AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

FEDERAL REGISTER

Vol. 85 Wednesday,
No. 122 June 24, 2020

Pages 37731–38030

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Publishing Office, is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.federalregister.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at *www.govinfo.gov*, a service of the U.S. Government Publishing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 1, 1 (March 14, 1936) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Publishing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpocusthelp.com.*

The annual subscription price for the **Federal Register** paper edition is $860 plus postage, or $929, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $330, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Publishing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 85 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Publishing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Assistance with Federal agency subscriptions:

Email	*FRSubscriptions@nara.gov*
Phone	**202–741–6000**

The Federal Register Printing Savings Act of 2017 (Pub. L. 115-120) placed restrictions on distribution of official printed copies of the daily **Federal Register** to members of Congress and Federal offices. Under this Act, the Director of the Government Publishing Office may not provide printed copies of the daily **Federal Register** unless a Member or other Federal office requests a specific issue or a subscription to the print edition. For more information on how to subscribe use the following website link: *https://www.gpo.gov/frsubs.*

Printed on recycled paper.

Contents

Federal Register

Vol. 85, No. 122

Wednesday, June 24, 2020

Agency for Healthcare Research and Quality
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 37947–37949

Agricultural Marketing Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 37822–37823
Revision of Three U.S. Grade Standards for Carrots, 37820–37822

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Commodity Credit Corporation
See Rural Business-Cooperative Service

Animal and Plant Health Inspection Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Bovine Spongiform Encephalopathy; Importation of Animals and Animal Products, 37823–37824

Civil Rights Commission
NOTICES
Meetings:
Arkansas Advisory Committee, 37824
Illinois Advisory Committee, 37825
Maine Advisory Committee, 37826–37827
Nebraska Advisory Committee, 37825–37826
New York Advisory Committee, 37826
North Dakota Advisory Committee, 37824–37825

Commerce Department
See Economic Development Administration
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
RULES
Access to Information Under the Freedom of Information Act, 37778–37785

Commodity Credit Corporation
NOTICES
Funds Availability:
Higher Blends Infrastructure Incentive Program for Fiscal Year 2020; Correction, 37824

Commodity Futures Trading Commission
RULES
Retail Commodity Transactions Involving Certain Digital Assets, 37734–37744
NOTICES
Adoption of Revised Registration Form 8–R, 37880–37922
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Adoption of Revised Registration Form 8–R, 37922–37923

Community Living Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Evaluation of Participants of an Annual SMP/SHIP National Training Conference Hosted by the Office of Healthcare Information and Counseling, 37952–37953
National Beneficiary Survey of State Health Insurance Assistance Program, 37949–37951
SHIP-SMP Survey of Group Outreach and Education Events, 37951–37952

Comptroller of the Currency
RULES
Assessment of Fees, 37731–37734

Copyright Office, Library of Congress
NOTICES
Sovereign Immunity Study, 37961–37962

Copyright Royalty Board
RULES
Procedural Regulations of the Copyright Royalty Board Requiring Electronic Filing of Claims, 37752–37753

Defense Department
RULES
Defense Security Service Privacy Program, 37751
NOTICES
Meetings:
Defense Innovation Board; Cancellation, 37923

Economic Development Administration
NOTICES
Trade Adjustment Assistance; Petitions, 37827

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Application for the Language Resource Centers Program, 37924
Application for New Awards:
Higher Education Emergency Relief Fund; Coronavirus Aid, Relief, and Economic Security Act, 37923–37924

Election Assistance Commission
NOTICES
Meetings; Sunshine Act, 37924–37925

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Finding of Failure To Attain the 1987 24-Hour PM_{10} Standard; Reclassification as Serious Nonattainment; Pinal County, AZ, 37756–37760
National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List:
Partial Deletion of the Allied Chemical and Ironton Coke Superfund Site, 37763–37777

Pesticide Tolerances:
Indaziflam, 37760–37763
PROPOSED RULES
National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List:
Partial Deletion of the Allied Chemical and Ironton Coke Superfund Site, 37808–37809
Pesticide Petitions Filed for Residues of Pesticide Chemicals in or on Various Commodities (May 2020), 37806–37808
Review of Dust-Lead Post-Abatement Clearance Levels, 37810–37819
NOTICES
Clean Air Act Operating Permit Program; Petition for Objection:
State Operating Permit for Riverview Energy Corp. and ESSROC Cement Corp., 37944–37945
Final Toxic Substances Control Act Risk Evaluation:
Methylene Chloride, 37942–37944
Meetings:
Board of Scientific Counselors Executive Committee, 37942

Federal Aviation Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
National Air Tours Safety Standards, 38010–38011
Charter Renewals:
NextGen Advisory Committee, 38009
Environmental Assessments; Availability, etc.:
Wyoming Army National Guard, Training and Maneuver Activities at Camp Guernsey, Guernsey, WY; Establishment of Controlled Firing Areas; Finding of No Significant Impact and Record of Decision, 38002–38009
Wyoming Army National Guard; Establishment of Controlled Firing Areas: Finding of No Significant Impact/Record of Decision and Adoption, 38010
Meetings:
Research, Engineering, and Development Advisory Committee, 38011

Federal Communications Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 37945–37946

Federal Energy Regulatory Commission
NOTICES
Applications:
Verdant Power, LLC, 37940–37941
Combined Filings, 37931–37932, 37938
Environmental Impact Statements; Availability, etc.:
Nevada Hydro, Inc., 37925–37928
Initial Market-Based Rate Filings Including Requests for Blanket Section 204 Authorizations:
Cedar Springs Transmission, LLC, 37929
Cedar Springs Wind III, LLC, 37941
Gichi Noodin Wind Farm, LLC, 37941–37942
High Majestic Wind I, LLC, 37930
MPH Rockaway Peakers, LLC, 37928–37929
Wheatridge Wind Energy, LLC, 37925
Wheatridge Wind II, LLC, 37929–37930
Meetings:
Carbon Pricing in Organized Wholesale Electricity Markets; Technical Conference, 37930
Potential Enhancements to the Critical Infrastructure Protection Reliability Standards, 37932–37938
Request for Exemption of Time:
Atlantic Coast Pipeline, LLC; Dominion Energy Transmission, Inc., 37939–37940
Request Under Blanket Authorization:
Dominion Energy Transmission, Inc., 37938–37939
Eastern Shore Natural Gas Co., 37930–37931
Transfer of Exemption:
Columbia Mills Hydroelectric, LP; Green River Renewables, LLC, 37929

Federal Highway Administration
NOTICES
Buy America Waiver, 38013–38014
Special Experimental Project (SEP–16) To Evaluate Proposals for Delegation of FHWA Responsibilities to States, 38011–38013
Surface Transportation Project Delivery Program:
Ohio; Renewal Package and Proposed Memorandum of Understanding Assigning Environmental Responsibilities to the State, 38014–38016

Federal Motor Carrier Safety Administration
RULES
Motor Carrier Safety Assistance Program, 37785–37805
NOTICES
Hours of Service of Drivers; Exemption Applications:
Specialized Carriers and Rigging Assn., 38016–38018
Parts and Accessories Necessary for Safe Operation; Exemption Application:
Lytx Inc., 38018

Federal Reserve System
NOTICES
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 37946–37947

Food and Drug Administration
NOTICES
Drug Products Not Withdrawn From Sale for Reasons Other Than Safety or Effectiveness:
DEXTROSE in Plastic Container (Dextrose) Injectable, 30 Grams/100 Milliliters, 40 Grams/100 Milliliters, 60 Grams/100 Milliliters, and 70 Grams/100 Milliliters, 37954
TENEX (Guanfacine Hydrochloride) Tablets, 1 Milligram, 2 Milligrams, and 3 Milligrams, 37953

Foreign Assets Control Office
NOTICES
Blocking or Unblocking of Persons and Properties, 38018–38020

Foreign-Trade Zones Board
NOTICES
Production Activity; Authorization:
SICK Product and Competence Center Americas, LLC (Safety and Tracking Systems, Safety Light Curtains, and Connector Assemblies), Savage, MN; Foreign–Trade Zone 119, Minneapolis, MN, 37827

Health and Human Services Department
See Agency for Healthcare Research and Quality
See Community Living Administration
See Food and Drug Administration
See National Institutes of Health

Homeland Security Department
See Transportation Security Administration

See U.S. Customs and Border Protection

Indian Affairs Bureau
RULES
Change of Address:
Office of Indian Gaming for Submission of Tribal-State Class III Gaming Compacts, 37747–37748

Interior Department
See Indian Affairs Bureau
See National Park Service

Internal Revenue Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Annual Certification for Multiemployer Defined Benefit Plans, 38020–38021
Enhanced Oil Recovery Project, 38024–38025
Quarterly Federal Excise Tax Return, 38021
Privacy Act; Systems of Records, 38021–38024

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Cast Iron Soil Pipe Fittings From the People's Republic of China, 37832–37834
Certain Aluminum Foil From the People's Republic of China, 37829–37831
Corrosion-Resistant Steel Products From Italy and the People's Republic of China, 37828
Silicon Metal From Russia, 37831–37832

Justice Department
RULES
Privacy Act; Implementation, 37748–37751

Labor Department
See Occupational Safety and Health Administration

Library of Congress
See Copyright Office, Library of Congress
See Copyright Royalty Board

National Aeronautics and Space Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
COVID 19 Census of NASA Grantees, 37962
Meetings:
Advisory Council; Aeronautics Committee, 37962–37963

National Institutes of Health
NOTICES
Meetings:
Center for Scientific Review, 37955–37958
National Heart, Lung, and Blood Institute, 37957–37958
National Institute of Diabetes and Digestive and Kidney Diseases, 37957
National Institute of General Medical Sciences, 37957
National Institute on Aging, 37954–37955

National Oceanic and Atmospheric Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Alaska Interagency Electronic Reporting System, 37877–37878
Billfish Tagging Report, 37878–37879
For-Hire Telephone Survey, 37876–37877
National Marine Fisheries Services Alaska Region Vessel Monitoring System Program, 37879–37880
Processed Products Family of Forms, 37874–37875
Prohibited Species Donation Program, 37875–37876
Takes of Marine Mammals Incidental to Specified Activities:
Alameda Marina Shoreline Improvement Project, 37834–37848
Marine Site Characterization Surveys Off of Massachusetts, Rhode Island, Connecticut, New York and New Jersey, 37848–37874

National Park Service
NOTICES
Boundary Adjustment:
Delaware Water Gap National Recreation Area, 37959–37960

National Transportation Safety Board
NOTICES
Meetings; Sunshine Act, 37963

Nuclear Regulatory Commission
NOTICES
Environmental Impact Statements; Availability, etc.:
Holtec International HI–STORE Consolidated Interim Storage Facility Project, 37964–37965
Exemption:
Exelon Generation Co., LLC and MidAmerican Energy Co. Quad Cities Nuclear Power Station, Units 1 and 2, 37965–37968
Format Options for Requesting and Documenting Evaluation of Alternatives, 37963–37964

Occupational Safety and Health Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Rigging Equipment for Material Handling, 37960–37961

Postal Regulatory Commission
NOTICES
New Postal Products, 37968–37969

Presidential Documents
PROCLAMATIONS
Special Observances:
Father's Day (Proc. 10051), 38027–38030

Rural Business–Cooperative Service
NOTICES
Funds Availability:
Higher Blends Infrastructure Incentive Program for Fiscal Year 2020; Correction, 37824

Securities and Exchange Commission
NOTICES
Self-Regulatory Organizations; Proposed Rule Changes:
Financial Industry Regulatory Authority, Inc., 37970–37974
ICE Clear Europe, Ltd., 37992–37995
Miami International Securities Exchange, LLC, 37986–37988
Municipal Securities Rulemaking Board, 37974–37986
National Securities Clearing Corp., 37988–37992

Small Business Administration
NOTICES
Disaster Declaration:
California, 37995–37996

Social Security Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 37996–38000

State Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Annual Report: J–NONIMMIGRANT Exchange Visitor Program, 38000

Trade Representative, Office of United States
NOTICES
Product Exclusion and Amendments:
China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, 38000–38002

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Motor Carrier Safety Administration

Transportation Security Administration
NOTICES
Meetings:
Air Cargo Security Options To Mitigate Costs of Compliance With International Security Requirements, 37958–37959

Treasury Department
See Comptroller of the Currency
See Foreign Assets Control Office
See Internal Revenue Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Research Applied Analytics and Statistics Comprehensive Taxpayer Attitude Survey, 38025

U.S. Customs and Border Protection
RULES
Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Service Between the United States and Canada, 37744–37745
Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Service Between the United States and Mexico, 37745–37746

Veterans Affairs Department
RULES
Veterans Employment Pay for Success Grant Program, 37753–37756
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Principles of Excellence Complaint System Intake, 38026
Record Keeping at Flight Schools, 38025–38026

Separate Parts In This Issue

Part II
Presidential Documents, 38027–38030

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents electronic mailing list, go to https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new, enter your e-mail address, then follow the instructions to join, leave, or manage your subscription.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:

10051 38029

12 CFR

8 37731

17 CFR

1 37734

19 CFR

Ch. I (2 documents) 37744, 37745

25 CFR

293 37747

28 CFR

16 37748

32 CFR

321 37751

37 CFR

360 37752

38 CFR

21 37753

40 CFR

81 37756
180 37760
300 37763

Proposed Rules:

174 37806
180 37806
300 37808
745 37810

41 CFR

51–8 37778

49 CFR

350 37785
355 37785
388 37785

Rules and Regulations

Federal Register
Vol. 85, No. 122
Wednesday, June 24, 2020

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 THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 8

[Docket ID OCC–2020–0024]

RIN 1557–AE95

Assessment of Fees

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Interim final rule and request for comment.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is adopting an interim final rule to reduce assessments in response to the national emergency declared in connection with coronavirus disease 2019 (COVID–19). Under the interim final rule, assessments due on September 30, 2020, for national banks, Federal savings associations, and Federal branches and agencies of foreign banks (collectively, banks under the jurisdiction of the OCC) will be calculated using the December 31, 2019, ''Consolidated Reports of Condition and Income'' (Call Report) for each institution, rather than the June 30, 2020 Call Report. This will result in lower assessments for most banks under the jurisdiction of the OCC. In the event a bank's assets as reported on the June 30, 2020, Call Report are lower than on the December 31, 2019, Call Report, the OCC will calculate the assessment due on September 30, 2020, for the institution using the June 30, 2020, Call Report.

DATES: The interim final rule is effective from June 24, 2020 through October 15, 2020. Comments on the interim final rule must be received no later than July 24, 2020.

ADDRESSES: Interested parties are encouraged to submit written comments. Commenters are encouraged to submit comments through the Federal eRulemaking Portal or email, if possible. Please use the title ''Assessment of Fees'' to facilitate the organization and distribution of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—Regulations.gov Classic or Regulations.gov Beta:*

Regulations.gov Classic: Go to *https://www.regulations.gov/*. Enter ''Docket ID OCC–2020–0024'' in the Search Box and click ''Search.'' Click on ''Comment Now'' to submit public comments. For help with submitting effective comments please click on ''View Commenter's Checklist.'' Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov,* including instructions for submitting public comments.

Regulations.gov Beta: Go to *https://beta.regulations.gov/* or click ''Visit New *Regulations.gov* Site'' from the *Regulations.gov* Classic homepage. Enter ''Docket ID OCC–2020–0024'' in the Search Box and click ''Search.'' Public comments can be submitted via the ''Comment'' box below the displayed document information or by clicking on the document title and then clicking the ''Comment'' box on the top left side of the screen. For help with submitting effective comments please click on ''Commenter's Checklist.'' For assistance with the *Regulations.gov* Beta site, please call (877) 378–5457 (toll free) or (703) 454–9859 Monday–Friday, 9 a.m.–5 p.m. ET or email *regulations@erulemakinghelpdesk.com*.

- *Email: regs.comments@occ.treas.gov*.
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, 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 ''Docket ID OCC–2020–0024'' in your comment. In general, the OCC will enter all comments received into the docket and publish the comments on the *Regulations.gov* website 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 rulemaking action by any of the following methods:

- *Viewing Comments Electronically—Regulations.gov Classic or Regulations.gov Beta: Regulations.gov* Classic: Go to *https://www.regulations.gov/*. Enter ''Docket ID OCC–2020–0024'' in the Search box and click ''Search.'' Click on ''Open Docket Folder'' on the right side of the screen. Comments and supporting materials can be viewed and filtered by clicking on ''View all documents and comments in this docket'' and then using the filtering tools on the left side of the screen. Click on the ''Help'' tab on the *Regulations.gov* home page to get information on using *Regulations.gov*. The docket may be viewed after the close of the comment period in the same manner as during the comment period.

Regulations.gov Beta: Go to *https://beta.regulations.gov/* or click ''Visit New *Regulations.gov* Site'' from the *Regulations.gov* Classic homepage. Enter ''Docket ID OCC–2020–0024'' in the Search Box and click ''Search.'' Click on the ''Comments'' tab. Comments can be viewed and filtered by clicking on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Results'' options on the left side of the screen. Supporting materials can be viewed by clicking on the ''Documents'' tab and filtered by clicking on the ''Sort By'' drop-down on the right side of the screen or the ''Refine Results'' options on the left side of the screen.'' For assistance with the *Regulations.gov* Beta site, please call (877) 378–5457 (toll free) or (703) 454–9859 Monday–Friday, 9 a.m.–5 p.m. ET or email *regulations@erulemakinghelpdesk.com*. The docket may be viewed after the close of the comment period in the same manner.

FOR FURTHER INFORMATION CONTACT: Margaret Sherry, Principal Deputy Comptroller for Management and Deputy Chief Financial Officer, Financial Management, (202) 649–5658, or Mitchell Plave, Special Counsel, Chief Counsel's Office, (202) 649–5490,

for persons who are deaf or hard of hearing, TTY, (202) 649–5597.

SUPPLEMENTARY INFORMATION:

I. Background

The National Bank Act [1] and the Home Owners' Loan Act [2] authorize the Comptroller to recover the costs of the OCC's operations through assessments, fees, and other charges on banks under the jurisdiction of the OCC.[3] In setting assessments, the Comptroller has broad authority to consider variations among institutions, including the nature and scope of the activities of the entity, the amount and type of assets that the entity holds, the financial and managerial condition of the entity, and any other factor the Comptroller determines is appropriate.[4]

The OCC collects assessments from banks under its jurisdiction in accordance with 12 CFR part 8. Under part 8, the base assessment for banks is calculated using a table with eleven categories, or brackets, each of which comprises a range of asset-size values. The assessment for each bank is the sum of a base amount, which is the same for every bank in its asset-size bracket, plus a marginal amount, which is computed by applying a marginal assessment rate to the amount in excess of the lower boundary of the asset-size bracket.[5] The marginal assessment rate declines as asset size increases, reflecting economies of scale in bank examination and supervision.

The OCC's annual Notice of Office of the Comptroller of the Currency Fees and Assessments (Notice of Fees) sets forth the marginal assessment rates applicable to each asset-size bracket for each year, as well as other assessment components and fees. Under part 8, the OCC may adjust the marginal rates to account for inflation through the annual Notice of Fees.[6] The OCC also has the discretion under part 8 to adjust marginal rates by amounts other than inflation.[7] The OCC may issue an interim or amended Notice of Fees if the Comptroller determines that it is necessary to revise assessments to meet the OCC's supervisory obligations.[8]

Under 12 CFR 8.2, the OCC collects assessments on a semiannual basis, with fees due by March 31 and September 30 (payment due dates) of each year for the six-month period beginning on January 1 and July 1 before each payment due date.[9] Each semiannual assessment is based upon the total assets shown in the institution's most recent Call Report preceding the payment date.

II. Description of the Interim Final Rule

COVID–19 has significantly affected financial institutions, businesses, and consumers. In light of the adverse economic effect of the extraordinary measures that have been taken to limit the public health impacts of the COVID–19 pandemic, the OCC is issuing this interim final rule to reduce assessments for the upcoming semiannual assessment. Under the interim final rule, which amends 12 CFR part 8, the OCC will calculate assessments due on September 30, 2020, using Call Report assets as of December 31, 2019, rather June 30, 2020. The use of December 31, 2019, Call Report assets will result in reduced assessments for most banks. If an institution's June 30, 2020, Call Report assets are lower than the institution's assets as reported on December 31, 2019, the OCC will use the June 30, 2020, Call Report for calculation of the institution's assessment.

The interim final rule will expire after the collection of assessments on September 30, 2020. Thereafter, semiannual assessments will be based on the total assets shown in each institution's most recent Call Report preceding the payment date.

The OCC seeks comment on all aspects of this interim final rule.

III. Administrative Law Matters

A. Administrative Procedure Act

The OCC is issuing this interim final rule without prior notice and the opportunity for public comment and the delayed effective date ordinarily prescribed by the Administrative Procedure Act (APA).[10] Pursuant to section 553(b)(B) of the APA, general notice and opportunity for the public to comment are not require with respect to a rulemaking when an ''agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' [11]

The OCC believes that the public interest is best served by implementing the interim final before the next assessment collection. As discussed above, COVID–19 has significantly affected global economic activity. The reduction of assessments for banks under the jurisdiction of the OCC will reduce burden during this period. Issuance of an interim final rule will provide for expedited implementation of the assessment change and permit the OCC to timely issue an amended Notice of Fees, which will implement the assessment change for the semiannual assessment due on September 30, 2020.[12] For these reasons, the OCC believes that there is good cause consistent with the public interest to issue the interim final rule without advance notice and comment.[13]

The APA also requires a 30-day delayed effective date, except for (1) substantive rules which grant or recognize an exemption or relieve a restriction; (2) interpretative rules and statements of policy; or (3) as otherwise provided by the agency for good cause.[14] Because the rule grants an exemption, the interim final rule is exempt from the APA's delayed effective date requirement.[15] Additionally, the OCC finds good cause to publish the interim final rule with an immediate effective date for the same reasons set forth above. While the OCC believes that there is good cause to issue the rule without advance notice and comment and with an immediate effective date, the OCC is interested in the views of the public and requests comment on all aspects of the interim final rule.

B. Congressional Review Act

For purposes of Congressional Review Act, the Office of Management and Budget (OMB) makes a determination as to whether a final rule constitutes a ''major'' rule.[16] If a rule is deemed a ''major rule'' by the OMB, the Congressional Review Act generally provides that the rule may not take effect until at least 60 days following its publication.[17]

The Congressional Review Act defines a ''major rule'' as any rule that the Administrator of the Office of Information and Regulatory Affairs of

[1] Revised Statutes of the United States, Title LXII, 12 U.S.C. 1 *et seq.*

[2] The Home Owners' Loan Act, 12 U.S.C. 1461 *et seq.*

[3] 12 U.S.C. 16, 481, 482, 1467.

[4] 12 U.S.C. 16. *See also* 12 U.S.C. 1467 (providing that the Comptroller has the authority to recover costs of examination of federal savings associations ''as the Comptroller deems necessary or appropriate.'').

[5] 12 CFR 8.2(a). Only the total domestic assets of federal branches and agencies are subject to assessment. 12 CFR 8.2(b)(2).

[6] 12 CFR 8.2(a)(4).

[7] *Id.*

[8] 12 CFR 8.8(b).

[9] 12 CFR 8.2(a) and 8.2(b)(1).

[10] 5 U.S.C. 553.

[11] 5 U.S.C. 553(b)(B).

[12] 12 CFR 8.8. An amended Notice of Fees becomes effective 30 days after issuance. *Id.* 8.8(b).

[13] 5 U.S.C. 553(b)(B); 553(d)(3).

[14] 5 U.S.C. 553(d).

[15] 5 U.S.C. 553(d)(1).

[16] 5 U.S.C. 801 *et seq.*

[17] 5 U.S.C. 801(a)(3).

the OMB finds has resulted in or is likely to result in (A) an annual effect on the economy of $100,000,000 or more; (B) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions, or (C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic and export markets.[18]

For the same reasons set forth above with respect to APA requirements, the OCC is adopting the interim final rule without the delayed effective date generally prescribed under the Congressional Review Act. The delayed effective date required by the Congressional Review Act does not apply to any rule for which an agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rule issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.[19] Because the interim rule will reduce assessments and provide relief to institutions during the financial stress introduced by the measures taken to limit the public health risks of the COVID–19 pandemic, the OCC believes that delaying the rule would be contrary to the public interest.

As required by the Congressional Review Act, the OCC will submit this interim final rule and other appropriate reports to Congress and the Government Accountability Office for review.

C. Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA),[20] the OCC may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless it displays a currently valid OMB control number. The OCC has reviewed this interim final rule and determined that it would not introduce any new or revise any collection of information pursuant to the PRA. Therefore, no submissions will be made to OMB.

D. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act (RFA)[21] generally requires that an agency to consider whether a proposed rule will have a significant economic impact on a substantial number of small entities.[22] The RFA applies only to rules for which an agency publishes a general notice of proposed rulemaking pursuant to 5 U.S.C. 553(b).[23] As discussed above, consistent with section 553(b)(B) of the APA, the OCC has determined for good cause that general notice and opportunity for public comment is unnecessary, and, therefore, the OCC is not issuing a notice of proposed rulemaking. Accordingly, the OCC has concluded that the RFA's requirements relating to initial and final regulatory flexibility analysis do not apply.

Nevertheless, the OCC seeks comment on whether, and the extent to which, the interim final rule would affect a significant number of small entities.

E. Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[24] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions (IDIs), the OCC must consider, consistent with the principle of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosure, or other new requirements on IDIs generally to take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form, with certain exceptions, including for good cause.[25] The interim final rule would not impose any additional reporting, disclosure, or other new requirements on IDIs. Therefore, for the reasons described above, the OCC finds good cause exists under section 302 of RCDRIA to publish this interim final rule with an immediate effective date. As such, the interim final rule will be effective on June 24, 2020.

Nevertheless, the OCC seeks comment on RCDRIA.

F. Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act[26] requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The OCC has sought to present the interim final rule in a simple and straightforward manner. The OCC invites comment on whether there are additional steps it could take to make the rule easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the regulation contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand? What else could we do to make the regulation easier to understand?

G. OCC Unfunded Mandates Reform Act of 1995 Determination

Consistent with the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531 *et seq.,* the OCC typically prepares a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. However, UMRA does not apply to final rules for which a general notice of proposed rulemaking was not published.[27] Therefore, because the OCC has found good cause to dispense with notice and comment for this interim final rule, the OCC has not prepared a budgetary impact statement for this interim final rule.

List of Subjects in 12 CFR Part 8

Assessments, Federal branches and agencies, National banks, Reporting and recordkeeping requirements, Savings associations.

[18] 5 U.S.C. 804(2).

[19] 5 U.S.C. 808(2).

[20] 44 U.S.C. 3501–3521.

[21] U.S.C. 601 *et seq.*

[22] 5 U.S.C. 604. Under regulations issued by the Small Business Administration, a small entity includes a depository institution, bank holding company, or savings and loan holding company with total assets of $600 million or less and trust companies with total assets of $41.5 million or less. *See* 13 CFR 121.201.

[23] 5 U.S.C. 604(a).

[24] 12 U.S.C. 4802(a).

[25] 12 U.S.C. 4802.

[26] 12 U.S.C. 4809.

[27] *See* 2 U.S.C. 1532(a).

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set forth in the preamble, chapter I of title 12 of the Code of Federal Regulations is amended as follows:

PART 8—ASSESSMENT OF FEES

■ 1. The authority for part 8 continues to read as follows:

Authority: 12 U.S.C. 16, 93a, 481, 482, 1467, 1831c, 1867, 3102, 3108, and 5412(b)(2)(B); and 15 U.S.C. 78c and 78*l*.

■ 2. Section 8.2 is amended by:
■ a. Redesignating paragraph (a)(5) as paragraph (a)(5)(i);
■ b. Adding paragraph (a)(5)(ii);
■ c. Redesignating paragraph (b)(3) as paragraph (b)(3)(i); and
■ d. Adding paragraph (b)(3)(ii).

The additions read as follows:

§ 8.2 Semiannual assessment.

(a) * * *

(5) * * *

(ii) Notwithstanding paragraph (a)(5)(i) of this section, the semiannual assessment for each national bank or Federal savings association due on September 30, 2020, will be based upon the lesser of total assets shown in the national bank's or Federal savings association's December 31, 2019, Call Report or June 30, 2020, Call Report.

* * * * *

(b) * * *

(3) * * *

(ii) Notwithstanding paragraph (b)(3)(i) of this section, the semiannual assessment for each Federal branch and each agency due on September 30, 2020, will be based upon the lesser of total assets shown in the Federal branch's or agency's December 31, 2019, Call Report or June 30, 2020, Call Report.

* * * * *

Brian P. Brooks,

Acting Comptroller of the Currency.

[FR Doc. 2020–13719 Filed 6–23–20; 8:45 am]

BILLING CODE 4810–33–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

RIN 3038–AE62

Retail Commodity Transactions Involving Certain Digital Assets

AGENCY: Commodity Futures Trading Commission.

ACTION: Final interpretive guidance.

SUMMARY: The Commodity Futures Trading Commission (the ''Commission'' or ''CFTC'') is issuing this final interpretive guidance concerning the term ''actual delivery'' as set forth in the Commodity Exchange Act (''CEA'') pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act''). Specifically, this final interpretive guidance is being issued to inform the public of the Commission's views when determining whether actual delivery has occurred in the context of retail commodity transactions in certain types of digital assets that serve as a medium of exchange, colloquially known as ''virtual currencies.'' The Commission issues this interpretive guidance after a 90-day comment period and a significant amount of time and effort further observing the development of the digital asset and virtual currency marketplace.

DATES: This final guidance is effective on June 24, 2020.

FOR FURTHER INFORMATION CONTACT: Philip W. Raimondi, Special Counsel, (202) 418–5717, *praimondi@cftc.gov;* Office of the Chief Counsel, Division of Market Oversight, Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

With certain exceptions, the CFTC has been granted exclusive jurisdiction over commodity futures, options, and all other derivatives that fall within the definition of a swap.[1] Further, the Commission has been granted general anti-fraud and anti-manipulation authority over any swap, or a contract of sale of any commodity in interstate commerce, or for future delivery on or subject to the rules of any registered entity.[2] The Commission's mission is to promote the integrity, resilience, and vibrancy of the U.S. derivatives markets through sound regulation; it does so, in part, by protecting the American public from fraudulent schemes and abusive practices in those markets and products over which it has been granted jurisdiction.

The Commission has long held that certain speculative commodity transactions involving leverage or margin are futures contracts subject to Commission oversight.[3] However, certain judicial decisions called that view into question with respect to certain leveraged retail transactions primarily in foreign currencies.[4] In 2008, Congress addressed this judicial uncertainty by providing that certain enumerated provisions of the CEA apply to certain retail foreign currency transactions pursuant to CEA section 2(c)(2)(C)(iv).[5] This new statutory provision is subject to an exception for retail foreign currency transactions that result in ''actual delivery'' within two days.[6] Two years later, in the Dodd-Frank Act, Congress similarly extended certain provisions of the CEA to apply to all other ''retail commodity transactions'' pursuant to CEA section 2(c)(2)(D)(iii).[7]

Specifically, CEA section 2(c)(2)(D) applies to any agreement, contract, or transaction in any commodity that is (i) entered into with, or offered to (even if not entered into with), a person that is neither an eligible contract participant[8] nor an eligible commercial entity[9] (''retail''), (ii) on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis.[10] CEA section 2(c)(2)(D) provides that such an agreement, contract, or transaction is subject to CEA sections 4(a),[11] 4(b),[12] and 4b[13] ''as if the agreement, contract,

[1] 7 U.S.C. 2(a)(1)(A). The CFTC shares its swap jurisdiction in certain aspects with the Securities and Exchange Commission (''SEC''). *See* 7 U.S.C. 2(a)(1)(C).

[2] 7 U.S.C. 9(1).

[3] *See In re Stovall,* CFTC Docket No. 75–7 [1977–1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) paragraph 20,941, at 23,777 (CFTC Dec. 6, 1979) (applying traditional elements of a futures contract to a purported cash transaction).

[4] *See, e.g., CFTC* v. *Zelener,* 373 F.3d 861 (7th Cir. 2004); *CFTC* v. *Erskine,* 512 F.3d 309 (6th Cir. 2008).

[5] *See* Food, Conservation and Energy Act of 2008, Public Law 110–246, 122 Stat. 1651 (2008).

[6] 7 U.S.C. 2(c)(2)(C)(i)(II)(bb)(AA).

[7] *See* Sec. 742 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, Public Law 111–203, 124 Stat. 1376 (2010); *see also Hearing to Review Implications of the CFTC* v. *Zelener Case Before the Subcomm. on General Farm Commodities and Risk Management of the H. Comm. on Agriculture,* 111th Cong. 52–664 (2009) (statement of Rep. Marshall, Member, H. Comm. on Agriculture) (''If in substance it is a futures contract, it is going to be regulated. It doesn't matter how clever your draftsmanship is.''); 156 Cong. Rec. S5, 924 (daily ed. July 15, 2010) (statement of Sen. Lincoln) (''Section 742 corrects [any regulatory uncertainty] by extending the Farm Bill's ''*Zelener* fraud fix'' to retail off-exchange transactions in *all* commodities.'') (emphasis added).

[8] 7 U.S.C. 1a(18).

[9] 7 U.S.C. 1a(17); *see also* 7 U.S.C. 2(c)(2)(D)(iv).

[10] 7 U.S.C. 2(c)(2)(D)(i).

[11] 7 U.S.C. 6(a) (prohibiting the off-exchange trading of futures transactions by U.S. persons unless the transaction is conducted on or subject to the rules of a designated contract market).

[12] 7 U.S.C. 6(b) (permitting foreign boards of trade registered with the Commission with the ability to provide direct access to U.S. persons).

[13] 7 U.S.C. 6b (prohibiting fraudulent conduct in connection with any contract of sale of any

or transaction was a contract of sale of a commodity for future delivery'' (*i.e.,* a futures contract).[14] The statute, however, excepts certain transactions from its application. In particular, CEA section 2(c)(2)(D)(ii)(III)(aa)[15] excepts a contract of sale that ''results in actual delivery within 28 days or such other longer period as the Commission may determine by rule or regulation based upon the typical commercial practice in cash or spot markets for the commodity involved.''[16]

In connection with this statutory authority, the Commission previously issued a proposed interpretation of the term ''actual delivery'' in the context of CEA section 2(c)(2)(D), accompanied by a request for comment.[17] In that interpretation, the Commission provided several examples of what may and may not constitute actual delivery. After reviewing public comments, the Commission issued a final interpretation in 2013 (the ''2013 Guidance'').[18]

The 2013 Guidance explained that the Commission will consider evidence ''beyond the four corners of contract documents'' to assess whether actual delivery of the commodity occurred.[19] The Commission further noted that it will ''employ a functional approach and examine how the agreement, contract, or transaction is marketed, managed, and performed, instead of relying solely on language used by the parties in the agreement, contract, or transaction.''[20] The 2013 Guidance also included a list of relevant factors the Commission will consider in determining whether a transaction has resulted in actual delivery[21] and again provided examples[22] of what may and may not constitute actual delivery. The 2013 Guidance provided that satisfactory examples of actual delivery involve transfer of title and possession of the commodity to the purchaser[23] or a depository acting on the purchaser's behalf.[24] Among other things, mere book entries and certain instances where a purchase is rolled, offset, or otherwise netted with another transaction do not constitute actual delivery.[25]

Within a year after the 2013 Guidance was released, the Eleventh Circuit issued an opinion affirming a preliminary injunction obtained by the Commission in *CFTC* v. *Hunter Wise Commodities, LLC.*[26] *Hunter Wise* was in line with the Commission's interpretation of actual delivery in the 2013 Guidance.[27] Specifically, the Eleventh Circuit recognized that delivery ''denotes a transfer of possession and control.''[28] Indeed, the Eleventh Circuit explained, ''[i]f 'actual delivery' means anything, it means something other than simply 'delivery,' for we must attach meaning to Congress's use of the modifier 'actual.' ''[29] Accordingly, the Eleventh Circuit stated that actual delivery ''denotes '[t]he act of giving real and immediate possession to the buyer or the buyer's agent,' '' and constructive delivery does not suffice.[30] Recently, the Ninth Circuit agreed, finding the exception requires ''some meaningful degree of possession or control by the customer.''[31]

Soon after the *Hunter Wise* decision, the Commission determined that virtual currency is a commodity as that term is defined by CEA section 1a(9).[32] Subsequently, the Commission brought its first enforcement action against a platform that offered virtual currency transactions to retail customers on a leveraged, margined, or financed basis without registering with the Commission.[33] In the *Bitfinex* settlement order, the Commission found that the virtual currency platform violated CEA sections 4(a) and 4d because the unregistered entity ''did not actually deliver bitcoins purchased from them.''[34] Rather, the entity ''held the purchased bitcoins in bitcoin deposit wallets that it owned and controlled.''[35]

As a result of several requests for additional guidance regarding this subject, the Commission published a proposed interpretation (the ''Proposed Interpretation'') regarding the ''actual delivery'' exception of CEA section 2(c)(2)(D) within the specific context of retail commodity transactions in virtual currency on December 20, 2017.[36] The Commission provided a 90-day comment period and received many public comments.

The Proposed Interpretation set out two central tenets of the Commission's view on when actual delivery of virtual currency has occurred:

(1) A customer having the ability to: (i) Take possession and control of the entire quantity of the commodity, whether it was purchased on margin, or using leverage, or any other financing arrangement, and (ii) Use it freely in commerce (both within and away from any particular platform) no later than 28 days from the date of the transaction; and

(2) The offeror and counterparty seller (including any of their respective affiliates or other persons acting in concert with the offeror or counterparty

commodity in interstate commerce, among other things).

[14] 7 U.S.C. 2(c)(2)(D)(iii). In addition, retail commodity transactions fall within the definition of ''commodity interest,'' which also includes futures, options, and swaps. 17 CFR 1.3 (defining ''commodity interest'').

[15] 7 U.S.C. 2(c)(2)(D)(ii)(III)(aa).

[16] The Commission has not adopted any regulations permitting a longer actual delivery period for any commodity pursuant to this statute. Accordingly, the 28-day actual delivery period remains applicable to all commodities, while retail foreign currency transactions remain subject to a 2-day actual delivery period pursuant to CEA section 2(c)(2)(C). In addition, certain commercial transactions and securities are excepted pursuant to CEA section 2(c)(2)(D)(ii).

[17] Retail Commodity Transactions Under Commodity Exchange Act, 76 FR 77670 (Dec. 14, 2011).

[18] Retail Commodity Transactions Under Commodity Exchange Act, 78 FR 52426 (Aug. 23, 2013).

[19] *Id.* at 52428.

[20] *Id.*

[21] Relevant factors in this determination include the following: Ownership, possession, title, and physical location of the commodity purchased or sold, both before and after execution of the agreement, contract, or transaction, including all related documentation; the nature of the relationship between the buyer, seller, and possessor of the commodity purchased or sold; and the manner in which the purchase or sale is recorded and completed. *Id.*

[22] In the 2013 Guidance, Examples 1 and 2 illustrate circumstances where actual delivery is made, while Examples 3, 4 and 5 illustrate circumstances where actual delivery is not made. In setting forth the examples, the Commission made clear that they are non-exclusive and were intended to provide the public with guidance on how the Commission would apply the interpretation. *Id.* at 52427–28.

[23] The Commission notes that ''purchaser'' and ''customer'' may be used interchangeably throughout this interpretation in reference to the non-eligible contract participant counterparty that has engaged in a ''retail commodity transaction'' as defined by CEA section 2(c)(2)(D). This clarification is made, in part, to recognize that a ''customer'' may be attempting to engage in a ''retail commodity transaction'' as part of a short sale strategy.

[24] *Id.*

[25] *Id.*

[26] *CFTC* v. *Hunter Wise Commodities, LLC, et al.,* 749 F.3d 967 (11th Cir. 2014) (hereinafter, *Hunter Wise*).

[27] *Id.* at 980 (''While we need not defer to the agency's interpretation because the statutory text is unambiguous . . . we note also that the interpretation the court adopts today harmonizes with the Commission's own informal interpretation.'') (internal citations omitted).

[28] *Id.* at 978–79, (citing *Black's Law Dictionary* 494 (9th ed. 2009)).

[29] *Id.* at 979.

[30] *Id.*

[31] *CFTC* v. *Monex Credit Company, et al.,* 931 F.3d 966, 972–75 (9th Cir. 2019).

[32] *In re Coinflip, Inc., d/b/a Derivabit, and Francisco Riordan,* CFTC Docket No. 15–29, 2015 WL 5535736, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) paragraph 33,538 (CFTC Sept. 17, 2015) (consent order); *In re TeraExchange LLC,* CFTC Docket No. 15–33, 2015 WL 5658082, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) paragraph 33,546 (CFTC Sept. 24, 2015) (consent order).

[33] *In re BFXNA INC. d/b/a BITFINEX,* CFTC Docket No. 16–19 (June 2, 2016) (consent order) (hereinafter, *Bitfinex*).

[34] *Id.*

[35] *Id.*

[36] Retail Commodity Transactions Involving Virtual Currency, 82 FR 60335 (Dec. 20, 2017).

seller on a similar basis) not retaining any interest in or control over any of the commodity purchased on margin, leverage, or other financing arrangement at the expiration of 28 days from the date of the transaction.

The Commission has thoroughly reviewed the comments received. Further, the Commission has gained considerable experience and expertise with respect to digital asset markets generally, through additional public input and advisory committee meetings on the evolution of digital asset and cryptocurrency markets,[37] regulatory oversight of exchanges offering derivatives products on certain digital assets,[38] numerous LabCFTC initiatives and market interactions,[39] and market surveillance in furtherance of its anti-fraud and anti-manipulation responsibilities. Applying this knowledge and expertise, as well as its experience in interpreting CEA section 2(c)(2)(D) (particularly in light of recent judicial decisions), the Commission has determined to finalize the Proposed Interpretation with certain revisions discussed herein.

As noted, while the CEA addresses several different types of transactions, this final interpretive guidance specifically concerns the ''actual delivery'' exception in CEA section 2(c)(2)(D) as it applies to digital assets that serve as a medium of exchange. Notably, CEA section 2(c)(2)(D) and its exceptions remain separate and distinct from application of the swap definition in CEA section 1a(47).[40]

The Commission notes that this interpretive guidance is intended to provide an efficient and flexible way to communicate the agency's current views on how the actual delivery exception in Section 2(c)(2)(D) may apply in various situations. Given the complex and dynamic nature of these markets, the Commission believes it is appropriate to take an adaptable approach while it continues to follow developments in this space and evaluate business activity on a case-by-case basis.

II. Comments Generally

Among the many comments submitted, the Commission received 18 substantive comment letters and two substantive comment website entries. These comments were submitted by entities and individuals representing a broad range of interests, including a self-regulatory organization,[41] virtual currency exchanges or execution service providers,[42] dealers or traders in virtual currency transactions,[43] industry trade or advocacy groups,[44] industry developers,[45] trade associations comprised of energy producers and suppliers,[46] and concerned individuals.[47]

Several commenters expressed their general support for the Proposed Interpretation as written, with only minor suggested clarifications.[48] For example, NFA indicated that it ''fully support[s] the Commission's continued use of its jurisdiction to enhance the regulatory oversight of the nascent market for virtual currencies.'' [49] HBUS believed that, once finalized, the Proposed Interpretation ''will facilitate the growth of a transparent and fair marketplace for virtual currency, where legitimate business can thrive.'' [50] Contrarily, certain commenters believed that the Commission should proceed with caution [51] or take a different approach.[52] However, the majority of commenters primarily focused their responses on issues raised by varying questions posed in the Proposed Interpretation.

III. Specific Comments

A. The Scope of the Interpretation

Several commenters submitted suggestions for further modification of the ''virtual currency'' meaning provided in the Proposed Interpretation.[53] In particular, Coin Center suggested that the term ''digital commodities'' would more accurately reflect all ''digital currencies'' since many ''tokens'' at issue contain utility beyond that as a medium of exchange.[54] Separately, 3 Degrees encouraged the Commission to define virtual currency pursuant to a rulemaking process similar to the one used to further define the term ''swap.'' [55] In addition, the firm suggested ''virtual currency'' be further defined to focus on the ''extent to which a token is able to be used for its intended purpose at the time of evaluation'' to determine whether it is within scope.[56] In this regard, 3 Degrees believed that a token that does not have a present use as a medium of exchange or is not otherwise ''mimicking the attributes of fiat currency'' should be excluded from ''virtual currency.'' [57] Similarly, ConsenSys urged the Commission to consider further distinguishing ''mainstream'' virtual currencies (used as a medium of exchange generally) from other types of ''virtual tokens.'' [58]

HBUS supported the Proposed Interpretation's definition of virtual currency and primarily endorsed the ''Commission's avoidance of a bright line definition.'' [59] IECA and CEWG requested certain products or transactions be specifically excluded from the term and scope of the Proposed Interpretation, including transfers of digital assets between eligible contract

[37] *See, e.g.,* Request for Input, Request for Input on Crypto-Asset Mechanics and Markets, 83 FR 64563 (Dec. 17, 2018); CFTC, *Technology Advisory Committee, https://www.cftc.gov/About/CFTCCommittees/TechnologyAdvisory/tac_meetings.html* (last visited Mar 14, 2020).

[38] To date, four CFTC-registered futures exchanges have certified bitcoin-based futures contracts. A number of CFTC-registered swap execution facilities (''SEFs'') have offered bitcoin-based swaps, though some have since delisted these products or become dormant.

[39] *See* CFTC, *LabCFTC Events & News, https://www.cftc.gov/LabCFTC/News-Events/index.htm* (last visited Mar. 14, 2020).

[40] 7 U.S.C. 1a(47). For example, certain retail transactions that may involve leverage, such as contracts for difference (''CFDs''), are swaps. *See* Joint Final Rule, Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping, 77 FR 48208 at 48259 (Aug. 13, 2012). Pursuant to CEA section 2(e), U.S. retail persons are prohibited from entering into such swaps unless they are offered on a designated contract market (''DCM'').

[41] National Futures Association (''NFA'').

[42] Coinbase, Inc. (''Coinbase''); Gemini Trust Company, LLC (''Gemini''); Decentralized Derivatives Association (''DDA''); dYdX Trading, Inc. (''dYdX''); HBUS Holdco Inc. (''HBUS'').

[43] 3 Degrees Group, Inc. (''3 Degrees''); Cable Car Capital LLC (''Cable Car'').

[44] Chamber of Digital Commerce (''Chamber''); Coin Center (''Coin Center''); Futures Industry Association (''FIA'').

[45] ConsenSys (''ConsenSys'').

[46] Commercial Energy Working Group (''CEWG''); International Energy Credit Association (''IECA'').

[47] Chris R. Barnard (''Barnard''); Paul Booth (''Booth''); Chris J. Dykzeul (''Dykzeul''); The Consumer Advocacy and Financial Regulation Organization at the University of Michigan Law School (''CAFRO''); Natalie Holland (''Holland''); Bruce A. Tupper (''Tupper'').

[48] 3 Degrees Letter at 1; Barnard Letter at 1–2; HBUS Letter at 1–2; NFA Letter at 1.

[49] NFA Letter at 1.

[50] HBUS Letter at 1.

[51] FIA Letter at 1.

[52] DDA Letter at 1.

[53] The Proposed Interpretation stated that the Commission interprets the term virtual currency broadly. In the context of this interpretation, virtual or digital currency: Encompasses any digital representation of value that functions as a medium of exchange, and any other digital unit of account that is used as a form of a currency (*i.e.,* transferred from one party to another as a medium of exchange); may be manifested through units, tokens, or coins, among other things; and may be distributed by way of digital 'smart contracts,' among other structures. However, the Commission notes that it does not intend to create a bright line definition at this time given the evolving nature of the commodity and, in some instances, its underlying public distributed ledger technology. Proposed Interpretation, 82 FR at 60338 (footnotes omitted).

[54] Coin Center Letter at 1–2.

[55] 3 Degrees Letter at 5–7.

[56] *Id.*

[57] *Id.*

[58] ConsenSys Letter at 2, note 2.

[59] HBUS Letter at 2.

participants (''ECPs'') and eligible commercial entities (''ECEs''), other physical commodity transactions effected through blockchain technology, and the trading of environmental commodities (*e.g.,* renewable identification numbers and renewable energy certificates).[60] Separately, dYdX requested that their specific type of virtual currency-based derivative transaction, which utilizes ''smart contract technology,'' be included within the scope of the Proposed Interpretation and satisfy the actual delivery exception.[61]

After reviewing the comments, the Commission has decided to use the virtual currency definition stated in the Proposed Interpretation to delineate the scope of this final interpretation of the term ''actual delivery'' in CEA section 2(c)(2)(D). Primarily, the Proposed Interpretation intended to address a digital asset that is, or can be used as, a medium of exchange in commerce,[62] including within a particular blockchain ecosystem.[63] The Commission believes it is appropriate to retain this scope, as many facets of this interpretation focus on the customer's ability to use commodities in this class as a medium of exchange.[64]

The importance of the ability to use these commodities as a medium of exchange is apparent given the industry's adoption of the terms ''virtual currency'' and ''cryptocurrency.'' Therefore, while this interpretive guidance incorporates several elements of the 2013 Guidance, the Commission views the examples provided herein as superseding the examples provided in the 2013 Guidance in the specific context of retail commodity transactions involving virtual currency. In regards to other digital assets that are commodities,[65] but do not serve as a medium of exchange or otherwise fall within the scope of this interpretive guidance at the time of the transaction, the Commission would continue to refer to the 2013 Guidance to determine whether actual delivery has occurred.

B. References to ''Title''

As per the Proposed Interpretation's question,[66] several commenters discussed the meaning of ''title'' in the context of virtual currency and retail commodity transactions. Chamber advocated for a flexible approach, whereby title is only evidenced by the ability of the purchaser to use the virtual currency ''freely and without restriction by the seller or offeror at any time.'' [67] CEWG recommended the Commission limit any further interpretation of ''title'' and ''explicitly state that other concepts and indicia of title could apply . . . .'' [68] Similarly, FIA urged the Commission to avoid developing a ''prescriptive regime concerning what constitutes good title . . .'' [69] Cable Car suggested the Commission consider whether there are instances in which title can attach before a transaction is memorialized on the relevant public ledger or blockchain.[70] In a similar manner, DDA asked the Commission to consider issues of internal transfers on ''side-chains'' that are separate from the general public ledger.[71] In contrast, Mr. Tupper noted that it is unclear whether off-chain transactions could satisfy good title.[72] ConsenSys argued that there is no acceptable equivalent to ''title'' that exists in the context of virtual currency.[73]

After reviewing the comments, the Commission believes the concept of ''title'' has not fully developed in the context of virtual currency, but the Commission will continue to follow the term's evolution. Indeed, the Commission agrees with the majority of commenters on this subject, and does not believe efforts to further define or utilize ''title'' in the examples of this interpretive guidance will provide appropriate clarity at this time. As recognized by existing judicial precedent,[74] the Commission believes that evidence of possession and control is most significant, while title may, in fact, connote elements of each, along with undetermined additional elements, such as transfer of ownership. Therefore, the Commission is not including an example illustrating transfer of title in this final interpretation. The Commission notes that, depending on the evolution of the term, it remains open to considering a customer's ability to obtain title as part of the ''functional approach'' noted in this final interpretation, but the Commission does not seek to further define or interpret the concept at this time.

C. The 28-Day Actual Delivery Period

The Proposed Interpretation noted that, absent Congressional action, the Commission is unable to reduce the actual delivery exception period,[75] and provided the public an opportunity to provide feedback regarding this requirement. A majority of the commenters addressing this subject were in support of any effort by the Commission to decrease the 28-day actual delivery period for retail commodity transactions in virtual currency.[76] HBUS noted that ''it generally takes much fewer than 28 days for a virtual currency transfer to complete.'' [77] Chamber stated that a shorter delivery period ''may be appropriate,'' as long as uncontrollable technological factors were considered.[78] Ms. Holland and Mr. Booth each advocated for a 2-day delivery period as a more appropriate standard.[79] Mr. Booth stressed that a shorter delivery period would ''provide a significantly larger impact on purchaser protection by decreasing the amount of time a virtual currency seller can hold currency paid for by the purchasing party.'' [80] Gemini advocated for a 1-day delivery period, which ''more accurately reflects the standard delivery time for spot transactions in virtual

[60] CEWG Letter at 2–3; IECA Letter at 2–4.

[61] dYdX Letter at 2–7.

[62] Although the scope of this interpretive guidance is sufficiently broad to capture digital assets that can be, but are not yet, used as a medium of exchange, a transaction nonetheless must first satisfy the plain language of CEA section 2(c)(2)(D) before analyzing the application of the actual delivery exception.

