvement points to a participant hospital's composite quality score for a measure if the hospital's performance percentile on an individual quality measure increases from the corresponding time period in the previous year by at least 2 deciles on the performance percentile scale, as described in § 510.315(d).

* * * * *

*Reconciliation payment* means a payment made by CMS to a CJR participant hospital as determined in accordance with § 510.305(f) and (l).

* * * * *

*Reconciliation target price* means, for performance years 6 through 8, the target price applied to an episode at reconciliation, as determined in accordance with § 510.301.

* * * * *

■ 3. Section 510.100 is amended by revising paragraph (a) to read as follows:

**§ 510.100 Episodes being tested.**

(a) *Initiation of an episode.* An episode is initiated when, with respect to a beneficiary described in § 510.205—

(1) The participant hospital admits the beneficiary for an anchor hospitalization; or

(2) On or after October 4, 2020, the participant hospital admits the beneficiary for an anchor hospitalization, or an anchor procedure is performed at the participant hospital.

* * * * *

■ 4. Section 510.105 is amended by adding paragraphs (a)(3) to read as follows:

**§ 510.105 Geographic areas.**

(a) * * *

(3) Beginning with performance year 6, only the 34 selected MSAs designated as mandatory participation MSAs as of performance year 3.

* * * * *

■ 5. Section 510.120 is amended by revising paragraph (a) introductory text to read as follows:

**§ 510.120 CJR participant hospital CEHRT track requirements.**

(a) *CJR CEHRT use.* For performance years 2 through 8, CJR participant hospitals choose either of the following:

* * * * *

■ 6. Section 510.200 is amended by—

■ a. Revising paragraphs (a), (c), (d)(4) introductory text, and (d)(6);

■ b. Adding paragraph (d)(7);

■ c. Revising paragraphs (e)(1) and (2) and paragraphs (e)(3) introductory text and (e)(4) introductory text; and

■ d. Adding paragraph (e)(5).

The revisions and additions read as follows:

**§ 510.200 Time periods, included and excluded services, and attribution.**

(a) *Time periods.* All episodes must begin on or after April 1, 2016 and end on or before December 31, 2023.

* * * * *

(c) *Episode attribution.* All items and services included in the episode are attributed to the participant hospital at which the anchor hospitalization or anchor procedure, as applicable, occurs.

(d) * * *

(4) Items and services unrelated to the anchor hospitalization or the anchor procedure. Excluded services include, but are not limited to, the following:

* * * * *

(6) For performance years 1 through 5 only, payments for otherwise included items and services in excess of 2 standard deviations above the mean regional episode payment in accordance with § 510.300(b)(5).

(7) For performance years 6 through 8 only, payments for otherwise included items and services in excess of the 99th percentile of regional spending, ranked within each region, for each of the four MS–DRG/permitted OP TKA/THA/hip fracture target price categories, as specified in § 510.300(a)(1) and (6), for performance years 6 through 8, in accordance with § 510.300(b)(5).

(e) * * *

(1) The list of excluded MS–DRGs, ICD–CM diagnosis codes, and CMS model PBPM payments are posted on the CMS website.

* * * * *

(2) For performance years 1 through 5 only, on an annual basis, or more frequently as needed, CMS updates the list of excluded services to reflect annual coding changes or other issues brought to CMS' attention.

(3) For performance years 1 through 5 only, CMS applies the following standards when revising the list of excluded services for reasons other than to reflect annual coding changes:

* * * * *

(4) For performance years 1 through 5 only, CMS posts the following to the CMS website:

* * * * *

(5) For performance years 6 through 8, the list of excluded services posted on the CMS website as it appears at the beginning of performance year 5 will not be updated.

■ 7. Section 510.210 is amended by revising paragraphs (a) and (b)(1)(ii) to read as follows:

**§ 510.210 Determination of the episode.**

(a) *General.* (1) An episode begins with the admission of a Medicare beneficiary described in § 510.205 to a participant hospital for an anchor hospitalization and ends on the 90th day after the date of discharge, with the day of discharge itself being counted as the first day in the 90-day post-discharge period.

(2) On or after October 4, 2020, an episode—

(i) Begins and ends in the manner specified in paragraph (a)(1) of this section; or

(ii) Begins on the date of service of an anchor procedure furnished to a Medicare beneficiary described in § 510.205 and ends on the 90th day after the date of service of the anchor procedure.

(b) * * *

(1) * * *

(ii) Is readmitted to any participant hospital for another anchor hospitalization, or, on or after October 4, 2020, receives an anchor procedure at any participant hospital.

* * * * *

■ 8. Section 510.300 is amended by—

■ a. Revising paragraphs (a)(2) and (4);

■ b. Adding paragraphs (a)(6) and (b)(1)(iv) through (vi); and

■ c. Revising paragraphs (b)(2)(iii), (b)(5), and (c)(3)(iii).

The revisions and additions read as follows:

**§ 510.300 Determination of episode quality-adjusted target prices.**

(a) * * *

(2) *Applicable time period for performance year episode quality-adjusted target prices.* For performance years 1 through 5, episode quality-adjusted target prices are updated to account for Medicare payment updates no less than 2 times per year, for updated quality-adjusted target prices effective October 1 and January 1, and at other intervals if necessary.

* * * * *

(4) *Identifying episodes with hip fracture.* CMS develops a list of ICD–CM hip fracture diagnosis codes that, when reported in the principal diagnosis code files on the claim for the anchor hospitalization or anchor procedure, represent a bone fracture for which a hip replacement procedure, either a partial hip arthroplasty or a total hip arthroplasty, could be the primary surgical treatment. The list of ICD–CM hip fracture diagnosis codes used to identify hip fracture episodes for performance years 1 through 5 can be found on the CMS website.

(i) For performance years 1 through 5 only, on an annual basis, or more frequently as needed, CMS updates the list of ICD–CM hip fracture diagnosis codes to reflect coding changes or other issues brought to CMS' attention.

(ii) For performance years 1 through 5 only, CMS applies the following standards when revising the list of ICD–CM hip fracture diagnosis codes.

(A) The ICD–CM diagnosis code is sufficiently specific that it represents a bone fracture for which a physician could determine that a hip replacement procedure, either a PHA or a THA, could be the primary surgical treatment.

(B) The ICD–CM diagnosis code is the primary reason (that is, principal diagnosis code) for the anchor hospitalization or anchor procedure.

(iii) For performance years 1 through 5 only, CMS posts the following to the CMS website:

(A) Potential ICD–CM hip fracture diagnosis codes for public comment; and

(B) A final ICD–CM hip fracture diagnosis code list after consideration of public comment.

(iv) For performance years 6 through 8, the hip fracture diagnosis code list posted at *https://innovation.cms.gov/Files/worksheets/cjr-icd10hipfracturecodes.xlsx* as it appears at the beginning of performance year 5 will not be updated.

* * * * *

(6) *For episodes beginning on or after October 4, 2020 that are initiated by an anchor procedure,* permitted OP TKAs and OP THAs will be grouped with MS–DRG 470 episodes as follows:

(i) Permitted OP THAs with hip fracture group with MS–DRG 470 with hip fracture.

(ii) Permitted OP THAs without hip fracture and permitted OP TKAs group with MS–DRG 470 without hip fracture.

(b) * * *

(1) * * *

(iv) Episodes beginning in 2019 for performance year 6.

(v) Episodes beginning in 2020 for performance year 7.

(vi) Episodes beginning in 2021 for performance year 8.

(2) * * *

(iii) Regional historical episode payments for performance years 4 through 8.

* * * * *

(5) *Exception for high episode spending.* (i) For performance years 1 through 5, episode payments are capped at 2 standard deviations above the mean regional episode payment for both the hospital-specific and regional components of the quality-adjusted target price.

(ii) For performance years 6 through 8, episode payments are capped at the 99th percentile of regional spending for each of the four MS–DRG/permitted OP TKA/THA/hip fracture categories, as specified in § 510.300(a)(1) and (6).

* * * * *

(c) * * *

(3) * * *

(iii) In performance years 4 through 8, 3.0 percent.

* * * * *

■ 9. Section 510.301 is added to read as follows:

**§ 510.301 Determination of reconciliation target prices.**

Beginning with performance year 6, the quality-adjusted target price computed under § 510.300 is further adjusted for risk and trend as described in this section to arrive at the reconciliation target price amount. Specifically:

(a) *Risk adjustment.* (1) The beneficiary-level target prices computed under § 510.300 is be risk adjusted by a CMS–HCC condition count risk adjustment factor and an age bracket risk adjustment factor. Both factors are binary, yes/no variables, meaning that a beneficiary either does or does not meet the criteria for a specific variable.