[63] For example, in the context of a ''decentralized'' network or protocol, the Commission would apply this interpretation to any tokens on the protocol that are meant to serve as virtual currency as described herein. In such instances, the Commission could, depending on the facts and circumstances, view ''offerors'' as any persons presenting, soliciting, or otherwise facilitating ''retail commodity transactions,'' including by way of a participation interest in a foundation, consensus, or other collective that controls operational decisions on the protocol, or any other persons with an ability to assert control over the protocol that offers ''retail commodity transactions,'' as set forth in CEA section 2(c)(2)(D).

[64] Relatedly, the Proposed Interpretation asked whether the Commission should explore use of its exemptive authority in CEA section 4(c) to establish a distinct registration and compliance regime for retail commodity transactions in this class of commodities. 82 FR at 60341. Commenters responding to this question generally did not believe a separate exemption or related regulatory regime was necessary or appropriate at this time. After reviewing the comments overall, the Commission currently believes that the development of such a separate regulatory regime is not appropriate.

[65] The Commission may, from time to time, further interpret the meaning of ''actual delivery'' in CEA section 2(c)(2)(D) regarding other digital assets that are commodities.

[66] 82 FR at 60341 (Question 8).

[67] Chamber Letter at 6.

[68] CEWG Letter at 5.

[69] FIA Letter at 5.

[70] Cable Car at 4.

[71] DDA Letter at 6–7.

[72] Tupper Letter at 6.

[73] ConsenSys Letter at 4.

[74] *See, e.g., CFTC* v. *Monex Credit Company, et al.,* 931 F.3d 966 (9th Cir. 2019); *CFTC* v. *Hunter Wise Commodities, LLC, et al.,* 749 F.3d 967 (11th Cir. 2014).

[75] 82 FR at 60339.

[76] HBUS Letter at 3; NFA Letter at 1.

[77] HBUS Letter at 3 (citation omitted).

[78] Chamber Letter at 4.

[79] Booth Comment at 2; Holland Letter at 2.

[80] Booth Comment at 2.

currencies.'' [81] Gemini noted that the delivery window is ''unnecessarily long'' and ''may give rise to fraudulent activity.'' [82]

Cable Car noted that ''establishing a uniform maximum settlement cycle'' for such retail transactions might be beneficial for future oversight.[83] CEWG urged the Commission to clarify that the delivery window would not be shortened for any digital transactions that fall outside CEA section 2(c)(2)(D).[84] FIA recommended that the Commission ''allow the virtual currency markets to continue to develop'' before determining whether to decrease the actual delivery period.[85]

The Commission appreciates the comments received on this subject and agrees that the actual delivery period should correspond to the reality of a virtual currency ''spot'' transaction. The Commission continues to believe it is limited in its ability to shorten the 28-day delivery period specified in CEA section 2(c)(2)(D).[86] However, the Commission will continue to engage all relevant stakeholders regarding a more appropriate actual delivery period for purposes of the exception to CEA section 2(c)(2)(D) in the context of virtual currency.

D. Demonstration of Possession and Control

In Example 2 of the Proposed Interpretation, actual delivery could occur even if the retail customer utilizes a third-party depository as an agent to secure the purchased virtual currency.[87] However, in order to constitute actual delivery under this example, the customer must obtain ''full control'' over the commodity within 28 days following the date of the transaction.[88] The Proposed Interpretation asked for further examples of ways in which such control can be demonstrated,[89] and several commenters replied.

Gemini noted that ''possession of a private key, or in some instances multiple private keys or credentials, necessary for the transfer of the virtual commodity'' would be sufficient proof of ''full control.'' [90] However, Gemini argued that book entries (which are inconsistent with actual delivery under Example 3 of the Proposed Interpretation) should be permitted to satisfy actual delivery where the purchaser's depository is appropriately licensed and regulated for such a custodial purpose.[91]

Chamber suggested that ''full control'' can be demonstrated as long as the virtual currency is held at a depository ''outside the reach of the seller.'' [92] Chamber noted that it did not believe requiring possession of private keys is necessary ''so long as the purchaser has access and the ability to move the virtual currency from the depository without restriction by the seller or offeror.'' [93] Similarly, ConsenSys noted that purchaser control is the appropriate test, but one must look to the purchaser's ability to ''use'' the commodity and existing functionalities of the virtual currency at the time of the transaction.[94] Coinbase believed that actual delivery can occur ''once the customer is able to use the virtual currency to either trade on an exchange platform or transfer it off-platform to purchase goods or services.'' [95] FIA argued that actual delivery should not require possession of a private key to demonstrate full control by the purchaser.[96]

The Commission appreciates all comments received on this subject and believes actual delivery has occurred when a customer achieves both possession *and* control of the virtual currency that is underlying the transaction. To avoid further confusion, the Commission clarifies that the customer's possession of a particular key or blockchain address will not be considered further in this interpretive guidance (except as described in Example 1), and has modified the final interpretation to focus on whether the customer has secured a meaningful degree of possession and control of the virtual currency, as discussed below.

E. Depository Independence

In order to satisfy Example 2 of the Proposed Interpretation, an acceptable third-party depository (acting as agent for the customer) cannot be affiliated with the counterparty seller.[97] The Proposed Interpretation did not explicitly extend this statement to the offeror or offeror's execution venue unless acting as a counterparty to the transaction.[98] However, under Example 3 in the Proposed Interpretation, mere book entries would not constitute actual delivery.[99] Therefore, the Proposed Interpretation sought feedback surrounding depository independence,[100] including whether the offeror or its affiliate may maintain some level of association with the depository in demonstration of actual delivery.

Several commenters expressed the view that independence of a third-party depository is an important factor in determining whether actual delivery has occurred. Ms. Holland stated that actual delivery ''cannot and should not be satisfied where the offering party, counterparty seller, or any of their agents retain any interest or control over the token at the conclusion of 28 days.'' [101] Similarly, Mr. Tupper stated that a virtual currency depository ''should operate in an independent manner from execution platforms and market participants.'' [102] NFA expressed concern with virtual currency execution venues that purchase relevant commodities for their own account and merely allocate purchases through internal bookkeeping.[103] NFA believes that such internal book entries are not subject to the same level of regulatory scrutiny that exists for traditional depositories authorized to hold customer funds.[104]

On the other hand, certain commenters believed that independence of a third-party depository is not necessary as long as the depository is appropriately regulated. Gemini noted that acceptable depositories should be limited to those covered by the CEA's definition of ''financial institutions,'' [105] which may include affiliates of the offeror or counterparty seller.[106] Chamber supported the idea of a federal licensing regime for virtual currency depositories.[107] Chamber argued that affiliation between offeror and depository should not be prohibited as long as appropriate controls and firewalls are in place to address potential conflicts of interest.[108] Coinbase noted that Commission guidance should ''encourage digital

[81] Gemini Letter at 4.
[82] *Id.* at 3.
[83] Cable Car Letter at 2.
[84] CEWG Letter at 4–5.
[85] FIA Letter at 2.
[86] 82 FR at 60340.
[87] *Id.*
[88] *Id.*
[89] *Id.* at 60341.
[90] Gemini Letter at 8.
[91] *Id.* at 8–9.
[92] Chamber Letter at 5.
[93] *Id.*
[94] ConsenSys Letter at 4.
[95] Coinbase Letter at 7.
[96] FIA Letter at 4.
[97] 82 FR at 60340.
[98] Similar to the Proposed Interpretation, actual delivery does not occur in Example 2 of this final interpretation if the offeror, an affiliate thereof, or someone acting in concert with such persons is also a counterparty to the retail commodity transaction at issue.
[99] 82 FR at 60340.
[100] *Id.* at 60341.
[101] Holland Letter at 2.
[102] Tupper Letter at 8.
[103] NFA Letter at 2.
[104] *Id.*
[105] 7 U.S.C. 1a(21).
[106] Gemini Letter at 7–8.
[107] Chamber Letter at 5.
[108] *Id.*

assets to be held at regulated entities.'' [109]

ConsenSys and FIA believed that depository affiliation with the offeror or counterparty seller can be consistent with actual delivery.[110] ConsenSys argued that treating depository affiliation as disqualifying may inadvertently expose the purchased virtual currency to higher cybersecurity risks by encouraging an external transfer away from the offeror and increase transaction costs since such transactions must be verified and recorded on the relevant public ledger.[111] ConsenSys and Coinbase also referenced the 2013 Guidance to argue that the Commission has said that actual delivery can occur even when affiliates of the offeror or seller hold the physical commodity in limited circumstances.[112] However, Coinbase further acknowledged that such affiliation was found to be consistent with actual delivery only by way of the Commission's reference to the regulated nature of the limited entities that would take delivery.[113]

After reviewing the variety of comments received and further considering the retail customer concerns at issue, the Commission is deciding to strike a balance. Primarily, the Commission generally believes the two central tenets of actual delivery are demonstrated when there is (i) a transfer of the virtual currency (that is the subject of the transaction) away from the counterparty seller, offeror, and any offeror execution venue ledger or digital account system and (ii) receipt by a separate blockchain address or depository that is chosen by the customer and allows the customer to use the virtual currency freely in commerce, where accepted, as soon as technologically practicable. Actual delivery may be found to have occurred even if there is some level of offeror affiliation with a depository that is a separate, independent legal entity, so long as there are certain safeguards to ensure that the customer receives actual possession and control over the purchased commodity within the 28-day actual delivery period, as described below.

The Commission believes that, in the context of virtual currency, such a transfer of the commodity to a separate entity from the offeror and the offeror's execution venue, when applicable, establishes that a customer achieves meaningful possession and control, including the ability to use the virtual currency as a medium of exchange at any time. The Commission is not alone in treating such a demonstration as critical when such a transaction, bearing hallmarks of a derivative, would otherwise be conducted in an unregulated capacity.[114]

This final interpretive guidance includes a new Example 3 and revises Example 2 to describe an appropriate transfer of possession and control to the customer, notwithstanding that an offeror may maintain an affiliation with a depository, so long as the depository is completely separated from any execution venue services and additional safeguards are satisfied. Accordingly, in order for offeror-depository affiliation not to disqualify a transaction from constituting ''actual delivery'' in Example 2, the Commission believes that an affiliated depository should be: (i) A ''financial institution'' as defined by CEA section 1a(21); (ii) a separate line of business from the offeror not subject to the offeror's control; [115] (iii) a separate legal entity from the offeror and any offeror execution venue; (iv) predominantly operated for the purpose of providing custodial services, including for virtual currency and other digital assets; [116] (v) appropriately licensed [117] to conduct such custodial activity in the jurisdiction of the customer; (vi) offering the ability for the customer to utilize and engage in cold storage of the virtual currency; and (vii) contractually authorized [118] by the customer to act as its agent.

The Commission believes this balance will ensure that a retail customer receives meaningful possession and control over purchased virtual currency, while permitting the offeror to associate with additional services in relation to the transaction. Further, the Commission believes the factors set forth above for an offeror-affiliated depository would ensure an adequate transfer of possession and control is made to the customer's chosen depository so that the customer can use the commodity freely in commerce, as a medium of exchange.

As mentioned, the Commission believes these factors will demonstrate that the depository's business is focused on providing the customer with control over purchased digital assets, as opposed to control that may be asserted by an affiliated offeror. Specifically, the Commission agrees with certain commenters that a ''financial institution,'' as defined by CEA section 1a(21), is one useful element to apply to an affiliated depository, as such institutions are already subject to supervision and are familiar with providing custodial services to customers.[119] In furtherance of ensuring that the customer obtains possession and control free and clear from an offeror's execution venue service, the Commission believes that the depository's status as a separate line of business and a separate legal entity is highly critical to the determination of whether actual delivery has occurred. These barriers should forestall attempts by an offeror to assert control over digital assets transferred to an affiliated depository. Further, the Commission believes that requiring such depository services to be operated predominantly for custodial services would further ensure a focus on the customer's control over the purchased asset. While regulatory registrations around digital asset custody are still developing, the Commission believes such regulations should apply to an offeror-affiliated depository to the extent such regulations exist, as they will ensure additional customer protection. Similarly, proper segregation of customer assets pursuant to regulatory requirements for entities offering custodial services further demonstrates

[109] Coinbase Letter at 5.

[110] ConsenSys Letter at 6; FIA Letter at 4.

[111] ConsenSys Letter at 6–7.

[112] ConsenSys Letter at 6–7; Coinbase Letter at 5, 7.

[113] Coinbase Letter at 5.

[114] *See* Canadian Securities Administrators, CSA Staff Notice 21–327, *Guidance on the Application of Securities Legislation to Entities Facilitating the Trading of Crypto Assets* (Jan. 16, 2020), *https://www.osc.gov.on.ca/documents/en/Securities-Category2/csa_20200116_21-327_trading-crypto-assets.pdf* (finding that crypto assets traded on a platform would be subject to applicable Canadian securities legislation unless the transaction results in an ''obligation to make immediate delivery of the crypto asset'' and ''is settled by the immediate delivery of the crypto asset'' to the platform's customer; and stating that ''immediate delivery'' involves transfer of ''ownership, possession and control'' of the crypto asset to the customer with no further involvement by the platform, including through any security interest or exposure to certain additional risks).

[115] The Commission understands that an offeror and an affiliated depository may be under common control. The Commission believes that ''control'' would include the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise. *See, e.g.,* Joint Final Rule, Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant,'' 77 FR 30596 at 30631 n.437 (May 23, 2012); 17 CFR 49.2(a)(4).

[116] The Commission recognizes that other custodial services may be provided as well.

[117] The Commission appreciates that the regulation of digital asset custodial services is still evolving. However, the Commission will only consider those regulatory regimes that are implemented by state or federal authorities, or a self-regulatory organization that has been formally authorized by such state or federal authorities to carry out such purposes on their behalf.

[118] The customer should be free to revoke such a contractual agency relationship at any time.

[119] *See* 7 U.S.C. 1a(18).

customer control and protection from the risks of commingling assets (which may frustrate usability).

Given the noted cybersecurity concerns raised regarding risks associated with external transfers and usage of hot storage, it is also important to consider the availability of cold storage options for the customer. While some external transfer risk may still exist, the option of cold storage will help mitigate the long term risk associated with the transfer. Lastly, the Commission will generally consider whether a customer has control over the contractual relationship regarding custodial services, similar to the custodial services available for other customer assets that are primarily used as a medium of exchange. Taken together, the Commission believes these safeguards would ensure that a customer receives meaningful possession and control in instances where a customer's chosen depository is affiliated with an offeror or an offeror's execution venue services.

F. Bucket Shops and Conflicts of Interest

The Commission specifically sought comment regarding potential ''bucket shop'' arrangements, whereby an offeror [120] may act as principal to a trade and take the opposite side of a retail commodity transaction, especially within a self-contained environment.[121] The Commission believes these types of transactions have, in the past, often served as a vehicle for unscrupulous actors to take advantage of customers. Keeping this concern in mind, the Commission sought comment to further consider whether ''actual delivery'' occurs in instances where an offeror is also a counterparty and the virtual currency remains within the offeror's blockchain address, execution venue, or affiliated depository, when applicable.

Several commenters expressed similar concerns, advocating that offerors should not take the opposite side of a customer transaction. Chamber noted that if an offeror acts as principal, it should not be permitted to rely on the actual delivery exception.[122] Cable Car believed that no unregulated entity should be able to act as principal, especially regarding the potential for a bilateral market consisting of a bucket shop acting as counterparty to its customers.[123] Gemini also agreed that an offeror should not be permitted to take the opposite side of a retail commodity transaction.[124] Further, Gemini noted that ''[a]llowing an exchange operator to take the opposite side of participant transactions may create incentives to influence prices and/or trading volumes as offerors would operate with an informational advantage with respect to its participants.'' [125] No commenters directly advocated for the ability of an offeror to act as principal in retail commodity transactions.

The Commission appreciates the comments received on this subject and agrees that, in the context of virtual currency, the offeror's ability to take the opposite side of a retail commodity transaction may create situations in which actual delivery fails to occur. Since the plain language of CEA section 2(c)(2)(D) does not specifically address whether the offeror has taken the opposite side of the transaction, the Commission will, within the ''functional approach'' described in this interpretation, consider such activity as a factor weighing against demonstration of actual delivery.[126] Therefore, as originally stated in the Proposed Interpretation,[127] the Commission will not consider the scenario in Example 2 to constitute actual delivery if an offeror is also the counterparty to the particular transaction.

G. Liens, Third-Party Leverage, and Forced Sales

One of the central tenets of the Proposed Interpretation is that to achieve actual delivery in the context of digital assets serving as a medium of exchange, the offeror and counterparty seller (including any affiliates) cannot retain interest or control over any of the virtual currency in question at the expiration of 28 days from the date of the transaction.[128] This principle supports the other central tenet of actual delivery—a customer securing ''possession and control'' over the virtual currency and the ability to use it freely in commerce within 28 days from the date of the transaction for its primary purpose as a medium of exchange.[129] Essentially, if a customer cannot practically use the virtual currency freely in commerce as a medium of exchange (and the offeror or seller can essentially take it back), it is difficult to argue the customer truly received or secured control over it in the first instance.[130]

The Proposed Interpretation noted that, in order to effect actual delivery, any liens on purchased virtual currency generally cannot extend beyond 28 days from the date of the transaction, and invited public comment on the forced sale scenarios that may result.[131] In the context of this final interpretative guidance, the Commission views forced sale scenarios as any event in which the offeror or counterparty seller, or anyone acting in concert with such persons, retains a security interest or some other contractual ability to forcibly liquidate, sell off, claw back, or reacquire any portion of the virtual currency subject to the transaction in satisfaction of a lien, debt obligation, or other security interest related to the transaction, with or without the prior consent of the customer.

Cable Car advocated that the Commission not permit forced sale scenarios in finding actual delivery.[132] They noted that it would be an ''extremely grave error'' if the Commission permitted a technical lien termination event on a margined trading platform to qualify for an exception from CEA section 2(c)(2)(D) jurisdiction.[133] Cable Car urged that ''[t]he Commission should be on guard against proposed 'lien scenarios' that lack economic purpose or serve only to

[120] The Proposed Interpretation acknowledges that an offeror may also be acting as counterparty seller. 82 FR at 60339, n. 66.

[121] 82 FR at 60338; 60340; *see also* Vitalik Buterin, *Bitfinex: Bitcoinica Rises From The Grave,* Bitcoin Magazine (Nov. 22, 2012), *http://bitcoinmagazine.com/articles/bitfinex-bitcoinica-rises-from-the-grave-1353644122* (describing a bucket shop arrangement whereby an execution venue ''steps in and acts as the counterparty to some of its users,'' creating ''perverse incentives'').

[122] Chamber Letter at 4.

[123] Cable Car Letter at 3.

[124] Gemini Letter at 4.

[125] *Id.*

[126] This is most notable in Example 2, whereby the Commission will only consider the occurrence of actual delivery in instances where the counterparty seller is not associated with, or acting as, the depository.

[127] 82 FR at 60340.

[128] *Id.* at 60339.

[129] *Id.*

[130] As a practical matter, an ongoing lien on purchased virtual currency generally results in a customer's inability to freely use such virtual currency for its full purpose as a medium of exchange. If a customer cannot freely use a purchased virtual currency as a medium of exchange, then the Commission would generally view such a customer as lacking ''possession and control'' of the virtual currency. While the focus of this interpretive guidance is solely on virtual currency as described herein, this conclusion is distinguishable from other types of loan arrangements, such as those involving a car or house. In those other circumstances, a debtor may actually obtain meaningful possession and the ability to use those items for their primary purposes, even while encumbered and in an environment outside of the offeror or counterparty. A lien on a car allows the customer to use the vehicle as a means of transportation. A lien on a house allows the customer to use the house for shelter. By contrast, as noted above, a lien on virtual currency as a practical matter does not allow the customer to fully use the virtual currency for its purpose as a medium of exchange both within and away from a relevant execution venue service.

[131] 82 FR at 60339–41.

[132] Cable Car Letter at 4.

[133] *Id.*

circumvent registration requirements.'' [134] Chamber stated that, if there is a possibility of a forced sale event, such an event should not qualify for actual delivery.[135] In addition, Chamber argued that permitting forced sales would circumvent the purpose and intent of the Proposed Interpretation.[136] Further, Chamber noted that allowing such scenarios would be ''tantamount to allowing rolling, netting, offsetting and/or cash settlement''—practices prohibited by Example 4 of the Proposed Interpretation.[137]

Coinbase recognized that many digital asset spot exchanges offering margin trading operate like futures markets. Specifically, Coinbase noted its observation of exchanges offering margined or leveraged transactions, matching those orders and allowing netting or offsetting settlements—all while forcibly liquidating margin positions if the market moved against the margined position.[138] As Coinbase stated, ''[a]ll of these are hallmarks of futures contracts and transactions with these qualities should be traded on regulated contract markets . . . .'' [139]

The Commission agrees with the majority of comments that a forced sale scenario, as described herein, appears inconsistent with actual delivery in CEA section 2(c)(2)(D). As noted above, while the Commission will consider all relevant facts and circumstances, the presence of a lien, debt obligation, or other security interest on a virtual currency generally makes it impractical for the customer to use the virtual currency freely in commerce as a medium of exchange, thus frustrating actual delivery. Forced sale scenarios would equally prevent a customer from freely utilizing the full amount of the relevant virtual currency in commerce. Again, if a retail customer cannot practically use the virtual currency underlying the transaction freely in commerce as a medium of exchange (and the offeror or seller can essentially take it back), it is difficult to argue the customer truly received or secured control over it in the first instance.[140]

The Commission has further revised Example 2 [141] and created Example 3 [142] in this final interpretive guidance to reflect this view. The Commission notes that it does not intend to frustrate commercial transactions conducted in the normal course of business of the buyer and seller, which may be separately excepted by CEA section 2(c)(2)(D)(ii)(III)(bb).[143]

IV. Commission Interpretation of Actual Delivery for Virtual Currency

A. Virtual Currency as a Commodity

As noted in the Proposed Interpretation, the Commission considers virtual currency to be a commodity as defined under Section 1a(9) of the Act,[144] like many other intangible commodities that the Commission has previously recognized (*e.g.,* renewable energy credits and emission allowances, certain indices, and certain debt instruments, among others).[145] Indeed, virtual currency structures, at times, have been compared to other long-standing classes of commodities.[146] In addition, multiple federal courts have held that virtual currencies fall within the CEA's commodity definition.[147] As a commodity, virtual currency is subject to applicable provisions of the CEA and Commission regulations, including CEA section 2(c)(2)(D).

The Commission continues to interpret the term ''virtual currency'' broadly. In the context of this interpretation, virtual currency:[148] Is a digital asset that encompasses any digital representation of value or unit of account that is or can be used as a form of currency (*i.e.,* transferred from one party to another as a medium of exchange); may be manifested through units, tokens, or coins, among other things; and may be distributed by way of digital ''smart contracts,'' among other structures. However, the Commission notes that it does not intend to create a bright line definition given the evolving nature of the commodity and, in some instances, its underlying public distributed ledger technology (''DLT'' or ''blockchain'').

B. The Commission's Interest in Virtual Currency

The Commission continues to recognize that certain virtual currencies and their underlying blockchain technologies have the potential to yield notable advancements in applications of financial technology (''FinTech''). As noted in the Proposed Interpretation, the Commission launched the LabCFTC initiative [149] with this potential in mind. LabCFTC continues to engage the FinTech community and promote market-enhancing innovation in furtherance of improving the quality, resiliency, and competitiveness of the markets overseen by the Commission. As such, the Commission is closely following the development and

[134] *Id.*

[135] Chamber Letter at 5–6.

[136] *Id.*

[137] *Id.*

[138] Coinbase Letter at 8.

[139] *Id.*

[140] The Commission recognizes that a customer should have the ability to cover an outstanding debt obligation (unrelated to the initial retail commodity transaction) with their purchased virtual currency, but such a situation must be initiated freely by the customer only after the occurrence of actual delivery as described in this interpretive guidance. Before actual delivery (and associated transfer of possession and control) has occurred, such transactions would otherwise bear hallmarks of off-exchange derivatives as described herein. The difference is the freedom of the customer to decide how to use the digital asset once they have secured control over it.

[141] Example 2 is revised in this interpretive guidance to address scenarios in which the offeror maintains an affiliated relationship with the depository or custodial services provider of the virtual currency subject to the retail commodity transaction.

[142] Example 3 in this interpretive guidance is meant to express the view that actual delivery occurs when the virtual currency subject to the transaction is transferred away from the offeror and any offeror execution venue service ledger or digital account and received by a depository or blockchain address that allows the customer to use the commodity freely in commerce for its primary purpose as a medium of exchange.

[143] CEA section 2(c)(2)(D)(ii)(III)(bb) creates an exception from section 2(c)(2)(D) for any ''contract of sale'' that creates an enforceable obligation to deliver between a seller and a buyer that have the ability to deliver and accept delivery, respectively, in connection with the line of business of the seller and buyer. Further, CEA section 2(c)(2)(D)(i)(II) applies to transactions that are leveraged, margined, or financed by the offeror or counterparty seller. However, as noted within, this section would not apply to transactions financed by independent third parties.

[144] 82 FR at 60337–38; *In re Coinflip, Inc., d/b/a Derivabit, and Francisco Riordan,* CFTC Docket No. 15–29, 2015 WL 5535736, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) paragraph 33,538 (CFTC Sept. 17, 2015) (consent order); *In re TeraExchange LLC,* CFTC Docket No. 15–33, 2015 WL 5658082, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) paragraph 33,546 (CFTC Sept. 24, 2015) (consent order); *see also In re BFXNA Inc.,* CFTC No. 16–19, 2016 WL 3137612, at *5 (June 2, 2016) (consent order).

[145] *See generally* 77 FR 48208 at 48233 (discussing application of the swap forward exclusion to intangible commodities).

[146] Nick Szabo, *Bit gold,* Unenumerated (Dec. 27, 2008), *http://unenumerated.blogspot.com/2005/12/bit-gold.html.*

[147] *See CFTC* v. *McDonnell,* 287 F. Supp. 3d 213, 217 (E.D.N.Y. 2018) (''Virtual currencies can be regulated by CFTC as a commodity. . . . They fall well-within the common definition of 'commodity' as well as the [Act's] definition of 'commodities' as 'all other goods and articles . . . in which contracts for future delivery are presently or in the future dealt in.' ''); *McDonnell,* 332 F. Supp. 3d at 650–51 (entering judgment against defendant following bench trial); *CFTC* v. *My Big Coin Pay, Inc.,* 334 F. Supp. 3d 492, 495–98 (D. Mass. 2018) (denying motion to dismiss; applying a categorical approach to interpreting ''commodity'' under the Act and determining that a non-bitcoin virtual currency is a ''commodity'' under the Act).

[148] As noted in the Proposed Interpretation, the term ''virtual currency'' for purposes of this interpretive guidance is meant to be viewed as synonymous with ''digital currency'' and ''cryptocurrency'' as well as any other digital asset or digital commodity that satisfies the scope of ''virtual currency'' described herein.

[149] *See* Press Release, Commodity Futures Trading Commission, CFTC Launches LabCFTC as Major FinTech Initiative (May 17, 2017), *http://www.cftc.gov/PressRoom/PressReleases/pr7558-17.*

continuing evolution of blockchain technologies and virtual currencies.

Moreover, since virtual currency may serve as an underlying component of derivatives transactions, the Commission maintains a close interest in the development of the virtual currency marketplace generally. Since publication of the Proposed Interpretation, several listed derivatives contracts based on virtual currency have been self-certified to be listed on CFTC registered entities [150] in accordance with the CEA and Commission regulations.

In addition, the Commission continues to closely follow the evolution of the cash or ''spot'' market for virtual currencies, including related execution venues, especially since such markets may inform and affect the listed derivatives markets. Many cash market execution venues offer services to retail customers that wish to speculate on the price movements of a virtual currency against other currencies. For example, a speculator may purchase virtual currency using borrowed money in the hopes of covering any outstanding balance owed through profits from favorable price movements in the future. Among other scenarios,[151] this interpretation is meant to address the Commission's concern with such ''retail commodity transactions,'' whereby an entity, platform or execution venue: (i) Offers margin trading or otherwise facilitates [152] the use of margin, leverage, or financing arrangements for their retail market participants; (ii) typically to enable such participants to speculate or capitalize on price movements of the commodity—two hallmarks of a regulated futures marketplace.[153]

Despite this concern, the Commission has sought to take a deliberative and measured approach in this area as supported by one commenter,[154] as the Commission does not wish to stifle nascent technological innovation. Accordingly, the Commission has carefully continued to monitor these markets and even sought additional comment on these markets more generally.[155] While these efforts have informed the Commission of the many potential uses of digital assets and related technology, they have also reinforced the Commission's concern regarding potential risk to participants in retail commodity transactions involving virtual currency. The Commission highlighted a host of concerns in the Proposed Interpretation [156] regarding these nascent and speculative [157] markets. In setting forth this final interpretation, the Commission believes that many of the concerns raised remain justified [158] and the ''actual delivery'' exception from CEA section 2(c)(2)(D) cannot be interpreted in a way that would frustrate the protection for retail customers afforded by Congress.

C. Actual Delivery Interpretation

In consideration of the foregoing, the Commission issues the following final interpretive guidance to inform the public of the Commission's views as to the meaning of the term ''actual delivery'' in the context of CEA section 2(c)(2)(D) transactions in virtual currency. The Commission, in interpreting the term ''actual delivery'' for the purposes of CEA section 2(c)(2)(D)(ii)(III)(aa), will continue to follow the 2013 Guidance and ''employ a functional approach and examine how the agreement, contract, or transaction is marketed, managed, and performed, instead of relying solely on language used by the parties in the agreement, contract, or transaction.'' [159]

Further, the Commission will continue to assess all relevant factors [160] that inform an actual delivery determination.[161] More specifically, in the Commission's view, ''actual delivery'' has occurred within the context of virtual currency when:[162]

(1) A customer secures: [163] (i) Possession *and* control of the entire quantity of the commodity, whether it was purchased on margin, or using leverage, or any other financing arrangement, and (ii) the ability to use the entire quantity of the commodity freely in commerce (away from any particular execution venue) no later than 28 days from the date of the transaction and at all times thereafter; and

(2) The offeror [164] and counterparty seller (including any of their respective affiliates or other persons acting in concert with the offeror or counterparty

[150] 7 U.S.C. 1a(40).

[151] For example, bilateral transactions could also fall within ''retail commodity transactions'' in CEA section 2(c)(2)(D).

[152] As noted earlier, CEA section 2(c)(2)(D)(i) captures any such retail transaction entered into, or offered on a leveraged or margined basis, or financed by the offeror, the counterparty, or a person acting in concert with the offeror or counterparty on a similar basis. The Commission views any financing arrangements facilitated, arranged, or otherwise endorsed by the offeror or counterparty to satisfy this statutory definition for purposes of this interpretive guidance.

[153] *See, e.g., CFTC* v. *Int'l Foreign Currency, Inc.,* 334 F. Supp. 2d 305, 310 (E.D.N.Y. 2004) (listing elements typically found in a futures contract); *In re Stovall,* CFTC Docket No. 75–7 [1977–1980 Transfer Binder] Comm. Fut. L. Rep. (CCH) paragraph 20,941, at 23,777 (CFTC Dec. 6, 1979) (describing how futures contracts, being traded on margin, ''are entered into primarily for the purpose of assuming or shifting the risk of change in value of commodities, rather than for transferring ownership of the actual commodities.''); David J. Gilberg, *Regulation of New Financial Instruments Under the Federal Securities and Commodities Laws,* 39 Vand. L. Rev. 1599, 1603–04, n.14 (1986) (typically, futures ''traders are interested only in obtaining cash payments of price differentials, not actual commodities'').

[154] FIA Letter at 1–2.

[155] Request for Input on Crypto-Asset Mechanics and Markets, 83 FR 64563 (Dec. 17, 2018).

[156] *See, e.g.,* 82 FR at 60338; Matt Levine, *How A Bank Should Be?,* Bloomberg View (Mar. 11, 2015), *https://www.bloomberg.com/view/articles/2015-03-11/how-should-a-bank-be-* (''Just because you mumble the word 'blockchain' doesn't make otherwise illegal things legal'').

[157] Paul Vigna, *BitBeat: Bitcoin Price Drops on Block-Size Debate, 'Flash Crash,'* The Wall Street Journal (Aug. 20, 2015), *http://blogs.wsj.com/moneybeat/2015/08/20/bitbeat-bitcoin-price-drops-on-block-size-debate-flash-crash/* (''[B]itcoin's speculative traders love this kind of stuff [margin trading]; these guys could easily give Wall Street's casino hotshots a run for their money'').

[158] *See, e.g.,* Paul Vigna and Eun-Young Jeong, *Cryptocurrency Scams Took In $4 Billion in 2019,* The Wall Street Journal, Feb. 10, 2020, at B4 (''[T]here are plenty of inexperienced investors who have heard stories of bitcoin riches and think they can get rich, too.''); Shane Shifflett and Coulter Jones, *Hundreds of Cryptocurrencies Show Hallmarks of Fraud,* The Wall Street Journal, May 18, 2018, at A1; Andy Greenberg, *A 'Blockchain Bandit' Is Guessing Private Keys and Scoring Millions,* Wired.com (Apr. 23, 2019), *https://www.wired.com/story/blockchain-bandit-ethereum-weak-private-keys/.*

[159] 78 FR at 52428.

[160] This list includes, but is not limited to ''[o]wnership, possession, title, and physical location of the commodity purchased or sold, both before and after execution of the agreement, contract, or transaction, including all related documentation; the nature of the relationship between the buyer, seller, and possessor of the commodity purchased or sold; and the manner in which the purchase or sale is recorded and completed.'' *Id.*

[161] As noted above, given the complex and dynamic nature of these markets, the Commission believes it is appropriate to take an adaptable approach while it continues to follow developments in this space and evaluate business activity on a case-by-case basis.

[162] The Commission has slightly modified this sentence of the interpretive guidance, as compared to the Proposed Interpretation. This modification clarifies that this is a statement of when, in the Commission's view, actual delivery has occurred.

[163] While this interpretation speaks to the customer, the burden of proof would always rest on the party that relies on this exception from the Commission's jurisdiction in CEA section 2(c)(2)(D). *See CFTC* v. *Monex Credit Company, et al.,* 931 F.3d 966, 973 (9th Cir. 2019).

[164] The Commission views the term ''offeror'' broadly in this interpretation to encompass any persons that present, solicit, or otherwise facilitate a retail commodity transaction under the Act. As noted, an offeror may include those with operational control of a particular blockchain protocol. Separately, CEA section 2(c)(2)(D) captures any transaction that is financed by the offeror, among other things. Transactions financed solely by non-affiliated third parties, such as a non-affiliated credit card network, are not traditionally considered within CEA section 2(c)(2)(D). However, the Commission may continue to view financing through a credit card that is endorsed, sponsored, or specifically affiliated with an offeror as a transaction that falls within CEA section 2(c)(2)(D).

seller on a similar basis)[165] do not retain *any* interest in, legal right, or control over any of the commodity purchased on margin, leverage, or other financing arrangement at the expiration of 28 days from the date of the transaction.[166]

Consistent with the 2013 Guidance and the Proposed Interpretation, a sham delivery is not consistent with the Commission's interpretation of the term ''actual delivery.'' As noted above, the Commission believes that actual delivery occurs when the offeror and counterparty seller, including their agents, cease to retain any interest, legal right, or control whatsoever[167] in the virtual currency acquired by the purchaser at the expiration of 28 days from the date of entering into the transaction or at any time prior to expiration of the 28-day period once ''actual delivery'' occurs. Indeed, in its simplest form, actual delivery of virtual currency connotes the ability of a purchaser to utilize the virtual currency purchased ''on the spot'' as a medium of exchange in commerce or within the entirety of its relevant blockchain ecosystem.

The Commission believes that, in the context of an ''actual delivery'' determination in virtual currency, physical settlement involving the entire amount of purchased commodity must occur. A cash settlement or offset mechanism, as described in Example 5 below, is not consistent with the Commission's interpretation. The distinction between physical settlement and cash settlement in this context is akin to settlement of a spot foreign currency transaction at a commercial bank or hotel in a foreign nation—the customer receives physical foreign currency, not U.S. dollars. As mentioned, actual delivery occurs if such physical settlement occurs within 28 days from the date on which the ''agreement, contract, or transaction is entered into.''[168]

Consistent with the interpretation above, the Commission provides the following non-exclusive examples to further clarify the meaning of actual delivery in the virtual currency context:

Example 1: Actual delivery of virtual currency will have occurred if, within 28 days after entering into an agreement, contract, or transaction, there is a record on the relevant public distributed ledger or blockchain address of the transfer of virtual currency, whereby the entire quantity of the purchased virtual currency, including any portion of the purchase made using leverage, margin, or other financing, is transferred from the counterparty seller's blockchain address[169] to the purchaser's blockchain address, over which the purchaser maintains sole possession and control. When an execution venue or other third party offeror acts as an intermediary, the virtual currency's public distributed ledger should reflect the purchased virtual currency transferring from the counterparty seller's blockchain address to the third party offeror's blockchain address and, separately, from the third party offeror's blockchain address to the purchaser's blockchain address, over which the purchaser maintains sole possession and control.

Example 2: Actual delivery will have occurred if, within 28 days after entering into a transaction:

(1) The counterparty seller or offeror has delivered the entire quantity of the virtual currency purchased, including any portion of the purchase made using leverage, margin, or financing, into the possession of a depository[170] (*i.e.,* wallet or other relevant storage system) other than one owned, controlled, operated by, or affiliated with, the counterparty seller (including any parent companies, subsidiaries, partners, agents, affiliates, and others acting in concert with the counterparty seller)[171] that has entered into an agreement with the purchaser to hold virtual currency as agent for the purchaser without regard to any asserted interest of the offeror, the counterparty seller, or persons acting in concert with the offeror or counterparty seller on a similar basis;

(2) The purchaser has secured full control over the virtual currency (*e.g.,* the ability to remove as soon as technologically practicable and use freely up to the full amount of purchased commodity from the depository at any time, including by transferring to another depository of the customer's choosing); and

(3) With respect to the commodity being delivered, no liens (or other interests or legal rights of the offeror, counterparty seller, or persons acting in concert with the offeror or counterparty seller on a similar basis) resulting or relating to the use of margin, leverage, or financing used to obtain the entire quantity of the commodity delivered will continue after the 28-day period has elapsed.[172] This scenario assumes that no portion of the purchased commodity could be subjected to a forced sale or otherwise removed from the customer's control as a method of satisfying this example.

Example 3: Actual delivery will *not* have occurred if, within 28 days of entering into a transaction, the full amount of the purchased commodity is not transferred away from a digital account or ledger system owned or

[165] The Commission recognizes that the offeror of the transaction and the ultimate counterparty may be two separate entities or may be the same. For example, the Commission would consider as the offeror of the transaction a virtual currency execution venue that makes the transaction available to the retail customer or otherwise facilitates the transaction. That virtual currency execution venue could also be considered a counterparty to the transaction if, for example, the platform itself took the opposite side of the transaction or the purchaser of the virtual currency enjoyed privity of contract solely with the platform rather than the seller. Additionally, the Commission recognizes that some virtual currency execution venues may provide a purchaser with the ability to source financing or leverage from other users or third parties. The Commission would consider such third parties or other users to be acting in concert with the offeror or counterparty seller on a similar basis.

[166] Among other things, the Commission may look at whether the offeror or seller retain any ability to access or withdraw any quantity of the commodity purchased from the purchaser's account or wallet.

[167] The Commission would continue to take this view even if the offeror maintains some level of affiliation with an independent, third-party depository, as described in Example 2.

[168] 78 FR at 52427.

[169] The source of the virtual currency is provided for purposes of this example. However, the focus of this analysis remains on the actions that would constitute actual delivery of the virtual currency to the purchaser.

[170] As noted above, the offeror may associate with an affiliated depository in Example 2 that the customer chooses to utilize, but such an affiliated depository should be: (i) A ''financial institution'' as defined by CEA section 1a(21); (ii) a separate line of business from the offeror not subject to the offeror's control; (iii) a separate legal entity from the offeror and any offeror execution venue; (iv) predominantly operated for the purpose of providing custodial services for virtual currency and other digital assets; (v) appropriately licensed to conduct such custodial activity in the jurisdiction of the customer; (vi) offering the ability for the customer to utilize and engage in cold storage of the virtual currency; and (vii) contractually authorized by the customer to act as its agent.

[171] The Commission recognizes that an offeror could act in concert with both the purchaser and the counterparty seller in the ordinary course of business if it intermediates a transaction. This level of association would not preclude the offeror from maintaining an affiliation with a depository in a transaction that otherwise results in actual delivery pursuant to this example. However, pursuant to this example, actual delivery does not occur if the offeror, the offeror's execution venue, or any of its subsidiaries or affiliates, is also the counterparty to the retail commodity transaction at issue.

[172] Although it will consider all relevant factors and circumstances, the Commission believes that actual delivery would not occur if a lien or similar interest is retained upon the specific virtual currency purchased beyond the 28-day actual delivery period, as such a lien is likely to preclude the customer from using the virtual currency freely as a medium of exchange in commerce. However, the Commission understands that actual delivery may still occur when liens exist on other collateral, including virtual currency or digital assets *other than* the specific virtual currency that is the subject of the retail commodity transaction.

operated by, or affiliated with, the offeror or counterparty seller (or their respective execution venues) and received by a separate, independent, appropriately licensed, depository or blockchain address in which the customer maintains possession and control in accordance with Example 2.

Example 4: Actual delivery will *not* have occurred if, within 28 days of entering into a transaction, a book entry is made by the offeror or counterparty seller purporting to show that delivery of the virtual currency has been made to the customer, but the counterparty seller or offeror has *not,* in accordance with the methods described in Example 1 or Example 2, actually delivered the entire quantity of the virtual currency purchased, including any portion of the purchase made using leverage, margin, or financing, regardless of whether the agreement, contract, or transaction between the purchaser and offeror or counterparty seller purports to create an enforceable obligation [173] to deliver the commodity to the customer.

Example 5: Actual delivery will *not* have occurred if, within 28 days of entering into a transaction, the agreement, contract, or transaction for the purchase or sale of virtual currency is rolled, offset against, netted out, or settled in cash or virtual currency (other than the purchased virtual currency) between the customer and the offeror or counterparty seller (or persons acting in concert with the offeror or counterparty seller).

Issued in Washington, DC, on May 27, 2020, by the Commission.

Robert Sidman,

Deputy Secretary of the Commission.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix to Retail Commodity Transactions Involving Certain Digital Assets—Commission Voting Summary

On this matter, Chairman Tarbert and Commissioners Quintenz, Behnam, Stump, and Berkovitz voted in the affirmative. No Commissioner voted in the negative.

[FR Doc. 2020–11827 Filed 6–23–20; 8:45 am]

BILLING CODE 6351–01–P

[173] As discussed earlier, this ''enforceable obligation'' language relates to an element of a separate exception to CEA section 2(c)(2)(D) that is limited by its terms to a commercial transaction involving two commercial entities with a pre-existing line of business in the commodity at issue that is separate and distinct from the business of engaging in a retail commodity transaction. *See* 7 U.S.C. 2(c)(2)(D)(ii)(III)(bb).

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Chapter I

Notification of Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Service Between the United States and Canada

AGENCY: Office of the Secretary, U.S. Department of Homeland Security; U.S. Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: Notification of continuation of temporary travel restrictions.

SUMMARY: This document announces the decision of the Secretary of Homeland Security (Secretary) to continue to temporarily limit the travel of individuals from Canada into the United States at land ports of entry along the United States-Canada border. Such travel will be limited to ''essential travel,'' as further defined in this document.

DATES: These restrictions go into effect at 12 a.m. Eastern Daylight Time (EDT) on June 23, 2020 and will remain in effect until 11:59 p.m. EDT on July 21, 2020.

FOR FURTHER INFORMATION CONTACT: Alyce Modesto, Office of Field Operations, U.S. Customs and Border Protection (CBP) at 202–344–3788.

SUPPLEMENTARY INFORMATION:

Background

On March 24, 2020, DHS published notice of the Secretary's decision to temporarily limit the travel of individuals from Canada into the United States at land ports of entry along the United States-Canada border to ''essential travel,'' as further defined in that document.[1] The document described the developing circumstances regarding the COVID–19 pandemic and stated that, given the outbreak and continued transmission and spread of COVID–19 within the United States and globally, the Secretary had determined that the risk of continued transmission and spread of COVID–19 between the United States and Canada posed a ''specific threat to human life or national interests.'' The Secretary later published a series of notifications continuing such limitations on travel until 11:59 p.m. EDT on June 22, 2020.[2]

The Secretary has continued to monitor and respond to the COVID–19 pandemic. As of June 18, there are over 8.2 million confirmed cases globally, with over 445,000 confirmed deaths.[3] There are over 2.1 million confirmed and probable cases within the United States,[4] over 99,000 confirmed cases in Canada,[5] and over 154,000 confirmed cases in Mexico.[6]

Notice of Action

Given the outbreak and continued transmission and spread of COVID–19 within the United States and globally, the Secretary has determined that the risk of continued transmission and spread of COVID–19 between the United States and Canada poses an ongoing ''specific threat to human life or national interests.''

U.S. and Canadian officials have mutually determined that non-essential travel between the United States and Canada poses additional risk of transmission and spread of COVID–19 and places the populace of both nations at increased risk of contracting COVID–19. Moreover, given the sustained human-to-human transmission of the virus, returning to previous levels of travel between the two nations places the personnel staffing land ports of entry between the United States and Canada, as well as the individuals traveling through these ports of entry, at increased risk of exposure to COVID–19. Accordingly, and consistent with the authority granted in 19 U.S.C. 1318(b)(1)(C) and (b)(2),[7] I have

[1] 85 FR 16548 (Mar. 24, 2020). That same day, DHS also published notice of the Secretary's decision to temporarily limit the travel of individuals from Mexico into the United States at land ports of entry along the United States-Mexico border to ''essential travel,'' as further defined in that document. 85 FR 16547 (Mar. 24, 2020).

[2] *See* 85 FR 31059 (May 22, 2020); 85 FR 22352 (Apr. 22, 2020). DHS also published parallel notifications of the Secretary's decisions to continue temporarily limiting the travel of individuals from Mexico into the United States at land ports of entry along the United States-Mexico border to ''essential travel.'' *See* 85 FR 31057 (May 22, 2020); 85 FR 22353 (Apr. 22, 2020).

[3] WHO, Coronavirus disease 2019 (COVID–19) Situation Report—150 (June 18, 2020), available at *https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200618-covid-19-sitrep-150.pdf?sfvrsn=aa9fe9cf_2.*

[4] CDC, Cases of COVID–19 in the U.S. (last updated June 17, 2020), available at *https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html.*

[5] WHO, Coronavirus disease 2019 (COVID–19) Situation Report—150 (June 18, 2020).

[6] *Id.*

[7] 19 U.S.C. 1318(b)(1)(C) provides that ''[n]otwithstanding any other provision of law, the Secretary of the Treasury, when necessary to respond to a national emergency declared under the National Emergencies Act (50 U.S.C. 1601 *et seq.*) or to a specific threat to human life or national interests,'' is authorized to ''[t]ake any . . . action that may be necessary to respond directly to the national emergency or specific threat.'' On March 1, 2003, certain functions of the Secretary of the Treasury were transferred to the Secretary of

determined that land ports of entry along the U.S.-Canada border will continue to suspend normal operations and will only allow processing for entry into the United States of those travelers engaged in ''essential travel,'' as defined below. Given the definition of ''essential travel'' below, this temporary alteration in land ports of entry operations should not interrupt legitimate trade between the two nations or disrupt critical supply chains that ensure food, fuel, medicine, and other critical materials reach individuals on both sides of the border.

For purposes of the temporary alteration in certain designated ports of entry operations authorized under 19 U.S.C. 1318(b)(1)(C) and (b)(2), travel through the land ports of entry and ferry terminals along the United States-Canada border shall be limited to ''essential travel,'' which includes, but is not limited to—

- U.S. citizens and lawful permanent residents returning to the United States;
- Individuals traveling for medical purposes (*e.g.,* to receive medical treatment in the United States);
- Individuals traveling to attend educational institutions;
- Individuals traveling to work in the United States (*e.g.,* individuals working in the farming or agriculture industry who must travel between the United States and Canada in furtherance of such work);
- Individuals traveling for emergency response and public health purposes (*e.g.,* government officials or emergency responders entering the United States to support federal, state, local, tribal, or territorial government efforts to respond to COVID–19 or other emergencies);
- Individuals engaged in lawful cross-border trade (*e.g.,* truck drivers supporting the movement of cargo between the United States and Canada);
- Individuals engaged in official government travel or diplomatic travel;
- Members of the U.S. Armed Forces, and the spouses and children of members of the U.S. Armed Forces, returning to the United States; and
- Individuals engaged in military-related travel or operations.

The following travel does not fall within the definition of ''essential travel'' for purposes of this Notification—

- Individuals traveling for tourism purposes (*e.g.,* sightseeing, recreation, gambling, or attending cultural events).

At this time, this Notification does not apply to air, freight rail, or sea travel between the United States and Canada, but does apply to passenger rail, passenger ferry travel, and pleasure boat travel between the United States and Canada. These restrictions are temporary in nature and shall remain in effect until 11:59 p.m. EDT on July 21, 2020. This Notification may be amended or rescinded prior to that time, based on circumstances associated with the specific threat.

The Commissioner of U.S. Customs and Border Protection (CBP) is hereby directed to prepare and distribute appropriate guidance to CBP personnel on the continued implementation of the temporary measures set forth in this Notification. The CBP Commissioner may determine that other forms of travel, such as travel in furtherance of economic stability or social order, constitute ''essential travel'' under this Notification. Further, the CBP Commissioner may, on an individualized basis and for humanitarian reasons or for other purposes in the national interest, permit the processing of travelers to the United States not engaged in ''essential travel.''

The Acting Secretary of Homeland Security, Chad F. Wolf, having reviewed and approved this document, is delegating the authority to electronically sign this document to Chad R. Mizelle, who is the Senior Official Performing the Duties of the General Counsel for DHS, for purposes of publication in the **Federal Register**.

Chad R. Mizelle,

Senior Official Performing the Duties of the General Counsel, U.S. Department of Homeland Security.

[FR Doc. 2020–13676 Filed 6–22–20; 11:15 am]

BILLING CODE 9112–FP–P

Homeland Security. *See* 6 U.S.C. 202(2), 203(1). Under 6 U.S.C. 212(a)(1), authorities ''related to Customs revenue functions'' were reserved to the Secretary of the Treasury. To the extent that any authority under section 1318(b)(1) was reserved to the Secretary of the Treasury, it has been delegated to the Secretary of Homeland Security. *See* Treas. Dep't Order No. 100–16 (May 15, 2003), 68 FR 28322 (May 23, 2003). Additionally, 19 U.S.C. 1318(b)(2) provides that ''[n]otwithstanding any other provision of law, the Commissioner of U.S. Customs and Border Protection, when necessary to respond to a specific threat to human life or national interests, is authorized to close temporarily any Customs office or port of entry or take any other lesser action that may be necessary to respond to the specific threat.'' Congress has vested in the Secretary of Homeland Security the ''functions of all officers, employees, and organizational units of the Department,'' including the Commissioner of CBP. 6 U.S.C. 112(a)(3).

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Chapter I

Notification of Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Service Between the United States and Mexico

AGENCY: Office of the Secretary, U.S. Department of Homeland Security; U.S. Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: Notification of continuation of temporary travel restrictions.

SUMMARY: This document announces the decision of the Secretary of Homeland Security (Secretary) to continue to temporarily limit the travel of individuals from Mexico into the United States at land ports of entry along the United States-Mexico border. Such travel will be limited to ''essential travel,'' as further defined in this document.

DATES: These restrictions go into effect at 12 a.m. Eastern Daylight Time (EDT) on June 23, 2020 and will remain in effect until 11:59 p.m. EDT on July 21, 2020.

FOR FURTHER INFORMATION CONTACT: Alyce Modesto, Office of Field Operations, U.S. Customs and Border Protection (CBP) at 202–344–3788.

SUPPLEMENTARY INFORMATION:

Background

On March 24, 2020, DHS published notice of the Secretary's decision to temporarily limit the travel of individuals from Mexico into the United States at land ports of entry along the United States-Mexico border to ''essential travel,'' as further defined in that document.[1] The document described the developing circumstances regarding the COVID–19 pandemic and stated that, given the outbreak and continued transmission and spread of COVID–19 within the United States and globally, the Secretary had determined that the risk of continued transmission and spread of COVID–19 between the United States and Mexico posed a ''specific threat to human life or national interests.'' The Secretary later published a series of notifications

[1] 85 FR 16547 (Mar. 24, 2020). That same day, DHS also published notice of the Secretary's decision to temporarily limit the travel of individuals from Canada into the United States at land ports of entry along the United States-Canada border to ''essential travel,'' as further defined in that document. 85 FR 16548 (Mar. 24, 2020).

continuing such limitations on travel until 11:59 p.m. EDT on June 22, 2020.[2]

The Secretary has continued to monitor and respond to the COVID–19 pandemic. As of June 18, there are over 8.2 million confirmed cases globally, with over 445,000 confirmed deaths.[3] There are over 2.1 million confirmed and probable cases within the United States,[4] over 154,000 confirmed cases in Mexico,[5] and over 99,000 confirmed cases in Canada.[6]

Notice of Action

Given the outbreak and continued transmission and spread of COVID–19 within the United States and globally, the Secretary has determined that the risk of continued transmission and spread of COVID–19 between the United States and Mexico poses an ongoing ''specific threat to human life or national interests.''