(i) The CMS–HCC condition count risk adjustment factor uses five variables, representing beneficiaries with zero, one, two, three, or four or more CMS–HCC conditions.

(ii) The age bracket risk adjustment factor uses four variables, representing beneficiaries aged less than 65 years, 65 to 74 years, 75 years to 84 years, or 85 years or more.

(2) Both factors are computed annually prior to the start of each performance year 6 through 8 via a linear regression analysis. The annual regression analysis is computed using the one year of claims data applicable to that performance years' target price calculation as specified in § 510.300(b) and the most recently available CMS–HCC yearly file.

(i) For performance year 6, CMS uses the CMS–HHC yearly file for CY 2019;

(ii) For performance year 7, CMS uses the CMS–HHC yearly file for CY 2020;

(iii) For performance year 8, CMS uses the CMS–HHC yearly file for CY 2021.

(3)(i) The dependent variable in the annual regression that produces the risk adjustment coefficients is equal to the difference between the log transformed target price calculated under § 510.300 and the capped episode costs as described in § 510.300(b)(5)(ii).

(ii) The independent variables are binary values assigned to each CMS–HCC condition count variable and each age bracket variable.

(iii) Using these variables, the annual regression produces exponentiated coefficients to determine the anticipated marginal effect of each risk adjustment factor on episode costs. CMS transforms, or exponentiate, these coefficients in order to ''reverse'' the previous logarithmic transformation, and the resulting coefficients are be the CMS–HCC condition count risk adjustment factor and the age bracket risk adjustment factor that would be used during reconciliation for the subsequent performance year.

(4)(i) At the time of reconciliation, the beneficiary-level target prices computed under § 510.300 is risk adjusted by applying the applicable CMS–HCC condition count risk adjustment factor and the age bracket risk adjustment factor specific to the beneficiary in the episode.

(ii) For the CMS–HCC condition count risk adjustment factor, applicable means the coefficient that applies to the CMS–HCC condition count for the beneficiary in the episode; for the age bracket risk adjustment factor, applicable means the coefficient for the age bracket into which the beneficiary falls on the first day of the episode.

(5)(i) The risk-adjusted target prices are normalized at reconciliation to remove the overall impact of adjusting for age and CMS–HCC condition count on the national average target price.

(ii) The normalization factor is the national mean of the target price for all episode types divided by the national mean of the risk-adjusted target price.

(iii) CMS applies the normalization factor to the previously calculated, beneficiary-level, risk-adjusted target prices specific to each episode region, MS–DRG, and hip fracture status combination (as specified in paragraph (a)(4) of this section).

(iv) These normalized target prices are then further adjusted for market trends (as specified in paragraph (b) of this section) and quality performance (as specified at § 510.300), prior to being compared to the episode costs (after episode costs are reduced for high episode spending as specified at § 510.300 and/or extreme and uncontrollable conditions under § 510.305).

(b) *Market trend adjustment factor.* (1) The risk-adjusted quality-adjusted target price computed under § 510.300 and paragraph (a) of this section is further adjusted for market trend changes at the region, MS–DRG/permitted OP TKA/THA/hip fracture level.

(2) This adjustment is accomplished by multiplying each risk-adjusted quality-adjusted target price computed under § 510.300 and paragraph (a) of this section by the applicable market trend adjustment factor.

(3) The applicable market trend adjustment factor is calculated as the percent difference between the average regional MS–DRG fracture episode costs computed using the performance year claims data and comparison average regional MS–DRG fracture episode costs computed using historical calendar year claims data used to calculate the regional target prices in effect for that performance year.

■ 10. Section 510.305 is amended by—

■ a. Revising paragraph (b), the paragraph (d) subject heading, and paragraphs (d)(1) introductory text, (e) introductory text, and (e)(1)(i);

■ b. Adding paragraphs (f)(1)(iv) through (vi);

■ c. Revising paragraphs (i), (j)(1) introductory text, and (j)(2); and

■ d. Adding paragraphs (l) and (m).

The revisions and additions read as follows:

**§ 510.305 Determination of the NPRA and reconciliation process.**

* * * * *

(b) *Reconciliation.* (1) For performance years 1 through 5, CMS uses a series of reconciliation processes, which CMS performs as described in paragraphs (d) and (f) of this section after the end of each performance year, to establish final payment amounts to participant hospitals for CJR episodes for a given performance year.

(2) For performance years 6 through 8, CMS conducts one reconciliation process, which CMS performs as described in paragraphs (l) and (m) of this section after the end of each performance year, to establish final payment amounts to participant hospitals for CJR episodes for a given performance year.