U.S. and Mexican officials have mutually determined that non-essential travel between the United States and Mexico poses additional risk of transmission and spread of COVID–19 and places the populace of both nations at increased risk of contracting COVID–19. Moreover, given the sustained human-to-human transmission of the virus, returning to previous levels of travel between the two nations places the personnel staffing land ports of entry between the United States and Mexico, as well as the individuals traveling through these ports of entry, at increased risk of exposure to COVID–19. Accordingly, and consistent with the authority granted in 19 U.S.C. 1318(b)(1)(C) and (b)(2),[7] I have determined that land ports of entry along the U.S.-Mexico border will continue to suspend normal operations and will only allow processing for entry into the United States of those travelers engaged in ''essential travel,'' as defined below. Given the definition of ''essential travel'' below, this temporary alteration in land ports of entry operations should not interrupt legitimate trade between the two nations or disrupt critical supply chains that ensure food, fuel, medicine, and other critical materials reach individuals on both sides of the border.

For purposes of the temporary alteration in certain designated ports of entry operations authorized under 19 U.S.C. 1318(b)(1)(C) and (b)(2), travel through the land ports of entry and ferry terminals along the United States-Mexico border shall be limited to ''essential travel,'' which includes, but is not limited to—

- U.S. citizens and lawful permanent residents returning to the United States;
- Individuals traveling for medical purposes (*e.g.,* to receive medical treatment in the United States);
- Individuals traveling to attend educational institutions;
- Individuals traveling to work in the United States (*e.g.,* individuals working in the farming or agriculture industry who must travel between the United States and Mexico in furtherance of such work);
- Individuals traveling for emergency response and public health purposes (*e.g.,* government officials or emergency responders entering the United States to support federal, state, local, tribal, or territorial government efforts to respond to COVID–19 or other emergencies);
- Individuals engaged in lawful cross-border trade (*e.g.,* truck drivers supporting the movement of cargo between the United States and Mexico);
- Individuals engaged in official government travel or diplomatic travel;
- Members of the U.S. Armed Forces, and the spouses and children of members of the U.S. Armed Forces, returning to the United States; and
- Individuals engaged in military-related travel or operations.

The following travel does not fall within the definition of ''essential travel'' for purposes of this Notification—

- Individuals traveling for tourism purposes (*e.g.,* sightseeing, recreation, gambling, or attending cultural events).

At this time, this Notification does not apply to air, freight rail, or sea travel between the United States and Mexico, but does apply to passenger rail, passenger ferry travel, and pleasure boat travel between the United States and Mexico. These restrictions are temporary in nature and shall remain in effect until 11:59 p.m. EDT on July 21, 2020. This Notification may be amended or rescinded prior to that time, based on circumstances associated with the specific threat.

The Commissioner of U.S. Customs and Border Protection (CBP) is hereby directed to prepare and distribute appropriate guidance to CBP personnel on the continued implementation of the temporary measures set forth in this Notification. The CBP Commissioner may determine that other forms of travel, such as travel in furtherance of economic stability or social order, constitute ''essential travel'' under this Notification. Further, the CBP Commissioner may, on an individualized basis and for humanitarian reasons or for other purposes in the national interest, permit the processing of travelers to the United States not engaged in ''essential travel.''

The Acting Secretary of Homeland Security, Chad F. Wolf, having reviewed and approved this document, is delegating the authority to electronically sign this document to Chad R. Mizelle, who is the Senior Official Performing the Duties of the General Counsel for DHS, for purposes of publication in the **Federal Register**.

Chad R. Mizelle,

Senior Official Performing the Duties of the General Counsel, U.S. Department of Homeland Security.

[FR Doc. 2020–13677 Filed 6–22–20; 11:15 am]

BILLING CODE 9112–FP–P

[2] *See* 85 FR 31057 (May 22, 2020); 85 FR 22353 (Apr. 22, 2020). DHS also published parallel notifications of the Secretary's decisions to continue temporarily limiting the travel of individuals from Canada into the United States at land ports of entry along the United States-Canada border to ''essential travel.'' *See* 85 FR 31050 (May 22, 2020); 85 FR 22352 (Apr. 22, 2020).

[3] WHO, Coronavirus disease 2019 (COVID–19) Situation Report—150 (June 18, 2020), available at *https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200618-covid-19-sitrep-150.pdf?sfvrsn=aa9fe9cf_2.*

[4] CDC, Cases of COVID–19 in the U.S. (last updated June 17, 2020), available at *https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html.*

[5] WHO, Coronavirus disease 2019 (COVID–19) Situation Report—150 (June 18, 2020).

[6] *Id.*

[7] 19 U.S.C. 1318(b)(1)(C) provides that ''[n]otwithstanding any other provision of law, the Secretary of the Treasury, when necessary to respond to a national emergency declared under the National Emergencies Act (50 U.S.C. 1601 *et seq.*) or to a specific threat to human life or national interests,'' is authorized to ''[t]ake any . . . action that may be necessary to respond directly to the national emergency or specific threat.'' On March 1, 2003, certain functions of the Secretary of the Treasury were transferred to the Secretary of Homeland Security. *See* 6 U.S.C. 202(2), 203(1). Under 6 U.S.C. 212(a)(1), authorities ''related to Customs revenue functions'' were reserved to the Secretary of the Treasury. To the extent that any authority under section 1318(b)(1) was reserved to the Secretary of the Treasury, it has been delegated to the Secretary of Homeland Security. *See* Treas. Dep't Order No. 100–16 (May 15, 2003), 68 FR 28322 (May 23, 2003). Additionally, 19 U.S.C. 1318(b)(2) provides that ''[n]otwithstanding any other provision of law, the Commissioner of U.S. Customs and Border Protection, when necessary to respond to a specific threat to human life or national interests, is authorized to close temporarily any Customs office or port of entry or take any other lesser action that may be necessary to respond to the specific threat.'' Congress has vested in the Secretary of Homeland Security the ''functions of all officers, employees, and organizational units of the Department,'' including the Commissioner of CBP. 6 U.S.C. 112(a)(3).

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 293

[201A2100DD/AAKC001030/A0A501010.999900253G]

RIN 1076–AF54

Change of Address; Office of Indian Gaming for Submission of Tribal-State Class III Gaming Compacts

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule; technical amendment.

SUMMARY: This rule updates the address for submission of Tribal-State Class III gaming compacts, amendments, and extensions in the Tribal-State Class III Gaming Compact regulations.

DATES: Effective June 24, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Elizabeth Appel, Director, Office of Regulatory Affairs & Collaborative Action, Office of the Assistant Secretary—Indian Affairs, (202) 273–4680, *elizabeth.appel@bia.gov*.

SUPPLEMENTARY INFORMATION: The Department previously notified the public of the update to the Mail Stop for the Office of Indian Gaming by publication in the **Federal Register**. *See* 84 FR 71451 (December 27, 2019). This rule updates the Mail Stop as listed in the Code of Federal Regulations (CFR) at 25 CFR 293.9 to reflect the Office of Indian Gaming's new address for receipt of Tribal-State Class III gaming compacts. This update is necessary to ensure that the regulations provide an accurate Mail Stop for receipt by the Office of Indian Gaming to begin the 45-day timeline under 25 CFR 293.12.

A. Regulatory Planning and Review (E.O. 12866)

Executive Order (E.O.) 12866 provides that the Office of Information and Regulatory Affairs (OIRA) at the Office of Management and Budget (OMB) will review all significant rules. OIRA has determined that this rule is not significant.

E.O. 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 E.O. 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.

B. Reducing Regulation and Controlling Regulatory Costs (E.O. 13771)

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

C. Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It does not change current funding requirements and would not impose any economic effects on small governmental entities.

D. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act, because this rule does nothing more than update a Federal agency address. This rule:

(a) Will not have an annual effect on the economy of $100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises.

E. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

F. Takings (E.O. 12630)

This rule does not effect a taking of private property or otherwise have taking implications under E.O. 12630. A takings implication assessment is not required.

G. Federalism (E.O. 13132)

Under the criteria in section 1 of E.O. 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required.

H. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule: (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and (b) meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

I. Consultation With Indian Tribes (E.O. 13175)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in E.O. 13175 and have determined there are no substantial direct effects on federally recognized Indian Tribes that will result from this rulemaking because the rule is limited to updating an address.

J. Paperwork Reduction Act

OMB Control No. 1076–0172 currently authorizes the collections of information related to approval of Tribal-State Class III gaming compacts, with an expiration of May 31, 2021. This rulemaking does not affect the currently authorized collection. The Department may not conduct or sponsor, and you are not required to respond to, any collection of information unless it displays a currently valid OMB control number.

K. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because this is an administrative and procedural regulation. (For further information see 43 CFR 46.210(i)). We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

L. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

M. Determination To Issue Final Rule Without the Opportunity for Public Comment and With Immediate Effective Date

BIA is taking this action under its authority, at 5 U.S.C. 552, to publish regulations in the **Federal Register**. Under the Administrative Procedure Act, statutory procedures for agency rulemaking do not apply ''when the agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(3)(B). BIA finds that the notice and comment procedure are impracticable, unnecessary, or contrary to the public interest, because: (1) These amendments are non-substantive; and (2) the public benefits for timely notification of a change in the official agency address, and further delay is unnecessary and contrary to the public interest. Similarly because this final rule makes no substantive changes and merely reflects a change of address and updates to titles in the existing regulations, this final rule is not subject to the effective date limitation of 5 U.S.C. 553(d).

List of Subjects in 25 CFR Part 293

Gambling, Indians-business and finance.

For the reasons stated in the preamble, the Department of the Interior, Bureau of Indian Affairs, amends part 293 in title 25 of the Code of Federal Regulations to read as follows:

PART 293—CLASS III TRIBAL STATE GAMING COMPACT PROCESS

■ 1. The authority for part 293 continues to read as follows:

Authority: 5 U.S.C. 301; 25 U.S.C. 2, 9, 2710.

■ 2. Revise § 293.9 to read as follows:

§ 293.9 Where should a compact or amendment be submitted for review and approval?

Submit compacts and amendments to the Director, Office of Indian Gaming, U.S. Department of the Interior, 1849 C Street NW, Mail Stop 3543, Main Interior Building, Washington, DC 20240. If this address changes, a notice with the new address will be published in the **Federal Register** within 5 business days.

Tara Sweeney,

Assistant Secretary—Indian Affairs.

[FR Doc. 2020–13060 Filed 6–23–20; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF JUSTICE

28 CFR Part 16

[CPCLO Order No. 003–2020]

Privacy Act of 1974; Implementation

AGENCY: Federal Bureau of Investigation, United States Department of Justice.

ACTION: Final rule.

SUMMARY: The Federal Bureau of Investigation (FBI), a component of the United States Department of Justice (DOJ or Department), is finalizing without changes its Privacy Act exemption regulations for the system of records titled, ''National Crime Information Center (NCIC),'' JUSTICE/FBI–001, which were published as a Notice of Proposed Rulemaking (NPRM) on September 18, 2019. Specifically, the Department's regulations will exempt the records maintained in JUSTICE/FBI–001 from one or more provisions of the Privacy Act. The exemptions are necessary to avoid interference with the FBI's law enforcement and national security functions and responsibilities. The Department received only one substantive comment on the proposed rule.

DATES: This final rule is effective July 24, 2020.

FOR FURTHER INFORMATION CONTACT: Katherine M. Bond, Assistant General Counsel, Privacy and Civil Liberties Unit, Office of the General Counsel, FBI, Washington, DC, telephone 202–324–3000.

SUPPLEMENTARY INFORMATION: On September 10, 2019, the FBI published in the **Federal Register** a modified System of Records Notice (SORN) for an FBI system of records titled, ''National Crime Information Center (NCIC),'' JUSTICE/FBI–001, 84 FR 47533. The NCIC is a national criminal justice information system linking criminal (and authorized non-criminal) justice agencies located in the 50 states, the District of Columbia, U.S. territories and possessions, and selected foreign countries to facilitate the cooperative sharing of criminal justice information. The NCIC provides a system to receive and maintain information contributed by participating agencies relating to criminal justice and national security. Information maintained in the NCIC is readily accessible for authorized criminal justice purposes by authorized users via text-based queries (*i.e.,* using names and other descriptive data).

On September 18, 2019, the FBI published a Notice of Proposed Rulemaking (NPRM) proposing to amend its existing regulations exempting records maintained in JUSTICE/FBI–001 from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552aG) and (k), and inviting public comment on the proposed exemptions. 84 FR 49073. The comment period was open through October 18, 2019. DOJ received only one substantive comment responsive to the proposed exemptions. That comment, from the Electronic Privacy Information Center (EPIC), urged that ''[a]ll of these proposals should be withdrawn,'' so that the Department claims no Privacy Act exemptions at all for NCIC system of records. EPIC makes a number of claims, among which are the following:

- ''The over collection and maintenance of information that is unverified and unaccountable with no system for redress leaves personal data at a risk.''
- ''The FBI sets forward no reason that it should be able to maintain records irrelevant or unnecessary to accomplish a purpose of the agency.''
- ''[T]he categories of sources of records at minimum are essential in order to keep the government accountable throughout their data collection and law enforcement activities.''
- ''The exemptions as currently proposed are needlessly overbroad.''
- ''The NCIC has been known to have inaccurate and unreliable records, making it particularly unsuitable for vast exemptions from regulations designed to protect and optimize the accuracy and reliability of information held on people.''

After consideration of the statements in this public comment from EPIC, the Department has determined that, to protect the ability of the FBI to properly engage in its law enforcement and national security functions, the exemptions as proposed in the NPRM are codified in this final rule for the reasons stated below.

Response to Public Comments

As stated above, the one substantive comment the FBI received regarding its NPRM urged the FBI to withdraw its proposed Privacy Act exemptions. While, generically, it might be true that ''[t]he over collection and maintenance of information that is unverified and

unaccountable with no system for redress leaves personal data at a risk,'' the Department does not agree with this characterization of the FBI's activities. Rather than ''over collect,'' the FBI works with local, state, federal, and tribal criminal justice partners to determine what information is necessary to collect and share to ensure that the NCIC contains only information relevant and necessary to assist criminal justice agencies in fulfilling their missions. At times, due to the reality of law enforcement investigations, it may not be possible to know in advance what information is relevant and necessary for law enforcement and intelligence purposes. That is one reason that Congress, in the Privacy Act, provided for the ability of agencies to exempt themselves from certain Privacy Act requirements.

Further, regarding the assertion that the FBI will be maintaining ''unverified'' information, NCIC policy includes strict validation requirements ensuring that criminal justice agencies periodically review their records to ensure to the extent feasible that they are accurate, timely, relevant, and complete. If a record is not timely validated, it is purged from the active NCIC file and retired. Additionally, NCIC policy requires that before any user can take official action on active records within the NCIC (*e.g.,* arrest an individual, detain a missing person, seize stolen property, charge an individual with violation of a protection order, deny the purchase of a firearm, deny access to explosives), the user must confirm the validity and accuracy of the record with the agency that submitted the record to the NCIC. This ensures that agencies do not take action without verifying information from the NCIC. In addition, the FBI conducts triennial audits of all federal, state, and territorial repositories and a representative sample of local agencies to ensure compliance with policy. Findings of non-compliance are submitted to the Criminal Justice Information Services (CJIS) Advisory Policy Board for review. NCIC access is subject to termination for egregious violations of policy provisions. The NCIC also creates and maintains transaction logs, which can be reviewed to detect potential misuse of system data. And, regarding redress, the FBI in fact has had in place for many years a system for lawful access and amendment of records, detailed at 28 CFR part 16.

In the context of all of these steps taken by the FBI to promote data quality and appropriate data use, EPIC states that ''NCIC has been known to have inaccurate and unreliable records''—citing its own past assertions as support for this statement—and concludes that EPIC's allegations make NCIC ''particularly unsuitable for vast [Privacy Act] exemptions.'' When establishing the Privacy Act exemptions for law enforcement agencies, Congress considered and recognized the potential risks of law enforcement systems having inaccurate and unreliable records. Due to the nature of the type of work law enforcement agencies do and the type of information they must collect to do that work, it is not always possible to ensure the accuracy of records when collected. What is important is not whether a law enforcement agency may have inaccurate or unreliable records in its holdings; rather it is the steps taken by the law enforcement agency to promote data quality and appropriate data use under the circumstances. As detailed above, FBI efforts in this area are eminently reasonable, appropriate, and sufficient.

In response to EPIC's claim that ''[t]he FBI sets forward no reason that it should be able to maintain records irrelevant or unnecessary to accomplish a purpose of the agency,'' the FBI has not made this claim. Nowhere does the FBI assert that it ''should be able to maintain records irrelevant or unnecessary to accomplish a purpose of the agency.'' The FBI merely states the fact that it is a law enforcement agency and must act according to the realities and requirements of law enforcement investigations. As stated in the NPRM, relevance and necessity are questions of judgment and timing. Information that appears relevant and necessary when collected may, after further investigation and analysis, be deemed unnecessary. It is only after information is placed in the context of a fully completed investigation and assessed in that light that its relevancy and necessity to a specific investigative activity can be established.

EPIC states that ''the categories of sources of records at minimum are essential in order to keep the government accountable throughout their data collection and law enforcement activities.'' This statement fails to account for the wealth of public information, including information published by the Department and FBI, detailing types of information maintained in the NCIC as well as indicating the state, local, federal, and tribal law enforcement agency contributors of that information. This plethora of publicly available information already exists and allows the public to keep the government accountable regarding this system of records. As information detailing sources becomes more discrete, however, the realities of law enforcement agencies and investigations again come into play, including the fact that information frequently comes from sensitive sources. As stated in the NPRM, should subsection (e)(4)(!) be interpreted to require more detail regarding the record sources in this system than has already been published in the **Federal Register** through the SORN documentation, exemption from this provision is necessary to protect the sources of law enforcement and intelligence information and to protect the privacy and safety of witnesses and informants and others who provide information to the FBI.

EPIC states that ''[t]he exemptions as currently proposed are needlessly overbroad.'' On the contrary, in the NPRM and here in the Final Rule, the Department explains the need for each exemption. The exemptions as taken by FBI are as intended by Congress when it passed the Privacy Act, in order to ensure that law enforcement can continue to properly function in the face of the many requirements of the statute. After careful consideration, Congress allowed for exemptions from some requirements and not from others. Rather than acting counter to the Privacy Act, the Department and FBI are acting pursuant to it. Further, even though the FBI is authorized under the Privacy Act to maintain certain exemptions in all cases, the FBI takes seriously the privacy interests of the public. As stated in the proposed rulemaking, where the FBI determines compliance with an exempted Privacy Act provision—including access and amendment provisions—would not appear to interfere with or adversely affect interests of the United States or other system stakeholders, the FBI at its sole discretion may waive such exemption in that circumstance in whole or in part. In each circumstance, the FBI considers whether the facts of the request merit compliance with an exempted Privacy Act provision(s). In appropriate circumstances, as indicated in the Final Rule, the FBI may waive such exemptions at its discretion.

The Department has considered the submitted comment; however, for the reasons set forth above and the rationales included in the regulations, the Department adopts in this Final Rule the exemptions and rationales proposed in the NPRM.

Executive Orders 12866 and 13563—Regulatory Review

This regulation has been drafted and reviewed in accordance with Executive

Order 12866, ''Regulatory Planning and Review'' section 1(b), Principles of Regulation, and Executive Order 13563 ''Improving Regulation and Regulatory Review'' section 1(b), General Principles of Regulation.

The Department of Justice has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), and accordingly this rule has not been reviewed by the Office of Information and Regulatory Affairs within the Office of Management and Budget pursuant to Executive Order 12866.

Regulatory Flexibility Act

This regulation will only impact Privacy Act-protected records, which are personal and generally do not apply to an individual's entrepreneurial capacity, subject to limited exceptions. Accordingly, the Chief Privacy and Civil Liberties Officer, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132 Federalism

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988—Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

This regulation will have no implications for Indian Tribal governments. More specifically, it does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Therefore, the consultation requirements of Executive Order 13175 do not apply.

Unfunded Mandates Reform Act of 1995

This regulation will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000, as adjusted for inflation, or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This rule is not a major rule as defined by 5 U.S.C. 804 of the Congressional Review Act.

Paperwork Reduction Act

This rule imposes no information collection or recordkeeping requirements.

List of Subjects in 28 CFR Part 16

Administrative practices and procedures, Courts, Freedom of information, and the Privacy Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order 2940–2008, 28 CFR part 16 is amended as follows:

PART 16—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

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

Authority: 5 U.S.C. 301, 552, 552a, 553; 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717.

■ 2. Amend§ 16.96 by:
■ a. Revising paragraphs (g) and (h) and
■ b. Removing paragraph (i).

The revisions read as follows:

§ 16.96 Exemption of Federal Bureau of Investigation Systems-limited access.

* * * * *

(g) The following system of records is exempt from 5 U.S.C. 552a(c)(3) and (4), (d), (e)(l), (e)(2), (e)(3), (e)(4)(G), (H), and (I), (e)(5), (e)(8), (f), and (g):

(I) National Crime Information Center (NCIC) (JUSTICE/FBI–001).

(2) These exemptions apply only to the extent that information in the system is subject to exemption pursuant to 5 U.S.C. 552aG) and (k). Where the FBI determines compliance with an exempted provision would not appear to interfere with or adversely affect interests of the United States or other system stakeholders, the FBI in its sole discretion may waive an exemption, in whole or in part; exercise of this discretionary waiver prerogative in a particular matter shall not create any entitlement to or expectation of waiver in that matter or any other matter. As a condition of discretionary waiver, the FBI in its sole discretion may impose any restrictions deemed advisable by the FBI (including, but not limited to, restrictions on the location, manner, or scope of notice, access or amendment).

(h) Exemptions from the particular subsections are justified for the following reasons:

(I) From subsection (c)(3) the requirement that an accounting be made available to the named subject of a record, because this system is exempt from the access provisions of subsection (d). Also, because making available to a record subject the accounting of disclosures from records concerning him/her would specifically reveal law enforcement or national security investigative interest in the individual by the FBI or agencies that are recipients of the disclosures. Revealing this information could compromise ongoing, authorized law enforcement and intelligence efforts, particularly efforts to identify and defuse any potential acts of terrorism or other potential violations of criminal law. Revealing this information could also permit the record subject to obtain valuable insight concerning the information obtained during any investigation and to take measures to circumvent the investigation (*e.g.,* destroy evidence or flee the area to avoid investigation).

(2) From subsection (c)(4) notification requirements because this system is exempt from the access and amendment provisions of subsection (d) as well as the accounting disclosures provision of subsection (c)(3). The FBI takes seriously its obligation to maintain accurate records despite its assertion of this exemption, and to the extent it, in its sole discretion, agrees to permit amendment or correction of FBI records, it will share that information in appropriate cases.

(3) From subsection (d), (e)(4)(G) and (H), (e)(8), (f), and (g) because these provisions concern individual access to and amendment of law enforcement and intelligence records and compliance could alert the subject of an authorized law enforcement or intelligence activity about that particular activity and the investigative interest of the FBI and/or other law enforcement or intelligence agencies. Providing access could compromise sensitive law enforcement information; disclose information that could constitute an unwarranted invasion of another's personal privacy;

reveal a sensitive investigative or intelligence technique; provide information that would allow a subject to avoid detection or apprehension; or constitute a potential danger to the health or safety of law enforcement personnel, confidential sources, and witnesses. The FBI takes seriously its obligation to maintain accurate records despite its assertion of this exemption, and to the extent it, in its sole discretion, agrees to permit amendment or correction of FBI records, it will share that information in appropriate cases with subjects of the information.

(4) From subsection (e)(l) because it is not always possible to know in advance what information is relevant and necessary for law enforcement and intelligence purposes. Relevance and necessity are questions of judgment and timing. For example, what appears rekvant and necessary when collected ultimately may be deemed unnecessary. It is only after information is assessed that its relevancy and necessity in a specific investigative activity can be established.

(5) From subsections (e)(2) and (3) because it is not feasible to comply with these provisions given the nature of this system. The majority of the records in this system come from other federal, state, local, joint, foreign, tribal, and international agencies; therefore, it is not feasible for the FBI to collect information directly from the individual or to provide notice. Additionally, the application of this provision could present a serious impediment to the FBI's responsibilities to detect, deter, and prosecute crimes and to protect the national security. Application of these provisions would put the subject of an investigation on notice of that fact and allow the subject an opportunity to engage in conduct intended to impede that activity or avoid apprehension.

(6) From subsection (e)(4)(I), to the extent that this subsection is interpreted to require more detail regarding the record sources in this system than has already been published in the **Federal Register** through the SORN documentation. Should the subsection be so interpreted, exemption from this provision is necessary to protect the sources of law enforcement and intelligence information and to protect the privacy and safety of witnesses and informants and others who provide information to the FBI.

(7) From subsection (e)(S) because in the collection of information for authorized law enforcement and intelligence purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With time, additional facts, or analysis, information may acquire new significance. The restrictions imposed by subsection (e)(S) would limit the ability of trained investigators and intelligence analysts to exercise their judgment in reporting on investigations and impede the development of criminal intelligence necessary for effective law enforcement. Although the FBI has claimed this exemption, it continuously works with its federal, state, local, tribal, and international partners to maintain the accuracy of records to the greatest extent practicable. The FBI does so with established policies and practices. The criminal justice and national security communities have a strong operational interest in using up-to-date and accurate records and will foster relationships with partners to further this interest.

Dated: May 21, 2020.

Peter A. Winn,

Acting Chief Privacy and Civil Liberties Officer, United States Department of Justice.

[FR Doc. 2020–11386 Filed 6–23–20; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 321

[Docket ID: DOD–2018–OS–0008]

RIN 0790–AK67

Defense Security Service Privacy Program

AGENCY: Defense Counterintelligence and Security Agency, DoD.

ACTION: Final rule.

SUMMARY: This final rule removes DoD's regulation concerning the Defense Security Service (DSS) Privacy Program. The DSS organization's name has been changed since codification to the Defense Counterintelligence and Security Agency (DCSA). Moving forward, this agency will be referenced as DCSA. On April 11, 2019, the Department of Defense published a revised DoD-level Privacy program, which contains the necessary information for an agency-wide Privacy Program regulation under the Privacy Act and now serves as the single Privacy Program rule for the Department. That revised Privacy Program rule also includes all DoD component exemption rules. Therefore, this part is now unnecessary and may be removed from the CFR.

DATES: This rule is effective on June 24, 2020.

FOR FURTHER INFORMATION CONTACT: Ms. Stephanie J. Courtney, 571–305–6740.

SUPPLEMENTARY INFORMATION: DoD now has a single DoD-level Privacy Program rule at 32 CFR 310 (84 FR 14728) that contains all the codified information required for the Department. The Defense Counterintelligence and Security Privacy Act Program regulation at 32 CFR 321, last updated on September 14, 1999 (64 FR 49660), is no longer required and may be removed.

It has been determined that publication of this CFR part removal for public comment is impracticable, unnecessary, and contrary to public interest since it is based on removing DoD policies and procedures that are either now reflected in another CFR part, 32 CFR 310, or are publically available on the Department's website. To the extent that DCSA internal guidance concerning the implementation of the Privacy Act within DCSA is necessary, it will be issued in an internal document.

This rule is one of 20 separate DoD component Privacy rules. With the finalization of the DoD-level Privacy rule at 32 CFR part 310, the Department eliminated the need for this component Privacy rule, thereby reducing costs to the public as explained in the preamble of the DoD-level Privacy rule published on April 11, 2019, at 84 FR 14728–14811.

This rule is not significant under Executive Order (E.O.) 12866, ''Regulatory Planning and Review.'' Therefore, E.O. 13771, ''Reducing Regulation and Controlling Regulatory Costs'' does not apply.

List of Subjects in 32 CFR Part 321

Privacy.

PART 321—[REMOVED]

■ Accordingly, by the authority of 5 U.S.C. 301, 32 CFR part 321 is removed.

Dated: June 12, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–13115 Filed 6–23–20; 8:45 am]

BILLING CODE 5001–06–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 360

[Docket No. 20–CRB–0006 RM]

Procedural Regulations of the Copyright Royalty Board Requiring Electronic Filing of Claims

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule.

SUMMARY: The Copyright Royalty Judges (Judges) adopt amendments to regulations governing the filing of claims to royalty fees collected under compulsory license to require that all claims be filed electronically through the Copyright Royalty Board's (CRB) electronic filing system (eCRB).

DATES: Effective June 24, 2020.

FOR FURTHER INFORMATION CONTACT: Anita Blaine, CRB Program Specialist, by telephone at (202) 707–7658 or email at *crb@loc.gov*.

SUPPLEMENTARY INFORMATION: On May 6, 2020, the Copyright Royalty Judges (Judges) published a proposed rule amending 37 CFR part 360 to require that all claims to royalty fees collected under compulsory license be filed online through eCRB. 85 FR 26906 (May 6, 2020). The Judges received no comments on the proposal and therefore adopt it as proposed for the reasons set forth below.

Background

In 2017, the CRB deployed its electronic filing and case management system, eCRB, and began accepting claims to compulsory license royalties electronically. The CRB continued, however, to permit the filing of claims on paper forms.

The CRB has since received a diminishing number of paper claims. In the most recent claims filing period for cable and satellite royalties (July 2019), out of 545 and 280 claims, respectively, the CRB received two claims for cable royalties and one claim for satellite royalties that were filed exclusively in paper form.[1] In the most recent claims filing period for DART royalties (January–February 2020), out of 61 claims filed, the CRB received no claims that were filed exclusively in paper form.[2]

The handling of paper claims is more resource-intensive for the CRB than the handling of electronic claims. Each paper claim must be opened, date-stamped, numbered, scanned, and uploaded to eCRB, and details from the paper claim must be entered manually into eCRB to generate an electronic claim.

More critically, acceptance of paper claims creates a dependency on the receipt and processing of mail and courier deliveries. The current disruption at the Library of Congress to both mail processing and acceptance of courier deliveries because of the COVID–19 pandemic demonstrates the risk to claims processing of that dependency.

In order to eliminate the need for resource-intensive manual processing of paper claims and to mitigate the risk to CRB operations of a disruption to normal mail and courier delivery, and having received no comments from the public in response to the May 6, 2020 proposed rule, the Judges hereby amend 37 CFR part 360 to require that all claims be filed online through eCRB.

List of Subjects in 37 CFR Part 360

Administrative practice and procedure, Cable royalties, Claims, Copyright, Electronic filing, Satellite royalties.

For the reasons set forth in the preamble, and under the authority of chapter 8, title 17, United States Code, the Copyright Royalty Judges hereby amend part 360 of title 37 of the Code of Federal Regulations as follows:

Subchapter C—Submission of Royalty Claims

PART 360—FILING OF CLAIMS TO ROYALTY FEES COLLECTED UNDER COMPULSORY LICENSE

■ 1. The authority citation for part 360 continues to read as follows:

Authority: 17 U.S.C. 801, 803, 805.

Subpart A also issued under 17 U.S.C. 111(d)(4) and 119(b)(4).

Subpart B also issued under 17 U.S.C. 1007(a)(1).

Subpart C also issued under 17 U.S.C. 111(d)(4), 119(b)(4) and 1007(a)(1).

Subpart A—Cable and Satellite Claims

§ 360.3 [Amended]

■ 2. Amend § 360.3 by:

■ a. In paragraph (b), removing the words ''or by mail or hand delivery in accordance with § 301.2'';

■ b. Removing paragraph (d); and

■ c. Redesignating paragraph (e) as paragraph (d).

■ 3. Amend § 360.4 by:

■ a. Revising paragraph (a);

■ b. Removing paragraph (b)(1)(v);

■ c. Redesignating paragraph (b)(1)(vi) as paragraph (b)(1)(v);

■ d. Revising paragraph (b)(2)(i);

■ e. In paragraph (b)(2)(iii), removing the words ''for claims submitted through eCRB'';

■ f. Removing paragraph (b)(2)(v); and

■ g. Redesignating paragraph (b)(2)(vi) as paragraph (b)(2)(v).

The revisions read as follows:

§ 360.4 Form and content of claims.

(a) *Electronic filing.* (1) Each filer must file claims online using the claims filing feature of eCRB to claim cable compulsory license royalty fees or satellite compulsory license royalty fees and must provide all information required by the online form and its accompanying instructions.

(2) Filers may access eCRB at *https://app.crb.gov*. The claims filing feature for claims to cable compulsory license royalty fees and satellite compulsory license royalty fees will be available only during the month of July.

(b) * * *

(2) * * *

(i) With the exception of joint claims filed by a performing rights society on behalf of its members, a list including the full legal name, address, and email address of each copyright owner whose claim(s) are included in the joint claim. Claims must include an Excel spreadsheet containing the information if the number of joint claimants is in excess of ten.

* * * * *

§ 360.5 [Removed]

■ 4. Remove § 360.5.

Subpart B—Digital Audio Recording Devices and Media (DART) Royalty Claims

■ 5. Amend § 360.22 by:

■ a. Revising paragraph (a);

■ b. In paragraph (b)(2), removing the words ''for claims submitted through eCRB'';

■ c. Removing paragraph (c);

■ d. Redesignating paragraphs (d), (e), and (f) as paragraphs (c), (d), and (e) respectively; and

■ e. Revising newly redesignated paragraph (d).

The revisions read as follows:

§ 360.22 Form and content of claims.

(a) *Electronic filing.* (1) Each claim to DART royalty payments must be filed online using the claims filing feature of eCRB and must contain the information required by the online form and its accompanying instructions.

[1] For both cable and satellite claims, the CRB received approximately 20 backup paper claims—*i.e.,* claims filed in paper form that are duplicates of claims filed in electronic form. The practice of filing backup paper claims is neither necessary nor encouraged by the CRB.

[2] The CRB received four backup paper claims.

(2) Filers may access eCRB at *https://app.crb.gov*. The claims filing feature for claims to DART royalty payments will be available only during the months of January and February.

* * * * *

(d) *List of claimants.* If the claim is a joint claim, it must include the name of each claimant participating in the joint claim. Filers submitting joint claims on behalf of ten or fewer claimants, must list the name of each claimant included in the joint claim directly on the filed joint claim. Filers submitting joint claims on behalf of more than ten claimants must include an Excel spreadsheet listing the name of each claimant included in the joint claim.

* * * * *

§ 360.23 [Removed]

■ 6. Remove § 360.23.

§ 360.24 [Redesignated as § 360.23 and Amended]

■ 7. Redesignate § 360.24 as § 360.23 and, in newly redesignated § 360.23(b), add the words ''online through eCRB'' after the word ''notice''.

Subpart C—Rules of General Application

■ 8. Amend § 360.30 by adding a sentence at the end of the paragraph to read as follows:

§ 360.30 Amendment of claims.

* * * All Notices of Amendment must be filed online through eCRB.

■ 9. Amend § 360.31 by adding a sentence at the end of the paragraph to read as follows:

§ 360.31 Withdrawal of claims.

* * * All Notices of Withdrawal of Claim(s) must be filed online through eCRB.

Dated: June 16, 2020.

Jesse M. Feder,

Chief United States Copyright Royalty Judge.

Approved by:

Carla Hayden,

Librarian of Congress.

[FR Doc. 2020–13554 Filed 6–23–20; 8:45 am]

BILLING CODE 1410–72–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AP72

Veterans Employment Pay for Success Grant Program

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) established a grant program (Veterans Employment Pay for Success (VEPFS)) to award grants to eligible entities to fund projects that are successful in accomplishing employment rehabilitation for Veterans with service-connected disabilities. VA will award grants on the basis of an eligible entity's proposed use of a Pay for Success (PFS) strategy to achieve goals. This final rule adopts with changes an interim final rule that established regulations for awarding a VEPFS grant, including the general process for awarding the grant, criteria and parameters for evaluating grant applications, priorities related to the award of a grant, and general requirements and guidance for administering a VEPFS grant program.

DATES: This rule is effective on June 24, 2020.

FOR FURTHER INFORMATION CONTACT: Mike Frueh, Deputy Assistant Secretary, Planning and Performance Management, (008A), Department of Veterans Affairs, 810 Vermont Ave. NW, Washington, DC, (202) 632–8784. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 3119 of title 38, United States Code, authorizes the Secretary of Veterans Affairs (Secretary) to make grants to or contract with public or nonprofit agencies, including institutions of higher learning, to advance ''the knowledge, methods, techniques, and resources available for use in rehabilitation programs for veterans.'' Section 3119 specifically authorizes the Secretary to make grants to such agencies to conduct or provide support for projects which are ''designed to increase the resources and potential for accomplishing the rehabilitation of disabled veterans.'' (See also implementing regulation at 38 CFR 21.390.)

On August 10, 2016, VA published an interim final rule in the **Federal Register**, 81 FR 52770, under the authority of sec. 3119 establishing regulations for administering a VEPFS grant program to award grants to eligible entities to fund projects that are successful in accomplishing employment rehabilitation for Veterans with service-connected disabilities. In general, a PFS model is a strategy for successfully attaining positive social or environmental outcomes by paying for an intervention to achieve such outcomes only after the intervention produces these outcomes. The interim final rule included the general process for awarding the grant, criteria and parameters for evaluating grant applications, priorities related to the award of a grant, and general requirements and guidance for administering a VEPFS grant program. VA provided a 60-day public comment period that ended on October 11, 2016, and received nine comments from a single entity.

The first comment recommended amending the definition of ''Employment outcome'' to include outcomes that occur ''during'' as well as following the service period so that the PFS agreement reflects the benefits of the selected intervention while services are provided. In addition, this comment and the third comment recommended amending the definitions of ''Employment outcome'' and ''Outcomes payments'' to allow a PFS project evaluation to be based on a ''comparison'' group in addition to a ''control'' group so there is greater flexibility when structuring valid evaluation methodologies. VA agrees that if employment outcomes can be measured during the service period, an evaluator may be able to obtain useful information that could assist with determining whether employment outcomes have improved across the lifecycle of the project. It is feasible to assume that some outcomes may be achievable and measurable at any point during the lifecycle of the service period. VA believes measuring outcomes during the service period may allow for greater flexibility in transaction structuring for outcomes payments. In addition, VA agrees that basing a project evaluation on a comparison group or a control group will allow for greater flexibility in structuring evaluation methodologies. Having greater flexibility in this regard may allow for greater statistical power when measuring outcomes and benefit the VA program office when evaluating the impact of the outcomes on future rehabilitation policy and programming. Therefore, we are amending the definition of ''Employment outcome'' to reflect that it means the employment or earnings of a participant in an intervention group or a control or comparison group either during or after a service period. We are further amending this definition and the definition of ''Outcomes payments'' to indicate that comparison groups, in addition to control groups, may be used when structuring evaluation methodologies.

The second comment proposed adding a definition of ''Outcome metrics'' and additional comments, including the sixth comment,

recommended adding the language, ''outcomes metrics or'' before ''target levels'' in a number of the regulatory sections in this rulemaking. ''Outcomes metrics or target levels'' as a phrase does not make sense. Outcomes are a kind of result of interventional or non-interventional activities. Targets are a hoped-for level of achievement for various outcomes, or a characteristic of outcomes, and are not part of an ''either/or'' option. Therefore, we will not add the language ''outcomes metrics or'' to any of the regulatory provisions in this rulemaking. Because we are not adding this proposed language, there is no need to add a definition for ''Outcome metrics.''

The fourth comment recommended clarifying that the project partnership may be memorialized in more than one agreement. We are amending the definition of project partnership to reflect that it may consist of multiple agreements because allowing for multiple agreements will provide the project partnership with greater flexibility.

The fifth comment recommended allowing each VEPFS grant to establish the minimum and maximum number of years rather than requiring a minimum 5-year period for all VEPFS grants. VA's original vision for pay for success programming did not account for projects that may have a shorter duration, such as feasibility studies or studies that may require long-term evaluation of certain employment outcomes. To accommodate a broader range of PFS projects with the increased potential for better outcomes, VA agrees that performance period minimums or maximums should be established on a per grant program basis. Thus, we are amending § 21.442(c) to allow each VEPFS grant agreement to establish the project duration instead of setting a required minimum period.

The seventh comment proposed to eliminate the requirement that grantees procure investors in a government acquisition process following procurement standards set forth in 2 CFR 200.317–200.326. The commenter explained that, in typical PFS arrangements to which it has been a party, investors are not ''procured'' and are not a party to the PFS agreement. Typically, the government is not a party to the investor financing agreements and does not negotiate directly with investors. The commenter explained that investors do not provide services to the government, but fund services to be provided by the service provider and bear the risk that the intervention will not achieve the agreed upon outcomes metrics. Thus, investors are recruited or engaged in a manner that befits their role as risk-bearing entities in the PFS model.

We agree to eliminate the requirement that grant recipients ''procure'' investors and follow procurement standards set forth in 2 CFR 200.317–200.326. Although the uniform grant regulations at 2 CFR part 200 apply to recipients (and subrecipients) of the PFS grants, they do not contemplate investors as playing a part in the grant agreement or carrying out the purposes of the grant. The procurement of goods and services by way of contract is a key factor in creating a procurement relationship. *See* 2 CFR 200.330(b). The Federal Acquisition Regulations defining ''procurement'' and ''acquisition'' support the position that investors and investments of capital are not ''procured.'' As the commenter explained, because investors supply money/funding, and do not provide goods or services, obtaining investments is not an acquisition or procurement as contemplated by the uniform grant regulations. While the funding investors provide is used to procure goods or services necessary to carry out the grant's purpose, neither the investor nor the funding is a good or service that is procured. Therefore, the uniform grant regulations at 2 CFR part 200 should not apply, and we agree to exclude ''investors'' from the requirement in § 21.445(b) that partner entities be procured following procurement standards set forth in 2 CFR 200.317–200.326.

The eighth comment proposed to not require grantees to identify investors at the time of application. We see no reason why grantees should not be able to identify investors at the time of application and the commenter has provided no convincing reason. We do not believe that excluding investors from the procurement requirement supports the argument that investors should be identified later in the grant process. Furthermore, identifying investors later in the process would introduce uncertainty into the overall viability of the applicant's proposed project. Accordingly, we will not make any changes based on this comment.

The ninth comment proposed to allow VA and an applicant to negotiate a cooperative agreement or a grant agreement to provide flexibility in finalizing the terms of the VEPFS grant. As stated above, sec. 3119 provides the authority for the Secretary to make these VEPFS grants. It also provides authority for the Secretary to contract with entities to fund projects that are successful in accomplishing rehabilitation for Veterans with service-connected disabilities. However, there is no authority for the Secretary to enter into cooperative agreements to fund such projects. As VA has no authority to enter cooperative agreements for this purpose, we must decline to change the regulations to allow for the negotiation of cooperative agreements between an applicant and VA.

Based on the rationale set forth in the interim final rule and in this document, VA is adopting the provisions of the interim final rule as a final rule with changes, as noted above.

Administrative Procedure Act

The Secretary is issuing this rule because there is a need to find new methods for rehabilitating Veterans with service-connected disabilities to become employable and obtain and maintain suitable employment. This rulemaking serves an important Veterans' need in an economical way because it provides the opportunity for discovering such new methods using a strategy that will save taxpayer money. However, funding for a grant awarded under these regulations was available to be obligated within a limited timeframe. Therefore, it was impracticable and contrary to the public interest to delay the rule for the purpose of soliciting advance public comment or to have a delayed effective date. Accordingly, VA issued an interim final rule with an immediate effective date and is now issuing this final rule after having considered the comments submitted.

Executive Orders 12866, 13563 and 13771

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is not a significant regulatory action under Executive Order 12866.

VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's website at *http://*

www.va.gov/orpm/, by following the link for ''VA Regulations Published From FY 2004 Through Fiscal Year to Date.''

This final rule is considered an E.O. 13771 regulatory action. Details on the estimated costs of this final rule can be found in the rule's economic analysis.

Paperwork Reduction Act

Although this action contains provisions constituting collections of information at 38 CFR 21.445, 21.447, and 21.448, under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521), no new or proposed revised collections of information are associated with this final rule. The information collection requirements for §§ 21.445, 21.447, and 21.448 are currently approved by OMB and have been assigned OMB control number 2900–0847.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). The Secretary estimates that, for any VEPFS grant program, no more than ten non-renewable grants will be awarded. For each grant awarded, usually one of each, but no more than a few, outcomes payors, project coordinators, evaluators, investors, and service providers will be involved with the grant program. The goal of these grants is to rehabilitate Veterans with service-connected disabilities with regard to employment. Thus, an insubstantial number of small entities will be affected by this final rule and, accordingly, there will not be a significant economic impact on such affected entities. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule will have no such effect on State, local, and tribal governments, or on the private sector.

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).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number and title for the program affected by this document is 64.116, Vocational Rehabilitation for Disabled Veterans.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs—education, Grant programs—veterans, Health care, Loan programs—education, Loan programs—veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Signing Authority

The Secretary of Veterans Affairs approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Pamela Powers, Chief of Staff, Performing the Delegable Duties of the Deputy Secretary, Department of Veterans Affairs, approved this document on April 13, 2020, for publication.

Jeffrey M. Martin,

Assistant Director, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

Accordingly, the interim final rule amending 38 CFR part 21, which published at 81 FR 52770 on August 10, 2016, is adopted as final with the following changes:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart A—Vocational Rehabilitation and Employment Under 38 U.S.C. Chapter 31

■ 1. The authority citation for part 21, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 18, 31, and as noted in specific sections.

■ 2. In § 21.441, revise the definitions of ''Employment outcome'' and ''Outcomes payments'' and the introductory text of the definition of ''Project partnership'' to read as follows:

§ 21.441 Definitions.

* * * * *

Employment outcome is the employment or earnings of a participant in an intervention group or control or comparison group during or after the service period. Improving employment outcomes means creating positive impact in terms of these outcomes, where the results for individuals that receive the intervention are better than the results for a valid control or comparison group that did not receive the intervention.

* * * * *

Outcomes payments are funds that are paid to an investor or service provider and that are released only for the achievement of outcomes, as compared to those of a control or comparison group, that meet target levels that have been agreed to in advance of the provision of intervention (*i.e.,* if positive impact has been created by the intervention in terms of these outcomes). When investors have provided the upfront capital for the project, these payments generally cover repayment of the principal investment and provide a modest return on investment for any associated risks of paying for the intervention upfront.

* * * * *

Project partnership is a collaboration among entities that negotiate one or more agreements and execute a project to improve employment outcomes for Veterans with service-connected disabilities. The entities that may be involved in a project partnership include:

* * * * *

■ 3. In § 21.442, revise paragraph (c) to read as follows:

§ 21.442 VEPFS grants—general.

* * * * *

(c) A VEPFS grant will be awarded for a minimum and maximum number of years that is specified in the VEPFS grant agreement, beginning on the date on which the VEPFS grant is awarded, with the availability of no-cost extensions.

* * * * *

■ 4. In § 21.445, revise paragraph (b) to read as follows:

§ 21.445 Application.

* * * * *

(b) Description of anticipated project partnership(s), including the responsibilities of each of the partner entities, the experience of any involved entities with serving Veteran populations, and other qualifications of the involved entities that may be relevant in carrying out responsibilities of the project partnership. In

establishing the project partnership, entities, including the project coordinator, evaluator, and service provider, but excluding investors, must be procured following procurement standards set forth in 2 CFR 200.317 through 200.326.

* * * * *

[FR Doc. 2020–11915 Filed 6–23–20; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R09–OAR–2020–0151; FRL–10010–56–Region 9]

Finding of Failure To Attain the 1987 24-Hour PM_{10} Standard; Reclassification as Serious Nonattainment; Pinal County, Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to determine that the West Pinal County, Arizona nonattainment area did not attain the 1987 24-hour national ambient air quality standards (NAAQS or ''standard'') for particulate matter with a diameter of ten micrometers or smaller (PM_{10}) by December 31, 2018, the statutory attainment date for the nonattainment area. This action is based on the EPA's calculation of the PM_{10} design value for the nonattainment area over the 2016–2018 period, using complete, quality-assured, and certified PM_{10} monitoring data. With this final determination that West Pinal County has failed to attain the PM_{10} NAAQS by its attainment date, the Clean Air Act (CAA) section 188(b)(2) requires that the nonattainment area be reclassified to Serious by operation of law. Within 18 months from the effective date of this reclassification to Serious, the State must submit State Implementation Plan (SIP) revisions that comply with the statutory and regulatory requirements for Serious PM_{10} nonattainment areas.

DATES: This rule will be effective on July 24, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2020–0151. 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: Jerry Wamsley, EPA Region IX, (415) 947–4111, *wamsley.jerry@epa.gov.*

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

Table of Contents

I. Summary of the Proposed Action
II. Public Comments and EPA Responses
III. Final Action
IV. Statutory and Executive Order Reviews

I. Summary of the Proposed Action

On April 7, 2020, the EPA proposed to determine that the West Pinal County nonattainment area failed to attain the 1987 24-hour PM_{10} NAAQS by December 31, 2018, the statutory attainment date for the area.[1] For a PM_{10} nonattainment area classified as Moderate under the CAA, such as the West Pinal County area, section 188(c) of the CAA states that the area's attainment date is ''as expeditiously as practicable, but no later than the end of the sixth calendar year after the area's designation as nonattainment.'' Consequently, the applicable attainment date for West Pinal County, designated nonattainment in 2012, was December 31, 2018. CAA section 188(b)(2) requires the EPA to determine whether any PM_{10} nonattainment area classified as Moderate attained the 24-hour PM_{10} NAAQS by the area's attainment date and requires the EPA to make such a determination within six months after that date.

Our proposed determination that the West Pinal County area failed to attain the PM_{10} NAAQS was based on complete, quality-assured, and certified PM_{10} monitoring data for the appropriate three-year period, 2016–2018. As discussed in our proposal, an area attains the 24-hour PM_{10} standard of 150 micrograms per cubic meter (μg/m^3) when the expected number of days per calendar year with a 24-hour concentration exceeding the standard, referred to as an ''exceedance'', averaged over a three-year period is equal to or less than one.

In our proposal, the EPA's evaluation of whether the West Pinal County nonattainment area has met the 1987 24-hour PM_{10} NAAQS was based on our review of the monitoring data, the adequacy of the PM_{10} monitoring network in the nonattainment area, and the reliability of the data collected by that network. The PM_{10} standard is attained when the expected number of exceedances, averaged over a three-year period, is less than or equal to one. The expected number of exceedances averaged over a three-year period at any given monitor is known as the PM_{10} design value for that site. The PM_{10} design value for the nonattainment area is the highest design value from a monitor within that area. Three consecutive years of air quality data are required to show attainment of the PM_{10} standard.

We reviewed the 2018 PM_{10} design values for all regulatory monitoring sites measuring PM_{10} within the West Pinal County nonattainment area, expressed as a single value representing the average expected exceedances over the three-year period, 2016–2018.[2] The PM_{10} data showed that the design values at multiple monitoring sites are greater than 1.0 estimated annual average exceedances of the 1987 24-hour PM_{10} NAAQS. Consequently, the EPA proposed to determine, based upon three years of complete, quality-assured and certified data from 2016–2018, that the West Pinal County nonattainment area did not attain the 1987 24-hour PM_{10} NAAQS by the applicable attainment date of December 31, 2018.

In our proposal to determine that the West Pinal County area did not attain the NAAQS by the relevant attainment date, the EPA noted that the consequence of our determination is that the West Pinal County area will be reclassified as a Serious PM_{10} nonattainment area by operation of law and will be subject to all applicable Serious area attainment planning and nonattainment New Source Review requirements. This includes the requirement to submit a Serious area air quality plan within 18 months of the effective date of our final rule, per section 189(b)(2) of the CAA. This Serious area air quality plan must demonstrate attainment of the 24-hour PM_{10} NAAQS by December 31, 2022, ten years after the area's designation to nonattainment, per section 188(c)(2) of the CAA.

[1] 85 FR 19408 (April 7, 2020).

[2] A design value is calculated using a specific methodology from monitored air quality data and is used to compare an area's air quality to a NAAQS. The methodologies for calculating expected exceedances for the 24-hour PM_{10} NAAQS are found in 40 CFR part 50, Appendix K, Section 2.1(a).

II. Public Comments and EPA Responses

The public comment period on the proposed rule opened on April 7, 2020, the date of its publication in the **Federal Register**, and closed on May 7, 2020. During this period, the EPA received one comment letter submitted by the Sierra Club and The Arizona Center for Law in the Public Interest (ACLIPI). The Sierra Club and ACLIPI comment letter expressed support for our proposal and suggested that the EPA take our final action without delay. A copy of this comment letter is included in the docket for this final action.

III. Final Action

In accordance with section 188(b)(2) of the CAA, the EPA is taking final action to determine that the West Pinal County Moderate nonattainment area did not attain the 1987 24-hour PM_{10} NAAQS by its applicable attainment date of December 31, 2018. Our determination that West Pinal County failed to attain the PM_{10} NAAQS is based on complete, quality-assured, and certified PM_{10} monitoring data for the appropriate three-year period, 2016–2018.

As a result of our determination of failure to attain the 1987 24-hour PM_{10} NAAQS by its applicable attainment date, West Pinal County is reclassified as a Serious PM_{10} nonattainment area by operation of law and is subject to all applicable Serious area attainment planning and nonattainment New Source Review requirements, in accordance with section 188(b)(2) of the CAA. This includes the requirement to submit a Serious area air quality plan within 18 months of the effective date of our final rule, per section 189(b)(2) of the CAA. This Serious area air quality plan must demonstrate attainment of the 24-hour PM_{10} NAAQS by December 31, 2022, ten years after the area's designation to nonattainment, per section 188(c)(2) of the CAA.

IV. Statutory and Executive Order Reviews

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

This action is not a significant regulatory action under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and Executive Order 13563 (76 FR 3821, January 21, 2011), and therefore was not submitted to the Office of Management and Budget (OMB) for review.

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

This action is not an Executive Order 13771 regulatory action because it is not a significant regulatory action under Executive Order 12866.

C. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3521) because it does not contain any information collection activities.

D. Regulatory Flexibility Act

I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. This action will not impose any requirements on small entities. This action requires the state to adopt and submit SIP revisions to satisfy the statutory requirements that apply to Serious areas and would not itself directly regulate any small entities. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

E. Unfunded Mandates Reform Act

This action does not contain any unfunded mandate of $100 million or more and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531–1538). This action itself imposes no enforceable duty on any state, local, or tribal governments, or the private sector. This action determines that the West Pinal County nonattainment area failed to attain the 1987 24-hour PM_{10} NAAQS by its applicable attainment date, triggering reclassification as a Serious nonattainment area and existing statutory timeframes for the state to submit SIP revisions. Such a reclassification in and of itself does not impose any federal intergovernmental mandate.

F. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). The requirement to submit SIP revisions to meet the 1987 24-hour PM_{10} NAAQS is imposed by the CAA. This final rule does not alter the distribution of power and responsibilities established in the CAA. Thus, Executive Order 13132 does not apply to this action. In the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicited comments on our prior proposed action from state and local officials.

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

This action does not have tribal implications as specified in Executive Order 13175. No areas of Indian country are located within the West Pinal County PM_{10} nonattainment area. Therefore, no tribal areas are implicated in the area that the EPA has determined to have failed to attain the 1987 24-hour PM_{10} NAAQS by the applicable attainment date. The CAA and the Tribal Authority Rule establish the relationship of the federal government and tribes in developing plans to attain the NAAQS, and this rule does nothing to modify that relationship. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because the effect of this action is to reclassify the West Pinal County nonattainment area as Serious nonattainment for the 1987 24-hour PM_{10} NAAQS triggering additional Serious area planning requirements under the CAA. This action does not establish an environmental standard intended to mitigate health or safety risks.

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

This final rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant

regulatory action under Executive Order 12866.

J. National Technology Transfer and Advancement Act

This action is not subject to the 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 involve technical standards.

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

Executive Order 12898 (59 FR 7629, Feb. 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. The EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The effect of this final action is to reclassify the West Pinal County nonattainment area as Serious nonattainment for the 1987 24-hour PM_{10} NAAQS triggering additional Serious area planning requirements under the CAA.

L. Congressional Review Act (CRA)

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).

M. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 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, does not 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 81

Environmental protection, Air pollution control, Intergovernmental relations, National parks, Particulate matter, Wilderness areas.

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

Dated: June 8, 2020.

John Busterud,

Regional Administrator, Region IX.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 1. The authority citation for part 81 continues to read as follows:

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

■ 2. In § 81.303 amend in the table ''Arizona–PM–10'' by revising the entry under Pinal County (part) for ''West Pinal'' to read as follows:

§ 81.303 Arizona.

* * * * *

ARIZONA—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
* * * *	*		*	*
Pinal County (part):				
West Pinal	7/2/12	Nonattainment	7/24/20	Serious.
1. Commencing at a point which is the intersection of the western line of Range 2 East, Gila and Salt River Baseline and Meridian, and the northern line of Township 4 South, which is the point of beginning:				
2. Thence, proceed easterly along the northern line of Township 4 South to a point where the northern line of Township 4 South intersects the western line of Range 7 East;				
3. Thence, northerly along the western line of Range 7 East to a point where the western line of Range 7 East intersects the northern line of Township 3 South;				
4. Thence, easterly along the northern line of Township 3 South to a point where the northern line of Township 3 South intersects the western line of Range 8 East;				
5. Thence, northerly along the western line of Range 8 East to a point where the western line of Range 8 East intersects the northern line of Township 1 South;				
6. Thence, easterly along the northern line of Township 1 South to a point where the northern line of Township 1 South intersects the eastern line of Range 8 East;				
7. Thence southerly along the eastern line of Range 8 East to a point where the eastern line of Range 8 East intersects the Northern line of Township 3 South;				

ARIZONA—PM–10—Continued

Designated area	Designation		Classification	
	Date	Type	Date	Type
8. Thence easterly along the northern line of Township 3 South to a point where the northern line of Township 3 South intersects the eastern line of Range 9 East;			
9. Thence southerly along the eastern line of Range 9 east to a point where the eastern line of Range 9 East intersects the northern line of Township 4 South;				
10. Thence easterly along the northern line of Township 4 South to a point where the northern line of Township 4 South intersects the eastern line of Range 10 East;				
11. Thence southerly along the eastern line of Range 10 East to a point where the eastern line of Range 10 East intersects the southern line of Township 5 South;				
12. Thence westerly along the southern line of Township 5 South to a point where the southern line of Township 5 South intersects the eastern line of Range 8 East;				
13. Thence southerly along the eastern line of Range 8 East to a point where the eastern line of Range 8 East intersects the northern line of Township 8 South;				
14. Thence easterly along the northern line of Township 8 South to a point where the northern line of Township 8 South intersects the eastern line of Range 9 East;				
15. Thence southerly along the eastern line of Range 9 east to a point where the eastern line of Range 9 East intersects the northern line of Township 9 South;				
16. Thence easterly along the northern line of Township 9 South to a point where the northern line of Township 9 South intersects the eastern line of Range 10 East;				
17. Thence southerly along the eastern line of Range 10 East to a point where the eastern line of Range 10 East intersects the southern line of Township 9 South;				
18. Thence westerly along the southern line of Township 9 South to a point where the southern line of Township 9 South intersects the western line of Range 7 East;				
19. Thence northerly along the western line of Range 7 East to a point where the western line of Range 7 East intersects the southern line of Township 8 South;				
20. Thence westerly along the southern line of Township 8 South to a point where the southern line of Township 8 South intersects the western line of Range 6 East;				
21. Thence northerly along the western line of Range 6 East to a point where the western line of Range 6 East intersects the southern line of Township 7 South;				
22. Thence, westerly along the southern line of Township 7 South to a point where the southern line of Township 7 South intersects the quarter section line common to the southwestern southwest quarter section and the southeastern southwest quarter section of section 34, Range 3 East and Township 7 South;				
23. Thence, northerly along the along the quarter section line common to the southwestern southwest quarter section and the southeastern southwest quarter section of sections 34, 27, 22, and 15, Range 3 East and Township 7 South, to a point where the quarter section line common to the southwestern southwest quarter section and the southeastern southwest quarter section of sections 34, 27, 22, and 15, Range 3 East and Township 7 South, intersects the northern line of section 15, Range 3 East and Township 7 South;				
24. Thence, westerly along the northern line of sections 15, 16, 17, and 18, Range 3 East and Township 7 South, and the northern line of sections 13, 14, 15, 16, 17, and 18, Range 2 East and Township 7 South, to a point where the northern line of sections 15, 16, 17, and 18, Range 3 East and Township 7 South, and the northern line of sections 13, 14, 15, 16, 17, and 18, Range 2 East and Township 7 South, intersect the western line of Range 2 East, which is the common boundary between Maricopa and Pinal Counties, as described in Arizona Revised Statutes sections 11–109 and 11–113;				
25. Thence, northerly along the western line of Range 2 East to the point of beginning which is the point where the western line of Range 2 East intersects the northern line of Township 4 South;				

ARIZONA—PM–10—Continued

Designated area	Designation		Classification	
	Date	Type	Date	Type
26. Except that portion of the area defined by paragraphs 1 through 25 above that lies within the Ak-Chin Indian Reservation, Gila River Indian Reservation, and the Tohono O'odham Nation's Florence Village and San Lucy Farms.				
* * * * * * *				

* * * * *

[FR Doc. 2020–12827 Filed 6–23–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2020–0045; FRL–10008–92]

Indaziflam; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of indaziflam in or on multiple commodities which are identified and discussed later in this document. Bayer CropScience requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective June 24, 2020. Objections and requests for hearings must be received on or before August 24, 2020, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2020–0045, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805.

Please note that due to the public health emergency the EPA Docket Center (EPA/DC) and Reading Room was closed to public visitors on March 31, 2020. Our EPA/DC staff will continue to provide customer service via email, phone, and webform. For further information on EPA/DC services, docket contact information and the current status of the EPA/DC and Reading Room, please visit *https://www.epa.gov/dockets*.

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (703) 305–7090; email address: *RDFRNotices@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Publishing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl*.

C. How can I file an objection or hearing request?

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2020–0045 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before August 24, 2020. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2020–0045, 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 CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html*.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets*.

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of April 15, 2020 (85 FR 20910) (FRL–10006–54), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a

pesticide petition (PP 8F8725) by Bayer CropScience 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. The petition requested that 40 CFR part 180 be amended by establishing tolerances for residues of indaziflam (*N*-[(1*R*,2*S*)-2,3-dihydro-2,6-dimethyl-1*H*-inden-1-yl]-6-(1-fluoroethyl)-1,3,5-triazine-2,4-diamine) in or on grass, forage, fodder and hay, group 17, forage at 30 parts per million (ppm); grass, forage, fodder and hay, group 17, hay at 10 ppm; sugarcane, cane at 0.01 ppm; cattle, goat, horse, and sheep fat at 0.07 ppm; cattle, goat, horse, and sheep meat at 0.01 ppm; cattle, goat, horse, and sheep meat byproducts at 0.2 ppm; milk at 0.01 ppm; and milk, fat at 0.25 ppm. That document referenced a summary of the petition prepared by Bayer CropScience, the registrant, which is available in the docket, *http://www.regulations.gov*. There were no comments received in response to the notice of filing.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for indaziflam including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with indaziflam follows.

On October 10, 2019, EPA published in the **Federal Register** a final rule establishing tolerances for residues of indaziflam in or on the tropical and subtropical fruit (edible peel) group 23 and tropical and subtropical fruit (inedible peel) group 24 based on the Agency's conclusion that aggregate exposure to indaziflam is safe for the general population, including infants and children. *See* 84 FR 54510 (FRL–9999–70). That document contains a summary of the toxicological profile and points of departure, assumptions for exposure assessment, and the Agency's determination regarding the children's safety factor, which have not changed.

EPA's dietary exposure assessments have been updated to include the additional exposure from use of indaziflam on grass forage, grass hay, and sugarcane cane, and from exposure to residues in edible ruminant commodities, *i.e.,* reliance on tolerance-level residues for all crops, maximum anticipated residues for all edible ruminant commodities, and an assumption of 100 percent crop treated (PCT). EPA's aggregate exposure assessment incorporated this additional dietary exposure, as well as exposure in drinking water and from residential sources, although those latter exposures are not impacted by the new uses on grass forage, grass hay, and sugarcane cane and thus have not changed since the last assessment. Further information about EPA's risk assessment and determination of safety supporting the tolerances established in the October 10, 2019 **Federal Register** action, as well as the new indaziflam tolerances, can be found at *http://www.regulations.gov* in the document titled ''Indaziflam—Aggregate Human Health Risk Assessment of the Proposed New Use on Lowbush Blueberry, and Crop Group Expansions to Tropical and Subtropical Fruit, Edible Peel, Group 23 and Tropical and Subtropical Fruit, Inedible Peel, Group 24.'' dated September 11, 2019 in docket ID EPA–HQ–OPP–2018–0561 and the document titled, ''Indaziflam. Human Health Risk Assessment in Support of the Proposed New Uses on Grasses, Sugarcane, Wildlife Management, and Rights-of-Way'' dated April 17, 2020 in docket ID number EPA–HQ–OPP–2020–0045.

Acute dietary risks are below the Agency's level of concern: 20% of the acute population adjusted dose (aPAD) at the 95th percentile of exposure for all infants less than 1 year old, the population subgroup with the highest exposure estimate. Chronic dietary risks are below the Agency's level of concern: 20% of the chronic population adjusted dose (cPAD) for children 1 to 2 years old, the population subgroup with the highest exposure estimate. The updated combined short-term food, water, and residential exposure estimates result in aggregate margins of exposure (MOEs) above the level of concern (LOC) of 100 for all scenarios assessed and are not of concern.

Therefore, based on the risk assessments and information described above, EPA concludes there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to indaziflam residues. More detailed information on the subject action to establish tolerances in or on the grass forage, grass hay, sugarcane cane, and edible ruminant commodities can be found in the document entitled, ''Indaziflam. Human Health Risk Assessment in Support of the Proposed New Uses on Grasses, Sugarcane, Wildlife Management, and Rights-of-Way'' by going to *http://www.regulations.gov*. The referenced document is available in the docket established by this action, which is described under **ADDRESSES**. Locate and click on the hyperlink for docket ID number EPA–HQ–OPP–2020–0045.

IV. Other Considerations

A. Analytical Enforcement Methodology

There are adequate residue analytical methods for enforcing tolerances for indaziflam residues of concern in/on the registered plant and livestock commodities. Method DH–003–P07–02 is an adequate high-performance liquid chromatography with tandem mass spectrometry (LC–MS/MS) tolerance enforcement method for indaziflam and 1-fluoroethyl diaminotriazine (FDAT) in crops. Method DH–009–A18–01 is an adequate LC–MS/MS tolerance enforcement method for the determination of indaziflam residues in livestock commodities.

These methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov*.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health

Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

The Codex has not established any MRLs for indaziflam.

V. Conclusion

Therefore, tolerances are established for residues of indaziflam, *N*-[(1R,2S)-2,3-dihydro-2,6-dimethyl-1*H*-inden-1-yl]-6-(1-fluoroethyl)-1,3,5-triazine-2,4-diamine, including its metabolites and degradates in or on grass, forage, fodder and hay, group 17, forage at 30 ppm; grass, forage, fodder and hay, group 17, hay at 10 ppm; and sugarcane, cane at 0.01 ppm. Compliance with the tolerance levels specified above is to be determined by measuring only indaziflam and FDAT, 6-[(1*R*)-1-fluoroethyl]-1,3,5-triazine-2,4-diamine, calculated as the stoichiometric equivalent of indaziflam, in or on the commodity.

Tolerances are also established for residues of indaziflam, *N*-[(1R,2S)-2,3-dihydro-2,6-dimethyl-1*H*-inden-1-yl]-6-(1-fluoroethyl)-1,3,5-triazine-2,4-diamine, including its metabolites and degradates in or on cattle, fat at 0.7 ppm; cattle, meat at 0.01 ppm; cattle, meat byproducts at 0.2 ppm; goat, fat at 0.07 ppm; goat, meat at 0.01 ppm; goat, meat byproducts at 0.2 ppm; horse, fat at 0.07 ppm; horse, meat at 0.01 ppm; horse, meat byproducts at 0.2 ppm; milk at 0.01 ppm; milk, fat at 0.25 ppm; sheep, fat at 0.07 ppm; sheep, meat at 0.01 ppm; and sheep, meat byproducts at 0.2 ppm. Compliance with the tolerance levels specified above is to be determined by measuring only indaziflam in or on the commodity.

Lastly, the existing tolerance in paragraph (a) for ''Sugarcane, refined sugar'' is removed as unnecessary and the tolerances under paragraph (b), Section 18 emergency exemptions for ''Grass, forage, fodder, and hay, group 17 forage'', and ''Grass, forage, fodder, and hay, group 17, hay'' are removed as unnecessary due to the establishment of the above tolerances.

VI. Statutory and Executive Order Reviews

This action establishes and modifies tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), nor is it considered a regulatory action under Executive Order 13771, entitled ''Reducing Regulations and Controlling Regulatory Costs'' (82 FR 9339, February 3, 2017). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 26, 2020.

Michael Goodis,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.653:

■ a. Redesignate paragraph (a) as (a)(1), revise newly redesignated paragraph (a)(1) introductory text and redesignate the table as Table 1 to paragraph (a)(1);

■ b. In the table in newly redesignated paragraph (a)(1) remove the entry for ''Sugarcane, refined sugar'' and add alphabetically entries for ''Grass, forage, fodder and hay, group 17, forage''; ''Grass, forage, fodder and hay, group 17, hay''; and ''Sugarcane, cane'';

■ c. Add paragraph (a)(2); and

■ d. Remove and reserve paragraph (b).

The additions and revisions read as follows:

§ 180.653 Indaziflam; tolerances for residues.

(a) *General* (1) Tolerances are established for residues of the herbicide indaziflam, *N*-[(1R,2S)-2,3-dihydro-2,6-dimethyl-1*H*-inden-1-yl]-6-(1-fluoroethyl)-1,3,5-triazine-2,4-diamine, including its metabolites and degradates, in or on the commodities in the following table. Compliance with the tolerance levels specified in the following table is to be determined by measuring only indaziflam and FDAT,

6-[(1*R*)-1-fluoroethyl]-1,3,5-triazine-2,4-diamine, calculated as the stoichiometric equivalent of indaziflam, in or on the commodity.

TABLE 1 TO PARAGRAPH (a)(1)

Commodity	Parts per million
* * * * *	
Grass, forage, fodder and hay, group 17, forage	30
Grass, forage, fodder and hay, group 17, hay	10
* * * * *	
Sugarcane, cane	0.01

(2) Tolerances are established for residues of the herbicide indaziflam, *N*-[(1R,2S)-2,3-dihydro-2,6-dimethyl-1*H*-inden-1-yl]-6-(1-fluoroethyl)-1,3,5-triazine-2,4-diamine, including its metabolites and degradates, in or on the commodities in the following table. Compliance with the tolerance levels specified in the following table is to be determined by measuring only indaziflam in or on the commodity.

TABLE 2 TO PARAGRAPH (a)(2)

Commodity	Parts per million
Cattle, fat	0.07
Cattle, meat	0.01
Cattle, meat byproducts	0.2
Goat, fat	0.07
Goat, meat	0.01
Goat, meat byproducts	0.2
Horse, fat	0.07
Horse, meat	0.01
Horse, meat byproducts	0.2
Milk	0.01
Milk, fat	0.25
Sheep, fat	0.07
Sheep, meat	0.01
Sheep, meat byproducts	0.2

(b) [Reserved]

* * * * *

[FR Doc. 2020–12132 Filed 6–23–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1983–0002; FRL–10010–67–Region 5]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Partial Deletion of the Allied Chemical & Ironton Coke Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 5 is publishing a direct final Notice of Partial Deletion of soil (land), lagoon, and sediment portions of the Allied Chemical & Ironton Coke Superfund Site (Site), in Ironton, Ohio, from the National Priorities List (NPL). The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan. This direct final partial deletion is being published by EPA with the concurrence of the State of Ohio, through the Ohio Environmental Protection Agency, because all appropriate response actions for these Site media under CERCLA have been completed. However, this partial deletion does not preclude future actions under Superfund. This partial deletion does not include the OU2 ROD Soils Area 2 or the groundwater portions of the Site, which will remain on the NPL.

DATES: This direct final partial deletion is effective August 24, 2020 unless EPA receives adverse comments by July 24, 2020. If adverse comments are received, EPA will publish a timely withdrawal of the direct final partial deletion in the **Federal Register** informing the public that the partial deletion will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–1983–0002 by one of the following methods:

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

Email: Deletions@usepa.onmicrosoft.com.

Written comments submitted by mail are suspended and no hand deliveries will be accepted. We encourage the public to submit comments via email or at *https://www.regulations.gov*.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–1983–0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be CBI or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *https://www.regulations.gov* or email. The *https://www.regulations.gov* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *https://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *https://www.regulations.gov* index. Although listed in the index, some information is

not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *https://www.regulations.gov* and at *https://www.epa.gov/superfund/allied-chemical-ironton* or you may contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

The EPA is suspending its Docket Center and Regional Records Centers for public visitors to reduce the risk of transmitting COVID–19. In addition, many site information repositories are closed and information in these repositories, including the deletion docket, has not been updated with hardcopy or electronic media. For further information and updates on EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets*.

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID–19.

FOR FURTHER INFORMATION CONTACT: Karen Cibulskis, NPL Deletion Coordinator, U.S. Environmental Protection Agency Region 5, at (312) 886–1843 or via email at *cibulskis.karen@epa.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Partial Deletion Procedures
IV. Basis for Partial Site Deletion
V. Partial Deletion Action

I. Introduction

EPA Region 5 is publishing this direct final Notice of Partial Deletion of the Allied Chemical & Ironton Coke Superfund Site (Allied Chemical Site or Site), from the NPL. The Allied Chemical Site covers 129 acres and includes three operable units (OUs). The Goldcamp Disposal Area (GDA) is OU1. The former Coke Plant/Lagoon Area (CPLA) is OU2. The former Tar Plant is OU3. See Figures 1 and 2 in the Docket. Groundwater contamination is present below all three OUs, but is addressed as part of the OU1 and OU2 cleanup remedies.

This partial deletion pertains to the soil (land) portion of OU1 (GDA); the soil (land) and lagoons portion of OU2 (CPLA) except for the OU2 ROD Soils Area 2 located within the bermed area of the East Tank Farm (see Figure 3 in the Docket); and all of OU3 (which only addressed contaminated soil and sediment at the Tar Plant and in the adjacent Ohio River). The OU2 ROD Soils Area 2 located within the bermed area of the East Tank Farm contains components of the groundwater treatment system and will not be remediated until after the groundwater cleanup is complete. Therefore, the OU2 ROD Soils Area 2 is not being considered for deletion as part of this action. The contaminated groundwater at the Site, which is present below all three OUs but is being addressed as part of the OU1 and OU2 cleanup remedies, is undergoing a long-term cleanup and is also not being considered for deletion as part of this action. The OU2 ROD Soils Area 2 and the groundwater portions of the Allied Chemical Site (*i.e.,* the groundwater portion of OU1 and OU2, which includes the contaminated groundwater below OU3) will remain on the NPL.

The NPL constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to CERCLA. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). This partial deletion of the Allied Chemical Site is proposed in accordance with 40 CFR 300.425(e) and is consistent with the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List. 60 FR 55466 (Nov. 1, 1995). As described in 40 CFR 300.425(e)(3) of the NCP, a portion of a site deleted from the NPL remains eligible for Fund-financed remedial actions if future conditions warrant such actions.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the soil, lagoons, and sediment portions of OU1, OU2, and OU3 of the Allied Chemical Site included in this partial deletion and demonstrates how these media/areas meet the deletion criteria. Section V discusses EPA's action to partially delete the soil, lagoons, and sediment in OU1, OU2, and OU3 of the Allied Chemical Site (except for the soil in OU2 ROD Soils Area 2) from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites, or portions thereof, may be deleted from the NPL where no further response is appropriate. In making such a determination pursuant to 40 CFR 300.425(e), EPA will consider, in consultation with the state, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. the remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

Pursuant to CERCLA Section 121(c) and the NCP, EPA conducts five-year reviews to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure. EPA conducts such five-year reviews even if a site or a portion of a site is deleted from the NPL. EPA may initiate further action to ensure continued protectiveness at a deleted site if new information becomes available that indicates it is appropriate. Whenever there is a significant release from a site deleted from the NPL, the deleted site may be restored to the NPL without application of the hazard ranking system.

III. Partial Deletion Procedures

The following procedures apply to the deletion of the soil, lagoons, and sediment portions of OU1, OU2, and OU3 of the Allied Chemical Site, excluding the OU2 ROD Soils Area 2:

(1) EPA consulted with the State of Ohio prior to developing this direct final Notice of Partial Deletion and the Notice of Intent for Partial Deletion co-published in the ''Proposed Rules'' section of the **Federal Register**.

(2) EPA has provided the State 30 working days for review of this notice and the parallel Notice of Intent to Partially Delete prior to their publication today, and the State, through the Ohio Environmental Protection Agency (OEPA), concurred on the partial deletion of the Allied Chemical Site from the NPL on March 6, 2020.

(3) Concurrent with the publication of this direct final Notice of Partial Deletion, an announcement of the availability of the parallel Notice of Intent for Partial Deletion is being published in a major local newspaper,

the Ironton Tribune. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent for Partial Deletion of the Allied Chemical Site from the NPL.

(4) The EPA placed copies of documents supporting the partial deletion in the deletion docket and made these items available for public inspection and copying at *https://www.regulations.gov* and at *https://www.epa.gov/superfund/allied-chemical-ironton*.

(5) If adverse comments are received within the 30-day public comment period on this partial deletion action, EPA will publish a timely notice of withdrawal of this direct final Notice of Partial Deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent for Partial Deletion and the comments already received.

Deletion of a portion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a portion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for further response actions, should future conditions warrant such actions.

IV. Basis for Partial Site Deletion

The following information provides EPA's rationale for deleting the soil, lagoons, and sediment portions of OU1, OU2, and OU3, except for the soil in OU2 ROD Soils Area 2, of the Allied Chemical Site from the NPL.

Site Background and History

The Allied Chemical Site (OHD043730217) is 129 acres and is located at 3330 South Third Street in Ironton, Lawrence County, Ohio (see Figure 1 in the Docket). The Site is surrounded by industries, businesses, private residences, waterways, and wetlands. Part of the Site is adjacent to, and includes, a portion of the Ohio River.

The Allied Chemical Site is divided into three OUs (see Figure 2 in the Docket). OU1 is the Goldcamp Disposal Area (GDA) and is 10 acres in size. The GDA is a former sand and gravel pit that was used to dispose waste from the Site's Tar Plant, as well as waste from the Goldcamp Gravel Company and foundry sand from a nearby iron works.

OU2 is the former Coke Plant/Lagoon Area (CPLA). The CPLA covers 91 acres and contained the former Coke Plant and five lagoons. The CPLA is bordered by Ice Creek to the east and south. Ice Creek flows into the Ohio River and portions of the CPLA are within the 100 year floodplain. Eastern portions of the CPLA extend into the adjacent Village of Coal Grove, Ohio.

OU2 includes groundwater below the CPLA and in the former Tar Plant area (OU3). Limited areas of soil contamination in OU3 were also evaluated and addressed as part of OU2.

OU3 is the former Tar Plant area. The Tar Plant OU is 28 acres and consists of two parcels, the Main Parcel and the River Parcel. The Main Parcel is 16 acres and contained the former Tar Plant facility. The River Parcel is 12 acres and includes seven acres of the Ohio River (this varies with river elevation). The Main Parcel and the River Parcel of OU3 are separated by an active railroad track.

Initial operations at the Allied Chemical Site began with the Ironton Solvay Coke Company (Ironton) Coke Plant (OU2). In 1926, Ironton and other companies united to form the Allied Chemical & Dye Corporation (Allied Chemical). From 1981 to 1999, Allied Chemical went through additional name changes, mergers and acquisitions and is currently Honeywell International Inc. (Honeywell).

The Coke Plant operated from 1917 to 1982. Products from the coking operations included: Crude tar, coke, light oil, and ammonia. From 1920 through the 1960s, the facility discharged wastewater and solid wastes generated during the coking process into the marshy area east of the plant adjacent to Ice Creek. The waste streams included process wastewater, coke and coal fines, tar decanter sludges, boiler ash, and weak ammonia liquor. Specific constituents present in the waste streams included: Ammonia, benzene, cyanide, metals, naphthalene, phenolics, and polynuclear aromatic hydrocarbons (PAHs).

In the early 1970s, Allied Chemical constructed a wastewater treatment plant (WWTP) and a series of lagoons in the marshy area of the Coke Plant to treat the waste streams from the Coke Plant and the Tar Plant. The treated wastewater discharged to the Ohio River through two permitted outfalls, Outfall 001 and Outfall 002. Outfall 002 was taken out of service in 2001.

In 1977, Allied Chemical sold the Coke Plant to the McClouth Steel Corporation (McClouth Steel). In 1982, McClouth Steel filed for bankruptcy and the Coke Plant was shut down.

Iron City Fuels, Inc. (Iron City Fuels) purchased the Coke Plant property for salvaging after the Coke Plant closed. In 1984, Allied Chemical re-purchased the Coke Plant property, excluding the surface facilities, from Iron City Fuels. Iron City Fuels retained the surface facilities at the Coke Plant for salvaging until 1985.

Iron City Fuels completed their salvage operations and transferred the surface facilities back to Allied Chemical in 1985. In 1987, Allied Chemical entered into a CERCLA Section 106(a) Administrative Order on Consent (AOC) with EPA and OEPA to remove six remaining above-ground storage tanks, 4,700 cubic feet of tar decanter sludge (a K087 hazardous waste), and the material in the #4 weak liquor storage tank from the CPLA for off-site disposal.

Allied Chemical operated the Tar Plant (0U3) from 1945 until 2000 when the Tar Plant closed. The Tar Plant manufactured products from the crude tar produced at the Coke Plant. The Tar Plant contained 124 above ground storage tanks for various coal tar derivatives and chemicals, and numerous buildings housing administrative, laboratory, storage, and maintenance activities. After the Tar Plant closed, the Tar Plant facilities were demolished. The Tar Plant property demolition was completed in 2003.

Specific products from the Tar Plant included: Phthalic anhydride, creosotes, pitches, naphthalene, road tar, driveway sealer, roofing pitch, and anthracene. The Tar Plant disposed the wastes and residues generated during the manufacturing processes to the adjacent GDA (OU1). These wastes included: Anthracene residues and salts, coal tar pitch scrap, and phthalic anhydride residues.

The GDA was a former sand and gravel pit that was approximately 40 feet deep. The GDA received waste from the Tar Plant, as well as waste from the sand and gravel company and foundry sand from a nearby iron foundry.

Allied Chemical purchased the GDA property in 1955. In 1961, the construction of the Greenup Dam on the Ohio River raised the water levels of the river and adjacent groundwater, causing the waste at the bottom of the GDA to be in direct contact with the groundwater.

Allied Chemical stopped using the GDA for waste disposal in 1977 and developed a plan for closing the GDA in consultation with OEPA. The closure included: Removing standing liquid from the GDA for off-site disposal, filling the GDA to surface grade, and

capping the GDA with clay. Allied Chemical completed the GDA closure in 1980.

EPA inspected the Allied Chemical Site and completed a Site Inspection Report in 1980. In 1982, OEPA sampled the five Coke Plant lagoons and collected groundwater samples from the Site. OEPA detected high concentrations of PAHs in the lagoon sludge [total PAH concentrations as high as 148,000 milligrams per kilogram (mg/kg) in Lagoon 5] and high levels of cyanide, arsenic, phenol, and metals in the liquid fractions of the lagoons. OEPA detected arsenic in the groundwater at concentrations as high as 120,000 micrograms per liter (μg/l) and benzene at concentrations as high as 1,200 μg/l.

EPA completed a Preliminary Assessment Report and a Remedial Action Master Plan for the Site in 1983. EPA proposed the Site to the NPL on December 30, 1982 (47 FR 58476) due to the potential for groundwater contaminants to affect private well supplies, as well as the Ohio River and Ice Creek, which supply municipal drinking water. EPA finalized the Allied Chemical Site on the NPL on September 8, 1983 (48 FR 40658).

EPA finalized: Cleanup remedies for the Allied Chemical Site in Records of Decision (RODs) issued in 1988, 1990, and 2007; ROD Amendments in 1995, 1997, and 1998; and Explanations of Significant Differences (ESD) in 2015 and 2020. Allied Chemical/Honeywell implemented the EPA-selected cleanup actions for the Site from 1993 to 2015. In 2016, EPA issued a Preliminary Close Out Report documenting that Allied Chemical/Honeywell constructed the cleanup remedies consistent with all requirements and that the cleanups were protective of human health and the environment.

The OU1 property (GDA) is currently owned by Honeywell. The majority of the OU1 property is a capped landfill and the perimeter is fenced. There is presently no anticipated future use for the portion of OU1 located over the landfill. Honeywell split approximately 1.4 acres of OU1 near Third Street that is not part of the landfill from the original parcel, and this property is available for redevelopment.

The OU2 property (Coke Plant/Lagoon Area) is divided into 17 parcels of land. Allied Corporation (*i.e.,* Honeywell) currently owns two of the 17 parcels: Parcel 2, located in the City of Ironton and Parcel 1 located in the Village of Coal Grove (see Figure 2 in the Docket). Parcel 2 contains the former lagoons which were converted into wetlands and the upgraded WWTP that treats the extracted groundwater from the Site prior to discharge to the Ohio River. Parcel 2 is under security and monitoring by a Honeywell contractor stationed at the WWTP seven days a week during business hours and via telemetry 24 hours per day. Parcel 1 contains a portion of the Lagoon Area and a portion of Ice Creek. A section of Parcel 1 has also been converted into wetlands. The entire perimeter of the WWTP and the lagoons is secured by a chain-link fence with posted warning signs maintained by Honeywell's contractors.

Honeywell donated Parcel 4 of OU2 to the Ironton Port Authority in 2008. Honeywell sold the remaining OU2 parcels to the City of Ironton (City) for use as an industrial park in 2002. The City sold various parcels of OU2 for redevelopment.

The two OU3 parcels, the Main Parcel and the River Parcel, are currently owned by Honeywell/Allied Chemical. The Main Parcel is covered by a low-permeability cover and the perimeter is fenced. The River Parcel has a 2-foot soil cover and a sediment cover. The access road is gated to prevent vehicles from entering the area.

In 2011, EPA's contractor performed a reuse assessment to identify future land use considerations and opportunities and to coordinate reuse goals for the Site. On September 22, 2011, EPA and the City hosted a workshop to plan for Site reuse. Participants included Site owners and representatives from local businesses, adjacent properties, local educational and healthcare institutions, and local and state government. During the workshop, participants gave input regarding future uses and priorities for the Site.

In 2012, EPA's contractor completed a ''Reuse Framework'' report, which summarized the outcomes of the workshop and the findings of a reuse suitability assessment for the Site. This document includes reuse considerations and opportunities for education, workforce development, and Site improvements that can position the Site for productive reuse.

Several of the OU2 Site parcels have been redeveloped. The ownership information for the OU2 parcels is summarized on Figure 2 in the Docket. The active stakeholders, their interests, and their contact information is summarized in Table 1 of the 2020 Institutional Controls Implementation & Assurance Plan, which is available in the Docket.

This partial deletion pertains to the soil (land) portion of OU1 (GDA); the soil (land) and lagoons portion of OU2 (CPLA), except for the OU2 ROD Soils Area 2 located within the bermed area of the East Tank Farm (see Figure 3 in the Docket); and all of OU3 (which only addressed contaminated soil and sediment at the Tar Plant and in the adjacent Ohio River).

The OU2 ROD Soils Area 2 located within the bermed area of the East Tank Farm contains components of the groundwater treatment system and will not be remediated until after the groundwater cleanup is complete. Therefore, the OU2 ROD Soils Area 2 is not being considered for deletion as part of this action. The contaminated groundwater at the Site, which is present below all three OUs but is being addressed as part of the OU1 and OU2 cleanup remedies, is undergoing a long-term cleanup and is also not being considered for deletion as part of this action. The OU2 ROD Soils Area 2 and the groundwater portions of the Allied Chemical Site (*i.e.,* the groundwater portion of OU1 and OU2, which includes the contaminated groundwater below OU3) will remain on the NPL.

Remedial Investigation and Feasibility Study (RI/FS)

Allied Chemical entered into an AOC with EPA and OEPA to conduct a Site-wide Remedial Investigation (RI) and Feasibility Study (FS) at the Allied Chemical Site in 1984. The purpose of the RI was to characterize the nature and extent of contamination associated with the Site and the impact of the contamination on human health and the environment. The purpose of the FS was to develop and evaluate cleanup alternatives to address the unacceptable risks posed by the Site.

Allied Chemical conducted field investigations at the Site in 1984 and finalized the RI Report in 1986. The 1986 RI included: (1) The installation and sampling of over 45 groundwater monitoring wells; (2) collection and analysis of over 200 groundwater samples; (3) collection and analysis of over 200 soil samples; (4) collection and analysis of over ten surface water samples; (5) continuous sampling and analysis of air samples during sampling and excavation; (6) excavation and sampling of waste in over 20 test pits; and (7) collection and analysis of over 1000 samples of fish tissue. The soil and waste samples were analyzed for six Site-specific indicator chemicals: Phenolics, benzene, naphthalene, cyanide, ammonia, and chloride. The groundwater and municipal water samples were analyzed for the six indicator chemicals and EPA's Target Analyte List (TAL) inorganic and Target Compound List (TCL) chemicals.

The 1986 RI determined that the 4-acre waste pit in the GDA contained

approximately 300,000 cubic yards of waste material, including hazardous substances disposed from the Tar Plant and the Coke Plant. The bottom five feet of the waste was below the water table and in direct contact with groundwater. The surface of the GDA was a source of contamination because contaminated substances oozed up through the existing cap and collected on the GDA surface. The contaminants of concern (COCs) in the GDA were: Benzene, naphthalene, phenolics, cyanide, ammonia, sulfate, chloride, and the PAHs benz(a)anthracene, benzo(a)pyrene, chrysene, and dibenz(a,h)anthracene.

The groundwater below the GDA was contaminated. The groundwater contamination extended west to the Ohio River and to the production wells located at the Amcast company (formerly Ironton Iron Inc.) located 1,000 feet north of the GDA. Amcast Production Well No. 7 contained benzene at concentrations as high as 36 µg/l. These concentrations were above the Safe Drinking Water Act Maximum Contaminant Level (MCL) for benzene of 5 µg/l. Dense non-aqueous phase liquid (DNAPL) was present on top of the bedrock below the GDA. Total petroleum hydrocarbon concentrations in the DNAPL were 100 to 250 parts per million. Due to the groundwater contamination, Allied Chemical began providing bottled drinking water to Amcast for its employees in 1986.

The 1986 RI found seven areas of soil contamination in the Coke and Tar Plant areas that required cleanup (see Figures 3 and 4 in the Docket). The soils were contaminated with benzo(a)pyrene, a carcinogenic PAH (PAHc). The maximum concentrations of benzo(a)pyrene detected in the contaminated soil were: 150 mg/kg in Area 1, 60 mg/kg in Area 2, 330 mg/kg in Area 3, 96 mg/kg in Area 4, and 39 mg/kg in Area 5. The total amount of soils requiring cleanup in the Coke Plant area was 38,000 cubic yards. Approximately 2,000 cubic yards of soil required cleanup in the Tar Plant area.

The 1986 RI found that Lagoons 1 through 4 in the CPLA contained waste coal and coke, and general debris, including bricks, pieces of metal, and tar. Lagoons 1 and 3 also contained lime kiln sludge (K060), a listed hazardous waste under the Resource Conservation and Recovery Act (RCRA) based on the content of cyanide, naphthalene, phenolic compounds, and arsenic. The analytical sampling indicated that the material in Lagoons 1 through 4 was contaminated with widely varying concentrations of PAHs, ammonia, cyanide, phenolics, sulfate, benzene, and arsenic.

Lagoon 5 in the CPLA was used to dispose decanter tank tar sludge (K087), a RCRA listed hazardous waste based on phenol and naphthalene content. Lagoon 5 was also believed to contain waste coal and coke materials. Lagoon 5 was approximately 40 feet deep and contained approximately 122,000 cubic yards of waste. About five to 15 feet of the waste was below the water table. Analytical sampling in Lagoon 5 detected high concentrations of carcinogenic PAHs. Although the solubility and mobility of PAHs is low, the chemicals are potent carcinogens.

The 1986 RI found that the sediments of Ice Creek downstream from the Site were contaminated from the discharge of wastewater from the Coke Plant operations. The sampling indicated that downstream sediments contained Site-related concentrations of phenolics, naphthalene, ammonia, and cyanide. An examination of 214 fish collected from Ice Creek and the Ohio River, however, did not show any neoplastic liver lesions in the fish. Surface water samples collected downstream of the Site contained higher concentrations of chloride and ammonia than upstream samples, but the concentrations were well below EPA's Water Quality Criteria.

The groundwater in the CPLA and the Tar Plant area was contaminated with several contaminants, including phenolics, ammonia, cyanide, chloride, naphthalene, and benzene. The pattern of groundwater contamination indicated that the contamination was due to a number of localized on-site sources. The data also indicate that DNAPL was present above the surface of the bedrock at some locations.

Groundwater modeling conducted during the RI indicated that the groundwater below the CPLA and Tar Plant flowed toward Ice Creek and the Ohio River. The modeling indicated that the Coal Grove well field located approximately 2,000 feet south of the CPLA, which provides drinking water to about 2,840 residents, obtains approximately 27 percent of its water from Ice Creek leakage, 29 percent of its water from the Ohio River, 41 percent of its water from the aquifer southeast of the well field away from the Site, and three percent of its water from Site groundwater flowing underneath Ice Creek. The modeling and the actual analysis of the Coal Grove municipal water indicated that no drinking water standards were being exceeded in the Coal Grove wellfield as a result of the Allied Chemical Site.

The 1986 RI concluded that contaminated groundwater from the CPLA and Tar Plant was discharging to the Ohio River, but the discharge was not detectable since the river contained contaminants similar to those found in Site groundwater upstream and downstream of the Site. Contaminant loading modeling indicated that the groundwater contaminants discharging to the Ohio River would not be detectable at the City of Ironton's drinking water intake.

Allied Chemical conducted air sampling during the 1986 RI during worst-case conditions by collecting air samples when the most highly contaminated material at the Site, the tar sludge in Lagoon 5, was disturbed with a backhoe. Allied Chemical did not detect any discernible atmospheric volatile organic emissions at the perimeter of the tar sludge area during this sampling.

After the 1986 RI was complete, EPA, OEPA, and Allied Chemical divided the Site into two OUs to expedite the completion of the FS for the GDA (OU1). Allied Chemical completed an Endangerment Assessment and a FS Report for the GDA in 1988. Allied Chemical completed an Endangerment Assessment and a FS Report for the remaining areas of the Site (OU2) in 1990. The OU2 Endangerment Assessment and FS addressed the CPLA, contaminated groundwater below the Tar Plant, and limited areas of soil contamination at the Tar Plant.

Allied Chemical's EA for the GDA examined potential contaminant exposure pathways from the GDA including ground water, surface water (Ohio River contamination via ground water), soil, and air. The potential receptors included Amcast workers drinking contaminated groundwater from Amcast's wells (if bottled water was not supplied), recreational users in the Ohio River ingesting surface water, and workers at the closest business inhaling airborne contaminants. The GDA was covered and fenced, so direct contact with the wastes was not considered a major exposure pathway.

The OU2 EA for the CPLA (and some portions of the Tar Plant) evaluated potential risks to current Coal Grove residents from: Inhalation of downwind dust and vapors; dermal contact with and the incidental ingestion of water in Ice Creek while swimming; using Coal Grove municipal water for drinking and showering; incidental ingestion of contaminated soil while trespassing; and eating fish from Ice Creek. The EA also evaluated potential risks to hypothetical future residents living on the CPLA property and using the

contaminated groundwater as a water supply.

The EA for the GDA determined that the contaminated groundwater from the GDA posed an unacceptable risk to people using the groundwater as a source of drinking water. The excess lifetime cancer risk was 6.7×10^{-3}. This risk was greater than EPA's acceptable cancer risk range of 1×10^{-4} to 1×10^{-6}. The noncancer hazard index (HI) calculated for exposure to the GDA groundwater was 3.0, which is greater than EPA's acceptable noncancer HI of 1.0.

Recreational use of the Ohio River did not pose a risk since sampling results did not indicate a significant increase of Site-related contaminants in the Ohio River downstream of the GDA. Air modeling also indicated that potential air releases from the GDA did not pose a significant risk via the air pathway (an excess lifetime cancer risk of 1.6×10^{-6}).

The OU2 EA for the CPLA and portions of the Tar Plant identified unacceptable potential future risks to hypothetical residents living on the CPLA property. The potential future cancer risk was 5.7×10^{-3} for children and 3.4×10^{-3} for adults. The unacceptable noncancer HIs were 7.1 for children and 4.0 for adults. The cancer risks were primarily due to the concentrations of PAHs in the soil and to benzene and arsenic in the groundwater. The unacceptable noncancer risks were primarily due to cyanide contamination in the groundwater.

The CPLA EA did not identify any unacceptable risks to current Coal Grove residents. The total excess lifetime cancer risk calculated for Coal Grove residents from all exposure pathways was 1.0×10^{-5} for children and 2.6×10^{-5} for adults. The calculated noncancer HIs for Coal Grove residents for all pathways were well below 1.0, with a maximum HI of 0.163.

At the time of the OU1 and OU2 RI/FS, the Tar Plant was an operating facility with limited accessibility. In 2003, after the Tar Plant closed and the area could be fully investigated, Honeywell (formerly Allied Chemical) entered into a separate AOC with EPA to conduct a RI/FS for the remaining areas of the Tar Plant (OU3) that were not addressed or remediated as part of OU2. Honeywell completed the Tar Plant OU3 RI/FS in 2007 and issued an OU3 RI Addendum in 2008.

The 2007 OU3 RI included: (1) The collection and analysis of 235 soil samples from 146 soil borings down to the water table; (2) 12 paired soil vapor and ambient air samples at locations of highest contaminant concentrations; (3) the installation and sampling of 48 groundwater monitoring wells installed from 28 to 90 feet below ground surface (with 21 locations nested) to horizontally and vertically delineate the groundwater contamination; (4) the installation of 12 DNAPL wells to delineate the extent and thickness of the DNAPL and allow for possible future recovery; and (5) the collection and analysis of 37 Ohio River water and 29 sediment samples to evaluate impacts to the river. Honeywell analyzed the 2007 RI samples for VOCs, PAHs, polychlorinated biphenyls (PCBs), cyanide, arsenic, total phenols, and ammonia. The groundwater samples were also analyzed for nitrate.

Honeywell's 2007 RI for the Tar Plant (OU3) found that the shallow and deep soil on the Main Parcel of the Tar Plant was contaminated with high levels of PAHs (as high as 44,100 mg/kg) and benzene, toluene, ethylbenzene, and xylene (BTEX) (a maximum concentration of 406 mg/kg BTEX). The distribution of PAHs and BTEX in the shallow soil was similar to the distribution of the DNAPL. The soil also contained lesser concentrations of arsenic (maximum concentration of 14.4 mg/kg), PCBs (maximum concentration of 7.7 mg/kg total PCBs), phenols (280 mg/kg), cyanide, and ammonia.

Shallow soil in the River Parcel contained high levels of PAHs and BTEX. High levels of PAHs were also detected in sediment samples collected from the Ohio River adjacent to the Site. The highest concentrations of PAHs in sediment were located downstream of Outfall 001 and ranged from 184 mg/kg to 1,053 mg/kg.

Soil vapor in the Tar Plant OU contained benzene at concentrations as high as 55,000 parts per billion/volume (ppbv) and other VOCs. Benzene (maximum concentration of 0.31 ppbv), toluene, and naphthalene were detected in ambient air.

DNAPL is present in the southern half of the Main Parcel of the Tar Plant and has collected in depressions at the surface of the bedrock. The soil boring data indicates that the DNAPL has not, and is not likely to, migrate toward the Ohio River due to rises in the surface of the bedrock between the Site and the river.

Honeywell completed a Human Health Risk Assessment (HHRA) and a Screening Ecological Risk Assessment (SERA) for the Tar Plant (OU3) in the 2007 Phase 1A RI Report. The HHRA evaluated risks to current trespassers and to future recreational visitors, indoor and outdoor commercial/industrial workers, and construction workers. The HHRA evaluated exposure pathways including dermal contact with and the incidental ingestion of surface and subsurface soil, dust inhalation, the inhalation of ambient air and indoor contaminants via vapor intrusion, dermal contact with and the incidental ingestion of surface water, dermal contact with sediment, and the ingestion of groundwater. The SERA evaluated potential impacts to ecological receptors from exposure to soil and to surface water and sediment in the Ohio River adjacent to the Site.

Honeywell's 2007 OU3 HHRA indicated that the Tar Plant posed an unacceptable risk to current trespassers, future recreational users, future indoor and outdoor commercial/industrial workers, and future construction workers. The total excess lifetime cancer risks ranged from 8×10^{-4} to 8×10^{-3}. The noncancer HIs ranged from 2 to 1201. The majority of the cancer and noncancer risks were posed by PAHs in the surface and subsurface soil and by concentrations of benzene, toluene, and naphthalene in soil vapor.

The results of the 2007 OU3 SERA indicated that the concentrations of PAHs in the Tar Plant soil posed a hazard to soil invertebrates, worm-eating birds, and predatory birds. Ecological hazard quotients (HQs) greater than or equal to 100 were calculated in scattered areas across the Tar Plant. The SERA also indicated that the concentrations of COCs detected in surface water could cause adverse effects to aquatic receptors. Additionally, the concentrations of Site-related PAHs in sediment could cause adverse effects to benthic organisms (direct contact) and piscivorous birds (food chain).

Allied Chemical and Honeywell conducted Feasibility Studies (FSs) to develop and evaluate cleanup alternatives to address the unacceptable risks associated with the GDA, the CLPA, and the Tar Plant OUs.

The 1988 OU1 FS evaluated four cleanup alternatives for the GDA: No action; slurry wall and cap with groundwater recovery wells inside and outside of slurry wall; incinerate GDA waste and return residual material to GDA, with slurry wall with groundwater recovery wells inside and outside of slurry wall (no cap); and incinerate GDA waste and subsoils with one groundwater recovery well (no slurry wall or cap). All alternatives except the no-action alternative also included groundwater treatment at the on-site WWTP with discharge to the Ohio River under the existing or a modified NPDES permit, connecting Amcast to the

municipal water supply, and a DNAPL investigation.

Allied Chemical completed the OU2 FS for the CPLA in 1990. The OU2 FS evaluated varying combinations of cleanup options for the CPLA. Cleanup options for the lagoons and contaminated Coke Plant and OU2 Tar Plant soils included: No action; on-site incineration and off-site waste fuel recovery; partial bioremediation with on-site incineration; partial bioremediation and off-site waste fuel recovery; partial off-site waste fuel recovery with solidification/stabilization of residual materials; and partial bioremediation with on-site waste fuel recovery of lagoon materials and an asphalt and plastic layered cap over the Coke Plant and OU2 Tar Plant soils.

Ice Creek sediment cleanup options included: Monitoring with trigger levels for accelerated monitoring and groundwater remediation; excavation and bioremediation of Ice Creek sediments with lagoon materials; and solidification/stabilization of Ice Creek sediments. All cleanup alternatives included groundwater collection with treatment at the on-site WWTP with discharge to the Ohio River.

Honeywell completed the Tar Plant OU3 FS in 2007. The 2007 FS evaluated eight cleanup alternatives for the contaminated Tar Plant soils, two cleanup alternatives for air, and five cleanup alternatives for Site-related sediment contamination in the Ohio River. The soil alternatives included: No further action; soil cover; low-permeability cover; limited excavation and off-site disposal with either a soil cover or a low-permeability cover; limited excavation with on-site consolidation and a soil cover or a low-permeability cover; and extensive excavation and off-site disposal.

The cleanup alternatives evaluated for the contaminated sediment included: No further action; monitored natural recovery; in-situ capping; dredging and off-site disposal; and a combination of dredging, off-site disposal and in-situ capping. The cleanup alternatives evaluated for the air were no further action and institutional controls (ICs).

Selected Remedy

EPA selected cleanup remedies for the Allied Chemical Site in RODs EPA issued in 1988, 1990, and 2007. EPA issued three ROD Amendments modifying the remedy in 1995, 1997, and 1998. EPA documented additional changes to the remedy in ESDs EPA issued in 2015 and 2020.