(3) Following the end of each performance year, for performance years 1 through 8, CMS determines actual episode payments for each episode for the performance year (other than episodes that have been canceled in accordance with § 510.210(b)) and determines the amount of a reconciliation payment or repayment amount.

* * * * *

(d) *Annual reconciliation for performance years 1 through 5.* (1) Beginning 2 months after the end of each of performance years 1 through 5, CMS does all of the following:

* * * * *

(e) *Calculation of the NPRA for performance years 1 through 5.* By comparing the quality-adjusted target prices described in § 510.300 and the participant hospital's actual episode spending for the performance year and applying the adjustments in paragraph (e)(1)(v) of this section, CMS establishes an NPRA for each participant hospital for each of performance years 1 through 5.

(1) * * *

(i) Determines actual episode payments for each episode included in the performance year (other than episodes that have been canceled in accordance with § 510.210(b)) using claims data that is available 2 months after the end of the performance year. Actual episode payments are capped at the amount determined in accordance with paragraph (b)(5)(i) of this section for the performance year or the amount determined in paragraph (k) of this section for episodes affected by extreme and uncontrollable circumstances.

* * * * *

(f) * * *

(1) * * *

(iv) In each case as subject to paragraph (f)(1)(iii) of this section, results from the performance year 5 reconciliation as described in paragraph (i) of this section and the performance year 5 post-episode spending and ACO overlap calculations as described in paragraph (j) of this section are added to the performance year 6 NPRA in order to determine the reconciliation payment or repayment amount.

(v) Results from the performance year 6 reconciliation as described in paragraph (m) of this section and the performance year 6 post-episode spending and ACO overlap calculations as described in paragraph (j) of this section are added to the performance year 6 NPRA in order to determine the reconciliation payment or repayment amount.

(vi) Results from the performance year 7 reconciliation as described in paragraphs (m) of this section and the performance year 7 post-episode spending and ACO overlap calculations as described in paragraph (j) of this section are added to the performance year 8 NPRA in order to determine the

reconciliation payment or repayment amount.

(vii) The reconciliation or repayment amount will be assessed independently for performance year 8 in 2024.

* * * * *

(i) *Subsequent reconciliation calculation.* (1) For performance years 1 through 5, 14 months after the end of each performance year 1 through 5, CMS performs an additional calculation, using claims data available at that time, to account for final claims run-out and any additional episode cancelations due to overlap between the CJR model and other CMS models and programs, or for other reasons as specified in § 510.210(b).

(2) The subsequent calculation for performance years 1 through 4 occurs concurrently with the first reconciliation process for the following performance year.

(i) If the result of the subsequent calculation is different than zero, CMS applies the stop-loss and stop-gain limits in paragraph (e) of this section to the aggregate calculation of the amounts described in paragraphs (e)(1)(iv) and (i)(1) of this section for that performance year (the initial reconciliation and the subsequent reconciliation calculation) to ensure such amount does not exceed the applicable stop-loss or stop-gain limits.

(ii) Because performance year 5 is the last year for which a subsequent reconciliation will occur, that subsequent reconciliation will be conducted slightly before the performance year 6 reconciliation described in paragraph (m) of this section, and any amounts different than zero that do not exceed the applicable stop-loss or stop-gain limits will be included when calculating reconciliation for performance year 6 and prior to issuing a reconciliation payment or demanding a repayment amount.

(j) * * *

(1) In order to account for shared savings payments, CMS reduces the reconciliation payment or increase the repayment amount for the subsequent performance year (for years 1 through 8) by the amount of the participant hospital's discount percentage that is paid to the ACO in the prior performance year as shared savings. (This amount will be assessed independently for performance year 8 in 2025.) This adjustment is made only when the participant hospital is a participant or provider/supplier in the ACO and the beneficiary in the CJR episode is assigned to one of the following ACO models or programs:

* * * * *

(2) If the average post-episode Medicare Parts A and B payments for a participant hospital in the prior performance year is greater than 3 standard deviations above the regional average post-episode payments for the same performance year, then the spending amount exceeding 3 standard deviations above the regional average post-episode payments for the same performance year is subtracted from the net reconciliation or added to the repayment amount for the subsequent performance year for performance years 1 through 7, and assessed independently for performance year 8.

* * * * *

(l) *Annual reconciliation for performance years 6 through 8.* (1) Beginning 6 months after the end of each of performance years 6 through 8, CMS does all of the following:

(i) Performs a reconciliation calculation to establish an NPRA for each participant hospital.

(ii) For participant hospitals that experience a reorganization event in which one or more hospitals reorganize under the CCN of a participant hospital performs—

(A) Separate reconciliation calculations for each predecessor participant hospital for episodes where the anchor hospitalization admission or the anchor procedure occurred before the effective date of the reorganization event; and

(B) Reconciliation calculations for each new or surviving participant hospital for episodes where the anchor hospitalization admission or anchor procedure occurred on or after the effective date of the reorganization event.

(2) CMS—

(i) Calculates the NPRA for each participant hospital in accordance with paragraph (m) of this section including the adjustments provided for in paragraph (m)(1)(iv) of this section; and

(ii) Assesses whether participant hospitals meet specified quality requirements under § 510.315.

(m) *Calculation of the NPRA for performance years 6 through 8.* By comparing the reconciliation target prices described in § 510.301 and the participant hospital's actual episode spending for the performance year and applying the adjustments in paragraph (m)(1)(v) of this section, CMS establishes an NPRA for each participant hospital for each of performance years 6 through 8.

(1) In calculating the NPRA for each participant hospital for each performance year, CMS does the following:

(i) Determines actual episode payments for each episode included in the performance year (other than episodes that have been canceled in accordance with § 510.210(b)) using claims data that is available 6 months after the end of the performance year. Actual episode payments are capped at the amount determined in accordance with § 510.300(b)(5)(ii) for the performance year or the amount determined in paragraph (k) of this section for episodes affected by extreme and uncontrollable circumstances.

(ii) Multiplies each episode reconciliation target price by the number of episodes included in the performance year (other than episodes that have been canceled in accordance with § 510.210(b)) to which that episode reconciliation target price applies.

(iii) Aggregates the amounts computed in paragraph (m)(1)(ii) of this section for all episodes included in the performance year (other than episodes that have been canceled in accordance with § 510.210(b)).

(iv) Subtracts the amount determined under paragraph (m)(1)(i) of this section from the amount determined under paragraph (m)(1)(iii) of this section.

(v) Applies the following prior to determination of the reconciliation payment or repayment amount:

(A) Except as provided in paragraph (m)(1)(v)(C) of this section, the total amount of the NPRA for a performance year cannot exceed 20 percent of the amount calculated in paragraph (m)(1)(iii) of this section for the performance year. The post-episode spending and ACO overlap calculation amounts in paragraphs (j)(1) and (2) of this section are not subject to the limitation on loss.

(B) The total amount of the NPRA for a performance year cannot exceed 20 percent of the amount calculated in paragraph (m)(1)(iii) of this section for the performance year. The post-episode spending and ACO overlap calculation amounts in paragraphs (j)(1) and (2) of this section are not subject to the limitation on gain.

(C) Financial loss limits for rural hospitals, SCHs, MDHs, and RRCs for performance years 6 through 8. If a participant hospital is a rural hospital, SCH, MDH, or RRC, the amount cannot exceed 5 percent of the amount calculated in paragraph (m)(1)(iii) of this section.

(2) [Reserved]

* * * * *

■ 11. Section 510.310 is amended by —

■ a. Removing paragraph (b)(4)(i);

■ b. Redesignating paragraphs (b)(4)(ii) through (iv) as paragraphs (b)(4)(i) through (iii);
■ c. Revising newly redesignated paragraph (b)(4)(iii);
■ d. Removing paragraph (b)(5);
■ e. Redesignating paragraphs (b)(6) and (7) as paragraphs (b)(5) and (6); and
■ f. Revising newly redisgnated paragraph (b)(6).

The revisions read as follows:

**§ 510.310 Appeals process.**

* * * * *

(b) * * *

(4) * * *

(iii) The procedures (including format and deadlines) for submission of briefs and evidence.

* * * * *

(6) The CMS reconsideration official will make all reasonable efforts to issue a written determination within 30 days of the deadline for submission of briefs and evidence. The determination is final and binding.

* * * * *

■ 12. Section 510.315 is amended by revising paragraphs (d) and (f)(1) and (2) to read as follows:

**§ 510.315 Composite quality scores for determining reconciliation payment eligibility and quality incentive payments.**

* * * * *

(d) *Quality improvement points.* (1) For performance year 1, if a participant hospital's quality performance percentile on an individual measure described in § 510.400(a) increases from the corresponding time period in the previous year by at least 2 deciles on the performance percentile scale, then the hospitals is eligible to receive quality improvement points equal to 10 percent of the total available point for that individual measure up to a maximum composite quality score of 20 points.