EPA selected the OU1 GDA cleanup remedy in the 1988 ROD. The remedial action objectives (RAOs) for the GDA are to: Mitigate the future generation of contaminated leachate; mitigate the GDA-related contamination of the Amcast potable/sanitary water supply and any other private well supplies located north and northwest of the GDA; mitigate the migration of GDA-related contaminants above applicable Ohio River standards into the Ohio River (Ohio Administrative Code 3745–1–32); and mitigate the potential for direct or indirect contact by the public with hazardous substances in the buried GDA waste.

The major components of the selected GDA remedy included: Constructing a low-permeability slurry wall around the GDA from the ground surface into the low-permeability bedrock; installing a multi-media RCRA hazardous waste cap over the GDA; continuous extraction of groundwater within the containment system with treatment at the existing on-site WWTP located at the CPLA (to be upgraded) to create an inward groundwater gradient within the slurry wall boundaries; extraction and treatment at the on-site WWTP of contaminated groundwater outside the containment system until cleanup standards are achieved; municipal water hook-up for in-plant potable and sanitary uses at the Amcast facility until contaminant levels in groundwater meet the cleanup standards; deed restrictions to limit future uses of the disposal area portion of the property; and a supplemental RI/FS to identify the nature and extent of the DNAPL, develop and evaluate cleanup alternatives, and implement the EPA-approved DNAPL remedy, if different from the currently selected containment alternative.

EPA selected the cleanup remedy for the CPLA in the 1990 ROD. The RAOs for the CPLA cleanup are to: Mitigate the potential for direct or indirect contact of the public with the lagoon area wastes; mitigate the potential for future mobilization of contaminants into the groundwater; mitigate the migration of CPLA-related contaminants into Ice Creek, the Ohio River, and the Coal Grove well field; and remediate all contaminated media to meet ARARs and acceptable risk-based levels for human health and the environment.

The major components of the selected CPLA remedy in the 1990 ROD were: Excavate the entire volume of Lagoon 5 (122,000 cubic yards of material); on-site incineration and waste fuel recovery (heat reuse) of Lagoon 5 material and 31,000 cubic yards of waste coal excavated from the coal overburden area, with the ash to be disposed of at a permitted off-site solid waste facility; excavation and bioremediation on a prepared pad of 40,000 cubic yards of Coke and Tar Plant soils (OU2 ROD Soils Areas 1 to 7); in-situ bioremediation of the remaining volume of material in Lagoons 1 through 4 (475,000 cubic yards), the residual soil in Lagoon 5, and the adjacent inner and outer dikes; monitoring the Ice Creek area and developing a contingency plan in the event that contaminant migration is encountered; groundwater collection, on-site treatment with the groundwater from the GDA, and monitoring; and deed restrictions and fencing.

The 1990 CPLA ROD stated that the cleanup standard for soil was 0.97 mg/kg of PAHc. The standard was based on an excess lifetime cancer risk of 1×10^{-6} assuming a direct contact residential land use exposure. The CPLA ROD also provided for an alternative cleanup standard of 97 mg/kg PAHc (a 1×10^{-4} cancer risk, which is still within EPA's acceptable risk range) if the threat of direct contact from lagoon soils through residential land use was eliminated by flooding Lagoons 1 through 4 to create a wetland. An assessment of Lagoons 1 through 4 indicated that this area was more likely to be an ecological area than a residential area due to its proximity to Ice Creek and the fact that this low-lying area has historically served as a flood water storage area.

EPA issued ROD Amendments in 1995, 1997 and 1998 modifying the cleanup remedies for the GDA and CLPA based on additional information collected during the predesign and design phases of the project. The three ROD Amendments modified the OU1 and OU2 remedies as follows: Revised the groundwater clean-up standards for benzo(a)pyrene and dibenz(a,h)anthracene for OU1 and OU2 from 0.005 μg/l total to the new MCLs of 0.2 μg/l for benzo(a)pyrene and 0.3 μg/l for dibenz(a,h)anthracene; selected excavation and on-site storage for eventual treatment or placement into the lagoon area for 135,000 additional cubic yards of CPLA soil found to be contaminated with PAHs during the design phase; replaced prepared-pad bioremediation of 40,000 cubic yards of CPLA soil with off-site disposal in an approved landfill; replaced in-situ bioremediation of 475,000 cubic yards of material in Lagoons 1 through 4 with excavation of materials above 97 mg/kg PAHc and wetland development; and replaced incineration of Lagoon 5 materials with recycling, treatment, and/or disposal of the K087 listed waste in an approved off-site hazardous waste facility and the use of the remaining material, excluding debris, as an alternative fuel.

In 2020, EPA issued an ESD for the OU2 CPLA remedy. EPA issued the ESD to formally document a previously accepted change in the soil cleanup standard for arsenic from a residential cleanup level of 0.56 mg/kg selected in the 1990 OU2 ROD to a Site-specific background concentration of 15 mg/kg calculated during the remedial design (RD) phase of the project. See the Cleanup Levels section of this notice for additional information.

EPA issued the Tar Plant OU3 ROD in 2007. The OU3 ROD addressed contaminated soil, sediment and air at the Tar Plant OU. The RAOs for OU3 assumed that future use of the Tar Plant property would be commercial/industrial and may include riverside parks or other recreational use.

The RAOs for the Tar Plant soil are to: Prevent human ingestion and direct contact with soil containing PAHs at concentrations that exceed applicable NCP and Ohio EPA risk management criteria for applicable exposure scenarios; prevent terrestrial invertebrates from being exposed to PAHs at concentrations that may be harmful to invertebrates and worm-eating birds; prevent predatory birds from being exposed to unacceptable concentrations of PAHs; and reduce, to the extent practicable, contaminant leaching from soil that may contribute to groundwater contamination above NCP and/or Ohio EPA risk management criteria.

The RAOs for sediment in the adjacent Ohio River are to prevent human direct contact with sediment containing PAHs that exceed applicable NCP and Ohio EPA risk management criteria for future exposure scenarios, and to prevent benthic invertebrates from direct contact with sediment containing PAHs that exceed preliminary remediation goals based on background toxicity levels. The RAOs for air are to prevent the inhalation of vapors in indoor air in future buildings in excess of NCP and Ohio EPA risk management criteria and to prevent the inhalation of vapors by construction workers during any future grading and/or excavation activities.

EPA's selected cleanup remedy for soil in the 2007 OU3 ROD was the construction of an OEPA-compliant low-permeability solid waste cap over all contaminated portions of the Tar Plant (the entire 16-acre Main Parcel), a geotextile fabric and soil cover over all contaminated portions of the River Parcel (approximately four acres), ICs to protect the integrity of the cap and soil cover, and an IC implementation plan. EPA did not select a low-permeability cap for the River Parcel based on concerns with hydraulic instability caused by hydrostatic pressure differences between the groundwater and surface water which could cause a low-permeability cover to fail.

The selected OU3 remedy for sediment consisted of dredging approximately 3,300 to 5,100 cubic yards of contaminated sediment from the Ohio River using appropriate dredging techniques and turbidity control measures; sediment dewatering and disposal at an approved off-site landfill; evaluating the water from the dewatered sediment during the RD for disposal at the on-site WWTP; and installing an in-situ cap over approximately 0.7 acres of residual sediment contamination using earthen materials (sand, gravel and/or cobbles), engineered materials (geosynthetics or marine mattresses), or a combination of these materials to be determined during the RD. The exact areas and volume of sediment to be excavated and capped would be determined based on additional data collected and evaluated during the RD and post-dredging confirmation sampling.

The selected OU3 remedy for air was ICs in the form of land use restrictions restricting the land to industrial/commercial use and requiring future buildings to include measures (*e.g.,* physical barriers, venting, monitoring) to protect indoor workers against potential risks from vapor intrusion and outdoor workers during excavation or grading activities.

In 2015, EPA issued an ESD modifying the sediment component of the OU3 remedy based on Honeywell's 2009 and 2011 predesign investigations. The predesign investigations indicated that the volume of sediment requiring excavation increased from 3,300 to 5,100 cubic yards to 50,000 to 60,000 cubic yards, and that the area of sediment requiring capping was 2.3 acres, not 0.7 acres. Due to the significant increase in cost and concerns with potential river bank failure and the destabilization of the adjacent active railroad trackbed, the sediment component of the OU3 remedy was modified from dredging and capping to capping only.

Response Actions

Allied Chemical completed the RD for the GDA remedy in 1992 and constructed the GDA remedial action (RA) from 1993 to 1995 (see Figures 2 and 5 in the Docket). Allied Chemical constructed a soil-bentonite slurry wall around the GDA waste to provide a low-permeability barrier to ground water in-flow and contaminant migration out-flow. The slurry wall has a permeability of approximately 1×10^{-8} centimeters per second (cm/sec), which exceeds the 1×10^{-7} cm/sec permeability requirement. Allied Chemical did not key the slurry wall into the bedrock due to concerns that the keying efforts would fracture the bedrock and affect its competence and water-bearing capabilities.

After the slurry wall was constructed, Allied Chemical installed a RCRA Subtitle C hazardous waste compliant cap over the GDA. The cap incorporated a geosynthetic clay liner to minimize future exposure of the buried waste and infiltration. The cap has a permeability of less than 1×10^{-7} cm/sec. The cap includes a passive gas venting system with capabilities for adding an emissions control system in the future, if needed.

Allied Chemical installed two groundwater pumping wells inside the slurry wall (PW–3 and PW–4) to maintain an inward hydraulic gradient and prevent groundwater contaminants from migrating beyond the slurry wall, and two groundwater pumping wells outside the slurry wall (PW–1 and PW–2) to intercept and extract contaminated groundwater outside the wall. Based on the 1992 Design Report and Allied Chemical's 1992 Design Report Response, EPA revised the groundwater drawdown required to maintain the inward gradient from ten feet to one foot. The groundwater pumped from inside and outside the slurry wall is treated at the on-site WWTP at the CPLA, which was upgraded to add biological and carbon polishing treatment components to the system. The on-site WWTP was later upgraded again in 1997 during the OU2 RA. The treated groundwater is discharged to the Ohio River in compliance with the technical requirements of a Site-specific National Pollutant Discharge Elimination System (NPDES) permit administered by OEPA.

Allied Chemical installed groundwater monitoring wells to monitor the performance of the GDA containment system and the migration of the dissolved and free phase contaminant plumes to assist with delineating the extent of DNAPL and to evaluate potential technologies to address the DNAPL. Allied Chemical also constructed a security fence around the perimeter of the GDA to prohibit trespassing. EPA conducted a final inspection of the OU1 GDA remedy on August 2, 1995. Allied Chemical submitted a final Remedial Design/Remedial Action (RD/RA) completion report for the GDA on September 14, 1995.

Allied Chemical conducted preliminary Site preparation activities for the OU2 CPLA RA from 1994–1995. In 1995, Allied Chemical constructed the CPLA Stormwater Collection/Management System to contain stormwater runoff during the RA. Allied Chemical conducted the OU2 CPLA RA construction activities from 1996 to 2002 (see Figures 3, 4 and 6 in the Docket).

Allied Chemical completed the OU2 CPLA groundwater remedy in 1996 and 1997. The RA for the groundwater remedy included: Installing five groundwater extraction wells and five new groundwater monitoring wells to supplement the existing system; connecting a sixth groundwater extraction well installed in 1992 to the system; and modifying the on-site WWTP to allow for the handling and treatment of the extracted groundwater from the CPLA, the GDA, and the wastewater from the Tar Plant facility operations and to meet NPDES permit requirements. The WWTP modifications included: Installing an iron/suspended solids removal system consisting of aeration/pH adjustment, clarification, and sand filtration; a cyanide removal system using ultraviolet irradiation/oxidation; and flow modifications to the carbon towers organics treatment system. Formal system start-up of the OU2 CPLA groundwater treatment system occurred in June and July 1997.

Allied Chemical conducted the Lagoon 5 remediation activities from 1998 to 1999. Allied Chemical excavated the material in Lagoon 5 down to the underlying clay layer and removed approximately 120,000 tons of waste from the lagoon. Approximately 85,600 tons of coal/coke fines, 16,000 tons of segregated hard tar, and 500 tons of exempted RCRA–K087 listed waste from Lagoon 5 were shipped off-site to power generation plants for feedstock as part of approved alternative fuels programs. Allied Chemical disposed of the contaminated or unusable hard debris (10,800 tons) and soft debris excavated from Lagoon 5 at an off-site landfill. Allied Chemical stabilized 7,100 tons of soft-tar material (RCRA K087 listed waste) from Lagoon 5 on-site and disposed of it at an off-site landfill. Allied Chemical sent the scrap metal that was recovered from Lagoon 5 to a local recycler.

Allied Chemical backfilled the Lagoon 5 excavation with clean, hard debris from previous Site remediation activities (*e.g.,* concrete pipe supports, brick, and concrete) to an elevation above the water table. The hard debris was covered with 12,000 tons of crushed hard debris and 27,200 tons of soil having PAHc and arsenic concentrations below the 97 mg/kg and 15 mg/kg cleanup levels excavated from other Site areas. Allied chemical seeded and revegetated Lagoon 5, and placed rip-rap along the sides of the lagoon at the tie-ins with the City of Ironton Floodwall.

Based on the results of additional sampling conducted in Lagoons 1 to 4 in 1997, the Lagoon 2 materials were the only materials with PAHc concentrations above the alternate 97 mg/kg PAHc cleanup standard documented in ROD Amendment #3 that required excavation. Allied Chemical removed 8,300 tons of hard tar and 1,200 tons of coal/coke fine materials from Lagoon 2 in 1999 and shipped the material to off-site energy generators for feedstock. Allied Chemical backfilled the excavated areas in Lagoon 2 with 2,000 tons of clay material excavated from Lagoon 5 that had PAHc concentrations less than 97 mg/kg and arsenic concentrations less than 15 mg/kg. Allied Chemical placed a six-inch layer of imported fill material over the excavated area then tapered and sloped the sidewalls of Lagoon 2 downward into the partially backfilled area to create a depression to facilitate the collection of standing water to aid in the development of the wetland ecosystem.

Allied Chemical conducted a Reconnaissance Ecological Risk Assessment for Lagoons 1 to 4 in 1999 before the lagoons were converted into wetlands. The assessment evaluated potential ecological impacts from residual PAHc concentrations in the Lagoons 1 to 4 materials after the Lagoon 2 materials were removed. Allied Chemical's 1999 assessment followed EPA's Sediment Quality Triad Approach and included a vegetation study. The assessment indicated that residual concentrations of PAHc in Lagoons 1 to 4 at concentrations less than or equal to the alternate 97 mg/kg cleanup level would not significantly impact the planned wetland ecosystem or the aquatic or vegetative communities of the converted wetland areas.

Allied Chemical completed the conversion of Lagoons 1 to 4 into wetlands in 2002. The wetland conversion included: Construction of an overflow weir adjacent to Lagoon 4 and placement of rip-rap (*i.e.,* brick and concrete) in selected areas to minimize erosional effects during flood events; permanent modification of the sluice gate adjacent to Lagoon 3 to permit complete hydraulic connection with Ice Creek to allow for equalized inflow/outflow during flood events; and adoption of an annual monitoring program to evaluate the re-establishment of vegetation and assess the condition of the biological community.

Allied Chemical completed the OU2 soil remediation of the CPLA and OU2 Tar Plant soils, with the exception of the soil in OU2 ROD Soils Area 2, in 2000 (see Figures 3 and 4 in the Docket). The contaminated CPLA soils (OU2 ROD Soils Areas 1, 3 and 4) were excavated to a maximum depth of ten feet. The OU2 Tar Plant soils (OU2 ROD Soils Areas 5 to 7) were excavated to five feet and were not fully characterized due to the ongoing Tar Plant operations. The remaining Tar Plant soils were later addressed by Honeywell during the OU3 Tar Plant investigation and cleanup.

The CPLA OU2 ROD Soils Area 2 could not be remediated because this area is located within the bermed area of the East Tank Farm which contains components of the WWTP for the long-term OU1 and OU2 groundwater cleanup. The soil within OU2 ROD Soils Area 2 will remain on the NPL and is not included in this partial deletion action. OU2 ROD Soils Area 2 is located within the fenced portion of CPLA Parcel 2 which is owned by Allied Chemical/Honeywell. The area is planned for future characterization and remediation when decreased activity levels in this area will minimize potential disruption to the operations of the ongoing groundwater cleanup. It is expected that the OU2 ROD Soils Area 2 materials will be characterized, excavated, and disposed of at an off-site landfill.

Allied Chemical disposed the excavated OU2 CPLA and Tar Plant soils as non-hazardous solid waste in an off-site landfill in accordance with ROD Amendment #2. The excavated soils included: 18,100 tons of soil from CPLA ROD Soils Area 1; 4,000 tons of soil from CPLA ROD Soils Area 3 and the active Truck Scale Facility; 2,600 tons of soil from CPLA ROD Soils Area 4; and 4,700 tons of soil from OU2 Tar Plant ROD Soils Areas 5 to 7.

During the OU2 RA, Allied Chemical excavated contaminated soil and materials from additional areas of the CPLA in accordance with the 1995 ROD Amendment #1 (see Figure 3 in the Docket). These included: Excavating 44,000 tons of surficial coal fines accumulated from the off-loading of feed materials for the coke oven batteries for off-site use as an approved alternative fuel at cement kiln facilities and power generation plants; excavating 17,700 tons of fuel-grade overburden materials from the western portions of Lagoons 2 and 4 for off-site energy

recovery; excavating 6,000 tons of petroleum hydrocarbon-contaminated soil from the former Coke Plant Ammonia Concentration Building for off-site disposal as a non-hazardous solid waste; excavating 23,500 tons of PAH-contaminated soils west and south of the former coke oven batteries and other Site areas and disposing the soil with PAHc concentrations greater than 97 mg/kg or arsenic concentrations greater than 15 mg/kg at an off-site landfill as a non-hazardous wastes (3,700 tons) and backfilling the remaining soil into the Lagoon 5 excavation; excavating 3,500 tons of contaminated soil from the Trucker's Parking Lot area and an area located adjacent to the East Tank Farm and backfilling the material into Lagoon 5; excavating 35,000 tons of coal and coke fines and 500 tons of hard tar from the slope of the City of Ironton floodwall for off-site use as alternative fuel; excavating 63,000 tons of material with measured concentrations of PAHc less than 97 mg/kg and arsenic less than 15 mg/kg from the East Side Batteries Area for use as backfill along the toe of the City of Ironton floodwall slope and excavating 8,600 tons of material from this area for off-site energy recovery; and disposing 13,000 tons of hard debris (brick and concrete) and 500 tons of soft debris (wood, plastic, trash, etc.,) encountered in excavated areas as a non-hazardous solid waste at an off-site landfill. Allied Chemical completed these cleanup actions in 2000.

Documentation of the OU2 RA construction activities is provided in the October 23, 2002 Interim Remedial Action Report for Coke Plant/Lagoon Area (CPLA) Operable Unit at the Honeywell-Ironton Facility, which is available in the Docket.

Honeywell initiated OU3 construction activities (see Figure 7 in the Docket) in 2014 starting with the River Parcel. Honeywell conducted Site preparation activities and sealed eight groundwater monitoring wells. Honeywell cleaned out and demolished a concrete oil-water separator type structure at the top of the river bank and removed its associated piping and waste material for off-site disposal. Honeywell relocated the CPLA WWTP outfall, Outfall 001, which discharged to the Ohio River near the demolished structure, to a discharge located on Site at the south property boundary. Honeywell constructed a new storm water system for the Main Parcel with direct discharge to the Ohio River using former NPDES outfall structures 001 and 002.

Honeywell stabilized the riverbank at the soil and sediment interface of the River Parcel with 35,150 square feet of one-foot thick stone-filled Polymeric Marine Mattresses (PMMs) and rip-rap mixed with soil staked with live plant stakes. The PMMs were installed from elevation 512 feet to 515 feet. The rip-rap was installed from elevation 515 feet to 519 feet with some overlap on the PMMs. Honeywell placed the live plant stakes in the rip-rap/soil every three feet on center.

Honeywell removed 75 tons of debris from the Ohio River and installed three separate types of subaqueous sediment caps covering a total of 2.3 acres in the river. Cap A covers the majority of the area and consists of a minimum six-inch sand chemical isolation layer covered by a minimum six-inch gravel erosion protection and filter layer. Caps B and C have the same sand and gravel layers as Cap A but are covered with an additional 12-inches (Cap B) and 18-inches (Cap C) of a cobble erosion protection layer.

Honeywell installed a soil cover over the upland portion of the River Parcel (*i.e.,* the riverbank) to prevent direct contact with affected soils by humans and potential ecological receptors. The soil cover consisted of 18 inches of vegetative fill covered by six inches of topsoil. Honeywell installed an orange geogrid layer below the vegetative fill to demarcate the underlying subgrade material.

Honeywell installed coir (coconut fiber) matting over the topsoil from the top of the upland slope to the rip-rap at the bottom of the slope and coir logs at the base of the slope, between the soil cover and the rip-rap, to prevent erosion until the vegetation was established. Honeywell installed a temporary irrigation system and planted a mixture of native grasses, sedges and forbs on the sloped soil cover from elevation 519 (the top of the rip-rap) to elevation 547 (the bottom of the railroad embankment), and container plants (trees and shrubs) every ten feet on center from elevation 519 to elevation 538. Honeywell installed a gravel access road and gate near the top of the slope just above the 10-year flood elevation (about 535 feet). Honeywell completed the River Parcel remediation and restoration in 2015.

Honeywell conducted the remedial action construction for the OU3 Main Parcel in 2015. Honeywell demolished the remaining buildings and structures on the Main Parcel and sealed 51 groundwater monitoring wells and one pumping well. Honeywell installed a low-permeability solid waste-compliant cap over the entire 16-acre Main Parcel area (see Figure 7 in the Docket). The low permeability cap consists of a six-inch sand cushion layer over the contaminated soil covered by (from the bottom up): A geosynthetic clay liner (GCL), a 40-mil low-density polyethylene (LDPE) geomembrane layer, a 12-inch sand drainage layer with lateral underground drains to remove water from the top of the LLDPE, a 12-inch protective soil cover layer for vegetative growth, and six inches of topsoil.

Honeywell installed a gas venting system below the cover system to prevent any buildup of gas. The system includes lateral gas collection pipes installed under the six-inch bottom sand cushion layer that are connected to three gas vents along the western edge of the cover. Honeywell installed soil gas monitoring probes around the perimeter of the cap. The gas monitoring probes are spaced approximately 400 feet apart with screens set at 10 feet, 25 feet, and 40 feet below grade.

Honeywell seeded and mulched the topsoil layer of the cover system, constructed a gravel access road along the southern and eastern boundaries of the Main Parcel to provide access to groundwater extraction wells, and constructed a chain-link fence along the perimeter of the Main Parcel, except along South Third Street where an ornamental fence was installed.

EPA, OEPA, and Honeywell conducted a pre-final/final inspection of the River Parcel on November 13, 2014 and a pre-final/final inspection of the Main Parcel on December 16, 2015. Documentation of the OU3 RA construction activities is provided in the March 2016 Final Remedial Action Completion Report for OU3 which is available in the Docket.

EPA, OEPA, and EPA's contractors provided oversight of the cleanup at the Allied Chemical Site throughout the OU1, OU2, and OU3 RD/RAs. EPA and OEPA conducted a pre-final inspection of the Allied Chemical Site on December 19, 2015. During the inspection EPA verified that all remedial actions were conducted in accordance with the approved RD plans and specifications. A punch list of outstanding activities was prepared during the inspection. Honeywell addressed and completed all of the punch list activities by May 4, 2016. A final OU3 inspection and Site walk-through was conducted on June 1, 2016. EPA completed a Preliminary Close Out Report for the Site documenting that the RA construction activities were complete on September 29, 2016.

Cleanup Levels

The soil (land) remedy for the OU1 GDA is in-situ containment of the waste disposal area; therefore the 1988 OU1

ROD does not establish cleanup levels for the GDA waste.

EPA established the cleanup levels for the OU2 CPLA soil in the 1990 OU2 ROD. The OU2 soil cleanup levels applied to soil, the materials in Lagoons 1 to 4, the soil remaining in Lagoon 5 after the removal of the Lagoon 5 waste, and the adjacent dikes. The OU2 CPLA soil cleanup levels were a total PAHc concentration of 0.97 mg/kg and an arsenic concentration of 0.56 mg/kg. These cleanup levels are based on a hypothetical residential exposure, with the cumulative cancer risk level not to exceed 1×10^{-6}. The 1990 OU2 ROD also required ICs in the form of deed restrictions to prevent any residential or recreational use of the Site.

In March 1995, Allied Chemical submitted a petition to EPA and OEPA providing a statistical evaluation of arsenic concentrations measured at the Site during the 1994 CPLA predesign investigations compared to regionally established background concentrations of arsenic. This petition resulted in the Agencies' adoption of a revised cleanup level for arsenic in soil of 15 mg/kg. This revised cleanup standard for arsenic was identified in several Site reports including the EPA and OEPA-approved 2002 Interim Remedial Action Report for the Coke Plant/Lagoon Area and EPA's 2004 Five-Year Review report for the Site.

Allied Chemical recorded Environmental Deed Restrictions prohibiting residential and recreational use of the CPLA property with the Lawrence County Recorder's office on August 22, 2002 in Plat Book 10/Page 181. EPA formally documented the revised soil cleanup standard for arsenic of 15 mg/kg in an ESD EPA issued in May 2020.

EPA revised the PAHc cleanup level for the Lagoons 1 to 4 material in ROD Amendment #3 in 1998. ROD Amendment #3 selected the alternate cleanup level of 97 mg/kg for PAHc provided in the 1990 OU2 ROD. The 1990 OU2 ROD allowed the 97 mg/kg PAHc alternate cleanup level if the threat of direct contact with the lagoon materials through residential use was eliminated by flooding Lagoons 1 to 4 to create a wetland. The 1999 Reconnaissance Ecological Risk Assessment that Honeywell conducted before converting Lagoons 1 to 4 into a wetland further indicated that the residual concentrations of PAHc in Lagoons 1 to 4 at concentrations less than or equal to the alternate 97 mg/kg cleanup level would not significantly impact the planned wetland ecosystem or the aquatic or vegetative communities of the converted wetland areas.

EPA selected cleanup levels for the OU3 Tar Plant soil and Ohio River sediment in the 2007 OU3 ROD. The cleanup level for soil on the Main Parcel and the River Parcel of the Tar Plant is 0.16 mg/kg of benzo(a)pyrene. This cleanup level is based on a cancer risk of 1×10^{-6} under future industrial/commercial and recreational use of the property.

The cleanup level for the Ohio River sediment in the 2007 ROD was total PAH concentrations that are equal to or less than background sediment toxicity levels for aquatic receptors (benthos) in sediment from upstream sources. That is, the ROD required the sum of Environmental Sediment Toxicity Benchmark Units (ESTBUs) for Site-impacted sediment to be less than or equal to 10.0. During the RD process, and as allowed by the OU3 ROD, the ESTBU sediment cleanup values of 10, which are based on direct measurements of PAH concentrations in pore water and may overestimate PAH bioavailibity and pore water toxicity, were refined to use an Equilibrium Pore Water Toxic Unit (EPWTU) of 5 instead.

Allied Chemical's OU2 RD/RA for the soil and lagoon remediation was conducted in accordance with the 1992 CPLA Quality Assurance Project Plan (QAPP). The 1992 CPLA QAPP was used as the governing document to guide the field sampling, treatability studies, and analytical activities performed throughout the CPLA RD/RA, including field and laboratory Quality Assurance/Quality Control (QA/QC) procedures and data validation protocols. In addition, task-specific work plans were prepared and followed for each significant activity, including: Pre-Design Investigations for Bioremediation, Groundwater, and Waste Fuel Recovery; Coal Overburden Characterization and Removal; Site Soils and ROD Soils Characterization and Removal; Lagoon Materials Delineation; Floodwall Slope Restoration; East Side Batteries Characterization and Removal; Ice Creek Monitoring Program; and CPLA Compliance Monitoring Program and Stormwater Collection and Monitoring Program.

QA/QC activities for the OU2 CPLA ROD Soils, including OU2 ROD Soils Area 1 (including the Neal Junkyard portion), Area 3 (including the Truck Scale portion), and Area 4, included field sampling to delineate the areal and vertical extent of the impacted areas, followed by excavation to the agreed upon maximum depth of 10 feet. The OU2 Tar Plant ROD Soils Areas 5 to 7 were similarly delineated and the impacted materials excavated to the agreed upon maximum depth of 5 feet.

Allied Chemical collected soil samples from 0–1.0 foot, 1.0–2.5 feet, and 2.5–5.0 feet below ground surface (bgs) in each of the OU2 ROD Soils Areas to determine the final depth of the excavation. CPLA ROD Soils Areas 1, 3 and 4 were additionally sampled from 5.0–7.5 and 7.5–10.0 feet bgs. The soil samples were analyzed for PAHc and arsenic in accordance with the approved USEPA Contract Laboratory Program (CLP) Statements of Work for Organics and Inorganics, respectively, which were in effect at the time of analysis.

The most-highly contaminated sample from each of the excavated OU2 ROD Soils Areas underwent additional testing prior to disposal. The additional tests included RCRA toxicity characteristic leaching procedure (TCLP) analysis, a paint filter test, and the RCRA hazardous characteristic tests for reactivity, corrosivity, and ignitability.

Allied Chemical conducted an initial characterization of the additional CPLA soils identified for remediation in the 1995 ROD Amendment #1 in 1994 and 1995. The soil samples were collected in incremental one-foot intervals down to a maximum depth of 10 feet. In areas with coal and other fuel-grade overburden material, the overlying coal or fuel-grade layer was removed down to the ''visually-clean'' underlying native materials, and afterwards samples were collected from the top foot and then at the 4.0–5.0 feet depth of the native material. In 1997, the sampling protocol was revised to be consistent with the OU2 ROD Soils Areas sampling, with samples collected from 0.0–1.0 foot, 1.0–2.5 feet, 2.5–5.0 feet, 5.0–7.5 feet, and 7.5–10.0 feet bgs. The samples were analyzed for PAHc and arsenic.

The additional CPLA soils that required remediation based on the predesign investigation were excavated to a maximum depth of 10 feet and the materials were stockpiled on-site. Soil containing PAHc concentrations greater than 97 mg/kg or arsenic concentrations greater than 15 mg/kg were disposed off-site following TCLP and hazardous characteristic testing. Before the stockpiled materials were placed in the Lagoon 5 excavation, the materials were sampled again for PAHc and arsenic at a frequency of 1 sample for every 2,000 cubic yards to confirm they were below cleanup standards.

CPLA soil materials in the area adjacent to the East Tank Farm were characterized using samples collected from 0.0–1.0 foot, 1.0–2.5 feet, 2.5–5.0 feet, 5.0–7.5 feet, and 7.5–10.0 feet

intervals. Soil in the Truckers' Parking Lot was sampled incrementally at 0.5-foot intervals from the ground surface to the underlying native material (based on visual observations). Samples of the native material were then collected at 0.5-foot intervals until the analytical results indicated that the concentrations of PAHc and arsenic were below 0.97 mg/kg and 15 mg/kg, respectively. The excavated materials from these areas were either disposed off-site or backfilled directly into Lagoon 5 if they were below cleanup levels.

Characterization of the CPLA East Side Batteries Area focused on the materials in the former Coke Plant processing areas and extending east to the City of Ironton Floodwall. Near-surface materials were removed to expose the underlying ''visually-clean'' native material. Samples were collected from the native material in 0.5-foot intervals until the concentration of PAHc was less than 0.97 mg/kg and arsenic was less than 15 mg/kg. Based on the analytical results, the materials were excavated and sent off-site for disposal (after TCLP and hazardous characteristic testing) or stockpiled to be placed along the toe of the floodwall in the Lagoon Area. The stockpiled materials were subjected to another round of sampling for PAHc and arsenic at a frequency of 1 sample for every 2,000 cubic yards prior to placement along the floodwall.

Allied Chemical discovered soil contamination in the CPLA Ammonia Concentration Building Area during other Site work due to the discoloration of the soil (a green tint) and a petroleum-like odor. This area was not specifically identified in the CPLA ROD or ROD Amendments. Allied Chemical sampled the material and detected elevated levels of total petroleum hydrocarbons (TPHC).

Allied Chemical conducted a focused investigation in the Ammonia Concentration Building Area and collected soil samples at depth intervals corresponding to 0.0–5.0 feet and 5.0–10.0 feet at designated locations. The samples were analyzed for TPHC using EPA Method 418.1. Based on a review of State of Ohio cleanup standards for hydrocarbon-contaminated soils that were in effect at the time, a Site-specific TPHC cleanup level of 100 mg/kg was adopted for the Ammonia Concentration Building Soils. Allied Chemical excavated the sampled material having TPHC concentrations greater than 100 mg/kg and disposed of it at an off-site landfill following TCLP and hazardous characteristic testing.

The 1990 OU2 ROD and subsequent amendments required the entire contents of Lagoon 5 to be removed. Allied Chemical excavated all of the materials in Lagoon 5 (about 120,000 tons) down to the visually encountered clay layer. Allied Chemical then removed about 2,000 tons of the Lagoon 5 clay, sampled the material to confirm that concentrations of PAHc and arsenic were below the cleanup criteria of 97 mg/kg PAHc and 15 mg/kg arsenic, and backfilled the clay into the excavated areas of Lagoon 2.

The materials in Lagoon 2 that required excavation were delineated during Allied Chemical's 1997 Lagoon Materials Delineation Program. The program involved collecting samples from Lagoons 1 to 4 for PAHc analysis. The PAHc sample data was combined with other existing data for the lagoons and used in a statistical evaluation to determine which materials required removal in order to maintain an overall average concentration of PAHc less than 97 mg/kg to meet the 1998 ROD Amendment #3 requirement for converting the lagoons into a wetland system. The analysis indicated that only certain areas of Lagoon 2 required excavation. Additionally, potential ecological risks posed by the residual PAHc concentrations in the lagoons were evaluated in the 1999 Reconnaissance Ecological Risk Assessment and through the performance of subsequent annual ecological assessments to confirm that the remedial action for the constructed wetlands met objectives.

Honeywell conducted the OU3 Tar Plant RA in accordance with the 2013 Construction Quality Assurance Plan, the 2013 Construction Quality Assurance Plan—Main Parcel, and the 2014 Construction Quality Assurance Plan—River Parcel. The RA for the Main Parcel was a low-permeability solid waste cap containment remedy over the entire 16-acre Main Parcel. The RA for the upland area (riverbank slope) of the River Parcel was a geotextile fabric and soil cover over the entire 4-acre upland area of the River Parcel. Because these remedial actions were containment/cover remedies over the entire property, confirmation sampling was not required. Instead, surveys were conducted to confirm that the RAOs were attained.

The areas of Ohio River sediment that exceeded the refined cleanup level of the sum of EPWTU of 5 or where tar was observed were identified as areas that required remediation during the RD based on the predesign investigation studies. Sediment within the design capping area had sums of EPWTU values that ranged from 5 to 40, while values outside the capped area were less than 5.

The final capped area and thickness of the OU3 Ohio River sediment remedy was confirmed by comparing a baseline multi-beam bathymetric survey conducted prior to capping to verification multi-beam bathymetric surveys conducted after each layer of the cap was placed to check for areal extent and material thicknesses. Honeywell's construction managing contractor monitored the surveying results and verified that the quality and coverage of the cap met the specified design. The construction manager contractor notified the construction contractor of any deficiencies to be corrected during construction, and approved the final completion of areas post-construction.

Operation and Maintenance

Operation and maintenance (O&M) activities at the Allied Chemical Site are extensive and include activities associated with groundwater/wastewater operations, monitoring systems, engineered structure maintenance, landscaping, and security. Honeywell's O&M costs for the period 2014 to 2018 averaged over $1.1 million annually.

Honeywell conducts the GDA groundwater monitoring in accordance with the 1994 GDA Remedial Action Monitoring Plan. The CPLA groundwater monitoring and Ice Creek monitoring is performed in accordance with the general protocols outlined in the 1995 CPLA Groundwater Compliance Sampling and Analysis Plan. Honeywell monitors and conducts O&M for the lagoons/wetlands in accordance with the 2000 Lagoon Area Wetlands/Floodplain Conversion Plan. Honeywell conducts O&M on the Tar Plant River Parcel in accordance with the 2015 Operation, Maintenance and Monitoring Plan—River Parcel. The Tar Plant Main Parcel O&M is conducted in accordance with the 2016 Draft Main Parcel Operation, Maintenance, and Monitoring Plan.

The O&M program includes comprehensive groundwater monitoring, potentiometric monitoring, chemical analysis, NPDES discharge monitoring, Site inspections, and any necessary repairs. The groundwater monitoring program includes monitoring contaminant concentrations and groundwater levels to assess the containment of the GDA waste, maintenance of Site-wide hydraulic control, and for the presence of DNAPL. Honeywell also conducts periodic bathymetric surveying in the Ohio River

to monitor the performance of the underwater sediment cap.

Honeywell monitors methane gas semiannually at the Main Parcel. In 2002, the Gas Vent Sampling Program at the GDA was terminated based on Honeywell's 2002 Air Emissions Evaluation Report. The 2002 Air Emissions Evaluation Report evaluated the analytical data from 14 consecutive quarterly air monitoring events and determined that the emissions of volatile organic compounds from the four GDA vents was insignificant. The 2002 report also concluded that the ambient impact to the nearest public receptor due to emissions from the vents was orders of magnitude lower than the corresponding Maximum Allowable Ground Level Concentration. As stipulated by EPA and OEPA, Honeywell continues to maintain the gas vents in the event that future sampling is required. At this time, however, no further sampling is anticipated.

Honeywell began annual lagoons/wetland monitoring in 2002. In 2012, Honeywell submitted the Lagoon Area Vegetation and Benthic Macro-invertebrate Monitoring Report, which summarized the activities and findings from the annual wetlands/ecological assessments conducted within the Lagoon Area (Lagoons 1, 2, 3, 4, and 5). Based on consultation with OEPA, EPA informed Honeywell that the final decision to determine whether the re-establishment of the wetland/floodplain community has been achieved would be made after evaluating the field results using OEPA's Vegetation Index of Biotic Integrity (VIBI) Assessment Process.

Honeywell agreed to perform the VIBI assessment on three categories of observed wetland vegetation—forested, scrub/shrub, and emergent—in order to properly represent and assess each vegetative community. Honeywell completed the VIBI Assessment in 2014. Based on this assessment, OEPA and EPA approved the discontinuation of monitoring in Lagoons 1, 3, 4, and 5. The VIBI assessment, however, identified the need to address Lagoon 2 to control the invasive species Purple Loosestrife.

Honeywell completed three herbicide applications in Lagoon 2 in July 2015, 2016, and 2017. Honeywell conducted a follow-up VIBI Assessment of Lagoon 2 in August 2019. The results of the 2019 VIBI are being evaluated. The Lagoon 2 vegetation will continue to be monitored and maintained as part of ongoing O&M.

The 1988, 1990, and 2007 RODs require ICs at the Site. The ICs are a protective measure used in conjunction with the containment and active treatment methods to restrict property use, maintain the integrity of the cleanup remedies, and to assure long-term protectiveness for Site areas which do not allow for unrestricted use/unlimited exposure (UU/UE). The ICs implemented at the Allied Chemical Site include Environmental Covenants (ECs), Environmental Restrictions, city ordinances, and local zoning requirements. A 1989 Unilateral Administrative Order and a 2010 Consent Decree made the ICs a binding requirement on Allied Chemical/Honeywell. Copies of the ICs for the Allied Chemical Site are available in the February 2020 Updated Institutional Control Implementation and Assurance Plan (ICIAP) in the Docket.

The IC for the 8.5-acre portion of the OU1 GDA that includes the landfill cap and slurry wall (see ID 18 on Figure 2 in the Docket) is an EC that was recorded with the Lawrence County Recorder's office on September 14, 2018. The EC requires isolation and containment of the waste pit and DNAPL, prohibits the use of groundwater, prohibits residential activities and exposure, and prohibits activities that would interfere with the slurry wall, cap and, groundwater extraction remedies.

The EC for the remaining 1.5 acres of the GDA that are outside the boundaries of the cap and slurry wall, but above areas with groundwater contamination (Figure 2, IDs 22 and 23), restricts the land use to commercial/industrial activities, prohibits residential use and other residential-type activities such as schools, hospitals, assisted living and daycare facilities, food stores, restaurants and indoor and outdoor entertainment and recreational facilities, prohibits the consumption of groundwater, and prohibits food chain products, manufacturing, and warehousing. This EC was recorded with the County on September 14, 2018.

Land and groundwater use on the OU2 CPLA (Figure 2, IDs 1 to 17) is restricted by Environmental Deed Restrictions recorded with the Recorder's office on August 22, 2002 in Plat Book 10/Page 181. These deed restrictions: Prohibit residential and recreational exposure on the properties; prohibit future use that is incompatible with the remedial actions; prohibit the consumption of groundwater and interference with the remedy; and ensure proper maintenance.

ECs are implemented on two on-site parcels of the Tar Plant OU3 and one off-site parcel (approximately 0.19 acres of the sediment cap on off-site property). The EC for the Tar Plant Main Parcel property, which consists of the 16-acre landfill cap (Figure 2, ID 19) and the EC for the 12-acre River Parcel property, which includes the soil cap on the river bank and part of the Ohio River sediment cap, permit the properties to be used only for commercial/industrial activities, prohibit residential use and other residential-type use, prohibit the use of groundwater, and prohibit future use that is incompatible with the remedial actions and any interference with the remedy. The EC for the River Parcel also prohibits drilling, dredging, and/or vessel anchoring on the capped sediment area. These ECs were recorded with the Lawrence County Recorder's office on September 14, 2018.

The EC for the off-site sediment parcel in the Ohio River (Figure 2, ID 21) was recorded with the Lawrence County Recorder's office on September 26, 2018. This EC prohibits any activities which would interfere with or adversely affect the integrity or the protectiveness of the sediment cap, and does not permit any drilling, dredging, and/or vessel anchoring on the property.

Land and groundwater use on OU1, OU3, and most of OU2 (the portion of OU2 located within the City of Ironton) is additionally restricted by the City of Ironton Municipal Code Chapter 1272, 1977 and Code 1046.35, 2013. Chapter 1272 prohibits the installation of groundwater wells within the City, with the exception of wells installed on commercial property used exclusively and solely for irrigation. Zoning ordinance Code 1046.35 restricts OU1, OU3 and the OU2 property located in Ironton to General Industrial Use.

Long-term stewardship (LTS) is addressed at the Allied Chemical Site through the implementation of the ICIAP and IC monitoring, the ECs, Environmental Deed Restrictions, and local government controls, in conjunction with engineering controls, O&M, and routine Site inspections, to ensure that the remedy remains protective and continues to function as intended. The Allied Chemical Site achieved EPA's Site-Wide Ready for Anticipated Use designation on October 2, 2018.

Five-Year Reviews

The Allied Chemical Site requires statutory five-year reviews (FYRs) due to the fact that hazardous substances, pollutants, or contaminants remain at the Site above levels that allow for unrestricted use/unlimited exposure (UU/UE). EPA completed FYRs for the Allied Chemical Site in 1999, 2004, 2009, 2014, and 2019.

EPA completed the most recent FYR for the Site in September 2019. EPA's

2019 FYR found that the Site-wide remedy protects human health and the environment. The exposure pathways that could result in unacceptable risks are being controlled and the cleanup remedies are operating as expected. Site-wide threats have been addressed through: Waste containment and isolation (through the slurry wall, low-permeability hazardous waste and solid waste-compliant caps, soil, and sediment covers, and wetlands conversion); excavation with off-site disposal or off-site energy recovery; on-site groundwater containment, extraction and treatment; and ICs that restrict land use, prohibit groundwater use, and prevent activities that could impair the integrity of the engineering controls.

The 2019 FYR concluded that in order for the remedy to be protective in the long-term, an ICIAP needed to be completed and the LTS procedures from the ICIAP need to be incorporated into the O&M plans for OUs 1, 2, and 3. Honeywell submitted a revised ICIAP to EPA on March 11, 2019 and an updated ICIAP to EPA on February 14, 2020. EPA approved Honeywell's updated ICIAP on March 5, 2020. EPA and OEPA are currently evaluating whether the O&M Plans for the Site need to be amended to incorporate the ICIAP, or whether the ICIAP can be implemented as a stand-alone document in conjunction with the current O&M Plans for OU1, OU2 and OU3.

Copies of EPA's 1999, 2004, 2009, 2014, and 2019 FYR Reports are available in the Docket. EPA expects to complete the next FYR for the Allied Chemical Site in 2024.

Community Involvement

EPA satisfied public participation activities for the Allied Chemical Site as required by Sections 113(k)(2)(B)(i–v) and 117 of CERCLA, 42 U.S.C. 9613(k)(2)(B)(i–v) and 9617. In 1986, EPA developed a Community Relations Plan for the Allied Chemical Site. EPA established a local information repository for the Site at the Briggs Lawrence County Public Library in Ironton, Ohio. EPA maintains a copy of the administrative record documents for the Allied Chemical Site at the local information repository, at EPA's Region 5 office in Chicago, Illinois, and on EPA's web page for the Allied Chemical Site at *http://www.epa.gov/superfund/allied-chemical-ironton*.

EPA distributed fact sheets to the community throughout the Site investigations and cleanups to inform the public about Site activities. In 1986, EPA held a public meeting to present the findings of the OU1 and OU2 RI to the community. EPA released the FS Reports and proposed cleanup plans for the Site to the public in August 1988, September 1990, and July 2007 at the start of the OU1, OU2, and OU3 public comment periods. EPA published newspaper announcements advertising EPA's proposed cleanup plans for the Site, the 30-day public comment periods, and the availability of public meetings, in the Ironton Tribune. EPA mailed fact sheets summarizing the proposed OU1, OU2 and OU3 cleanup plans to individuals on the Site mailing list.

EPA and OEPA conducted public meetings on August 16, 1988 and October 23, 1990. At the meetings, EPA and OEPA explained the details of the Allied Chemical OU1 and OU2 FSs, discussed the proposed cleanup plans, answered questions from the community, and accepted public comments. A court reporter was present to record the meetings. EPA distributed copies of the Proposed Plan fact sheets at the meetings. EPA offered to hold a public meeting to present and discuss EPA's proposed cleanup plan for OU3, but a meeting was not requested.

EPA received a request to extend the public comment period for the OU2 proposed cleanup plan during the October 23, 1990 meeting. As a result, EPA extended the comment period for 30 days. EPA published a notice of the public comment period extension in the Ironton Tribune. On November 7 and 8, 1990, EPA conducted interviews with local officials, residents, and a local environmental interest group to assess community concerns regarding the Site and to evaluate past community relations activities. EPA used the information collected during these interviews to update the 1986 Community Relations Plan and EPA's mailing list.

On November 19, 1990, EPA and Ohio EPA appeared before the Ironton City Council and members of the public to answer additional questions about the Site and the proposed OU2 cleanup plan. EPA distributed a ''Question & Answer'' fact sheet to provide easy-to-understand answers to the questions raised by the community. EPA mailed a copy of the ''Question & Answer'' fact sheet to all individuals on the updated mailing list for the Site.

EPA received three public comments during the proposed plan public comment period for OU1, 25 public comments and one concern during the comment period for OU2, and two public comments during the comment period for OU3. EPA responded to the comments in Responsiveness Summaries attached to the 1988, 1990, and 2007 RODs.

EPA issued fact sheets summarizing the proposed ROD Amendments #1 (1995), #2 (1997), and #3 (1998), and held thirty-day public comment periods to accept comments on the proposed ROD Amendments. EPA also held a public meeting on March 30, 1995 to discuss EPA's proposed ROD Amendment #1. EPA did not receive any public comments on proposed ROD Amendments #1 or #2, and only positive comments on EPA's proposed ROD Amendment #3.

EPA placed a copy of the 2015 OU3 ESD and the 2020 OU2 ESD in the information repositories at the Briggs Lawrence Public Library and at EPA's Region 5 office, in the administrative record file, and on EPA's web page for the Allied Chemical Site at *https://www.epa.gov/superfund/allied-chemical-ironton*.

EPA published advertisements announcing EPA's FYRs for the Allied Chemical Site in the local newspaper, the Ironton Tribune, at the start of the 1999, 2004, 2009, 2014, and 2019 FYRs. The newspaper announcements informed the community about the start and purpose of the FYRs and invited the public to submit comments and concerns about the Site to EPA. EPA placed copies of the FYR Reports in the local information repository at the Briggs Lawrence County Public Library and made them available on EPA's website.

In 2011, EPA and the City hosted a workshop with Site property owners and representatives from local businesses, adjacent properties, local educational and healthcare institutions, and local and state government to plan for Site reuse. In 2018, EPA conducted interviews with the City of Ironton mayor, residents, and businesses as part of the 2019 FYR process, to document any perceived problems or successes with the remedy.

EPA has satisfied public participation activities for this partial deletion of the Allied Chemical Site as required by CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. EPA arranged to publish an advertisement announcing this proposed direct final Partial Deletion and the 30-day public comment period in the Ironton Tribune concurrent with publishing this partial deletion in the **Federal Register**. Documents in the deletion docket, which EPA relied on for recommending the partial deletion of the Allied Chemical Site from the NPL, are available to the public at *https://www.regulations.gov* and at *https://www.epa.gov/superfund/allied-*

chemical-ironton. Documents in the Docket include maps which identify the Allied Chemical Site; the locations of OU1, OU2 and OU3; areas of contamination and remediation; and the ICIAP, FYRs, and other Site reports.

Determination That the Criteria for Partial Deletion Have Been Met

The soil (land) portion of OU1 (GDA); the soil (land) and lagoons portion of OU2 (CPLA), except for the OU2 ROD Soils Area 2 located within the bermed area of the East Tank Farm (see Figure 3 in the Docket); and all of OU3 (which only addressed contaminated soil and sediment at the Tar Plant and in the adjacent Ohio River), meet all of the site completion requirements specified in Office of Solid Waste and Emergency Response (OSWER) Directive 9320.2–22, Close Out Procedures for National Priorities List Sites. All cleanup actions and remedial action objectives for OU1 soil, OU2 soil and lagoons (except for OU2 ROD Soils Area 2), and OU3 set forth in the 1988, 1990, and 2007 RODs, the 1995 to 1998 ROD Amendments #1 to #3, and the 2015 ESD have been implemented for all pathways of exposure. The selected remedial actions, RAOs, and associated cleanup levels for OU1 soil, OU2 soil, and lagoons (except for OU2 ROD Soils Area 2) and OU3 are consistent with EPA policy and guidance. No further Superfund response is necessary to protect human health or the environment from the soil portion of OU1, the soil and lagoons portion of OU2 (except for OU2 ROD Soils Area 2), or from OU3.

Section 300.425(e) of the NCP states that a Superfund site or a portion of a site may be deleted from the NPL when no further response is appropriate. EPA, in consultation with the State of Ohio, has determined that all required response actions have been implemented for the soil portion of OU1, the soil and lagoons portion of OU2 (except for the OU2 ROD Soils Area 2), and all of OU3, and that no further response action is appropriate for these media/areas.

V. Deletion Action

EPA, with concurrence of the State of Ohio, through the OEPA, has determined that all appropriate response actions under CERCLA, other than maintenance, monitoring, and five-year reviews, have been completed for the soil (land) portion of OU1 (GDA), the soil (land) and lagoons portion of OU2 (CPLA), except for the OU2 ROD Soils Area 2 located within the bermed area of the East Tank Farm (see Figure 3 in the Docket), and all of OU3 (which only addressed contaminated soil and sediment at the Tar Plant and in the adjacent Ohio River) of the Allied Chemical Site. Therefore, EPA is deleting the soil portion of OU1, the soil and lagoons portion of OU2 except for the OU2 ROD Soils Area 2, and all OU3, of the Allied Chemical Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective August 24, 2020 unless EPA receives adverse comments by July 24, 2020. If adverse comments are received within the 30-day public comment period, EPA will publish a timely notice of withdrawal of this direct final Notice of Partial Deletion before its effective date and the partial deletion will not take effect. EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to partially delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: June 11, 2020.

Kurt Thiede,

Regional Administrator, Region 5.

For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.;* 42 U.S.C. 9601–9675; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

■ 2. Table 1 of appendix B to part 300 is amended by revising the entry under ''Allied Chemical & Ironton Coke'', ''OH'' to read as follows:

Appendix B to Part 300—[Amended]

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/county	Notes (a)
* * * * *	* * * * *	* * *	
OH	Allied Chemical & Ironton Coke	Ironton	P
* * * * *	* * * * *	* * *	

(a) * * *
P = Sites with partial deletion(s).

* * * * *

[FR Doc. 2020–13302 Filed 6–23–20; 8:45 am]

BILLING CODE 6560–50–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

41 CFR Part 51–8

RIN 3037–AA10

Access to Information Under the Freedom of Information Act

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Final rule.