(2) For performance years 2 through 8, if a participant hospital's quality performance percentile on an individual measure described in § 510.400(a) increases from the previous performance year by at least 2 deciles on the performance percentile scale, then the hospitals is eligible to receive quality improvement points equal to 10 percent of the total available point for that individual measure up to a maximum composite quality score of 20 points.

* * * * *

(f) * * *

(1) *Performance years 1 through 5.* For performance years 1 through 5—

(i) A 1.0 percentage point reduction to the effective discount factor or applicable discount factor for participant hospitals with good quality performance, defined as composite quality scores that are greater than or equal to 6.9 and less than or equal to 15.0; or

(ii) A 1.5 percentage point reduction to the effective discount factor or applicable discount factor for participant hospitals with excellent quality performance, defined as composite quality scores that are greater than 15.0.

(2) *Performance years 6 through 8.* For performance years 6 through 8—

(i) A 1.5-percentage point reduction to the effective discount factor or applicable discount factor for participant hospitals with good quality performance, defined as composite quality scores that are greater than or equal to 6.9 and less than or equal to 15.0; or

(ii) A 3-percentage point reduction to the effective discount factor or applicable discount factor for participant hospitals with excellent quality performance, defined as composite quality scores that are greater than 15.0.

* * * * *

■ 13. Section 510.400 is amended—
■ a. In paragraphs (b)(2)(i) and (ii) by removing the phrase ''over the 5 years'' and adding in its place the phrase ''over the 8 years''; and
■ b. Adding paragraph (b)(4).

The addition reads as follows:

**§ 510.400 Quality measures and reporting.**

* * * * *

(b) * * *

(4) For years 6 through 8 of the model the following data are requested by CMS for each performance period as follows:

(i) Year 6 (2021). Submit—

(A) Post-operative data on primary elective THA/TKA procedures for ≥80% or ≥200 procedures performed between July 1, 2019 and June 30, 2020; and

(B) Pre-operative data on primary elective THA/TKA procedures for ≥90% or ≥500 procedures performed between July 1, 2020 and June 30, 2021.

(ii) Year 7 (2022). Submit—

(A) Post-operative data on primary elective THA/TKA procedures for •90% or •500 procedures performed between July 1, 2020 and June 30, 2021; and

(B) Pre-operative data on primary elective THA/TKA procedures for 100% or ≥1,000 procedures performed between July 1, 2021 and June 30, 2022.

(iii) Year 8 (2023). Submit—

(A) Post-operative data on primary elective THA/TKA procedures for 100% or •1,000 procedures performed between July 1, 2021 and June 30, 2022; and

(B) Pre-operative data on primary elective THA/TKA procedures for 100% or •1,000 procedures performed between July 1, 2022 and June 30, 2023.

* * * * *

■ 14. Section 510.405 is amended by revising paragraphs (b)(1) and (3) to read as follows:

**§ 510.405 Beneficiary choice and beneficiary notification.**

* * * * *

(b) * * *

(1) *Participant hospital detailed notification.* Each participant hospital must provide written notification to any Medicare beneficiary that meets the criteria in § 510.205 of his or her inclusion in the CJR model.

(i) *Timing of notification.* The notification must be delivered at the following times:

(A) If the anchor procedure or anchor hospitalization is scheduled in advance, then the participant hospital must provide notice as soon as the anchor procedure or anchor hospitalization is scheduled.

(B) If the anchor procedure or anchor hospitalization is not scheduled in advance, then the notification must be provided on the date of the anchor procedure or date of admission to the anchor hospitalization, as applicable.

(C) In anchor hospitalization circumstances where, due to the patient's condition, it is not feasible to provide notification at the times specified in paragraphs (b)(1)(i)(A) or (B), the notification must be provided to the beneficiary or his or her representative as soon as is reasonably practicable, but no later than discharge from the participant hospital where the anchor hospitalization occurs.

(D) The participant hospital must be able to generate a list of all beneficiaries receiving such notification, including the date on which the notification was provided to the beneficiary, to CMS or its designee upon request.

(ii) *Content of notification.* The beneficiary notification must contain all of the following:

(A) A detailed explanation of the model and how it might be expected to affect the beneficiary's care.