SUMMARY: The Committee for Purchase From People Who Are Blind or Severely Disabled (Committee) amends it's regulations in their entirety under the Freedom of Information Act (FOIA) to incorporate changes made to the FOIA by the FOIA Improvement Act of 2016. In addition, this document amends provisions in the fee section to reflect developments in the case law and to streamline the description of the factors to be considered when making fee waiver determinations.

DATES: Effective July 31, 2020.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Timi Nickerson Kenealy, General Counsel, *Tknealy@abilityone.gov,* 703–603–2121.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule replaces and renumbers in its entirety the Committee's regulations in 41 CFR part 51–8 to reflect statutory changes associated with the Freedom of Information Act.

The Freedom of Information Act (FOIA) at 5 U.S.C. 552, requires agencies to ''promulgate regulations, pursuant to notice and receipt of public comment, specifying the schedule of fees applicable to the processing of requests [the FOIA] and establishing procedures and guidelines for determining when such fees should be waived or reduced.'' Additionally, an agency may, in its regulation, designate those components that can receive FOIA requests, provide for the aggregation of certain requests, and provide for multitrack processing of requests. Finally, the FOIA requires agencies to ''promulgate regulations . . . providing for expedited processing of requests for records.''

On June 30, 2016, the FOIA Improvement Act of 2016 (Act) was signed. The Act requires agencies to notify requesters for engaging in dispute resolution through the FOIA Public Liaison and the Office of Government Information Services. It also requires that agencies:

(i) Make records that have been both released previously and requested three or more times available to the public in electronic format,

(ii) Establish a minimum of ninety days for requesters to appeal an adverse determination, and

(iii) Provide, or direct requesters to, dispute resolution services at various times throughout the FOIA process.

The FOIA Improvement Act also adds restrictions to when agencies can charge certain fees if they are not able to meet FOIA's time limits.

The changes associated with this final rule are consistent with Department of Justice's Guidance for Agency FOIA Regulations issued September 8, 2016, and adopts both the format and suggested language of the accompanying Template for Agency FOIA Regulations.

The Committee for Purchase From People Who Are Blind or Severely Disabled published a proposed rule in the **Federal Register** at 84 FR 23005, May 21, 2019. No comments were received.

II. Regulatory Procedures

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

This rule is not a significant regulatory action under E.O. 12866 and E.O. 13563.

Executive Order 13771—Reducing Regulations and Controlling Regulatory Costs

The Committee believes this final rule is an E.O. 13771 deregulatory action. Many of the measures included in this document should facilitate FOIA requests and production by making it easier for requesters to research and review the Committee's FOIA rule before submitting a request. It is deregulatory in nature in that it provides relief to requestors however the Committee is unable to quantify these savings.

III. Regulatory Flexibility Act

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

This rule does not contain an information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

V. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments.

List of Subjects in 41 CFR Part 51–8

Administrative practice and procedure, Freedom of Information Act, Privacy Act.

Dated: July 31, 2020.

Shelly Hammond,

Director, Contracting and Policy.

■ Therefore, the Committee revises 41 CFR part 51–8 to read as follows:

PART 51–8—PUBLIC AVAILABILTY OF AGENCY MATERIALS

Sec.
51–8.1 General.
51–8.2 Proactive Disclosures.
51–8.3 Requirements for Making Requests.
51–8.4 Responsibility for Responding to Requests.
51–8.5 Timing of Responses to Requests.
51–8.6 Responses to Requests.
51–8.7 Confidential Commercial Information.
51–8.8 Administrative Appeals.
51–8.9 Preservation of Records.
51–8.10 Fees.
51–8.11 Other Rights and Services.

Authority: 5 U.S.C. 552.

§ 51–8.1 General.

(a) This part contains the rules that the Committee for Purchase From People Who Are Blind or Severely Disabled (Committee) follows in processing requests for records under the Freedom of Information Act (''FOIA''), 5 U.S.C. 552. The rules in this part should be read in conjunction with the text of the FOIA and the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget (''OMB Guidelines''). Requests made by individuals for records about themselves under the Privacy Act of 1974, 5 U.S.C. 552a, are processed under part 51–9 as well as under this part. As a matter of policy, the Committee makes discretionary disclosures of records or information exempt from disclosure under the FOIA whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption, but this policy does not create any right enforceable in court.

(b) The Committee has a centralized system for processing requests, all requests are handled by the FOIA Officer.

§ 51–8.2 Proactive Disclosures.

Records that the Committee is required to make available for public inspection in an electronic format may be accessed through the Committee's public website: *www.abilityone.gov*. The Committee is responsible for determining which of its records must be made publicly available, for identifying additional records of interest to the public that are appropriate for public disclosure, and for posting and indexing such records. The Committee shall ensure that its website of posted records and indices is reviewed and updated on an ongoing basis. The Committee's FOIA Public Liaison contact information is available at *https://www.abilityone.gov/laws,_regulations_and_policy/foia.html*.

§ 51–8.3 Requirements for Making Requests.

(a) *General Information.* (1) The Committee has designated a FOIA office to process and respond to all FOIA requests. All Committee departments have the capability to receive requests electronically either through email or a web portal. A request will receive the quickest possible response if it is addressed to the FOIA office. To make a request for records, a requester should write directly to the FOIA office.

(2) A requester may submit a request for records to the Executive Director at the Committee's offices, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–3259, or via email to *FOIA@abilityone.gov,* or via facsimile to (703) 603–0655. The request must be in writing and should indicate that it is being made under the FOIA. Failure to submit a request in accordance with these procedures may delay the processing of the request.

(3) A requester who is making a request for records about himself or herself must comply with the verification of identity provision set forth in part 51–9.

(4) Where a request for records pertains to a third party, a requester may receive greater access by submitting either a notarized authorization signed by that individual or a declaration made in compliance with the requirements set forth in 28 U.S.C. 1746 by that individual authorizing disclosure of the records to the requester, or by submitting proof that the individual has deceased (*e.g.,* a copy of a death certificate or an obituary). As an exercise of administrative discretion, the Committee can require a requester to supply additional information if necessary in order to verify that a particular individual has consented to disclosure.

(b) *Description of records sought.* Requesters must describe records sought in sufficient detail to enable Committee personnel to locate them with a reasonable amount of effort. To the extent possible, requesters should include specific information that may assist in identifying the requested records, such as the date, title or name, author, recipient, subject matter of the record, case number, file designation, or reference number. In general, requesters should include as much detail as possible about the specific records or the types of records that they are seeking. Before submitting their requests, requesters may contact the FOIA office or FOIA Public Liaison to discuss the records they are seeking and to receive assistance in describing the records. If after receiving a request the FOIA office determines that it does not reasonably describe the records sought, the FOIA office shall inform the requester what additional information is needed or why the request is otherwise insufficient. Requesters who are attempting to reformulate or modify such a request may discuss their request with the FOIA office or FOIA Public Liaison, each of whom is available to assist the requester in reasonably describing the records sought. If a request does not reasonably describe the records sought, the agency's response to the request may be delayed.

(c) If the Committee determines that a request does not reasonably describe the records, it shall inform the requester of this fact and extend to the requester an opportunity to clarify the request or to confer promptly with knowledgeable Committee personnel to attempt to identify the records being sought or to reformulate a request. The Committee may offer assistance in identifying records and reformulating a request where: The description is deemed insufficient, the production of voluminous records is required, or a considerable number of work hours would be required to complete the request that would interfere with the business of the Committee.

§ 51–8.4 Responsibility for Responding to Requests.

(a) *In general.* Except in the instances described in paragraphs (c) of this section, the Committee is responsible for responding to a record request it received. In determining which records are responsive to a request, the Committee ordinarily will include only records in its possession as of the date that it begins its search. If any other date is used, the Committee shall inform the requester of that date. A record that is excluded from the requirements of the FOIA pursuant to 5 U.S.C. 552(c) is not considered responsive to a request. The Committee has no obligation to create a record solely for the purpose of making it available under the FOIA.

(b) *Authority to grant or deny requests.* The Executive Director, or designee, is authorized to grant or deny any request for records that are maintained by the Committee.

(c) *Consultation, referral, and coordination.* When reviewing records located by the Committee in response to a request, the Committee shall determine whether another agency of the Federal Government is better able to determine whether the record is exempt from disclosure under the FOIA. As to any such record, the Committee shall proceed in one of the following ways:

(1) *Consultation.* When records originated with the Committee processing the request, but contain information of interest to another agency, or other Federal Government office, the Committee should typically consult with that other agency prior to making a release determination.

(2) *Referral.* (i) When upon the receipt of the request the Committee determines that a different agency, or other Federal Government office is best able to determine whether to disclose the record, the Committee should refer the responsibility for responding to the request to the other agency, as long as that agency is subject to the FOIA. Ordinarily, the agency that originated the record will be presumed to be best able to make the disclosure determination. However, if the Committee processing the request and the originating agency jointly agree that the former is in the best position to respond regarding the record, then the record may be handled as a consultation.

(ii) Whenever the Committee refers any part of the responsibility for responding to a request to another agency, it shall document the referral, maintain a copy of the record that it refers, and notify the requester of the referral and inform the requester of the name(s) of the agency to which the record was referred, including that agency's FOIA contact information.

(3) *Coordination.* The standard referral procedure is not appropriate where disclosure of the identity of the agency to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemptions that protect personal

privacy or national security interests. For example, if the Committee responding to a request for records on a living third party locates within its files records originating with a law enforcement agency, and if the existence of that law enforcement interest in the third party was not publically known, then to disclose that law enforcement interest could cause an unwarranted invasion of the personal privacy of the third party. Similarly, if the Committee locates within its files material originating with an Intelligence Community agency, and the involvement of that agency in the matter is classified and not publicly acknowledged, then to disclose or give attribution to the involvement of that Intelligence Community agency could cause national security harms. In such instances, in order to avoid harm to an interest protected by an applicable exemption, the Committee, upon receipt of the request, should coordinate with the originating component or agency to seek its views on the disclosability of the record. The release determination for the record that is the subject of the coordination should then be conveyed to the requester by the Committee.

(d) *Classified information.* Whenever a request involves a record containing information that has been classified or may be appropriate for classification by another agency under any applicable executive order concerning the classification of records, the Committee shall refer the responsibility for responding to the request regarding that information to the agency that classified the information, or that should consider the information for classification. Whenever a component's record contains information that has been derivatively classified (*e.g.,* when it contains information classified by another agency), the Committee shall refer the responsibility for responding to that portion of the request to the agency that classified the underlying information.

(e) *Timing of responses to consultations and referrals.* All consultations and referrals received by the Committee will be handled according to the date that the FOIA request was received by the first agency.

(f) *Agreements regarding consultations and referrals.* The Committee may establish agreements with other agencies to eliminate the need for consultations or referrals with respect to particular types of records.

§ 51–8.5 Timing of Responses to Requests.

(a) *In general.* (1) The Committee ordinarily will respond to requests according to their order of receipt. The time limits prescribed in the FOIA will begin only after the Committee identifies a request as being made under the FOIA and deemed received by the Committee.

(2) An initial determination whether, and to what extent, to grant each request for records or a fee waiver shall be made within 10 business days after receipt of that request. The requester shall be notified as soon as the determination is made.

(3) When a requester complies with the procedures established in this part for obtaining records under the FOIA, the request shall receive prompt attention, and a response will be made within 20 business days.

(b) *Unusual circumstances.* Whenever the Committee cannot meet the statutory time limit for processing a request because of ''unusual circumstances,'' as defined in the FOIA, and the Committee extends the time limit on that basis, the Committee shall, before expiration of the 20-day period to respond, notify the requester in writing of the unusual circumstances involved and of the date by which processing of the request can be expected to be completed. Where the extension exceeds 10 working days, the Committee will, as described by the FOIA, provide the requester with an opportunity to modify the request or arrange an alternative time period for processing the original or modified request. The Committee shall make available its FOIA office and its FOIA Public Liaison for this purpose. The agency must also alert requesters to the availability of the Office of Government Information Services to provide dispute resolution services.

(c) *Aggregating requests.* For the purposes of satisfying unusual circumstances under the FOIA, the Committee may aggregate requests in cases where it reasonably appears that multiple requests, submitted either by a requester or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances. The Committee shall not aggregate multiple requests that involve unrelated matters.

(d) *Multitrack processing.* (1) The Committee may use two or more processing tracks by distinguishing between simple, complex, and expedited requests based on the amount of work and/or time needed to process a request or the number of pages involved. Expedited processing shall be in accordance with the standards set forth in paragraph (g) of this section. Among the factors a component may consider are the number of pages involved in processing the request and the need for consultations or referrals. The Committee shall advise requesters of the track into which their request falls and, when appropriate, shall offer the requesters an opportunity to narrow their request so that it can be placed in a different processing track.

(e) *Expedited processing.* (1) Requests and appeals may be taken out of order and given expedited treatment whenever it is determined that they involve:

(i) Circumstances in which the lack of expedited processing could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged Federal Government activity, if made by a person who is primarily engaged in disseminating information;

(iii) The loss of substantial due process rights; or

(iv) A matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity that affect public confidence.

(2) A request for expedited processing may be made at any time. Requests based on paragraphs (e)(1)(i) through (iv) of this section must be submitted to the Committee's FOIA office.

(3) A requester who seeks expedited processing must submit a statement, certified to be true and correct, explaining in detail the basis for making the request for expedited processing. For example, under paragraph (e)(1)(ii) of this section, a requester who is not a full-time member of the news media must establish that the requester is a person whose primary professional activity or occupation is information dissemination, though it need not be the requester's sole occupation. Such a requester also must establish a particular urgency to inform the public about the government activity involved in the request—one that extends beyond the public's right to know about government activity generally. The existence of numerous articles published on a given subject can be helpful in establishing the requirement that there be an ''urgency to inform'' the public on the topic. As a matter of administrative discretion, the Committee may waive the formal certification requirement.

(4) The Committee shall notify the requester within 10 calendar days of the receipt of a request for expedited processing of its decision whether to grant or deny expedited processing. If expedited processing is granted, the request will be given priority and processed as soon as practicable. If a

request for expedited processing is denied, any appeal of that decision shall be acted on expeditiously.

§ 51–8.6 Responses to Requests.

(a) *In general.* The Committee should, to the extent practicable, communicate with requesters having access to the internet using electronic means, such as email or web portal.

(b) *Acknowledgment of requests.* The Committee shall acknowledge the request and assign it an individualized tracking number if it will take longer than 10 working days to process. The Committee shall include in the acknowledgement a brief description of the records sought to allow requesters to more easily keep track of their requests.

(c) *Grants of requests.* When the Committee makes a determination to grant a request in full or in part, it shall notify the requester in writing. The Committee shall inform the requester of any fees charged under subpart 51–8.10 of this part and shall disclose the requested records to the requester promptly upon payment of any applicable fees. The Committee must inform the requester of the availability of the FOIA Public Liaison to offer assistance.

(d) *Adverse determinations of requests.* If the Committee makes an adverse determination denying a request in any respect, the requester will be notified in writing. Adverse determinations, or denials of requests, include decisions that: The requested record is exempt, in whole or in part; the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has been destroyed; or the requested record is not readily reproducible in the form or format sought by the requester. Adverse determinations also include denials involving fees or fee waiver matters or denials of requests for expedited processing.

(e) *Content of denial.* The denial will be signed by the Executive Director or designee and include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reasons for the denial, including any FOIA exemption applied in denying the request;

(3) An estimate of the volume of any records or information withheld, such as the number of pages or some other reasonable form of estimation, although such an estimate is not required if the volume is otherwise indicated by deletions marked on records that are disclosed in part or if providing an estimate would harm an interest protected by an applicable exemption;

(4) A statement that the denial may be appealed under subpart 51–8.8 of this part, and a description of the appeal requirements set forth therein; and

(5) A statement notifying the requester of the assistance available from the Committee's FOIA Public Liaison and the dispute resolution services offered by Office of Government Information Services (OGIS).

§ 51–8.7 Confidential Commercial Information.

(a) *Definitions.*

(1) *Confidential commercial information* means commercial or financial information obtained by the Committee from a submitter that may be protected from disclosure under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).

(2) *Submitter* means any person or entity, including a corporation, State, or foreign government, but not including another Federal Government entity, that provides confidential commercial information, either directly or indirectly to the Federal Government.

(b) *Designation of confidential commercial information.* A submitter of confidential commercial information must use good faith efforts to designate by appropriate markings, either at the time of submission or within a reasonable time thereafter, any portion of its submission that it considers to be protected from disclosure under Exemption 4. These designations expire 10 years after the date of the submission unless the submitter requests and provides justification for a longer designation period.

(c) *When notice to submitters is required.* (1) The Committee will promptly provide written notice to the submitter of confidential commercial information whenever records containing such information are requested under the FOIA if, after reviewing the request, the responsive records, and any appeal by the requester, the Committee determines that it may be required to disclose the records, provided:

(i) The requested information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(ii) The Committee has a reason to believe that the requested information may be protected from disclosure under Exemption 4, but has not yet determined whether the information is protected from disclosure under that exemption or any other applicable exemption.

(2) The notice must either describe the commercial information requested or include a copy of the requested records or portions of records containing the information. In cases involving a voluminous number of submitters, notice may be made by posting or publishing the notice in a place or manner reasonably likely to accomplish notification.

(d) *Exceptions to submitter notice requirements.* The notice requirements of this section do not apply if:

(1) The Committee determines that the information is exempt under the FOIA;

(2) The information has been lawfully published or has been officially made available to the public;

(3) Disclosure of the information is required by a statute other than the FOIA or by a regulation issued in accordance with the requirements of Executive Order 12600 of June 23, 1987; or

(4) The designation made by the submitter under paragraph (b) of this section appears obviously frivolous, except that, in such a case, the Committee shall give the submitter written notice of any final decision to disclose the information and shall provide that notice within a reasonable number of days prior to a specified disclosure date.

(e) *Opportunity to object to disclosure.* (1) The Committee will specify a reasonable time period within which the submitter must respond to the notice referenced above. If a submitter has any objections to disclosure, it should provide the Committee a detailed written statement that specifies all grounds for withholding the particular information under any exemption of the FOIA. In order to rely on Exemption 4 as basis for nondisclosure, the submitter must explain why the information constitutes a trade secret or commercial or financial information that is privileged or confidential.

(2) A submitter who fails to respond within the time period specified in the notice shall be considered to have no objection to disclosure of the information. Information received by the Committee after the date of any disclosure decision shall not be considered by the Committee. Any information provided by a submitter under this subpart may itself be subject to disclosure under the FOIA.

(f) *Analysis of objections.* The Committee will consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose the requested information.

(g) *Notice of intent to disclose.* (1) Whenever the Committee decides to

disclose information over the objection of a submitter, the Committee will provide the submitter written notice, which will include:

(i) A statement of the reasons why each of the submitter's disclosure objections was not sustained;

(ii) A description of the information to be disclosed; and

(iii) A specified disclosure date, which must be a reasonable time after the notice, and not less than 10 business days after the date of the notice submission.

(iv) A statement that the submitter must notify the Committee immediately if the submitter intends to seek injunctive relief.

(2) Notwithstanding paragraph (e)(2) of this section, even if the submitter fails to respond to Committee's notice specified in paragraph (c) of this section, whenever the Committee decides to disclose the commercial information, the Committee will provide the submitter written notice of disclosure, as specified in paragraph (g)(1) of this section.

(h) *Notice of FOIA lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of confidential commercial information, the Committee will promptly notify the submitter.

(i) *Requester notification.* The Committee will notify the requester whenever it provides the submitter with notice and an opportunity to object to disclosure; whenever it notifies the submitter of its intent to disclose the requested information; and whenever a submitter files a lawsuit to prevent the disclosure of the information.

§ 51–8.8 Administrative Appeals.

(a) *Requirements for making an appeal.* A requester may appeal any adverse determinations to the Committee's Chief FOIA Officer. The contact information for the FOIA Officer is available at the Committee's website, at *https://www.abilityone.gov/laws,_regulations_and_policy/foia.html.* Appeals can be submitted through email or the web portal accessible on the FOIA web page. Examples of adverse determinations are provided in § 51–8.6(d). The requester must make the appeal in writing and to be considered timely it must be postmarked, or in the case of electronic submissions, transmitted, within 90 calendar days after the date of the response. The appeal should clearly identify the Committee's determination that is being appealed and the assigned request number. To facilitate handling, the requester should mark both the appeal letter and envelope, or subject line of the electronic transmission, ''Freedom of Information Act Appeal.''

(b) *Adjudication of appeals.* (1) The Committee Executive Director or designee will act on behalf of the Committee on all appeals under this section.

(2) An appeal ordinarily will not be adjudicated if the request becomes a matter of FOIA litigation.

(3) On receipt of any appeal involving classified information, the Committee's Chief FOIA Officer shall take appropriate action to ensure compliance with

(c) *Decisions on appeals.* A decision on an appeal must be made in writing. A decision that upholds a Committee determination will contain a statement that identifies the reasons for the affirmance, including any FOIA exemptions applied. The decision will provide the requester with notification of the statutory right to file a lawsuit and will inform the requester of the mediation services offered by the Office of Government Information Services (OGIS) of the National Archives and Records Administration as a non-exclusive alternative to litigation. If a Committee's decision is remanded or modified on appeal, the requester will be notified of that determination in writing. The Committee will thereafter further process the request in accordance with that appeal determination and respond directly to the requester.

(d) *Engaging in dispute resolution services provided by OGIS.* Mediation is a voluntary process. If the Committee agrees to participate in the mediation services provided by the Office of Government Information Services, it will actively engage as a partner to the process in an attempt to resolve the dispute.

(e) *When appeal is required.* Before seeking review by a court of a Committee's adverse determination, a requester generally must first submit a timely administrative appeal.

§ 51–8.9 Preservation of Records.

The Committee will preserve all correspondence pertaining to the requests it receives under this subpart, as well as copies of all requested records, until disposition or destruction is authorized pursuant to Title 44 of the United States Code or the General Records Schedule 4.2 of the National Archives and Records Administration. Records will not be destroyed while they are the subject of a pending request, appeal, or lawsuit under the Act.

§ 51–8.10 Fees.

(a) *In general.* The Committee will charge for processing requests under the FOIA in accordance with the provisions of this section and with the OMB Guidelines. In order to resolve any fee issues that arise under this section, the Committee may contact a requester for additional information. The Committee shall ensure that searches, review, and duplication are conducted in the most efficient and the least expensive manner. The Committee will ordinarily collect all applicable fees before sending copies of records to a requester. Requesters must pay fees by check or money order payable to the United States Department of Treasury.

(b) *Definitions.* For purposes of this section:

(1) *Commercial use request* is a request that asks for information for a use or a purpose that furthers a commercial, trade, or profit interest, which can include furthering those interests through litigation. The Committee's decision to place a requester in the commercial use category will be made on a case-by-case basis based on the requester's intended use of the information.

(2) *Direct costs* are those expenses that an agency incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records in order to respond to a FOIA request. For example, direct costs include the salary of the employee performing the work (*i.e.,* the basic rate of pay for the employee, plus 16 percent of that rate to cover benefits) and the cost of operating computers and other electronic equipment, such as photocopiers and scanners. Direct costs do not include overhead expenses such as the costs of space, and of heating or lighting a facility.

(3) *Duplication* is reproducing a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, audiovisual materials, or electronic records, among others.

(4) *Educational institution* is any school that operates a program of scholarly research. A requester in this fee category must show that the request is made in connection with the requester's role at the educational institution. The Committee may seek assurance from the requester that the request is in furtherance of scholarly research and agencies will advise requesters of their placement in this category.

Example 1 to paragraph (b)(4). A request from a professor of geology at a university for records relating to soil erosion, written on letterhead of the

Department of Geology, would be presumed to be from an educational institution.

Example 2 to paragraph (b)(4). A request from the same professor of geology seeking drug information from the Food and Drug Administration in furtherance of a murder mystery he is writing would not be presumed to be an institutional request, regardless of whether it was written on institutional stationary.

Example 3 to paragraph (b)(4). A student who makes a request in furtherance of the student's coursework or other school-sponsored activities and provides a copy of a course syllabus or other reasonable documentation to indicate the research purpose for the request, would qualify as part of this fee category.

(5) *Noncommercial scientific institution* is an institution that is not operated on a ''commercial'' basis, as defined in paragraph (b)(1) of this section and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. A requester in this category must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research and are not for a commercial use.

(6) *Representative of the news media* is any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term ''news'' means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations that broadcast ''news'' to the public at large and publishers of periodicals that disseminate ''news'' and make their products available through a variety of means to the general public, including news organizations that disseminate solely on the internet. A request for records supporting the news-dissemination function of the requester shall not be considered to be for a commercial use. ''Freelance'' journalists who demonstrate a solid basis for expecting publication through a news media entity shall be considered as a representative of the news media. A publishing contract would provide the clearest evidence that publication is expected; however, the Committee shall also consider a requester's past publication record in making this determination.

(7) *Review* is the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of redacting the record and marking the appropriate exemptions. Review costs are properly charged even if a record ultimately is not disclosed. Review time also includes time spent both obtaining and considering any formal objection to disclosure made by a confidential commercial information submitter under § 51–8.7, but it does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(8) *Search* is the process of looking for and retrieving records or information responsive to a request. Search time includes page-by-page or line-by-line identification of information within records and the reasonable efforts expended to locate and retrieve information from electronic records.

(c) *Charging fees.* In responding to FOIA requests, the Committee will charge the following fees unless a waiver or reduction of fees has been granted under paragraph (k) of this section. Because the fee amounts provided below already account for the direct costs associated with a given fee type, the Committee should not add any additional costs to charges calculated under this section.

(1) *Search.* (i) Requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media are not subject to search fees. The Committee will charge search fees for all other requesters, subject to the restrictions of paragraph (d) of this section. The Committee may properly charge for time spent searching even if responsive records are not located or if the Committee determines that the records are entirely exempt from disclosure.

(ii) For each quarter hour spent by personnel searching for requested records, including electronic searches that do not require new programming, the fees shall be as follows: Professional—$10.00; and clerical/administrative—$4.75.

(iii) Requesters shall be charged the direct costs associated with conducting any search that requires the creation of a new computer program to locate the requested records. Requesters shall be notified of the costs associated with creating such a program and must agree to pay the associated costs before the costs may be incurred.

(iv) For requests that require the retrieval of records stored by an agency at a Federal records center operated by the National Archives and Records Administration (NARA), additional costs shall be charged in accordance with the Transactional Billing Rate Schedule established by NARA.

(2) *Duplication.* Duplication fees shall be charged to all requesters, subject to the restrictions of paragraph (d) of this section. The Committee shall honor a requester's preference for receiving a record in a particular form or format where it is readily reproducible by the Committee in the form or format requested. Where photocopies are supplied, agencies will provide one copy per request at the cost of 25¢ per page. For copies of records produced on tapes, disks, or other media, the Committee will charge the direct costs of producing the copy, including operator time. Where paper documents must be scanned in order to comply with a requester's preference to receive the records in an electronic format, the requester shall also pay the direct costs associated with scanning those materials. For other forms of duplication, agencies will charge the direct costs.

(3) *Review.* The Committee will charge review fees to requesters who make commercial use requests. Review fees will be assessed in connection with the initial review of the record, *i.e.,* the review conducted by the Committee to determine whether an exemption applies to a particular record or portion of a record. No charge will be made for review at the administrative appeal stage of exemptions applied at the initial review stage. However, if a particular exemption is deemed to no longer apply, any costs associated with the Committee's re-review of the records in order to consider the use of other exemptions may be assessed as review fees. Review fees will be charged at the same rates as those charged for a search under paragraph (c)(1)(ii) of this section.

(d) *Restrictions on charging fees.* (1) No search fees will be charged for requests by educational institutions (unless the records are sought for a commercial use), noncommercial scientific institutions, or representatives of the news media.

(2)(i) If the Committee fails to comply with the FOIA's time limits in which to respond to a request, it may not charge search fees, or, in the instances of requests from requesters described in paragraph (d)(1) of this section, may not charge duplication fees, except as described in paragraphs (d)(2)(ii) through (iv) of this section.

(ii) If the Committee has determined that unusual circumstances, as defined by the FOIA, apply and the Committee provided timely written notice to the requester in accordance with the FOIA, a failure to comply with the time limit shall be excused for an additional 10 days.

(iii) If the Committee has determined that unusual circumstances, as defined by the FOIA, apply and more than 5,000 pages are necessary to respond to the request, the Committee may charge search fees, or, in the case of requesters described in paragraph (d)(1) of this section, may charge duplication fees if the following steps are taken. The Committee must have provided timely written notice of unusual circumstances to the requester in accordance with the FOIA and the Committee must have discussed with the requester via written mail, email, or telephone (or made not less than three good-faith attempts to do so) how the requester could effectively limit the scope of the request in accordance with 5. U.S.C. 552(a)(6)(B)(ii). If this exception is satisfied, the Committee may charge all applicable fees incurred in the processing of the request.

(iv) If a court has determined that exceptional circumstances exist, as defined by the FOIA, a failure to comply with the time limits shall be excused for the length of time provided by the court order.

(3) No search or review fees will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(4) Except for requesters seeking records for a commercial use, Committee shall provide without charge:

(i) The first 100 pages of duplication (or the cost equivalent for other media); and

(ii) The first two hours of search.

(5) No fee will be charged when the total fee, after deducting the 100 free pages (or its cost equivalent) and the first two hours of search, is equal to or less than $25.

(e) *Notice of anticipated fees in excess of $25.00.* (1) When the Committee determines or estimates that the fees to be assessed in accordance with this section will exceed $25.00, the requesting party will be notified of the actual or estimated amount of the fees, including a breakdown of the fees for search, review or duplication, unless a written statement from the requester has been received indicating a willingness to pay fees as high as those anticipated. If only a portion of the fee can be readily estimated, the Committee shall advise the requester accordingly. If the requester is a noncommercial use requester, the notice shall specify that the requester is entitled to the statutory entitlements of 100 pages of duplication at no charge and, if the requester is charged search fees, two hours of search time at no charge, and shall advise the requester whether those entitlements have been provided.

(2) If the Committee notifies the requester that the actual or estimated fees are in excess of $25.00, the request will not be considered received and further work will not be completed until the requester commits in writing to pay the actual or estimated total fee, or designates some amount of fees the requester is willing to pay, or, in the case of a noncommercial use, requester who has not yet been provided with the requester's statutory entitlements, designates that the requester seeks only that which can be provided by the statutory entitlements. The requester must provide the commitment or designation in writing, and must, when applicable, designate an exact dollar amount the requester is willing to pay. The Committee is not required to accept payments in installments.

(3) If the requester has indicated a willingness to pay some designated amount of fees, but the Committee estimates that the total fee will exceed that amount, the Committee will toll the processing of the request when it notifies the requester of the estimated fees in excess of the amount the requester has indicated a willingness to pay. The Committee will inquire whether the requester wishes to revise the amount of fees the requester is willing to pay or modify the request. Once the requester responds, the time to respond will resume from where it was at the date of the notification.

(4) The Committee will make available the FOIA Public Liaison or other personnel to assist any requester in reformulating a request to meet the requester's needs at a lower cost.

(f) *Charges for other services.* Although not required to provide special services, if the Committee chooses to do so as a matter of administrative discretion, the direct costs of providing the service will be charged. Examples of such services include certifying that records are true copies, providing multiple copies of the same document, or sending records by means other than first class mail.

(g) *Charging interest.* The Committee may charge interest on any unpaid bill for processing FOIA requests starting on the 31st day following the date of billing the requester. Interest rates will be assessed at the rate provided in 31 U.S.C. 3717 and will accrue from the billing date until payment is received by the Committee.

(h) *Aggregating requests.* When the Committee reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a single request into a series of requests for the purpose of avoiding fees, the Committee may aggregate those requests and charge accordingly. The Committee may presume that multiple requests of this type made within a 30-day period have been made in order to avoid fees. For requests separated by a longer period, the Committee will aggregate them only where there is a reasonable basis for determining that aggregating the requests is warranted in view of all the circumstances involved. Multiple requests involving unrelated matters shall not be aggregated.

(i) *Advance payments.* (1) For requests other than those described in paragraphs (i)(2) or (i)(3) of this section, the Committee shall not require the requester to make an advance payment before work is commenced or continued on a request. Payment owed for work already completed (*i.e.,* payment before copies are sent to a requester) is not an advance payment.

(2) When the Committee determines or estimates that a total fee to be charged under this section will exceed $250.00, it may require that the requester make an advance payment up to the amount of the entire anticipated fee before beginning to process the request. The Committee may elect to process the request prior to collecting fees when it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(3) Where a requester has previously failed to pay a properly charged FOIA fee within 30 calendar days of the billing date, the Committee may require that the requester pay the full amount due, plus any applicable interest on that prior request, and the Committee may require that the requester make an advance payment of the full amount of any anticipated fee before the Committee begins to process a new request or continues to process a pending request or any pending appeal. Where the Committee has a reasonable basis to believe that a requester has misrepresented the requester's identity in order to avoid paying outstanding fees, it may require that the requester provide proof of identity.

(4) In cases in which the Committee requires advance payment, the request will not be considered received and further work will not be completed until the required payment is received. If the requester does not pay the advance payment within 30 calendar days after

the date of the Committee's fee determination, the request will be closed.

(j) *Other statutes specifically providing for fees.* The fee schedule of this section does not apply to fees charged under any statute that specifically requires an agency to set and collect fees for particular types of records. In instances where records responsive to a request are subject to a statutorily-based fee schedule program, the Committee shall inform the requester of the contact information for that program.

(k) *Requirements for waiver or reduction of fees.* (1) Requesters may seek a waiver of fees by submitting a written application demonstrating how disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(2) The Committee will furnish records responsive to a request without charge or at a reduced rate when it determines, based on all available information, that the factors described in paragraphs (k)(2)(i) through (ii) of this section are satisfied:

(i) Disclosure of the requested information would shed light on the operations or activities of the government. The subject of the request must concern identifiable operations or activities of the Federal Government with a connection that is direct and clear, not remote or attenuated.

(ii) Disclosure of the requested information is likely to contribute significantly to public understanding of those operations or activities. This factor is satisfied when the following criteria are met:

(A) Disclosure of the requested records must be meaningfully informative about the Committee operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not be meaningfully informative if nothing new would be added to the public's understanding.

(B) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester's expertise in the subject area as well as the requester's ability and intention to effectively convey information to the public must be considered. The Committee ordinarily will presume that a representative of the news media will satisfy this consideration.

(iii) The disclosure must not be primarily in the commercial interest of the requester. To determine whether disclosure of the requested information is primarily in the commercial interest of the requester, the Committee will consider the following criteria:

(A) The Committee must identify whether the requester has any commercial interest that would be furthered by the requested disclosure. A commercial interest includes any commercial, trade, or for profit interest. Requesters must be given an opportunity to provide explanatory information regarding this consideration.

(B) If there is an identified commercial interest, the Committee must determine whether that is the primary interest furthered by the request. A waiver or reduction of fees is justified when the requirements of paragraphs (k)(2)(i) through (ii) of this section are satisfied and any commercial interest is not the primary interest furthered by the request. The Committee ordinarily will presume that when a news media requester has satisfied the requirements of paragraphs (k)(2)(i) through (ii) of this section, the request is not primarily in the commercial interest of the requester. Disclosure to data brokers or others who merely compile and market government information for direct economic return will not be presumed to primarily serve the public interest.

(3) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver shall be granted for those records.

(4) Requests for a waiver or reduction of fees should be made when the request is first submitted to the Committee and should address the criteria referenced above. A requester may submit a fee waiver request at a later time as long as the underlying record request is pending or on administrative appeal. When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester must pay any costs incurred up to the date the fee waiver request was received.

§ 51–8.11 Other Rights and Services.

Nothing in this part shall be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

Michael R. Jurkowski,

Deputy Director, Business & PL Operations.

[FR Doc. 2020–12704 Filed 6–23–20; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 350, 355, and 388

[Docket No. FMCSA–2017–0370]

RIN 2126–AC02

Motor Carrier Safety Assistance Program

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

ACTION: Final rule.

SUMMARY: FMCSA amends two of the Agency's financial assistance programs. As required by the Fixing America's Surface Transportation (FAST) Act, FMCSA adopts a new funding formula based on recommendations from the Motor Carrier Safety Assistance Program (MCSAP) Formula Working Group (working group), effective for fiscal year (FY) 2021 grant funds and beyond. This rule reorganizes the Agency's regulations to create a standalone subpart for the High Priority Program. It also includes other programmatic changes to reduce redundancies, require the use of 3-year MCSAP commercial vehicle safety plans (CVSPs), and align the financial assistance programs with FMCSA's current enforcement and compliance programs.

DATES: This final rule is effective July 24, 2020.

Petitions for Reconsideration of this final rule must be submitted to the FMCSA Administrator no later than July 24, 2020.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Kostelnik, State Programs Division, at FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; (202) 366–5721; *jack.kostelnik@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION: FMCSA organizes this final rule as follows:

I. Rulemaking Documents
  A. Availability of Rulemaking Documents
  B. Privacy Act
II. Executive Summary
  A. Purpose of the Regulatory Action
  B. Summary of Major Provisions
  C. Costs and Benefits
III. Abbreviations, Acronyms, and Symbols
IV. Legal Basis for the Rulemaking
V. Background and Proposed Rule
  A. Regulatory History

B. Summary of the Proposed Rule
VI. Discussion of Comments and Responses
VII. International Impacts
VIII. Section-by-Section Analysis
A. Subpart A—General
B. Subpart B—MCSAP Administration
C. Subpart C—MCSAP Required Compatibility Review
D. Subpart D—High Priority Program
E. Subpart E—Miscellaneous
IX. Guidance
X. Regulatory Analyses
A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulations
B. E.O. 13771 (Reducing Regulation and Controlling Regulatory Costs)
C. Congressional Review Act
D. Regulatory Flexibility Act
E. Assistance for Small Entities
F. Unfunded Mandates Reform Act of 1995
G. Paperwork Reduction Act
H. E.O. 13132 (Federalism)
I. Privacy
J. E.O. 13175 (Indian Tribal Governments)
K. National Environmental Policy Act of 1969

I. Rulemaking Documents

A. Availability of Rulemaking Documents

For access to docket FMCSA–2017–0370 to read background documents and comments received, go to *https://www.regulations.gov* at any time, or to Docket Operations at U.S. Department of Transportation, Room W12–140, West Building Ground Floor, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *https://www.regulations.gov,* as described in the system of records notice ''DOT/ALL 14—Federal Docket Management System (FDMS),'' which can be reviewed at *https://www.transportation.gov/privacy.*

II. Executive Summary

A. Purpose of the Regulatory Action

The purpose of this regulatory action is to amend and reorganize 49 CFR part 350, including adding relevant sections that are currently located in part 355, and to address certain regulations that are no longer necessary or are redundant. Moreover, the FAST Act requires FMCSA to implement a multi-year CVSP with annual updates for States [1] applying for MCSAP funds and to provide a new MCSAP allocation formula. This rule implements the new MCSAP allocation formula, requires States to adopt 3-year CVSPs, and reorganizes the Agency's regulations to create a standalone subpart for the High Priority Program. FMCSA's primary legal authority for this rulemaking is Title V, Subtitle A of the FAST Act, Public Law 114–94, 129 Stat. 1312, 1514–34 (Dec. 4, 2015).

B. Summary of Major Provisions

This rule implements a new MCSAP allocation formula that is effective for FY 2021 grant funds and beyond. The FAST Act required the Secretary of Transportation (Secretary) to assemble a working group to recommend a new MCSAP allocation formula. The Agency considered and fully adopts the recommendations of the working group.

The new MCSAP allocation formula includes three components: State, Border, and Territory. The formula assigns each component a percentage of MCSAP funds. The State Component allocates funds using five equally-weighted factors and then applies minimum and maximum caps to the allocated funding. The Border Component allocates funding based on the number of United States ports of entry and the number of commercial motor vehicle (CMV) crossings at those ports of entry, subject to minimum and maximum funding levels. This Border Component accounts for differences in the number of crossings per port of entry at the Northern border compared to the Southern border of the United States. Finally, the Territory Component ensures that each Territory, except for the Commonwealth of Puerto Rico (which is allocated funding under the State Component), receives a minimum funding amount of $350,000. The formula adds any funds not allocated under the Border or Territory Component to the State Component for allocation. The formula promotes stability in funding and protects States from experiencing significant and unpredicted changes by including a hold-harmless provision and a funding cap.

This rule requires States to use CVSPs in accordance with the FAST Act, and provides direction to States on how and when to submit CVSPs on 3-year cycles. For the first year of the CVSP, States submit quantitative performance objectives, analysis of past performance, and other documents traditionally provided in an annual CVSP, as well as a budget for the initial year. For the second and third years of the CVSP, States submit an annual update that includes changes to the CVSP (including updates to performance objectives and adjustments to activities), a budget for the applicable fiscal year, and other documents required on an annual basis.

FMCSA clarifies that it is a State's obligation to cooperate in the enforcement of hazardous materials safety permits for interstate and intrastate carriers issued under subpart E of 49 CFR part 385 by verifying possession of the permit when required while conducting vehicle inspections and investigations. This rule does not require States to adopt part 385 as a condition of receiving MCSAP funds, but States are strongly encouraged to do so to support a comprehensive CMV safety program.

The rule also revises and reorganizes part 350. Currently, part 350 intertwines the High Priority Program and MCSAP regulations, but some regulations do not apply to both programs. To provide clarity for the eligible recipients, this rule separates the two programs into different subparts in part 350. In addition, FMCSA adds relevant sections of part 355 to part 350. These changes address regulatory compatibility, reduce redundancy, and make part 350 more clear and concise.

Finally, FMCSA removes part 388, titled ''Cooperative Agreements with States.'' FMCSA does not rely on part 388 provisions to enter into agreements with State partners because there is no specific funding for that part.

C. Costs and Benefits

This rule adopts a new MCSAP allocation formula to replace the current formula that has been in use for more than a decade with little modification. The new formula makes several improvements over the current formula. The new formula will result in a reallocation of grant funding, beginning with FY 2021, but will not change the total amount of funds distributed.

The rule requires States to use CVSPs in accordance with the FAST Act. It also provides direction to States on how and when to submit CVSPs on 3-year cycles. Under the current regulations, States submit lengthy CVSP applications annually to receive MCSAP funding. However, beginning in FY 2018, States began voluntarily submitting CVSPs on 3-year cycles, as is now required by this rule. Following the implementation of

[1] Unless otherwise provided in this preamble, FMCSA uses the term ''State'' as including the District of Columbia and the 5 Territories (American Samoa, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands), consistent with 49 U.S.C. 31101(4).

this rule, States will no longer be able to submit annual CVSP applications and must submit robust 3-year CVSP applications for the first year, with annual updates for the second and third years. Based on experience from voluntary implementation, FMCSA expects that 3-year CVSPs will be less burdensome and time consuming for States than submitting lengthy CVSP applications annually, which will result in lower program administrative costs. All 55 current MCSAP participants [2] voluntarily transitioned to 3-year CVSPs, and thus, there is no impact from this change.

III. Abbreviations, Acronyms, and Symbols

CE Categorical Exclusion
CFR Code of Federal Regulations
CHP Department of California Highway Patrol
CMV Commercial motor vehicle
CVSA Commercial Vehicle Safety Alliance
CVSP Commercial vehicle safety plan
DOT Department of Transportation
eCVSP Electronic commercial vehicle safety plan
E.O. Executive Order
FAST Act Fixing America's Surface Transportation Act
FHWA Federal Highway Administration
FMCSA Federal Motor Carrier Safety Administration
FMCSRs Federal Motor Carrier Safety Regulations
FR Federal Register
FY Fiscal year
HMRs Federal Hazardous Materials Regulations
MCSAP Motor Carrier Safety Assistance Program
MOE Maintenance of effort
NASI North American Standard Inspection
NOFO Notice of Funding Opportunity
NPRM Notice of proposed rulemaking
OMB Office of Management and Budget
PRISM Performance and Registration Information Systems Management
RFA Regulatory Flexibility Act
§ Section
Secretary Secretary of Transportation
working group MCSAP Formula Working Group
U.S.C. United States Code
VMT Vehicle miles traveled

IV. Legal Basis for the Rulemaking

FMCSA has and continues to issue the regulations found in 49 CFR parts 350 and 355 under the authority of 49 U.S.C. 504, 13902, 31101, 31102, 31104, 31106, 31108, 31136, 31141, 31161, 31310, 31311, and 31502.

The primary basis for this rule is Title V, Subtitle A of the FAST Act, Public Law 114–94, 129 Stat. 1312, 1514–34 (Dec. 4, 2015), which consolidated several of FMCSA's financial assistance programs and authorized program funding levels through FY 2020. Key provisions, effective FY 2017, include section 5101, which amended 49 U.S.C. 31102, consolidating the former New Entrant, Performance and Registration Information Systems Management (PRISM), Safety Data Improvement, and Border Enforcement grant programs into the MCSAP formula grant. In addition, it established the High Priority Program as a separate discretionary financial assistance program for qualifying entities and projects relating to motor carrier safety and Innovative Technology Deployment. Section 5101 also amended 49 U.S.C. 31104, which prescribes, among other things, authorized funding levels through FY 2020, the minimum Federal funding share applicable to these (and other) FMCSA financial assistance programs, and the periods of time in which awarded funds may be used.

Section 5106 of the FAST Act (note following 49 U.S.C. 31102) required the Secretary to appoint a working group, consisting of prescribed stakeholder interests, to develop and recommend to the Secretary a new MCSAP allocation formula reflecting specified factors for the award of MCSAP funds. Following receipt of the working group's recommendations, section 5106 required the Secretary to issue a notice of proposed rulemaking (NPRM). The working group submitted its report on April 7, 2017, and an addendum to the report on January 8, 2019. As noted below, FMCSA issued its NPRM on August 22, 2019 (84 FR 44162).

Section 5107 of the FAST Act (note following 49 U.S.C. 31102) addresses the maintenance of effort calculations for FY 2017 and subsequent fiscal years until the new MCSAP allocation formula is in place. It also allows States to request a one-time permanent adjustment to their maintenance of effort baselines in the first fiscal year of the new MCSAP allocation formula.

FMCSA has authority under Federal hazardous materials transportation law, 49 U.S.C. 5101–5128, to require States to cooperate in the enforcement of Federal hazardous materials safety permit requirements as a condition to qualify for MCSAP funds. The purpose of the hazardous materials transportation law is ''to protect against the risks to life, property, and the environment that are inherent in the transportation of hazardous material in intrastate, interstate, and foreign commerce'' (49 U.S.C. 5101). Section 5109(a) provides that a ''motor carrier may transport or cause to be transported by motor vehicle in commerce hazardous material only if the carrier holds a safety permit'' issued by FMCSA. The Secretary has authority to prescribe what hazardous materials require a safety permit (49 U.S.C. 5109(b)). In addition, the Secretary has authority to require States to adopt provisions compatible with Federal provisions on hazardous materials transportation safety to receive MCSAP funds (49 U.S.C. 31102(c)(1)). Exercising these authorities, this rule clarifies that States are required to cooperate in ensuring carriers transporting certain hazardous materials possess the required FMCSA hazardous materials safety permit.

Any clarifying or non-substantive changes made by this final rule that are not explicitly attributed to the FAST Act or 49 U.S.C. 5101–5128 are made under one or more of the statutory authorities listed at the beginning of this section. FMCSA implements these statutory provisions by delegation from the Secretary in 49 CFR 1.87.

V. Background and Proposed Rule

A. Regulatory History

On August 22, 2019, FMCSA published an NPRM titled ''Motor Carrier Safety Assistance Program'' in the **Federal Register** (84 FR 44162). FMCSA received one comment requesting an extension of the comment period. On October 9, 2019, FMCSA published a notice extending the comment period to October 21, 2019 (84 FR 54093). FMCSA received three additional comments on the NPRM. No public meeting was requested and none was held.

The NPRM included a detailed discussion of the background for this regulatory action, including the history of MCSAP, the FAST Act changes to MCSAP, a previous omnibus rule that implemented portions of the FAST Act, the working group, and States' voluntary transition to 3-year CVSPs. That discussion is not repeated here, but can be found in the published NPRM (84 FR at 44165–7).

B. Summary of the Proposed Rule

A detailed summary of the proposed rule can be found in the NPRM (84 FR at 44167–72), which includes discussion of the separation of MCSAP and the High Priority Program provisions, the proposed MCSAP allocation formula, and the proposed 3-year CVSP requirements. It also included discussions of the following topics: (1) The proposed changes to fully implement the PRISM program; (2) the FMCSA Administrator's discretion to distribute funding during an extension of the Agency's authorization

[2] Currently, the 55 MCSAP participants consist of the States minus Oregon.

or a period the Agency is operating under a continuing resolution; (3) the relocation to 49 CFR part 350 of relevant requirements of part 355 relating to regulatory compatibility: (4) A State's obligation to cooperate in the enforcement of hazardous materials safety permits for interstate and intrastate carriers; and (5) the removal of 49 CFR part 388 for which there is no specific funding and therefore no reliance by the Agency. Finally, FMCSA discussed changes to improve the organization of part 350, update definitions, and clarify when a State may retain an exemption for a particular segment of the motor carrier industry from all or part of its laws or regulations that were in effect before April 1988.

VI. Discussion of Comments and Responses

FMCSA received four comments on the NPRM. The first comment requested an extension to the comment period, which was granted (as noted above in Regulatory History). The second comment was non-responsive to the NPRM and, as such, is not discussed here. The Department of California Highway Patrol (CHP) and the Commercial Vehicle Safety Alliance (CVSA) submitted the remaining two comments. Both comments responded to the five questions posed in the NPRM. The Agency summarizes those comments below.

Q.1. Are there other elements FMCSA should consider including in a new MCSAP allocation formula and, if so, what are they? Why should such elements be considered? How would they promote safety?

Comments: Both the CHP and CVSA agreed with the MCSAP elements as proposed. CVSA stated that the ''working group conducted a rigorous review of the current formula components, as well as an extensive review of alternative data points before arriving at the final recommendation. The group used safety-based methodology and sought to balance the needs of individual [State] programs with the overarching goal of MCSAP. The final recommendations are designed to direct MCSAP funds to where they can most benefit overall commercial motor vehicle safety, while providing [S]tates with funding stability that enables program managers to plan and adjust their programs accordingly.'' CVSA also noted that any changes to the MCSAP elements should be subject to the same evaluation methodology and be based on the same priorities as those considered by the working group. The CHP commented that the funding allocations resulting from the proposed elements appropriately assist the CHP in promoting greater safety and compliance with regulatory requirements within the framework of current CHP operations that meet or exceed FMCSA grant program requirements.

Response: FMCSA agrees with the commenters. As such, the Agency does not make any changes to the proposed elements included in the MCSAP allocation formula.

Q.2. Should there be additional requirements in CVSPs to ensure MCSAP funding is used efficiently to promote safety and, if so, what are they? Why should such requirements be considered? How would they promote safety?

Comments: CVSA responded that no additional requirements should be included and that additional requirements would not be effective. CVSA suggested that FMCSA should look for ways to reduce the burden on States by lessening current reporting requirements, particularly with respect to information to which the Agency has direct access or duplicative sections within the CVSP. The CHP suggested that there be a requirement to use ''commercially trained'' personnel when MCSAP money is used.

Response: The Agency commits to look for ways to minimize burden by reviewing reporting requirements as a part of its annual review of CVSP design.

Existing paragraph (p) of § 350.211 provides a State must certify that MSCAP-funding personnel (including sub-grantees) meet the standards in 49 CFR part 385, subpart C, for performing inspections, audits, and investigations. Rather than repeating all the certifications that correspond to the conditions States must meet to qualify for MCSAP funds, as in existing § 350.211, new §§ 350.211(i)(1)(i) and 350.213(e)(1)(i) provide that States must certify they meet all the MCSAP conditions in proposed § 350.207. The relevant condition as proposed in § 350.207(a)(6) required more broadly that States must provide assurances they have the ''qualified personnel necessary to enforce compatible safety laws, regulations, standards, and orders.'' The Agency agrees with the CHP comment that the added specificity in existing § 350.211(p) provides clarity regarding what ''qualified personnel'' includes. Accordingly, FMCSA modifies § 350.207(a)(6) to include language that clarifies certified personnel are required.

Q.3. Should the Incentive Fund be eliminated from a new MCSAP allocation formula? Why should the Incentive Fund be kept or eliminated? How would keeping or eliminating the Incentive Fund promote safety?

Comments: CVSA recommended elimination of the Incentive Fund. CVSA commented that the ''Incentive Fund model does not fit within the proposed structure, as it is not correlated with crash risk, nor does it provide stable, reliable funding for the jurisdictions.'' It continued, as noted by the working group, ''the factors used in the incentive model are no longer relevant. Distributing funds through the incentive model does not ensure that funds are being spent where they can have the most direct impact on safety.''