(B) Notification that the beneficiary retains freedom of choice to choose providers and services.

(C) Explanation of how patients can access care records and claims data through an available patient portal, and how they can share access to their Blue Button® electronic health information with caregivers.

(D) A statement that all existing Medicare beneficiary protections continue to be available to the beneficiary. These include the ability to report concerns of substandard care to

Quality Improvement Organizations or the 1–800–MEDICARE helpline.

(E) A list of the providers, suppliers, and ACOs with whom the CJR participant hospital has a sharing arrangement. This requirement may be fulfilled by the participant hospital including in the detailed notification a Web address where beneficiaries may access the list.

* * * * *

(3) *Discharge planning notice.* A participant hospital must provide the beneficiary with a written notice of any potential financial liability associated with non-covered services recommended or presented as an option as part of discharge planning, no later than the time that the beneficiary discusses a particular post-acute care option or at the time the beneficiary is discharged from an anchor procedure or anchor hospitalization, whichever occurs earlier.

(i) If the participant hospital knows or should have known that the beneficiary is considering or has decided to receive a non-covered post-acute care service or other non-covered associated service or supply, the participant hospital must notify the beneficiary that the service would not be covered by Medicare.

(ii) If the participant hospital is discharging a beneficiary to a SNF prior to the occurrence of a 3-day hospital stay, and the beneficiary is being transferred to or is considering a SNF that would not qualify under the SNF 3-day waiver in § 510.610, the participant hospital must notify the beneficiary in accordance with paragraph (b)(3)(i) of this section that the beneficiary will be responsible for payment for the services furnished by the SNF during that stay, except those services that would be covered by Medicare Part B during a non-covered inpatient SNF stay.

* * * * *

■ 15. Section 510.500 is amended by revising paragraphs (c)(4)(i) and (ii) to read as follows:

**§ 510.500 Sharing arrangements under the CJR model.**

* * * * *

(c) * * *

(4) * * *

(i) For episodes beginning on or after April 1, 2016 and ending on or before December 31, 2020, in the case of a CJR collaborator who is a physician or non-physician practitioner, 50 percent of the Medicare-approved amounts under the PFS for items and services furnished by that physician or non-physician practitioner to the participant hospital's CJR beneficiaries during CJR episodes that occurred during the same performance year for which the participant hospital accrued the internal cost savings or earned the reconciliation payment that comprises the gainsharing payment being made.

(ii) For episodes beginning on or after April 1, 2016 and ending on or before December 31, 2020, in the case of a CJR collaborator that is a PGP or NPPGP, 50 percent of the Medicare-approved amounts under the PFS for items and services billed by that PGP or NPPGP and furnished to the participant hospital's CJR beneficiaries by the PGP members or NPPGP members respectively during CJR episodes that occurred during the same performance year for which the participant hospital accrued the internal cost savings or earned the reconciliation payment that comprises the gainsharing payment being made.

* * * * *

■ 16. Section 510.505 is amended by revising paragraphs (b)(8)(i) and (ii) to read as follows:

**§ 510.505 Distribution arrangements.**

* * * * *

(b) * * *

(8) * * *

(i) For episodes beginning on or after April 1, 2016 and ending on or before December 31, 2020, in the case of a collaboration agent that is a physician or non-physician practitioner, 50 percent of the total Medicare-approved amounts under the PFS for items and services furnished by the collaboration agent to the participant hospital's CJR beneficiaries during CJR episodes that occurred during the same performance year for which the participant hospital accrued the internal cost savings or earned the reconciliation payment that comprises the gainsharing payment being distributed.

(ii) For episodes beginning on or after April 1, 2016 and ending on or before December 31, 2020, in the case of a collaboration agent that is a PGP or NPPGP, 50 percent of the total Medicare-approved amounts under the PFS for items and services billed by that PGP or NPPGP for items and services furnished by PGP members or NPPGP member respectively to the participant hospital's CJR beneficiaries during CJR episodes that occurred during the same performance year for which the participant hospital accrued the internal cost savings or earned the reconciliation payment that comprises the gainsharing payment being distributed.

* * * * *

■ 17. Section 510.506 is amended by revising paragraph (b)(8) to read as follows:

**§ 510.506 Downstream distribution arrangements.**

* * * * *

(b) * * *

(8) Except for a downstream distribution payment from a PGP to a PGP member that complies with § 411.352(g) of this chapter, for episodes beginning on or after April 1, 2016 and ending on or before December 31, 2020 the total amount of downstream distribution payments for a performance year paid to a downstream collaboration agent who is a physician or non-physician practitioner and is either a member of a PGP or a member of an NPPGP must not exceed 50 percent of the total Medicare-approved amounts under the PFS for items and services furnished by the downstream collaboration agent to the participant hospital's CJR beneficiaries during a CJR episode that occurred during the same performance year for which the participant hospital accrued the internal cost savings or earned the reconciliation payment that comprises the distribution payment being distributed.

* * * * *

**§ 510.600 [Amended]**

■ 18. Section 510.600 is amended in paragraph (b)(1) by removing the phrase ''an anchor hospitalization'' and adding in its place the phrase ''an anchor hospitalization or anchor procedure.''

■ 19. Section 510.610 is amended—

■ a. By revising paragraph (a); and

■ b. In paragraph (b)(1), removing the phrase ''qualifying inpatient stay'' and adding in its place the phrase ''qualifying inpatient stay or anchor procedure''.

The revision reads as follows:

**§ 510.610 Waiver of SNF 3-day rule.**

(a) *Waiver of the SNF 3-day rule*—(1) *Performance year*—(i) *Performance years 2 through 5.* For episodes being tested in performance years 2 through 5 of the CJR model, CMS waives the SNF 3-day rule for coverage of a SNF stay for a beneficiary who is a CJR beneficiary on the date of discharge from the anchor hospitalization, but only if the SNF is identified on the applicable calendar quarter list of qualified SNFs at the time of the CJR beneficiary's admission to the SNF.

(ii) *Performance years 6 through 8.* For episodes being tested in performance years 6 through 8 of the CJR model, CMS waives the SNF 3-day rule for coverage of a SNF stay for a beneficiary who is a CJR beneficiary on the date of discharge from the anchor hospitalization or the date of service of the anchor procedure, as applicable, but only if the SNF is identified on the

applicable calendar quarter list of qualified SNFs at the time of the CJR beneficiary's admission to the SNF.

(2) *Determination of qualified SNFs.* CMS determines the qualified SNFs for each calendar quarter based on a review of the most recent rolling 12 months of overall star ratings on the Five-Star Quality Rating System for SNFs on the Nursing Home Compare website. Qualified SNFs are rated an overall of 3 stars or better for at least 7 of the 12 months.

(3) *Posting of qualified SNFs.* CMS posts to the CMS website the list of qualified SNFs in advance of the calendar quarter.

* * * * *

Dated: December 2, 2019.

**Seema Verma,**

*Administrator, Centers for Medicare and Medicaid Services.*

Dated: December 19, 2019.

**Alex M. Azar II,**

*Secretary, Department of Health and Human Services.*

[FR Doc. 2020–03434 Filed 2–20–20; 4:15 pm]

**BILLING CODE 4120–01–P**

# FEDERAL REGISTER

Vol. 85 Monday,

No. 36 February 24, 2020


Part III

## The President

Notice of February 20, 2020—Continuation of the National Emergency With Respect to Libya

Federal Register
Vol. 85, No. 36
Monday, February 24, 2020

# Presidential Documents

**Title 3—**

## The President

**Notice of February 20, 2020**

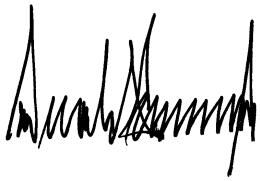
## Continuation of the National Emergency With Respect to Libya

On February 25, 2011, by Executive Order 13566, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions of Colonel Muammar Qadhafi, his government, and close associates, which took extreme measures against the people of Libya, including by using weapons of war, mercenaries, and wanton violence against unarmed civilians. In addition, there was a serious risk that Libyan state assets would be misappropriated by Qadhafi, members of his government, members of his family, or his close associates if those assets were not protected. The foregoing circumstances, the prolonged attacks against civilians, and the increased numbers of Libyans seeking refuge in other countries caused a deterioration in the security of Libya and posed a serious risk to its stability.

The situation in Libya continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States, and measures are needed to protect against the diversion of assets or other abuses by members of Qadhafi's family, their associates, and other persons hindering Libyan national reconciliation.

For this reason, the national emergency declared on February 25, 2011, must continue in effect beyond February 25, 2020. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13566.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
*February 20, 2020.*

[FR Doc. 2020–03810
Filed 2–21–20; 11:15 am]
Billing code 3295–F0–P

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