The CHP stated that the Incentive Fund does not account for statistical anomalies over the 10-year crash average, allowing single or multiple mass-casualty events in a given year (*i.e.,* an outlier event) to skew allocation of incentive funding. The CHP noted, if the Incentive Fund is retained, it should be modified to allow the exclusion of statistical outlier events.

Response: As the working group and CVSA noted, the factors used in the Incentive Fund are no longer relevant. Thus, as proposed by the working group and in the NPRM, the Agency eliminates the Incentive Fund.

Q.4. Should a new MCSAP allocation formula include variables connected with crash rates or risk? If so, what variables should be considered and why? How would such variables promote safety?

Comments: CVSA recommended basing allocations on crash risk variables, as proposed by the working group. CVSA noted that the working group considered a number of different variables and measures before concluding that using crash risk, rather than crash rates or other crash-related metrics, would most effectively allocate funds to improve safety. CVSA stated ''[f]ocusing on crash rates may have the unintentional effect of moving funds away from a jurisdiction that has a higher risk of crashes but has been successful in reducing the occurrence of those crashes through implementation of their enforcement and outreach programs.''

The CHP agreed with using crash rate variables, but noted the need to adjust crash rates to ensure that outlier events weigh less heavily than the overall number of crashes, to avoid results that present an inaccurate crash picture. The CHP continued that ''crash trends indicate a more accurate reflection of the true impacts of enforcement effectiveness than the sheer number of fatalities in a single [crash].''

Response: FMCSA acknowledges the comments, which are in line with the formula proposed by the working group and included in the NPRM that bases allocations on crash risk variables. Because FMCSA eliminates the Incentive Fund and the MCSAP formula factors do not use crash rate data, the MCSAP allocation formula adopted in this rule should not produce the unintentional effects identified by CVSA and the CHP. Accordingly, the Agency does not change the proposed formula in this rule.

Q.5.[3] *Should a new MCSAP allocation formula be more sensitive to changes in crash rates? If so, how could a new allocation formula be more sensitive to changes in crash rates and why would it be more sensitive to such changes? How would such a formula promote safety?*

Comments: CVSA responded that the proposed allocation formula already balances a number of different factors, such as crash risk, with States' need for reliability and continuity in funding. CVSA recommended that FMCSA consider any suggested changes to the proposed formula carefully, as changes will likely disrupt the balance and have a negative impact on the overall performance of the new formula. While relationship to crash risk is a critical factor, CVSA responded that it is imperative that funds not shift too quickly or unpredictably. If States are not confident in the timing and amount of grant funding, they will be reluctant to fill positions, continue enforcement programs, or engage in bold new initiatives. The CHP commented that a formula that is more sensitive to changes in crash rates would harm States with outlier events, causing a reduction in funding for otherwise successful enforcement and education programs.

Response: FMCSA agrees that an allocation formula that focuses on crash rates can have unintended consequences and harm States when an outlier event occurs. Basing the formula on crash risk, rather than crash rates, most effectively allocates funds to improve safety. The careful balance in the allocation formula of crash risk and predictability in funding is integral to ensuring robust safety programs and innovation. As such, the Agency makes no changes to the proposed formula in this rule.

[3] As noted by the CHP, the NPRM lists two questions numbered ''4,'' instead of a question number 4 followed by a question number 5. Both the CHP and CVSA labelled their comments as responses to question 5; therefore, FMCSA does the same in this final rule.

Additional Comments

CVSA also provided several additional comments. Some were more general in nature, and others were suggestions related to one or more specific sections, as reflected in the below discussion of those comments.

CVSA supported FMCSA's efforts to revise part 350 to make necessary updates and clean up irrelevant sections because clarity and uniformity in the regulations are the cornerstones of an effective, consistent enforcement program. CVSA supported separate subparts for the requirements of MCSAP and the High Priority Program and the new requirements for CVSPs, stating these changes bring additional clarity to the regulations, improving States' ability to understand and comply with the requirements in part 350. As discussed above, CVSA supported the adoption of the recommendations set forth by the working group included in this rule. CVSA encouraged FMCSA to continue working to improve the existing data sets and identify potential new ones.

Section 350.103 When do the financial assistance program changes take effect?

Comment: CVSA noted FMCSA proposed to implement the changes beginning with FY 2020; however, the comment period for the rulemaking ended after the beginning of the fiscal year. CVSA stated that the Agency should not move ahead with implementing the new allocation formula until after the close of the comment period and the Agency issues its final rule. Noting that States and FMCSA need time to prepare for and adjust their programs, CVSA recommended that the Agency implement the allocation formula and changes to part 350 beginning with FY 2021.

Response: FMCSA agrees that States need time to prepare for the changes and adjust their programs accordingly. Therefore, FMCSA modifies § 350.103 to provide that the changes to part 350 take effect for FY 2021 financial assistance funds and beyond.

Section 350.105 What definitions are used in this part?

Comment: CVSA supported the definition changes FMCSA proposed with one exception. It requested that the definition for the North American Standard Inspection (NASI) include attribution to CVSA, as CVSA owns all rights to non-regulatory elements created within the NASI.

CVSA agreed with the proposed elimination of an exception for 49 CFR 171.15 and 171.16 in the definition of Hazardous Materials Regulations (HMRs) and stated it would improve reporting and data collection. However, CVSA noted the preamble discussion made it appear the referenced sections apply only to investigations and not to roadside inspections, but it found the discussion unclear. CVSA requested that the Agency clarify how this change would impact roadside inspections, or add language explaining it applies only to investigations.

Response: With respect to the request to acknowledge CVSA's role in the development of the NASI, FMCSA revises the proposed definition to continue use of the language in existing § 350.105. The existing definition states that FMCSA and CVSA developed the inspection criteria.

Sections 171.15 and 171.16 contain requirements to provide a telephone or online report to the Pipeline and Hazardous Materials Safety Administration (PHMSA) through the National Response Center within 12 hours of a reportable incident (as defined by § 171.15) and a written report to PHMSA within 30 days of a reportable incident (as defined by § 171.16). Because the timing of these reports is tied to specific incidents, they are not generated and enforced through commercial vehicle inspections. This should provide the clarity CVSA requested.

Sections 350.201 What is MCSAP? and 350.207(a)(2) What conditions must a State meet to qualify for MCSAP funds?

Comment: CVSA expressed concern that the proposed regulations were ambiguous in terms of what States must do to qualify for MCSAP funding. Specifically, proposed § 350.201(b)(3) required States to ''[a]dopt and enforce effective motor carrier, CMV, and driver safety regulations and practices consistent with Federal requirements.'' Proposed § 350.207(a)(2) provided that to qualify for MCSAP funds a State must improve motor carrier safety ''by adopting and enforcing compatible safety laws and regulations, standards, and orders.'' CVSA noted the inconsistent language and that the proposed regulations no longer spelled out precisely which Federal Motor Carrier Safety Regulations (FMCSRs) and HMRs must be adopted by States to have compatible laws. CVSA requested that FMCSA revise the language to specifically identify which parts must be adopted.

Response: With respect to § 350.201(b)(3), CVSA points out an unintended consequence of the proposed language. FMCSA intended § 350.201 to be an overview of the goals

and purposes of MCSAP. The Agency further intended paragraph (b) to be a restatement of existing § 350.103 regarding the purpose of part 350, which restates the goals of MCSAP in 49 U.S.C. 31102(b). By replacing the introductory paragraph of existing § 350.103 with the phrase ''MCSAP requires States to'' in proposed § 350.201(b) for brevity, the Agency appeared to add new requirements for States that were inconsistent with those stated in the conditions of participation in proposed § 350.207. This was not FMCSA's intent. To address this issue, FMCSA replaces the phrase ''MCSAP requires States to'' with a slightly modified version of the introductory paragraph in existing § 350.103. FMCSA also makes changes in § 350.201(b)(3) to maintain consistency in the use of the term ''compatible,'' as discussed in the next paragraph.

CVSA correctly points out that, except for the definition section, the proposed regulations no longer spelled out precisely which FMCSRs and HMRs States had to adopt to have compatible laws. One of the Agency's goals for this rulemaking is to provide clarity for States with respect to compatibility issues. Currently, there are duplicative regulations addressing compatibility and inconsistent terminology is used when discussing compatibility. This understandably confused States. FMCSA addresses these issues by (1) integrating pertinent provisions of part 355 into part 350 to improve the organization and eliminate duplication of the compatibility regulations, and (2) using clearly defined terms consistently throughout part 350. As such, the Agency defines ''compatible'' and ''compatibility'' as terms of art in § 350.105 using the terms ''FMCSRs'' and ''HMRs.'' In turn, the Agency defines the terms ''FMCSRs'' and ''HMRs'' in § 350.105 by stating the specific regulatory parts included in those definitions that States must adopt. The intent is to simplify the regulatory text and improve consistency by substituting defined terms of art instead of lengthy repetitions of the parts of the regulations States must adopt and enforce, which are prone to being stated inconsistently. Because FMCSA's approach differs from what States are accustomed to, FMCSA revises the proposed regulatory text in this final rule to include cross-references to § 350.105 the first time ''compatible'' or ''compatibility'' is used in a section to remind readers to consult the specific regulatory definition.

While reviewing the new terms in proposed § 350.105 to respond to CVSA's comment, the Agency noticed the proposed definition of ''compatible'' and proposed § 350.303(d) conflicted with the underlying statutory provision in 49 U.S.C. 31141(c). Paragraph (c)(4) of that statutory section provides a State law or regulation on CMV safety (a CMV is defined in 49 U.S.C. 31132 to mean, in part, a vehicle used in interstate commerce) that is in addition to or more stringent than the FMCSRs may be enforced unless the Secretary decides that (A) the State provision has no safety benefit; (B) the State provision is incompatible with the FMCSRs; or (C) enforcement of the State provision would cause an unreasonable burden on interstate commerce (49 U.S.C. 31141(c)(4)). FMCSA included the criteria in proposed § 350.303. Proposed § 350.303(d)(2)(iii) provided that, for such State provisions to be compatible with the FMCSRs and enforceable, the State had to demonstrate that (A) the State provisions had a safety benefit; (B) the State provisions were compatible with the FMCSRs; and (C) enforcement would not cause an unreasonable burden on interstate commerce. In doing so, FMCSA inadvertently created a standard to determine ''compatibility'' that uses the term ''compatible,'' which would effectively nullify some of the standard. Thus, FMCSA must align the regulations with the underlying statutory authority.

The Agency corrects this regulatory conflict by changing § 350.303(d)(2)(ii) to provide that the State must demonstrate, in part, a law, regulation, standard, or order on CMV safety that is in addition to or more stringent than the FMCSRs ''does not unreasonably frustrate the Federal goal of uniformity.'' This change emphasizes the need for uniformity while providing flexibility to States with innovative safety requirements that are not identical to the national norm. Similarly, the Agency modifies the definition of ''compatible or compatibility'' in § 350.105 relating to interstate commerce to incorporate the statutory standard (as set forth in § 350.303(d)(2)(ii)) to ensure there is no discrepancy between statute and regulation.

Section 350.207(a)(28) What conditions must a State meet to qualify for MCSAP funds?

Comment: CVSA expressed support for the addition in proposed § 350.207(a)(28) that States document compliance with hazardous materials safety permit requirements in the course of inspections they conduct. It noted, however, that States would need additional time to adopt 49 CFR part 385.

Response: FMCSA clarifies that the rule does not require States to adopt part 385, but States are strongly encouraged to do so to support a comprehensive CMV safety program. States must cooperate in the enforcement of hazardous materials safety permit requirements under part 385 by verifying possession of the permit when required while conducting vehicle inspections and investigations. States are not required, however, to investigate or enforce violations under part 385. This change fosters communication between States and FMCSA by having State enforcement personnel verify the presence of a hazardous materials safety permit, when required, during vehicle inspections and investigations that States conduct so FMCSA can take appropriate enforcement action when warranted. FMCSA revises the proposed regulatory text to clarify the requirement for States regarding hazardous materials safety permits.

Section 350.211 What must a State include for the first year of the CVSP?

Comment: CVSA opposed removing the requirement that a State submit a training plan as part of the CVSP process. It stated that training for inspectors is critical to a uniform, effective national inspection program and that currently inspectors do not receive enough training. CVSA said that removing the requirement could result in a jurisdiction putting less focus on training, impacting both the State's program and the national program negatively.

Response: FMCSA disagrees. While the existing regulations include a requirement for States to include training plans, the electronic commercial vehicle safety plan (eCVSP) does not include the training plans, and has not since the eCVSP's implementation in 2013. At that time, a direct reporting process between the States and the National Training Center replaced the State training plans. FMCSA has not observed adverse effects on inspector training because of the direct reporting process. FMCSA will include information in the annual MCSAP application announcement indicating how a State may report its training plan to the National Training Center if the State wishes to do so.

Section 350.219 How are MCSAP funds awarded under a continuing resolution or an extension of FMCSA's authorization?

Comment: Section 350.219 clarifies the grant funding distribution process the Administrator may use in the event

of an extension of FMCSA's authorization or a continuing resolution impacting the Agency's budget. CVSA stated that it does not object to the proposed approach, but requested that FMCSA add a specific authority citation for clarity. CVSA also requested examples of when and how FMCSA applied this authority in the past.

Response: Adding a specific authority citation to § 350.219 would not clarify the distribution process the Administrator may use in the event of an extension of the Agency's authorization or during a period the Agency operates under a continuing resolution. As stated in the NPRM, the Administrator's discretion to distribute funds in such situations is found generally in 49 U.S.C. 31102. Section 31102 authorizes the Secretary to administer MCSAP. The Secretary's authority is delegated to FMCSA's Administrator in 49 CFR 1.87(f).

VII. 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.

VIII. Section-by-Section Analysis

Unless explicitly set forth below, FMCSA adopts the sections as proposed in the August 22, 2019 NPRM. The Agency makes some revisions in response to comments and to correct regulatory language not aligned with its underlying statutory authority. Otherwise, the final rule makes only minor editorial and grammatical changes to improve clarity or readability, use consistent phrases, conform style, or correct typographical errors.

A. Subpart A—General

Subpart A provides a general overview and defines the terms used in part 350, applicable to both MCSAP and the High Priority Program.

§ 350.101 What is the purpose of this part?

FMCSA adopts § 350.101 as proposed.

§ 350.103 When do the financial assistance program changes take effect?

The Agency revises § 350.103 to provide that the changes to the financial assistance programs take effect for FY 2021, which begins on October 1, 2020, rather than for FY 2020 as proposed. This change accounts for the timing of the issuance of this rule, which is too late to allow for use of the new MCSAP formula in time for FY 2020 grants. FMCSA removes the qualifier ''[u]nless otherwise provided'' because there are now no effective dates other than October 1, 2020 provided in part 350. FMCSA adds ''financial assistance funds and beyond'' at the end of the section to clarify that the changes will continue in effect for financial assistance funds awarded in subsequent fiscal years.

§ 350.105 What definitions are used in this part?

The Agency adds a sentence in the introductory paragraph to remind readers that terms used in part 350 but not defined in § 350.105 are subject to the definitions in 49 CFR part 390.

With the exceptions discussed below, FMCSA adopts the definitions as proposed with only minor editorial changes.

FMCSA revises the definition of ''compatible or compatibility'' to align with and incorporate the standard in 49 U.S.C. 31141(c) regarding when a State may enforce a law, regulation, standard, or order on CMV safety that is in addition to or more stringent than the FMCSRs. In paragraph (1) pertaining to interstate commerce not involving hazardous materials, the standard of paragraph (1) of proposed § 350.105 becomes subparagraph (i). New subparagraph (ii) addresses State provisions that are in addition to or more stringent than the FMCSRs. When read together, the definition defines these particular State provisions as compatible with the FMCSRs when (1) they are identical to or have the same effect as the FMCSRs, or (2) if in addition to or more stringent than the FMCSRs, they have a safety benefit, do not unreasonably frustrate the Federal goal of uniformity, and do not cause an unreasonable burden on interstate commerce when enforced. In paragraph (2)(ii) pertaining to intrastate commerce not involving hazardous materials, FMCSA removes and replaces ''subpart C of this part'' with ''§ 350.305 or § 350.307'' to more specifically identify the sections addressing intrastate variances. The Agency adds language in paragraphs (1) and (2) to clarify that the standards apply only to commerce ''not involving the movement of hazardous materials.'' Paragraph (3) remains as proposed.

As explained above, the Agency changes the definition of ''North American Standard Inspection'' to continue use of the definition in existing § 350.105. The definition reads: ''*North American Standard Inspection* means the methodology used by State CMV safety inspectors to conduct safety inspections of CMVs. This consists of various levels of inspection of the vehicle or driver or both. The inspection criteria are developed by FMCSA in conjunction with the Commercial Vehicle Safety Alliance (CVSA), which is an association of States, Canadian Provinces, and Mexico whose members agree to adopt these standards for inspecting CMVs in their jurisdiction.''

In the definition of ''State,'' FMCSA adds the phrase ''unless otherwise specified in this part'' to emphasize that ''State'' is defined differently in some sections.

B. Subpart B—MCSAP Administration

Subpart B provides an overview of MCSAP only. FMCSA revises the title to use the defined acronym for the Motor Carrier Safety Assistance Program.

§ 350.201 What is MCSAP?

In § 350.201(b), the Agency changes the paragraph title to ''MCSAP purpose'' to reflect, as explained above, that this section is a restatement of existing § 350.103 about the purpose of part 350, which restates the goals of MCSAP in 49 U.S.C. 31102(b). In addition, FMCSA replaces the phrase ''MCSAP requires States to'' with a slightly modified version of the introductory paragraph in current § 350.103 regarding the purposes of part 350, to correct the unintentional appearance of imposing new requirements on States to receive MCSAP funds. The introductory language reads: ''The purpose of MCSAP is to ensure FMCSA and States, local government agencies, other political jurisdictions, Federally-recognized Indian Tribes, and other organizations and persons work in partnership to establish programs to improve motor carrier, CMV, and driver safety to support a safe and efficient transportation system by—.'' The Agency also makes conforming grammatical changes. Finally, FMCSA removes the phrases ''consistent with Federal requirements'' and ''regulations and practices'' from proposed paragraph (b)(3) and uses the defined term ''compatible'' and the phrase ''laws, regulations, standards, and orders'' to ensure consistent use of defined terms and phrases in part 350. Paragraph (b)(3) reads: ''Adopting and enforcing effective and compatible (as defined in § 350.105 of this part) motor carrier, CMV, and driver safety laws, regulations, standards, and orders.''

§ 350.203 What are the national MCSAP elements?

FMCSA adopts § 350.203 as proposed.

§ 350.205 What entities are eligible for funding under MCSAP?

FMCSA adopts § 350.205 as proposed.

§ 350.207 What conditions must a State meet to qualify for MCSAP funds?

In § 350.207(a)(2), the Agency adds a cross reference to § 350.105 for the definition of ''compatible.'' In § 350.207(a)(6), FMCSA clarifies that the Lead State Agency must give satisfactory assurances in the CVSP that the Lead State Agency ''and any subrecipient of MCSAP funds'' has the legal authority, resources, and qualified personnel necessary to enforce compatible laws, regulations, standards, and orders on CMV safety, consistent with current MCSAP requirements. As explained above, FMCSA also adds language in paragraph (a)(6) to clarify that only MCSAP-funded personnel certified in accordance with 49 CFR part 385, subpart C, may perform inspections, audits, and investigations. In § 350.207(a)(28), the Agency clarifies that a State's requirement with respect to hazardous materials safety permits is limited to verifying possession of the permit when required while conducting vehicle inspections and investigations, as applicable.

§ 350.209 How and when does a State apply for MCSAP funds using a CVSP?

FMCSA changes the words ''MCSAP application memorandum'' to ''MCSAP application announcement'' in § 350.209(b).

§ 350.211 What must a State include for the first year of the CVSP?

FMCSA changes the beginning of several paragraphs from ''The first year of the CVSP . . .'' to ''For the first year of the CVSP, . . .'', with conforming changes to the sentences, for consistency across the sections. In § 350.211(a)(1) and (k), the Agency changes the words ''MCSAP application memorandum'' to ''MCSAP application announcement.'' In § 350.211(i)(1)(ii), FMCSA changes the phrase ''the State maintains required compatibility'' to ''State laws, regulations, standards, and orders on CMV safety are compatible (as defined in § 350.105 of this part)'' to have consistent terminology with § 350.213(e)(1)(ii). Finally, in paragraph (j), the Agency changes the phrase ''that was enacted by the State since the last CVSP or annual update was submitted'' to ''that was enacted by the State since the prior year's submission'' to use consistent terminology in the sections and avoid confusion.

§ 350.213 What must a State include for the second and third years of the CVSP?

In § 350.213(a), FMCSA changes ''a State must submit'' to ''a Lead State Agency must submit'' to use consistent terminology in the sections. In § 350.213(a) and (g), the Agency changes the words ''MCSAP application memorandum'' to ''MCSAP application announcement.'' The Agency changes the words ''prior year's CVSP'' in paragraph (a) and ''last CVSP or annual update was submitted'' in paragraph (f) to ''prior year's submission'' to use consistent terminology in the sections and avoid confusion. In § 350.213(e)(1)(ii), FMCSA adds a cross reference to § 350.105 for the definition of ''compatible.''

§ 350.215 What response does a State receive to its CVSP?

FMCSA changes the section title for clarity. In § 350.215(a)(1)(ii)(B), the Agency adds a cross reference to § 350.105 for the definition of ''compatible.'' Also, some of the regulatory text detailing the Agency response to the annual update submission was inadvertently left out of paragraph (b)(1). FMCSA adds the phrase ''because the annual update'' as a lead-in to new paragraphs (A) and (B) in § 350.215(b)(1)(ii), which features the same language as in § 350.215(a)(1)(ii) related to the Agency response for the first year of the CVSP.

§ 350.217 How are MCSAP funds allocated?

In § 350.217(e), the Agency makes minor edits to clarify how the hold-harmless provision and funding cap are calculated. FMCSA adds the quoted language to paragraph (1) to clarify that the dollar amounts calculated under paragraphs (c)(6) and (d)(5) of § 350.217 will be totaled ''for each State'' and then divided by the total MCSAP funds ''available for allocation under paragraphs (c) and (d) of this section'' to determine a State's percentage of the total MCSAP funds. In paragraph (2), the Agency changes the location of the word ''total'' at the beginning of the paragraph so the text reads ''percentage of total MCSAP funding.'' FMCSA also clarifies that the total MCSAP funding in the prior year does not include amounts allocated to American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the Virgin Islands. In paragraph (3), the Agency adds a cross reference to clarify the State's percentage of MCSAP funds allocated for the prior fiscal year is ''as calculated under paragraph (e)(2) of this section.''

§ 350.219 How are MCSAP funds awarded under a continuing resolution or an extension of FMCSA's authorization?

In § 350.219, FMCSA deletes the words ''appropriations act'' after ''continuing resolution'' in the title and introductory clause of the section.

§ 350.221 How long are MCSAP funds available to a State?

FMCSA adopts § 350.221 as proposed.

§ 350.223 What are the Federal and State shares of costs incurred under MCSAP?

FMCSA changes the words ''FMCSA policy'' to ''the MCSAP application announcement'' in § 350.223(b)(1) and (2) to clarify where States can find eligible costs. FMCSA also changes the words ''MCSAP application memorandum'' to ''MCSAP application announcement'' in § 350.223(c)(2)(i).

§ 350.225 What MOE must a State maintain to qualify for MCSAP funds?

In the introductory paragraph of § 350.225(a), FMCSA deletes the phrase ''equal to the average aggregate expenditure of the Lead State Agency'' because it is redundant. Section 350.225 reflects, in paragraphs (a)(2) and (e), that the grants issued for FY 2021 will be the first year of grants using the new MCSAP allocation formula. Paragraph (b)(5) now includes a cross reference to § 350.223 to further clarify that the MOE calculation excludes a State's matching funds. Paragraph (c) now includes clarifying language regarding eligible costs for the calculation of the MOE and expenditures under the current MOE.

§ 350.227 What activities are eligible for reimbursement under MCSAP?

In § 350.227(c), FMCSA separates the introductory paragraph into paragraph (1) to provide the provisions for State traffic laws and regulations relating to CMVs and a paragraph (2) for those provisions relating to non-CMVs, to clarify that the qualifications for reimbursement of traffic enforcement activities apply only to enforcement of laws and regulations relating to non-CMVs. In doing so, FMCSA moves the phrase ''when necessary to promote the safe operation of CMVs'' to a new paragraph (c)(2)(i) to further clarify that it is a qualification for reimbursement. The Agency redesignates the following paragraphs accordingly. With the addition of the new paragraph (c)(2)(i), FMCSA deletes the redundant phrase

''when necessary to promote the safe operation of CMVs'' in paragraph (c)(2)(iii).

§ 350.229 What specific costs are eligible for reimbursement under MCSAP?

In § 350.229(a), FMCSA deletes the words ''FMCSA policy,'' changes the words ''MCSAP application memorandum'' to ''MCSAP application announcement,'' and clarifies where States can find eligible costs. In paragraph (b), FMCSA changes the words ''MCSAP application memorandum'' to ''MCSAP application announcement.''

§ 350.231 What are the consequences for failure to meet MCSAP conditions?

FMCSA adopts § 350.231 as proposed.

C. Subpart C—MCSAP-Required Compatibility Review

Subpart C includes information related to the MCSAP-required compatibility review and variances for intrastate commerce available to States participating in MCSAP.

§ 350.301 What is the purpose of this subpart?

In the introductory paragraph, FMCSA adds a cross reference to § 350.105 for the definition of ''compatibility.''

§ 350.303 How does a State ensure compatibility?

In § 350.303(a), FMCSA adds a cross reference to § 350.105 for the definition of ''compatibility.'' FMCSA revises paragraph (d) to conform to that definition in substance and organization by setting forth the standards applicable to each type of commerce in separate paragraphs, and to use the terms ''compatible'' and ''compatibility'' consistently. FMCSA moves proposed paragraph (d)(2)(i) to paragraph (d)(1) with minor edits. The Agency specifies that the State must determine whether its laws, regulations, standards, and orders are identical to or have the same effect as, are in addition to or more stringent than, or are less stringent than the FMCSRs, or are identical to the HMRs. FMCSA removes the words ''corresponding provision of'' and ''provisions of,'' as they are unnecessary.

In paragraph (d)(2), FMCSA adds an introductory clause providing that the paragraph applies to interstate commerce not involving the movement of hazardous materials. To align the regulations with the underlying statutory authority as mentioned above, the Agency revises and renumbers proposed paragraphs (d)(2)(ii) through (d)(2)(iv) as paragraphs (d)(2)(i) through (d)(2)(iii) to address the enforceability of State provisions that are identical to or have the same effect as, are in addition to or more stringent than, and are less stringent than the FMCSRs, each in its own separate paragraph. In paragraph (d)(2)(ii) (relating to State provisions that are in addition to or more stringent than the FMCSRs), FMCSA changes the language from ''[i]t is compatible with the FMCSRs'' to ''does not unreasonably frustrate the Federal goal of uniformity.'' In paragraph (d)(2)(iii) (relating to State provisions that are less stringent than the FMCSRs), the Agency removes the proposed language providing ''unless it falls within the provisions of §§ 350.305 or 350.307'' and moves it to paragraph (d)(3)(ii) because it is only applicable to intrastate commerce not involving the movement of hazardous materials.

The Agency adds paragraph (d)(3) to create a separate paragraph that addresses State provisions applicable to intrastate commerce not involving hazardous materials to conform to the definition and organization of ''compatible'' in § 350.105. In the new paragraph, FMCSA separates into paragraphs (d)(3)(i) and (d)(3)(ii) the standard for State provisions that are identical to or have the same effect as the FMCSRs and the standard for those that differ from the FMCSRs, respectively. The Agency redesignates the following subparagraphs in paragraph (d) accordingly.

Paragraph (d)(4) provides the standard applicable to interstate and intrastate commerce involving the movement of hazardous materials.

Finally, in paragraph (g)(3), the Agency changes the words ''State or person'' to ''petitioner'' for clarity.

§ 350.305 What specific variances from the FMCSRs are allowed for State laws and regulations applicable to intrastate commerce and are not subject to Federal jurisdiction?

FMCSA revises the title of this section to improve readability and emphasize that variances are only available for State provisions applicable to intrastate commerce. Otherwise, FMCSA adopts § 350.305 as proposed with only minor editorial changes.

§ 350.307 How may a State obtain a new exemption for State laws or regulations for a specific industry involved in intrastate commerce?

FMCSA revises the title of this section to improve readability. Otherwise, FMCSA adopts § 350.307 as proposed with only minor editorial changes.

§ 350.309 What are the consequences if a State has provisions that are not compatible?

In § 350.309(a), FMCSA adds a cross reference to § 350.105 for the definition of ''compatible.''

D. Subpart D—High Priority Program

Subpart D describes the High Priority Program.

§ 350.401 What is the High Priority Program and what entities are eligible for funding under the High Priority Program?

FMCSA adds to the section title ''and what entities are eligible for funding under the High Priority Program'' to indicate the section also identifies the eligible entities. Otherwise, FMCSA adopts § 350.401 as proposed with only a minor editorial change.

§ 350.403 What are the High Priority Program objectives?

In § 350.403(e) and (f), FMCSA deletes the phrase ''safety data improvement projects'' to align with the authorizing statute. Section 350.403(g) already includes ''safety data improvement projects;'' accordingly, inclusion of the phrase in § 350.403(e) and (f) is duplicative and confusing for the reader.

In § 350.403(h), FMCSA adds the phrase ''by States'' to clarify that Innovative Technology Deployment funds only may be given to States, in accordance with the authorizing statute. In paragraph (i), FMCSA changes the conjunction ''and'' to ''or'' to clarify a High Priority Program project only needs to include one, not all, of the objectives.

§ 350.405 What conditions must an applicant meet to qualify for High Priority Program funds?

FMCSA reorganizes § 350.405 so the High Priority Program eligibility requirements for funds related to motor carrier safety activities for States are in paragraph (a)(1) and applicants other than States are in paragraph (a)(2). Conforming changes are made to the numbering of the paragraphs. In paragraph (b), FMCSA adds the eligibility requirements States must satisfy to qualify for High Priority Program funds for Innovative Technology Deployment activities set forth at 49 U.S.C. 31102(l)(3)(C). FMCSA believes it will be more convenient for applicants to have all the eligibility requirements for High Priority Program funds in one location and to know them prior to the availability of the NOFO.

§ 350.407 How and when does an eligible entity apply for High Priority Program funds?

FMCSA adds a sentence to clarify when an entity must apply for High Priority Program funds.

§ 350.409 What response will an applicant receive under the High Priority Program?

FMCSA adopts § 350.409 as proposed.

§ 350.411 How long are High Priority Program funds available to a recipient?

FMCSA revises the paragraph titles to correspond to § 350.405. Otherwise, FMCSA adopts § 350.411 as proposed with only minor editorial changes.

§ 350.413 What are the Federal and recipient shares of costs incurred under the High Priority Program?

In § 350.413(b), FMCSA removes the word ''policy'' and replaces it with the words ''in the NOFO'' to clarify where entities can find eligible costs.

§ 350.415 What types of activities and projects are eligible for reimbursement under the High Priority Program?

FMCSA adopts § 350.415 as proposed.

§ 350.417 What specific costs are eligible for reimbursement under the High Priority Program?

FMCSA adopts § 350.417 as proposed.

E. Miscellaneous

FMCSA removes and reserves part 355 of title 49 of the CFR (Compatibility of State Laws and Regulations Affecting Interstate Motor Carrier Operations) as proposed. FMCSA also removes and reserves part 388 (Cooperative Agreements with States) as proposed.

X. Regulatory Analyses

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulations

The Office of Information and Regulatory Affairs determined that this final rule is not a significant regulatory action under section 3(f) of E.O. 12866, Regulatory Planning and Review (58 FR 51735, Oct. 4, 1993), as supplemented by E.O. 13563, Improving Regulation and Regulatory Review (76 FR 3821, Jan. 21, 2011), and does not require an assessment of potential costs and benefits under section 6(a)(3) of E.O. 12866. Accordingly, the Office of Management and Budget (OMB) has not reviewed it under that Order. In addition, this rule is not significant within the meaning of DOT regulations (84 FR 71714, Dec. 27, 2019).

The purpose of the rule is to amend and reorganize 49 CFR part 350, including adding relevant sections that are currently located in part 355. Certain regulations are no longer necessary or are redundant. Moreover, the FAST Act requires FMCSA to implement a multi-year CVSP with annual updates for States applying for MCSAP funds and to provide a new MCSAP allocation formula. The new MCSAP formula helps the Federal Government operate more efficiently by establishing a reallocation of grant funds based on changes in safety factors. The new formula reallocates FY 2021 grant funding, but does not change the total amount of funds distributed. States are the only affected entities of this rule.

The new MCSAP allocation formula replaces the current formula that has been in use for more than a decade with little modification and makes several improvements over the current formula. The basis of the new formula is a careful statistical analysis of the relationship between numerous highway safety variables, crashes, and fatalities. While this analysis revealed that several of the existing formula factors (*e.g.,* special fuel consumption and population) remain highly correlated with crashes, newer data are available to more closely link the allocation of funding to safety risk.

The formula discontinues the use of Incentive Funds. Instead, the formula allocates funds primarily based on the calculation of the applicable highway and safety factors. Mitigation measures ensure that State funding levels do not fluctuate substantially from year to year. Specifically, subject to the availability of funding, a State would not have a decrease of more than 3 percent, or an increase of more than 5 percent, compared to its share of the formula grant calculation in the previous year.[4] This provides the State a degree of predictability to aid in budget planning, while still allowing for fair allocation of funds based on changes in safety factors.

The new MCSAP formula results in a reallocation of grant funding but will not change the total amount of funds distributed and will not impose or reduce any costs associated with the program.

FMCSA clarifies that it is a State's obligation to cooperate in the enforcement of hazardous materials safety permits for interstate and intrastate carriers as required under subpart E of 49 CFR part 385. The rule requires States to verify possession of the permit when required while conducting vehicle inspections and investigations. State officials already receive training on subpart E of part 385; therefore, FMCSA estimates that no new costs or benefits result from this clarification.

The rule requires States to use CVSPs in accordance with the FAST Act. The rule provides direction to States on how and when to submit CVSPs, which are on 3-year cycles. Under the current regulations, States must submit lengthy annual CVSP applications to receive MCSAP funding. This rule requires States to submit robust 3-year CVSP applications for the first year, with annual updates for the second and third years, resulting in a decrease in costs, or a cost savings, for States and FMCSA. Specifically, for the first year of the CVSP, States submit information regarding performance goals, past performance, and other documents traditionally provided in an annual CVSP. For the second and third years of the CVSP, States submit an annual update that includes a budget for the applicable fiscal year, changes to the CVSP, and other documents required on an annual basis. In response to comments from CVSA, these changes are implemented for FY 2021 and not FY 2020 grant funds, as proposed. This adjustment is to account for the timing of this final rule.

The rule eliminates the exception to adopt §§ 171.15 and 171.16 in the HMRs by States participating in MCSAP. These provisions require reporting of certain hazardous materials incidents. This rule allows States to ensure compliance with these provisions during the course of investigations, but does not require States to conduct investigations. Additionally, eliminating the exception does not expand the incident reporting burden. State officials already receive investigation training, which includes training on enforcement of §§ 171.15 and 171.16. Therefore, FMCSA estimates that no new costs or benefits result from this exception elimination.

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

[4] In this respect, the States, the District of Columbia, and the Commonwealth of Puerto Rico are treated differently than the remaining Territories. The U.S. Census Bureau does not provide annual population estimates for Territories other than the Commonwealth of Puerto Rico. Thus, these percentage limitations governing funding levels do not apply to these Territories.

subject to the ''2 for 1'' and budgeting requirements.[5]

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).[6]

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857 (Mar. 29, 1996), note following 5 U.S.C. 601), requires Federal agencies to consider the impact of their regulatory proposals on small entities, analyze effective alternatives that minimize small entity impacts, and make their analyses available for public comment. The term ''small entities'' means 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 under 50,000 (5 U.S.C. 601(6)). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

This rule primarily affects States applying for MCSAP funds due to the new MCSAP allocation formula governing distribution of MCSAP funds and the requirement to submit CVSPs on a 3-year cycle. States are not small entities because they do not meet the definition of a small entity in section 601 of the RFA. Specifically, States are not small governmental jurisdictions under section 601(5) of the RFA, both because State government is not among the various levels of government listed in section 601(5), and because, even if this were the case, no State, including the District of Columbia and the 5 Territories, has a population of less than 50,000, which is the criterion to be a small governmental jurisdiction under section 601(5) of the RFA.

Although States would not be small entities, there is a possibility that other entities that may be grant program applicants could be small entities. These other entities include local governments, Federally-recognized Indian Tribes, other political jurisdictions, universities, non-profit organizations, and other persons who, although not eligible for MCSAP funds, which are designated for States, would be eligible for funding under the High Priority Program. However, the impact of the rule results from changes to MCSAP, which do not affect the High Priority Program applicants. As such, FMCSA has determined that these non-State entities would not experience economic impacts as a result of the rule.

In summary, this rule only impacts States, including the District of Columbia and the 5 Territories, which are not small entities. The rule thus does not have a significant economic impact on the regulated entities, and does not significantly impact a substantial number of small entities. Accordingly, I certify that the action does 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 final rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the final rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the FMCSA point of contact, Mr. Jack Kostelnik, listed in the **FOR FURTHER INFORMATION CONTACT** section of this final 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.

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. In particular, 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 of $100 million in 1995, adjusted for inflation to 2018 levels) or more in any 1 year. Though this final rule will not result in such an expenditure, the Agency does discuss the effects of this rule elsewhere in this preamble.

G. Paperwork Reduction Act

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The Agency notes that MCSAP applications are not subject to OMB's standard application requirements pursuant to 2 CFR 1201.206. Entities apply for the Agency's other financial assistance programs using standardized forms found in *grants.gov*, which account for any information collection burden and are not impacted by this rule.

H. E.O. 13132 (Federalism)

A rule has implications for federalism under section 1(a) of E.O. 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 determined that this rule does not have substantial direct costs on or for States, nor would 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

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005 (Pub. L. 108–447, 118 Stat. 2809, 3268 (Dec. 8, 2004), note following 5 U.S.C. 552a), requires the Agency to conduct a privacy impact assessment of a regulation that will affect the privacy of individuals. The assessment considers impacts of the rule on the privacy of information in an identifiable form and related matters. The FMCSA Privacy Officer has evaluated the risks

[5] Executive Office of the President. *Executive Order 13771 of January 30, 2017. Reducing Regulation and Controlling Regulatory Costs.* 82 FR 9339–9341. February 3, 2017.

[6] A ''major rule'' means any rule that the Administrator of the Office of Information and Regulatory Affairs at OMB 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)).

and effects the rulemaking might have on collecting, storing, and sharing personally identifiable information and has evaluated protections and alternative information handling processes in developing the rule to mitigate potential privacy risks. FMCSA determined that this rule does not require the collection of individual personally identifiable information.

Additionally, the Agency submitted a Privacy Threshold Assessment analyzing the rulemaking to the DOT, Office of the Secretary's Privacy Office. The DOT Privacy Office has determined that this rulemaking does not create privacy risk.

The E-Government Act of 2002 (Pub. L. 107–347, 208, 116 Stat. 2899, 2921 (Dec. 17, 2002)), requires Federal agencies to conduct a privacy impact assessment for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology would collect, maintain, or disseminate information because of this rule.

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

This 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 Environmental Policy Act of 1969

FMCSA analyzed this rule for the purpose of 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, Mar. 1, 2004), Appendix 2, paragraphs 6.f. and 6.g. The Categorical Exclusions (CEs) in paragraphs 6.f. and 6.g. cover regulations implementing activities, whether performed by FMCSA or by States pursuant to MCSAP, and procedures to promote adoption and enforcement of State laws and regulations pertaining to CMV safety that are compatible with the FMCSRs and HMRs, and procedures to provide guidelines for a continuous regulatory review of State laws and regulations. These CEs cover the requirements in this rule and the rule does not have any effect on the quality of the environment.

List of Subjects

49 CFR 350

Grant programs-transportation, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements

49 CFR 355

Highway safety, Intergovernmental relations, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements

49 CFR 388

Administrative practice and procedure, Highway safety, Motor carriers, Motor vehicle safety

In consideration of the foregoing, FMCSA amends 49 CFR chapter III as follows:

■ 1. Revise part 350 to read as follows:

PART 350—MOTOR CARRIER SAFETY ASSISTANCE PROGRAM (MCSAP) AND HIGH PRIORITY PROGRAM

Subpart A—General

Sec.
350.101 What is the purpose of this part?
350.103 When do the financial assistance program changes take effect?
350.105 What definitions are used in this part?

Subpart B—MCSAP Administration

350.201 What is MCSAP?
350.203 What are the national MCSAP elements?
350.205 What entities are eligible for funding under MCSAP?
350.207 What conditions must a State meet to qualify for MCSAP funds?
350.209 How and when does a State apply for MCSAP funds using a CVSP?
350.211 What must a State include for the first year of the CVSP?
350.213 What must a State include for the second and third years of the CVSP?
350.215 What response does a State receive to its CVSP?
350.217 How are MCSAP funds allocated?
350.219 How are MCSAP funds awarded under a continuing resolution or an extension of FMCSA's authorization?
350.221 How long are MCSAP funds available to a State?
350.223 What are the Federal and State shares of costs incurred under MCSAP?
350.225 What MOE must a State maintain to qualify for MCSAP funds?
350.227 What activities are eligible for reimbursement under MCSAP?
350.229 What specific costs are eligible for reimbursement under MCSAP?
350.231 What are the consequences for failure to meet MCSAP conditions?

Subpart C—MCSAP-Required Compatibility Review

350.301 What is the purpose of this subpart?
350.303 How does a State ensure compatibility?
350.305 What specific variances from the FMCSRs are allowed for State laws and regulations applicable to intrastate commerce and are not subject to Federal jurisdiction?
350.307 How may a State obtain a new exemption for State laws or regulations for a specific industry involved in intrastate commerce?
350.309 What are the consequences if a State has provisions that are not compatible?

Subpart D—High Priority Program

350.401 What is the High Priority Program and what entities are eligible for funding under the High Priority Program?
350.403 What are the High Priority Program objectives?
350.405 What conditions must an applicant meet to qualify for High Priority Program funds?
350.407 How and when does an eligible entity apply for High Priority Program funds?
350.409 What response will an applicant receive under the High Priority Program?
350.411 How long are High Priority Program funds available to a recipient?
350.413 What are the Federal and recipient shares of costs incurred under the High Priority Program?
350.415 What types of activities and projects are eligible for reimbursement under the High Priority Program?
350.417 What specific costs are eligible for reimbursement under the High Priority Program?

Authority: 49 U.S.C. 504, 13902, 31101, 31102, 31104, 31106, 31108, 31136, 31141, 31161, 31310, 31311, 31502; secs. 5106 and 5107, Pub. L. 114–94, 129 Stat. 1312, 1530; and 49 CFR 1.87.

Subpart A—General

§ 350.101 What is the purpose of this part?

The purpose of this part is to provide direction for entities seeking MCSAP or High Priority Program funding to improve motor carrier, CMV, and driver safety.

§ 350.103 When do the financial assistance program changes take effect?

The changes to the FMCSA financial assistance programs under this part take effect for fiscal year 2021 (beginning October 1, 2020) financial assistance funds and beyond.

§ 350.105 What definitions are used in this part?

Unless specifically defined in this section, terms used in this part are subject to the definitions in 49 CFR part 390. As used in this part:

Administrative takedown funds means funds FMCSA deducts each fiscal year from the amounts made available for MCSAP and the High Priority Program for expenses incurred by FMCSA for training State and local government employees and for the administration of the programs.

Administrator means the administrator of FMCSA.

Border State means a State that shares a land border with Canada or Mexico.

Commercial motor vehicle (CMV) means a motor vehicle that has any of the following characteristics:

(1) A gross vehicle weight (GVW), gross vehicle weight rating (GVWR), gross combination weight (GCW), or gross combination weight rating (GCWR) of 4,537 kilograms (10,001 pounds) or more.

(2) Regardless of weight, is designed or used to transport 16 or more passengers, including the driver.

(3) Regardless of weight, is used in the transportation of hazardous materials and is required to be placarded pursuant to 49 CFR part 172, subpart F.

Commercial vehicle safety plan (CVSP) means a State's CMV safety objectives, strategies, activities, and performance measures that cover a 3-year period, including the submission of the CVSP for the first year and annual updates thereto for the second and third years.

Compatible or compatibility means State laws, regulations, standards, and orders on CMV safety that:

(1) As applicable to interstate commerce not involving the movement of hazardous materials:

(i) Are identical to or have the same effect as the FMCSRs; or

(ii) If in addition to or more stringent than the FMCSRs, have a safety benefit, do not unreasonably frustrate the Federal goal of uniformity, and do not cause an unreasonable burden on interstate commerce when enforced;

(2) As applicable to intrastate commerce not involving the movement of hazardous materials:

(i) Are identical to or have the same effect as the FMCSRs; or

(ii) Fall within the limited variances from the FMCSRs allowed under § 350.305 or § 350.307; and

(3) As applicable to interstate and intrastate commerce involving the movement of hazardous materials, are identical to the HMRs.

FMCSA means the Federal Motor Carrier Safety Administration of the United States Department of Transportation.

FMCSRs means:

(1) The Federal Motor Carrier Safety Regulations under parts 390, 391, 392, 393, 395, 396, and 397 of this subchapter; and

(2) Applicable standards and orders issued under these provisions.

HMRs means:

(1) The Federal Hazardous Materials Regulations under subparts F and G of part 107, and parts 171, 172, 173, 177, 178, and 180 of this title; and

(2) Applicable standards and orders issued under these provisions.

High Priority Program funds means total funds available for the High Priority Program, less the administrative takedown funds.

Investigation means an examination of motor carrier operations and records, such as drivers' hours of service, maintenance and inspection, driver qualification, commercial driver's license requirements, financial responsibility, crashes, hazardous materials, and other safety and transportation records, to determine whether a motor carrier meets safety standards, including the safety fitness standard under § 385.5 of this subchapter, or, for intrastate motor carrier operations, the applicable State standard.

Lead state agency means the State CMV safety agency responsible for administering the CVSP throughout a State.

Maintenance of effort (MOE) means the level of a State's financial expenditures, other than the required match, the Lead State Agency is required to expend each fiscal year in accordance with § 350.225.

Motor carrier means a for-hire motor carrier or private motor carrier. The term includes a motor carrier's agents, officers, and representatives, as well as employees responsible for hiring, supervising, training, assigning, or dispatching a driver or an employee concerned with the installation, inspection, and maintenance of motor vehicle equipment or accessories.

Motor Carrier Safety Assistance Program (MCSAP) funds means total formula grant funds available for MCSAP, less the administrative takedown funds.

New entrant safety audit means the safety audit of an interstate motor carrier that is required as a condition of MCSAP eligibility under § 350.207(a)(26), and, at the State's discretion, an intrastate new entrant motor carrier under 49 U.S.C. 31144(g) that is conducted in accordance with subpart D of part 385 of this subchapter.

North American Standard Inspection means the methodology used by State CMV safety inspectors to conduct safety inspections of CMVs. This consists of various levels of inspection of the vehicle or driver or both. The inspection criteria are developed by FMCSA in conjunction with the Commercial Vehicle Safety Alliance (CVSA), which is an association of States, Canadian Provinces, and Mexico whose members agree to adopt these standards for inspecting CMVs in their jurisdiction.

State means a State of the United States, the District of Columbia, American Samoa, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands, unless otherwise specified in this part.

Traffic enforcement means the stopping of vehicles operating on highways for moving violations of State, Tribal, or local motor vehicle or traffic laws by State, Tribal, or local officials.

Subpart B—MCSAP Administration

§ 350.201 What is MCSAP?

(a) *General.* MCSAP is a Federal formula grant program that provides financial assistance to States to reduce the number and severity of crashes, and resulting injuries and fatalities, involving CMVs and to promote the safe transportation of passengers and hazardous materials. The goal of MCSAP is to reduce CMV-involved crashes, fatalities, and injuries through consistent, uniform, and effective CMV safety programs that include driver or vehicle inspections, traffic enforcement, carrier investigations, new entrant safety audits, border enforcement, safety data improvements, and Performance and Registration Information Systems Management (PRISM).

(b) *MCSAP purpose.* The purpose of MCSAP is to ensure FMCSA and States, local government agencies, other political jurisdictions, Federally-recognized Indian Tribes, and other organizations and persons work in partnership to establish programs to improve motor carrier, CMV, and driver safety to support a safe and efficient transportation system by—

(1) Making targeted investments to promote safe CMV transportation, including transportation of passengers and hazardous materials;

(2) Investing in activities likely to generate maximum reductions in the number and severity of CMV crashes and in fatalities resulting from CMV crashes;

(3) Adopting and enforcing effective and compatible (as defined in § 350.105 of this part) motor carrier, CMV, and driver safety laws, regulations, standards, and orders; and

(4) Assessing and improving State-wide performance of motor carrier, CMV, and driver safety by setting

program goals and meeting performance standards, measurements, and benchmarks.

(c) *State participation.* MCSAP sets conditions of participation for States and promotes the adoption and uniform enforcement of compatible laws, regulations, standards, and orders on CMV safety.

§ 350.203 What are the national MCSAP elements?

The national MCSAP elements are:

(a) Driver inspections;

(b) Vehicle inspections;

(c) Traffic enforcement;

(d) Investigations;

(e) New entrant safety audits;

(f) CMV safety programs focusing on international commerce in border States;

(g) Beginning October 1, 2020, full participation in PRISM or an acceptable alternative as determined by the Administrator;

(h) Accurate, complete, timely, and corrected data;

(i) Public education and awareness; and

(j) Other elements that may be prescribed by the Administrator.

§ 350.205 What entities are eligible for funding under MCSAP?

Only States are eligible to receive MCSAP grants directly from FMCSA.

§ 350.207 What conditions must a State meet to qualify for MCSAP funds?

(a) *General.* To qualify for MCSAP funds, a State must:

(1) Designate a Lead State Agency;

(2) Assume responsibility for improving motor carrier safety by adopting and enforcing compatible (as defined in § 350.105 of this part) laws, regulations, standards, and orders on CMV safety, except as may be determined by the Administrator to be inapplicable to a State enforcement program;

(3) Ensure that the State will cooperate in the enforcement of financial responsibility requirements under part 387 of this subchapter;

(4) Provide that the State will enforce the registration requirements under 49 U.S.C. 13902 and 31134 by prohibiting the operation of any vehicle discovered to be operated by a motor carrier without a registration issued under those sections or operated beyond the scope of the motor carrier's registration;

(5) Provide a right of entry (or other method a State may use that is adequate to obtain necessary information) and inspection to carry out the CVSP;

(6) Give satisfactory assurances in its CVSP that the Lead State Agency and any subrecipient of MCSAP funds have the legal authority, resources, and qualified personnel (including individuals certified in accordance with 49 CFR part 385, subpart C, to perform inspections, audits, and investigations) necessary to enforce compatible laws, regulations, standards, and orders on CMV safety;

(7) Provide satisfactory assurances that the State will undertake efforts that will emphasize and improve enforcement of State and local traffic laws and regulations on CMV safety;

(8) Give satisfactory assurances that the State will devote adequate resources to the administration of the CVSP throughout the State, including the enforcement of compatible laws, regulations, standards, and orders on CMV safety;

(9) Provide that the MOE of the Lead State Agency will be maintained each fiscal year in accordance with § 350.225;

(10) Provide that all reports required in the CVSP be available to FMCSA upon request, meet the reporting requirements, and use the forms for recordkeeping, inspections, and investigations that FMCSA prescribes;

(11) Implement performance-based activities, including deployment and maintenance of technology, to enhance the efficiency and effectiveness of CMV safety programs;

(12) Establish and dedicate sufficient resources to a program to ensure that accurate, complete, and timely motor carrier safety data are collected and reported, and to ensure the State's participation in a national motor carrier safety data correction system prescribed by FMCSA;

(13) Ensure that the Lead State Agency will coordinate the CVSP, data collection, and information systems with the State highway safety improvement program under 23 U.S.C. 148(c);

(14) Ensure participation in information technology and data systems as required by FMCSA for jurisdictions receiving MCSAP funding;

(15) Ensure that information is exchanged with other States in a timely manner;

(16) Grant maximum reciprocity for inspections conducted under the North American Standard Inspection Program through the use of a nationally accepted system that allows ready identification of previously inspected CMVs;

(17) Provide that the State will conduct comprehensive and highly visible traffic enforcement and CMV safety inspection programs in high-risk locations and corridors;

(18) Ensure that driver or vehicle inspections will be conducted at locations that are adequate to protect the safety of drivers and enforcement personnel;

(19) Except in the case of an imminent or obvious safety hazard, ensure that an inspection of a vehicle transporting passengers for a motor carrier of passengers is conducted at a bus station, terminal, border crossing, maintenance facility, destination, or other location where a motor carrier may make a planned stop (excluding a weigh station);

(20) Provide satisfactory assurances that the State will address activities in support of the national program elements listed in § 350.203, including activities:

(i) Aimed at removing impaired CMV drivers from the highways through adequate enforcement of regulations on the use of alcohol and controlled substances and by ensuring ready roadside access to alcohol detection and measuring equipment;

(ii) Aimed at providing training to MCSAP personnel to recognize drivers impaired by alcohol or controlled substances; and

(iii) Related to criminal interdiction, including human trafficking, when conducted with an appropriate CMV inspection and appropriate strategies for carrying out those interdiction activities, including interdiction activities that affect the transportation of controlled substances (as defined in section 102 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. 802) and listed in 21 CFR part 1308) by any occupant of a CMV;

(21) Ensure that detection of criminal activities and size and weight activities described in § 350.227(b), if financed through MCSAP funds, will not diminish the effectiveness of the development and implementation of the programs to improve motor carrier, CMV, and driver safety;

(22) Ensure consistent, effective, and reasonable sanctions;

(23) Provide that the State will include in the training manuals for the licensing examinations to drive a CMV and non-CMV information on best practices for driving safely in the vicinity of CMVs and non-CMVs;

(24) Require all registrants of CMVs to demonstrate their knowledge of applicable FMCSRs, HMRs, or compatible State laws, regulations, standards, and orders on CMV safety;

(25) Ensure that the State transmits to inspectors the notice of each Federal exemption granted under subpart C of part 381 of this subchapter and §§ 390.23 and 390.25 of this subchapter that relieves a person or class of persons in whole or in part from compliance

with the FMCSRs or HMRs that has been provided to the State by FMCSA and identifies the person or class of persons granted the exemption and any terms and conditions that apply to the exemption;

(26) Subject to paragraphs (b) and (c)(1) of this section, conduct new entrant safety audits of interstate and, at the State's discretion, intrastate new entrant motor carriers in accordance with subpart D of part 385 of this subchapter;

(27) Subject to paragraph (c)(2) of this section, beginning October 1, 2020, participate fully in PRISM by complying with the conditions for full participation, or receiving approval from the Administrator for an alternative approach for identifying and immobilizing a motor carrier with serious safety deficiencies in a manner that provides an equivalent level of safety;

(28) Ensure that the State will cooperate in the enforcement of hazardous materials safety permits issued under subpart E of part 385 of this subchapter by verifying possession of the permit when required while conducting vehicle inspections and investigations, as applicable; and

(29) For Border States, conduct a border CMV safety program focusing on international commerce that includes enforcement and related projects, or forfeit all funds allocated for border-related activities.

(b) *New entrant safety audits—Use of third parties.* If a State uses a third party to conduct new entrant safety audits under paragraph (a)(26) of this section, the State must verify the quality of the work and the State remains solely responsible for the management and oversight of the audits.

(c) *Territories.* (1) The new entrant safety audit requirement under paragraph (a)(26) does not apply to American Samoa, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

(2) The required PRISM participation date under paragraph (a)(27) of this section does not apply to American Samoa, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

§ 350.209 How and when does a State apply for MCSAP funds using a CVSP?

(a) *MCSAP application submission format.* (1) The CVSP is a 3-year plan.

(2) The first year of the CVSP varies by State, depending on when the State implemented the CVSP.

(3) For the first year of the CVSP, the Lead State Agency must submit a CVSP projecting programs and projects covering 3 years and a budget for the first fiscal year for which the CVSP is submitted, as explained in § 350.211.

(4) For the second and third years of the CVSP, the Lead State Agency must submit an annual update and budget for that fiscal year and any other needed adjustments or changes to the CVSP, as explained in § 350.213.

(b) *MCSAP application submission deadline.* (1) The Lead State Agency must submit the first year of the CVSP, or the annual updates, to FMCSA by the date prescribed in the MCSAP application announcement for the fiscal year.

(2) The Administrator may extend for a period not exceeding 30 days the deadline prescribed in the MCSAP application announcement for document submission for good cause.

§ 350.211 What must a State include for the first year of the CVSP?

(a) *General.* (1) For the first year of the CVSP, the Lead State Agency must submit a CVSP that complies with the MCSAP application announcement and, at a minimum, provides a performance-based program with a general overview section that includes:

(i) A statement of the Lead State Agency's goal or mission; and

(ii) A program summary of the effectiveness of prior activities in reducing CMV crashes, injuries, and fatalities and in improving driver and motor carrier safety performance.

(2) The program summary must identify and address safety or performance problems in the State.

(3) The program summary must use 12-month data periods that are consistent from year to year. This may be a calendar year, fiscal year, or any 12-month period for which the State's data is current.

(4) The program summary must show trends supported by safety and program performance data collected over several years.

(b) *National MCSAP elements.* (1) For the first year of the CVSP, the Lead State Agency must include a brief narrative describing how the State CVSP addresses the national program elements listed in § 350.203.

(2) The CVSP must address each national program element even if there are no planned activities in a program area.

(c) *Resource allocation.* For the first year of the CVSP, the Lead State Agency must explain the rationale for the State's resource allocation decisions.

(d) *Specific activities.* For the first year of the CVSP, the Lead State Agency must have a narrative section that includes a description of how the CVSP supports:

(1) Activities aimed at removing impaired CMV drivers from the highways through adequate enforcement of restrictions on the use of alcohol and controlled substances and by ensuring ready roadside access to alcohol detection and measuring equipment;

(2) Activities aimed at providing an appropriate level of training to MCSAP personnel to recognize drivers impaired by alcohol or controlled substances;

(3) Criminal interdiction activities and appropriate strategies for carrying out those interdiction activities, including human trafficking, and interdiction activities affecting the transportation of controlled substances by any occupant of a CMV; and

(4) Activities to enforce registration requirements and to cooperate in the enforcement of financial responsibility requirements under § 392.9a and part 387 of this subchapter.

(e) *Performance objectives.* For the first year of the CVSP, the Lead State Agency must include performance objectives, strategies, and activities stated in quantifiable terms, that are to be achieved through the CVSP.

(f) *Monitoring.* For the first year of the CVSP, the Lead State Agency must include a description of the State's method for ongoing monitoring of the progress of the CVSP.

(g) *Budget.* For the first year of the CVSP, the Lead State Agency must include a budget for that year that describes the expenditures for allocable costs, such as personnel and related costs, equipment purchases, printing, information systems costs, and other eligible costs consistent with § 350.229.

(h) *List of MCSAP contacts.* For the first year of the CVSP, the Lead State Agency must include a list of MCSAP contacts.

(i) *Certification.* (1) For the first year of the CVSP, the Lead State Agency must certify that it has:

(i) Met all the MCSAP conditions in § 350.207; and

(ii) Completed the annual review required by § 350.303 and determined that State laws, regulations, standards, and orders on CMV safety are compatible (as defined in § 350.105 of this part).

(2) If a State law, regulation, standard, or order on CMV safety is no longer compatible, the certifying official must explain the State's plan to address the discrepancy.

(3) A certification under this paragraph must reflect that the certifying official has authority to make the certification on behalf of the State.

(j) *New or amended laws.* For the first year of the CVSP, the Lead State Agency must submit to FMCSA a copy of any new or amended law, regulation, standard, or order on CMV safety that was enacted by the State since the prior year's submission.

(k) *Further submissions.* For the first year of the CVSP, the Lead State Agency must also submit other information required, as described in the MCSAP application announcement for that fiscal year.

§ 350.213 What must a State include for the second and third years of the CVSP?

(a) *General.* For the second and third years of the CVSP, a Lead State Agency must submit an annual update that complies with the MCSAP application announcement and, at a minimum, must include program goals, certifications, and other information revised since the prior year's submission, and the items listed in paragraphs (b) to (g) of this section.

(b) *Budget.* For the second and third years of the CVSP, the Lead State Agency must include a budget that supports the applicable fiscal year of the CVSP and describes the expenditures for allocable costs, such as personnel and related costs, equipment purchases, printing, information systems costs, and other eligible costs consistent with § 350.229.

(c) *Resource allocation.* For the second and third years of the CVSP, the Lead State Agency must explain the rationale for the State's resource allocation decisions.

(d) *List of MCSAP contacts.* For the second and third years of the CVSP, the Lead State Agency must include a list of MCSAP contacts.

(e) *Certification.* (1) For the second and third years of the CVSP, the Lead State Agency must certify that it has:

(i) Met all the MCSAP conditions in § 350.207; and

(ii) Completed the annual review required by § 350.303 and determined that State laws, regulations, standards, and orders on CMV safety are compatible (as defined in § 350.105 of this part).

(2) If a State law, regulation, standard, or order on CMV safety is no longer compatible, the certifying official must explain the State's plan to address the discrepancy.

(3) A certification under this paragraph must reflect that the certifying official has authority to make the certification on behalf of the State.

(f) *New or amended laws.* For the second and third years of the CVSP, the Lead State Agency must submit to FMCSA a copy of any new or amended law, regulation, standard, or order on CMV safety that the State enacted since the prior year's submission.

(g) *Further submissions.* For the second and third years of the CVSP, the Lead State Agency must submit other information required, as described in the MCSAP application announcement for that fiscal year.

§ 350.215 What response does a State receive to its CVSP?

(a) *First year of the CVSP.* (1) FMCSA will notify the Lead State Agency within 30 days after FMCSA begins its review of the State's first year of the CVSP, including the budget, whether FMCSA:

(i) Approves the CVSP; or

(ii) Withholds approval because the CVSP:

(A) Does not meet the requirements of this part; or

(B) Is not adequate to ensure effective enforcement of compatible (as defined in § 350.105 of this part) laws, regulations, standards, and orders on CMV safety.

(2) If FMCSA withholds approval of the CVSP, FMCSA will give the Lead State Agency a written explanation of the reasons for withholding approval and allow the Lead State Agency to modify and resubmit the CVSP for approval.

(3) The Lead State Agency will have 30 days from the date of the notice under paragraph (a)(2) of this section to modify and resubmit the CVSP.

(4) Failure to resubmit the modified CVSP may delay funding or jeopardize MCSAP eligibility.

(5) Final disapproval of a resubmitted CVSP will result in disqualification for MCSAP funding for that fiscal year.

(b) *Annual update for the second or third year of the CVSP.* (1) FMCSA will notify the Lead State Agency within 30 days after FMCSA begins its review of the State's annual update, including the budget, whether FMCSA:

(i) Approves the annual update; or

(ii) Withholds approval because the annual update:

(A) Does not meet the requirements of this part; or

(B) Is not adequate to ensure effective enforcement of compatible laws, regulations, standards, and orders on CMV safety.

(2) If FMCSA withholds approval of the annual update, FMCSA will give the Lead State Agency a written explanation of the reasons for withholding approval and allow the Lead State Agency to modify and resubmit the annual update for approval.

(3) The Lead State Agency will have 30 days from the date of the notice under paragraph (b)(2) of this section to modify and resubmit the annual update.

(4) Failure to resubmit the modified annual update may delay funding or jeopardize MCSAP eligibility.

(5) Final disapproval of a resubmitted annual update will result in disqualification for MCSAP funding for that fiscal year.

(c) *Judicial review.* Any State aggrieved by an adverse decision under this section may seek judicial review under 5 U.S.C. chapter 7.

§ 350.217 How are MCSAP funds allocated?

(a) *General.* Subject to the availability of funding, FMCSA must allocate MCSAP funds to grantees with approved CVSPs in accordance with this section.

(b) *Territories—excluding the Commonwealth of Puerto Rico.* (1) Not more than 0.49 percent of the MCSAP funds may be allocated in accordance with this paragraph among the Territories of American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the Virgin Islands.

(2) Half of the MCSAP funds available under paragraph (b)(1) of this section will be divided equally among the Territories.

(3) The remaining MCSAP funds available under paragraph (b)(1) of this section will be allocated among the Territories in a manner proportional to the Territories' populations, as reflected in the decennial census issued by the U.S. Census Bureau.

(4) The amounts calculated under paragraphs (b)(2) and (b)(3) of this section will be totaled for each Territory.

(5) The amounts calculated under paragraph (b)(4) of this section will be adjusted proportionally, based on population, to ensure that each Territory receives at least $350,000.

(c) *Border States.* (1) Not more than 11 percent of the MCSAP funds may be allocated in accordance with this paragraph among Border States that maintain a border enforcement program.

(2) The shares for each border State will be calculated based on the number of CMV crossings at each United States port of entry, as determined by the Bureau of Transportation Statistics, with each border State receiving:

(i) 1 share per 25,000 annual CMV crossings at each United States port of entry on the Mexican border, with a minimum of 8 shares for each port of entry; or

(ii) 1 share per 200,000 annual CMV crossings at each United States port of entry on the Canadian border, with a minimum of 0.25 share for each port of entry with more than 1,000 annual CMV crossings.

(3) The shares of all Border States calculated under paragraph (c)(2) of this section will be totaled.

(4) Each individual border State's shares calculated under paragraph (c)(2) of this section will be divided by the total shares calculated in paragraph (c)(3) of this section.

(5) The percentages calculated in paragraph (c)(4) of this section will be adjusted proportionally to ensure that each Border State receives at least 0.075 percent but no more than 55 percent of the total border allocation available under paragraph (c)(1) of this section.

(6) Each Border State's percentage calculated in paragraph (c)(5) of this section will be multiplied by the total border allocation available under this paragraph to determine the dollar amount of the border State's allocation.

(7) To maintain eligibility for an allocation under this paragraph, a Border State must maintain a border enforcement program, but may expend more or less than the amounts allocated under this paragraph for border activities. Failure to maintain a border enforcement program will result in forfeiture of all funds allocated under this paragraph, but will not affect the Border State's allocation under paragraph (d) of this section.

(8) Allocations made under this paragraph are in addition to allocations made under paragraph (d) of this section.

(d) *States—including the Commonwealth of Puerto Rico.* (1)(i) At least 88.51 percent of the MCSAP funds must be allocated in accordance with this paragraph (d)(1)(i) among the eligible States, including the Commonwealth of Puerto Rico, but excluding American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the Virgin Islands.

(ii) The amounts made available under paragraphs (b) and (c) of this section that are not allocated under those paragraphs must be added to the total amount to be allocated in accordance with this paragraph.

(iii) In the case of reallocation of funds under paragraph (c) of this section by a border State that no longer maintains a border enforcement program, no portion of the reallocated funds will be allocated to that border State.

(2) The amount available under paragraph (d)(1) of this section will be calculated based on each State's percentage of the national total for each of the following equally-weighted factors:

(i) National Highway System Road Length Miles, as reported by the Federal Highway Administration (FHWA);

(ii) All Vehicle Miles Traveled, as reported by the FHWA;

(iii) Population (annual census estimates), as issued by the U.S. Census Bureau;

(iv) Special Fuel Consumption, as reported by the FHWA; and

(v) Carrier Registrations, as determined by FMCSA, based on the physical State of the carrier, and calculated as the sum of interstate carriers and intrastate hazardous materials carriers.

(3) Each State's percentages calculated in paragraph (d)(2) of this section will be averaged.

(4) The percentage calculated in paragraph (d)(3) of this section will be adjusted proportionally to ensure that each State receives at least 0.44 percent but no more than 4.944 percent of the MCSAP funds available under paragraph (d)(1) of this section.

(5) Each State's percentage will be multiplied by the total MCSAP funds available under this paragraph to determine the dollar amount of the State's allocation.

(e) *Hold-harmless provision and funding cap.* (1) The dollar amounts calculated under paragraphs (c)(6) and (d)(5) of this section will be totaled for each State and then divided by the total MCSAP funds available for allocation under paragraphs (c) and (d) of this section to determine a State's percentage of the total MCSAP funds.

(2) Each State's percentage of total MCSAP funding in the fiscal year immediately prior to the year for which funding is being allocated will be determined by dividing the State's dollar allocation by the total MCSAP funding in that prior year, excluding funds allocated to the Territories of American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the Virgin Islands.

(3) Proportional adjustments will be made to ensure that each State's percentage of MCSAP funds as calculated under paragraph (e)(1) of this section will be no less than 97 percent or more than 105 percent of the State's percentage of MCSAP funds allocated for the prior fiscal year as calculated under paragraph (e)(2) of this section.

(f) *Withholding.* (1) Allocations made under this section are subject to withholdings under § 350.231(d).

(2) Minimum or maximum allocations described in paragraphs (b), (c), and (d) of this section are to be applied prior to any reduction under § 350.231(d).

(3) State MCSAP funds affected by § 350.231(d) will be allocated to the unaffected States in accordance with paragraph (d) of this section.

(4) Paragraph (e) of this section does not apply after any reduction under § 350.231(d).

§ 350.219 How are MCSAP funds awarded under a continuing resolution or an extension of FMCSA's authorization?

In the event of a continuing resolution or an extension of FMCSA's authorization, subject to the availability of funding, FMCSA may first issue grants to States that have the lowest percent of undelivered obligations of the previous Federal fiscal year's funding, or as otherwise determined by the Administrator.

§ 350.221 How long are MCSAP funds available to a State?

MCSAP funds obligated to a State will remain available for the Federal fiscal year that the funds are obligated and the next full Federal fiscal year.

§ 350.223 What are the Federal and State shares of costs incurred under MCSAP?

(a) *Federal share.* FMCSA will reimburse at least 85 percent of the eligible costs incurred under MCSAP.

(b) *Match.* (1) In-kind contributions are acceptable in meeting a State's matching share under MCSAP if they represent eligible costs, as established by 2 CFR parts 200 and 1201 and the MCSAP application announcement.

(2) States may use amounts generated under the Unified Carrier Registration Agreement as part of the State's match required for MCSAP, provided the amounts are not applied to the MOE required under § 350.225 and are spent on eligible costs, as established by 2 CFR parts 200 and 1201 and the MCSAP application announcement.

(c) *Waiver.* (1) The Administrator waives the requirement for the matching share under MCSAP for American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the Virgin Islands.

(2) The Administrator reserves the right to reduce or waive the matching share under MCSAP for other States in any fiscal year:

(i) As announced in the MCSAP application announcement; or

(ii) As determined by the Administrator on a case-by-case basis.

§ 350.225 What MOE must a State maintain to qualify for MCSAP funds?

(a) *General.* Subject to paragraph (e) of this section, a State must maintain an MOE each fiscal year for CMV safety programs eligible for funding under this part at a level at least equal to:

(1) The average level of that expenditure for the base period of fiscal years 2004 and 2005; or

(2) The level of expenditure in fiscal year 2021, as adjusted under section

5107 of the Fixing America's Surface Transportation (FAST) Act (Pub. L. 114–94, 129 Stat. 1312, 1532–34 (2015)).

(b) *Calculation.* In determining a State's MOE, FMCSA:

(1) May allow the State to exclude State expenditures for Federally-sponsored demonstration and pilot CMV safety programs and strike forces;

(2) May allow the State to exclude expenditures for activities related to border enforcement and new entrant safety audits;

(3) May allow the State to use amounts generated under the Unified Carrier Registration Agreement, provided the amounts are not applied to the match required under § 350.223;

(4) Requires the State to exclude Federal funds; and

(5) Requires the State to exclude State matching funds required under § 350.223.

(c) *Costs.* (1) In calculating the MOE under paragraph (b) of this section, a State must include all eligible costs associated with activities performed during the base period by the Lead State Agency that receives funds under this part.

(2) In its annual MOE, a State must include only those activities that meet the current requirements for funding eligibility under MCSAP.

(d) *Waivers and modifications.* (1) If a State requests, FMCSA may waive or modify the State's obligation to meet its MOE for a fiscal year if FMCSA determines that the waiver or modification is reasonable, based on circumstances described by the State.

(2) Requests to waive or modify the State's obligation to meet its MOE must be submitted to FMCSA in writing.

(3) FMCSA will review the request and provide a response as soon as practicable, but no later than 120 days following receipt of the request.

(e) *Permanent adjustment.* After Federal fiscal year 2021, at the request of a State, FMCSA may make a permanent adjustment to reduce the State's MOE only if a State has new information unavailable to it during Federal fiscal year 2021.

§ 350.227 What activities are eligible for reimbursement under MCSAP?

(a) *General.* The primary activities eligible for reimbursement under MCSAP are:

(1) Activities that support the national program elements listed in § 350.203; and

(2) Sanitary food transportation inspections performed under 49 U.S.C. 5701.

(b) *Additional activities.* If part of the approved CVSP and accompanied by an appropriate North American Standard Inspection and inspection report, additional activities eligible for reimbursement are:

(1) Enforcement of CMV size and weight limitations at locations, other than fixed-weight facilities, where the weight of a CMV can significantly affect the safe operation of the vehicle, such as near steep grades or mountainous terrains, or at ports where intermodal shipping containers enter and leave the United States; and

(2) Detection of, and enforcement activities taken as a result of, criminal activity involving a CMV or any occupant of the vehicle, including the trafficking of human beings.

(c) *Traffic enforcement activities.* (1) Documented activities to enforce State traffic laws and regulations designed to promote the safe operation of CMVs are eligible for reimbursement under MCSAP.

(2) Documented activities to enforce State traffic laws and regulations relating to non-CMVs are eligible for reimbursement under MCSAP if:

(i) The documented activities are necessary to promote the safe operation of CMVs;

(ii) The number of motor carrier safety activities, including safety inspections, is maintained at a level at least equal to the average level of such activities conducted in the State in fiscal years 2004 and 2005; and

(iii) The State does not use more than 10 percent of its MCSAP funds for enforcement activities relating to non-CMVs, unless the Administrator determines that a higher percentage will result in significant increases in CMV safety.

§ 350.229 What specific costs are eligible for reimbursement under MCSAP?

(a) *General.* FMCSA must establish criteria for activities eligible for reimbursement and make those criteria available to the States in the MCSAP application announcement before the MCSAP application period.

(b) *Costs eligible for reimbursement.* All costs relating to activities eligible for reimbursement must be necessary, reasonable, allocable, and allowable under this subpart and 2 CFR parts 200 and 1201. The eligibility of specific costs for reimbursement is addressed in the MCSAP application announcement and is subject to review and approval by FMCSA.

(c) *Ineligible costs.* MCSAP funds may not be used for the:

(1) Acquisition of real property or buildings; or

(2) Development, implementation, or maintenance of a State registry of medical examiners.

§ 350.231 What are the consequences for failure to meet MCSAP conditions?

(a) *General.* (1) If a State is not performing according to an approved CVSP or not adequately meeting the conditions set forth in § 350.207, the Administrator may issue a written notice of proposed determination of nonconformity to the chief executive of the State or the official designated in the CVSP.

(2) The notice will set forth the reasons for the proposed determination.

(b) *Response.* The State has 30 days from the date of the notice to reply. The reply must address the discrepancy cited in the notice and must provide documentation as requested.

(c) *Final Agency decision.* (1) After considering the State's reply, the Administrator makes a final decision.

(2) In the event the State fails to timely reply to a notice of proposed determination of nonconformity, the notice becomes the Administrator's final determination of nonconformity.

(d) *Consequences.* Any adverse decision will result in FMCSA:

(1) Withdrawing approval of the CVSP and withholding all MCSAP funds to the State; or

(2) Finding the State in noncompliance in lieu of withdrawing approval of the CVSP and withholding:

(i) Up to 5 percent of MCSAP funds during the fiscal year that FMCSA notifies the State of its noncompliance;

(ii) Up to 10 percent of MCSAP funds for the first full fiscal year of noncompliance;

(iii) Up to 25 percent of MCSAP funds for the second full fiscal year of noncompliance; and

(iv) Up to 50 percent of MCSAP funds for the third and any subsequent full fiscal year of noncompliance.

(e) *Judicial review.* Any State aggrieved by an adverse decision under this section may seek judicial review under 5 U.S.C. chapter 7.

Subpart C—MCSAP-Required Compatibility Review

§ 350.301 What is the purpose of this subpart?

The purpose of this subpart is to assist States receiving MCSAP funds to address compatibility (as defined in § 350.105), including the availability of variances or exemptions allowed under § 350.305 or § 350.307, to:

(a) Promote adoption and enforcement of compatible laws, regulations, standards, and orders on CMV safety;

(b) Provide for a continuous review of laws, regulations, standards, and orders on CMV safety;

(c) Establish deadlines for States to achieve compatibility; and

(d) Provide States with a process for requesting variances and exemptions for intrastate commerce.

§ 350.303 How does a State ensure compatibility?

(a) *General.* The Lead State Agency is responsible for reviewing and analyzing State laws, regulations, standards, and orders on CMV safety to ensure compatibility (as defined in § 350.105 of this part).

(b) *Compatibility deadline.* As soon as practicable, but no later than 3 years after the effective date of any new addition or amendment to the FMCSRs or HMRs, the State must amend its laws, regulations, standards, and orders to ensure compatibility.

(c) *State adoption of a law, regulation, standard, or order on CMV safety.* A State must submit to FMCSA a copy of any new or amended State law, regulation, standard, or order on CMV safety immediately after its enactment or issuance and with the State's next annual compatibility review.

(d) *Annual State compatibility review.* (1) A State must conduct a review of its laws, regulations, standards, and orders on CMV safety, including those of its political subdivisions, for compatibility and report in the first year of the CVSP or annual update as part of its application for funding under § 350.209 each fiscal year. In conducting this compatibility review, the State must determine which of its laws, regulations, standards, and orders on CMV safety are identical to or have the same effect as, are in addition to or more stringent than, or are less stringent than the FMCSRs or are identical to the HMRs.

(2) As applicable to interstate commerce not involving the movement of hazardous materials:

(i) If a State satisfactorily demonstrates a law, regulation, standard, or order on CMV safety is identical to or has the same effect as the FMCSRs, the State provision is compatible and enforceable.

(ii) If a State satisfactorily demonstrates a law, regulation, standard, or order on CMV safety that is in addition to or more stringent than the FMCSRs has a safety benefit, does not unreasonably frustrate the Federal goal of uniformity, and does not cause an unreasonable burden on interstate commerce when enforced, the State provision is compatible and enforceable.

(iii) If a State law, regulation, standard, or order on CMV safety is less stringent than the FMCSRs, the State provision is not compatible and not enforceable.

(3) As applicable to intrastate commerce not involving the movement of hazardous materials:

(i) If a State satisfactorily demonstrates a law, regulation, standard, or order on CMV safety is identical to or has the same effect as the FMCSRs, the State provision is compatible and enforceable.

(ii) If a State satisfactorily demonstrates a law, regulation, standard, or order on CMV safety that is in addition to, more stringent than, or less stringent than the FMCSRs falls within a limited variance from the FMCSRs allowed under § 350.305 or § 350.307, the State provision is compatible and enforceable.

(4) As applicable to interstate and intrastate commerce involving the movement of hazardous materials, if a State satisfactorily demonstrates a law, regulation, standard, or order on CMV safety is identical to the HMRs, the State provision is compatible and enforceable.

(5) The State's laws, regulations, standards, and orders on CMV safety reviewed for the commercial driver's license compliance report are excluded from the compatibility review.

(6) Definitions of words or terms in a State's laws, regulations, standards, and orders on CMV safety must be compatible with those in the FMCSRs and HMRs.

(e) *Reporting to FMCSA.* (1) The reporting required by paragraph (d) of this section, to be submitted with the first year of the CVSP or annual update, must include:

(i) A copy of any State law, regulation, standard, or order on CMV safety that was adopted or amended since the State's last report; and

(ii) A certification that states the annual review was performed and State laws, regulations, standards, and orders on CMV safety remain compatible, and that provides the name of the individual responsible for the annual review.

(2) If State laws, regulations, standards, and orders on CMV safety are no longer compatible, the certifying official must explain the State's plan to correct the discrepancy.

(f) *FMCSA response.* Not later than 10 days after FMCSA determines that a State law, regulation, standard, or order on CMV safety is not compatible and may not be enforced, FMCSA must give written notice of the decision to the State.

(g) *Waiver of determination.* (1) A State or any person may petition the Administrator for a waiver of a decision by the Administrator that a State law, regulation, standard, or order on CMV safety is not compatible and may not be enforced.

(2) Before deciding whether to grant or deny a waiver under this paragraph, the Administrator shall give the petitioner an opportunity for a hearing on the record.

(3) If the petitioner demonstrates to the satisfaction of the Administrator that the waiver is consistent with the public interest and the safe operation of CMVs, the Administrator shall grant the waiver as expeditiously as practicable.

§ 350.305 What specific variances from the FMCSRs are allowed for State laws and regulations applicable to intrastate commerce and are not subject to Federal jurisdiction?

(a) *General.* (1) Except as otherwise provided in this section, a State may exempt a CMV from all or part of its laws or regulations applicable to intrastate commerce, if the gross vehicle weight rating, gross combination weight rating, gross vehicle weight, or gross combination weight does not equal or exceed 11,801 kilograms (26,001 pounds).

(2) A State may not exempt a CMV from laws or regulations under paragraph (a)(1) of this section if the vehicle:

(i) Transports hazardous materials requiring a placard; or

(ii) Is designed or used to transport 16 or more people, including the driver.

(b) *Non-permissible exemption—Type of business operation.* (1) Subject to paragraph (b)(2) of this section and § 350.307, State laws and regulations applicable to intrastate commerce may not grant exemptions based on the type of transportation being performed (*e.g.,* for-hire carrier, private carrier).

(2) A State may retain those exemptions from its motor carrier safety laws and regulations that were in effect before April 1988, are still in effect, and apply to specific industries operating in intrastate commerce, provided the scope of the original exemption has not been amended.

(c) *Non-permissible exemption—Distance.* (1) Subject to paragraph (c)(2) of this section, State laws and regulations applicable to intrastate commerce must not include exemptions based on the distance a motor carrier or driver operates from the work reporting location.

(2) Paragraph (c)(1) of this section does not apply to distance exemptions contained in the FMCSRs.

(d) *Hours of service.* State hours-of-service limitations applied to intrastate transportation may vary to the extent that they allow:

(1) A 12-hour driving limit, provided that a driver of a CMV is not permitted to drive after having been on duty more than 16 hours;

(2) Driving prohibitions for drivers who have been on duty 70 hours in 7 consecutive days or 80 hours in 8 consecutive days; or

(3) Extending the 100-air mile radius under § 395.1(e)(1)(i) of this subchapter to a 150-air mile radius.

(e) *Age of CMV driver.* All intrastate CMV drivers must be at least 18 years of age.

(f) *Driver physical conditions.* (1) Intrastate drivers who do not meet the physical qualification standards in § 391.41 of this subchapter may continue to be qualified to operate a CMV in intrastate commerce if:

(i) The driver was qualified under existing State law or regulation at the time the State adopted physical qualification standards consistent with the Federal standards in § 391.41 of this subchapter;

(ii) The otherwise non-qualifying medical or physical condition has not substantially worsened; and

(iii) No other non-qualifying medical or physical condition has developed.

(2) The State may adopt or continue programs granting variances to intrastate drivers with medical or physical conditions that would otherwise be non-qualifying under the State's equivalent of § 391.41 of this subchapter if the variances are based on sound medical judgment combined with appropriate performance standards ensuring no adverse effect on safety.

(3) A State that has physical qualification standards or variances continued in effect or adopted by the State under this paragraph for drivers operating CMVs in intrastate commerce has the option not to adopt laws and regulations that establish a separate registry of medical examiners trained and qualified to apply such physical qualification standards or variances.

(g) *Additional variances.* A State may apply to the Administrator for a variance from the FMCSRs not otherwise covered by this section for intrastate commerce. The variance will be granted only if the State satisfactorily demonstrates that the State law, regulation, standard, or order on CMV safety:

(1) Achieves substantially the same purpose as the similar Federal regulation;

(2) Does not apply to interstate commerce; and

(3) Is not likely to have an adverse impact on safety.

§ 350.307 How may a State obtain a new exemption for State laws or regulations for a specific industry involved in intrastate commerce?

FMCSA will only consider a State's request to exempt a specific industry from all or part of a State's laws or regulations applicable to intrastate commerce if the State submits adequate documentation containing information allowing FMCSA to evaluate:

(a) The type and scope of the industry exemption request, including the percentage of the industry it affects, number of vehicles, mileage traveled, and number of companies it involves;

(b) The type and scope of the requirement to which the exemption would apply;

(c) The safety performance of that specific industry (*e.g.,* crash frequency, rates, and comparative figures);

(d) Inspection information (*e.g.,* number of violations per inspection, and driver and vehicle out-of-service information);

(e) Other CMV safety regulations enforced by other State agencies not participating in MCSAP;

(f) The commodity the industry transports (*e.g.,* livestock or grain);

(g) Similar exemptions granted and the circumstances under which they were granted;

(h) The justification for the exemption; and

(i) Any identifiable effects on safety.

§ 350.309 What are the consequences if a State has provisions that are not compatible?

(a) *General.* To remain eligible for MCSAP funding, a State may not have in effect or enforce any State law, regulation, standard, or order on CMV safety that the Administrator finds is not compatible (as defined in § 350.105).

(b) *Process.* FMCSA may initiate a proceeding to withdraw the current CVSP approval or withhold MCSAP funds in accordance with § 350.231 if:

(1) A State enacts a law, regulation, standard, or order on CMV safety that is not compatible;

(2) A State fails to adopt a new or amended FMCSR or HMR within 3 years of its effective date; or

(3) FMCSA finds, based on its own initiative or on a petition of a State or any person, that a State law, regulation, standard, order, or enforcement practice on CMV safety, in either interstate or intrastate commerce, is not compatible.

(c) *Hazardous materials.* Any decision regarding the compatibility of a State law, regulation, standard, or order on CMV safety with the HMRs that requires an interpretation will be referred to the Pipeline and Hazardous Materials Safety Administration of the United States Department of Transportation before proceeding under § 350.231.

Subpart D—High Priority Program

§ 350.401 What is the High Priority Program and what entities are eligible for funding under the High Priority Program?

The High Priority Program is a competitive financial assistance program available to States, local governments, Federally-recognized Indian Tribes, other political jurisdictions, and other persons to carry out high priority activities and projects that augment motor carrier safety activities and projects. The High Priority Program also promotes the deployment and use of innovative technology by States for CMV information systems and networks. Under this program, the Administrator may make competitive grants to and enter into cooperative agreements with eligible entities to carry out high priority activities and projects that augment motor carrier safety activities and projects. The Administrator also may award grants to States for projects planned in accordance with the Innovative Technology Deployment Program.

§ 350.403 What are the High Priority Program objectives?

FMCSA may use the High Priority Program funds to support, enrich, or evaluate CMV safety programs and to:

(a) Target unsafe driving of CMVs and non-CMVs in areas identified as high-risk crash corridors;

(b) Improve the safe and secure movement of hazardous materials;

(c) Improve safe transportation of goods and passengers in foreign commerce;

(d) Demonstrate new technologies to improve CMV safety;

(e) Support participation in PRISM by Lead State Agencies:

(1) Before October 1, 2020, to achieve full participation in PRISM; and

(2) Beginning on October 1, 2020, or once full participation in PRISM is achieved, whichever is sooner, to conduct special initiatives or projects that exceed routine operations for participation;

(f) Support participation in PRISM by entities other than Lead State Agencies;

(g) Support safety data improvement projects conducted by:

(1) Lead State Agencies for projects that exceed MCSAP safety data requirements; or

(2) Entities other than Lead State Agencies for projects that meet or exceed MCSAP safety data requirements;

(h) Advance the technological capability and promote the Innovative Technology Deployment of intelligent transportation system applications for CMV operations by States;

(i) Increase public awareness and education on CMV safety; or

(j) Otherwise improve CMV safety.

§ 350.405 What conditions must an applicant meet to qualify for High Priority Program funds?

(a) *Motor carrier safety activities.* To qualify for High Priority Program funds related to motor carrier safety activities under § 350.403 paragraphs (a) through (g), (i), and (j):

(1) States must:

(i) Participate in MCSAP under subpart B of this part; and

(ii) Prepare a proposal that is responsive to the High Priority Program Notice of Funding Opportunity (NOFO).

(2) Applicants other than States must, to the extent applicable:

(i) Prepare a proposal that is responsive to the NOFO;

(ii) Except for Federally-recognized Indian Tribes, coordinate the proposal with the Lead State Agency to ensure the proposal is consistent with State and national CMV safety program priorities;

(iii) Certify that the applicant has the legal authority, resources, and trained and qualified personnel necessary to perform the functions specified in the proposal;

(iv) Designate an individual who will be responsible for implementing, reporting, and administering the approved proposal and who will be the primary contact for the project;

(v) Agree to prepare and submit all reports required in connection with the proposal or other conditions of the grant or cooperative agreement;

(vi) Agree to use the forms and reporting criteria required by the Lead State Agency or FMCSA to record work activities to be performed under the proposal;

(vii) Certify that a political jurisdiction will impose sanctions for violations of CMV and driver laws and regulations that are consistent with those of the State; and

(viii) Certify participation in national databases appropriate to the project.

(b) *Innovative Technology Deployment activities.* To qualify for High Priority Program funds for Innovative Technology Deployment activities under § 350.403(h), States must:

(1) Prepare a proposal that is responsive to the NOFO;

(2) Have a CMV information systems and networks program plan approved by the Administrator that describes the various systems and networks at the State level that need to be refined, revised, upgraded, or built to accomplish deployment of CMV information systems and networks capabilities;

(3) Certify to the Administrator that its CMV information systems and networks deployment activities, including hardware procurement, software and system development, and infrastructure modifications—

(i) Are consistent with the national intelligent transportation systems and CMV information systems and networks architectures and available standards; and

(ii) Promote interoperability and efficiency to the extent practicable; and

(4) Agree to execute interoperability tests developed by FMCSA to verify that its systems conform with the national intelligent transportation systems architecture, applicable standards, and protocols for CMV information systems and networks.

§ 350.407 How and when does an eligible entity apply for High Priority Program funds?

FMCSA publishes application instructions and criteria for eligible activities to be funded under this subpart in a NOFO at least 30 days before the financial assistance program application period closes. Entities must submit the application by the date prescribed in the NOFO.

§ 350.409 What response will an applicant receive under the High Priority Program?

(a) *Approval.* If FMCSA awards a grant or cooperative agreement, the applicant will receive a grant agreement to execute.

(b) *Denial.* If FMCSA denies the grant or cooperative agreement, the applicant will receive a notice of denial.

§ 350.411 How long are High Priority Program funds available to a recipient?

(a) *Motor carrier safety activities.* High Priority Program funds related to motor carrier safety activities under § 350.403(a) through (g), (i), and (j) obligated to a recipient are available for the rest of the fiscal year in which the funds are obligated and the next 2 full fiscal years.

(b) *Innovative Technology Deployment activities.* High Priority Program funds for Innovative Technology Deployment activities under § 350.403(h) obligated to a State are available for the rest of the fiscal year in which the funds were obligated and the next 4 full fiscal years.

§ 350.413 What are the Federal and recipient shares of costs incurred under the High Priority Program?

(a) *Federal share.* FMCSA will reimburse at least 85 percent of the eligible costs incurred under the High Priority Program.

(b) *Match.* In-kind contributions are acceptable in meeting the recipient's matching share under the High Priority Program if they represent eligible costs, as established by 2 CFR parts 200 and 1201 and FMCSA in the NOFO.

(c) *Waiver.* The Administrator reserves the right to reduce or waive the recipient's matching share in any fiscal year:

(1) As announced in the NOFO; or

(2) As determined by the Administrator on a case-by-case basis.

§ 350.415 What types of activities and projects are eligible for reimbursement under the High Priority Program?

Activities that fulfill the objectives in § 350.403 are eligible for reimbursement under the High Priority Program.

§ 350.417 What specific costs are eligible for reimbursement under the High Priority Program?

(a) *Costs eligible for reimbursement.* All costs relating to activities eligible for reimbursement must be necessary, reasonable, allocable, and allowable under this subpart and 2 CFR parts 200 and 1201. The eligibility of specific costs for reimbursement is addressed in the NOFO and is subject to review and approval by FMCSA.

(b) *Ineligible costs.* High Priority Program funds may not be used for the:

(1) Acquisition of real property or buildings; or

(2) Development, implementation, or maintenance of a State registry of medical examiners.

PART 355—[Removed and Reserved]

■ 2. Under the authority of 49 U.S.C. 504 and 31101 *et seq.,* remove and reserve part 355, consisting of §§ 355.1 through 355.25 and Appendix A to part 355.

PART 388—[Removed and Reserved]

■ 3. Under the authority of 49 U.S.C. 113 and 502, remove and reserve part 388, consisting of §§ 388.1 through 388.8.

Issued under authority delegated in 49 CFR 1.87.

James A. Mullen,

Deputy Administrator.

[FR Doc. 2020–11464 Filed 6–23–20; 8:45 am]

BILLING CODE 4910–EX–P

Proposed Rules

Federal Register
Vol. 85, No. 122
Wednesday, June 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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 174 and 180

[EPA–HQ–OPP–2020–0053; FRL–10010–82]

Receipt of a Pesticide Petition Filed for Residues of Pesticide Chemicals in or on Various Commodities (May 2020)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of filing of petition and request for comment.

SUMMARY: This document announces the Agency's receipt of an initial filing of a pesticide petition requesting the establishment or modification of regulations for residues of pesticide chemicals in or on various commodities.

DATES: Comments must be received on or before July 24, 2020.

ADDRESSES: Submit your comments, identified by docket identification (ID) number by one of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

• *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.

• *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Please note that due to the public health emergency the EPA Docket Center (EPA/DC) and Reading Room was closed to public visitors on March 31, 2020. Our EPA/DC staff will continue to provide customer service via email, phone, and webform. For further information on EPA/DC services, docket contact information and the current status of the EPA/DC and Reading Room, please visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Michael Goodis, Registration Division (7505P), main telephone number: (703) 305–7090, email address: *RDFRNotices@epa.gov;* or Robert McNally, Biopesticides and Pollution Prevention Division (7511P), main telephone number: (703) 305–7090, email address: *BPPDFRNotices@epa.gov.* The mailing address for each contact person is: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each pesticide petition summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

• Crop production (NAICS code 111).
• Animal production (NAICS code 112).
• Food manufacturing (NAICS code 311).
• Pesticide manufacturing (NAICS code 32532).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the agency taking?

EPA is announcing receipt of a pesticide petition filed under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, requesting the establishment or modification of regulations in 40 CFR part 174 and/or part 180 for residues of pesticide chemicals in or on various food commodities. The Agency is taking public comment on the request before responding to the petitioner. EPA is not proposing any particular action at this time. EPA has determined that the pesticide petition described in this document contains data or information prescribed in FFDCA section 408(d)(2), 21 U.S.C. 346a(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the pesticide petition. After considering the public comments, EPA intends to evaluate whether and what action may be warranted. Additional data may be needed before EPA can make a final determination on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition that is the subject of this document, prepared by the petitioner, is included in a docket EPA has created for this rulemaking. The docket for this petition is available at *http://www.regulations.gov.*

As specified in FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), EPA is publishing notice of the petition so that the public has an opportunity to comment on this request for the establishment or modification of regulations for residues of pesticides in or on food commodities. Further information on the petition may be obtained through the petition summary referenced in this unit.

A. Amended Tolerances for Non-Inerts

1. *PP* 0E8828. (EPA–HQ–OPP–2020–0235). The Interregional Research Project Number 4 (IR–4), Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540, proposes upon establishment of tolerances referenced in this document under ''New Tolerances'' for PP 0E8828, to remove the existing tolerance in 40 CFR 180.511 for residues of buprofezin, 2-[(1,1-dimethylethyl)imino]tetrahydro-3(1-methylethyl)-5-phenyl-4H–1,3,5-thiadiazin-4-one in or on the raw agricultural commodities in or on bean, snap, succulent at 0.02 parts per million (ppm). *Contact:* RD.

B. New Tolerance Exemptions For Inerts (Except PIPS)

1. *IN–11402.* (EPA–HQ–OPP–2020–0293). The Innovative Reform Group, on behalf of The Clorox Company, P.O. Box 493, Pleasanton, CA, 94566–0803, requests to establish an exemption from the requirement of a tolerance under 40 CFR 180.940(a) for residues of various fragrance components (CAS Reg. No. multiple) when used as inert ingredients in antimicrobial pesticide formulations for use on food contact surfaces in public eating places, dairy processing equipment, and food processing equipment and utensils at end-use concentrations not to exceed 5 parts per million (ppm). *Contact:* RD.

2. *IN–11016.* (EPA–HQ–OPP–2020–0294). Verto Solutions, 1101 17th Street NW, Suite 700, Washington, DC 20036, requests to establish an exemption from the requirement of a tolerance under 40 CFR 180.940(a) for residues of various fragrance components (CAS Reg. No. multiple) when used as inert ingredients in antimicrobial pesticide formulations for use on food contact surfaces in public eating places, dairy processing equipment, and food processing equipment and utensils at end-use concentrations not to exceed 100 ppm. *Contact:* RD

3. *IN–11373.* (EPA–HQ–OPP–2020–0295). The Innovative Reform Group, on behalf of The Clorox Company, P.O. Box 493, Pleasanton, CA, 94566–0803, requests to establish an exemption from the requirement of a tolerance under 40 CFR 180.940(a) for residues of various fragrance components (CAS Reg. No. multiple) when used as inert ingredients in antimicrobial pesticide formulations for use on food contact surfaces in public eating places, dairy processing equipment, and food processing equipment and utensils at end-use concentrations not to exceed 100 ppm. *Contact:* RD.

4. *IN–11018.* (EPA–HQ–OPP–2020–0296). Verto Solutions, 1101 17th Street NW, Suite 700, Washington, DC 20036, requests to establish an exemption from the requirement of a tolerance under 40 CFR 180.940(a) for residues of various fragrance components (CAS Reg. No. multiple) when used as inert ingredients in antimicrobial pesticide formulations for use on food contact surfaces in public eating places, dairy processing equipment, and food processing equipment and utensils at end-use concentrations not to exceed 100 ppm. *Contact:* RD.

5. *IN–11372.* (EPA–HQ–OPP–2020–0297). The Innovative Reform Group, on behalf of The Clorox Company, P.O. Box 493, Pleasanton, CA, 94566–0803, requests to establish an exemption from the requirement of a tolerance under 40 CFR 180.940(a) for residues of various fragrance components (CAS Reg. No. multiple) when used as inert ingredients in antimicrobial pesticide formulations for use on food contact surfaces in public eating places, dairy processing equipment, and food processing equipment and utensils at end-use concentrations not to exceed 100 ppm. *Contact:* RD.

6. *IN–11401.* (EPA–HQ–OPP–2020–0298). The Innovative Reform Group, on behalf of The Clorox Company, P.O. Box 493, Pleasanton, CA, 94566–0803, requests to establish an exemption from the requirement of a tolerance under 40 CFR 180.940(a) for residues of various fragrance components (CAS Reg. No. multiple) when used as inert ingredients in antimicrobial pesticide formulations for use on food contact surfaces in public eating places, dairy processing equipment, and food processing equipment and utensils at end-use concentrations not to exceed 33 ppm. *Contact:* RD.

C. New Tolerance Exemptions For Non-Inerts (Except PIPS)

1. *PP 0F8835.* (EPA–HQ–OPP–2020–0286). Plant Health Care Inc., 2626 Glenwood Avenue, Suite 350, Raleigh, NC 27608, requests to establish an exemption from the requirement of a tolerance in 40 CFR part 180 for residues of the biochemical pesticide PHC 25279 in or on food crops. The petitioner believes no analytical method is needed because it is expected that, when used as proposed, PHC 25279 would not result in residues of toxicological concern based on the lack of toxicity observed in toxicology studies. *Contact:* BPPD.

D. New Tolerance Exemptions For PIPS

1. *PP 0G8830.* (EPA–HQ–OPP–2020–0234). J.R. Simplot Company, 5369 West Irving Street, Boise ID, 83706, requests to establish a temporary exemption from the requirement of a tolerance in 40 CFR part 174 for residues of the plant-incorporated protectants (PIP) BLB2 and AMR3 Late Blight resistance proteins in potato. The petitioner believes no analytical method is needed because the levels of BLB2 and AMR3 are below levels of detection and it would be impractical to demonstrate methods for detecting and measuring the levels of the pesticide residues. *Contact:* BPPD.

2. *PP IN–11411.* (EPA–HQ–OPP–2020–0237). J.R. Simplot Company, 5369 West Irving Street, Boise ID, 83706, requests to establish an exemption from the requirement of a tolerance in 40 CFR part 174 for residues of the plant-incorporated protectant (PIP) inert ingredient modified potato acetolactate synthase (StmALS), in potato. The petitioner believes no analytical method is needed because: (1) StmALS is expressed in the plant and it is not feasible to remove residues of StmALS from transformed potato events, and (2) the safety assessment of StmALS demonstrates that both hazard and exposure associated with the protein is low and that the risk to both humans and the environment is close to zero. *Contact:* BPPD.

E. New Tolerances For Non-Inerts

1. *PP 7F8646.* (EPA–HQ–OPP–2018–0053). This posting is amending the previous NOF published in the **Federal Register** on July 24, 2018 by announcing commodities that were left inadvertently left off. BASF Corporation, 26 Davis Dr., P.O. Box 13528, Research Triangle Park, N.C. 27709, requests to establish a tolerance in 40 CFR part 180 for residues of the insecticide, broflanilide, including its metabolites and degradates, in or on amaranth, grain; quinoa, forage; quinoa, straw; teff, forage; and teff, straw at 0.01 ppm. Tolerances are also requested for food items (animal origin) for hog, meat; poultry, meat; eggs; cattle, meat byproducts; goat, meat byproducts; hog, meat byproducts; horse, meat byproducts; poultry, meat byproducts; sheep, meat byproducts; hog, fat; and horse, fat at 0.02 ppm. The

independently validated analytical method is used to measure and evaluate the chemical broflanilide and its metabolites S(PFP–OH)-8007 and DM–8007. An independently validated analytical method has been submitted for analyzing residues of parent Broflanilide plus metabolites DM–8007 and DC–DM–8007 in animal matrices by LC–MS/MS. Food handling matrices samples were analyzed for broflanilide residues using a combination of the plant and animal methods with minor modifications. *Contact:* RD.

2. *PP 9F8759.* (EPA–HQ–OPP–2019–0346). Syngenta Crop Protection, LLC. P.O. Box 18300 Greensboro, NC 27419, requests to establish an import tolerance in 40 CFR part 180 for residues of the fungicide mefenoxam metal *N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl)-*DL*-alaninate in or on the raw agricultural commodities Tree Nut Group 14–12, at 0.3 ppm. The analytical method used was Syngenta Crop Protection Analytical Method ''Link K (2016) Metalaxyl—Analytical Method GRM075.01A for the Determination of Residues of Metalaxyl and Structurally Related Metabolites as Common Moiety 2,6-Dimethylaniline (CGA72649) in Crops''. Final sample analysis was performed using LC–MS/MS with EAG method modifications dated August 14, 2017 to measure and evaluate the chemical mefenoxam. *Contact:* RD.

3. *PP 9E8773.* (EPA–HQ–OPP–2019–0531). Mitsui Chemicals Agro, Inc. c/o Landis International, Inc., 3185 Madison Highway, P.O. Box 5126, Valdosta, GA 31603, requests to establish a tolerance in 40 CFR part 180 for residues of the fungicide Penthiopyrad, (RS)-N-[2-(1,3-dimethylbutyl)-3-thienyl]-1-methyl-3-(trifluoromethyl)-pyrazole-4-carboxamide in or on Persimmon at 3.0 ppm. High Performance Liquid Chromatography-Mass Spectrometer (LC–MS) is used to measure and evaluate the chemical Penthiopyrad. *Contact:* RD.

4. *PP 0E8821.* (EPA–HQ–OPP–2020–0113). Interregional Research Project #4 (IR–4), Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540, requests to establish tolerances with regional registrations in 40 CFR part 180.633(c) for residues of the herbicide, florasulam, N-(2, 6-difluorophenyl)-8-fluoro-5-methoxy (1, 2, 4) triazole (1, 5-c)pyrimidine-2-sulfonamide, including its metabolites and degradates, in or on grass, forage at 0.01 ppm and grass, hay at 0.02 ppm. Compliance with the tolerance levels is to be determined by measuring only florasulam in or on the commodities. The High-Performance Liquid Chromatography with Tandem Mass Spectrometry is used to measure and evaluate the chemical. *Contact:* RD.

5. *PP 0E8828.* (EPA–HQ–OPP–2020–0235). The Interregional Research Project Number 4 (IR–4), Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W, Princeton, NJ 08540, requests to establish a tolerance in 40 CFR part 180.511 for residues of buprofezin, 2-[(1,1-dimethylethyl)imino]tetrahydro-3(1-methylethyl)-5-phenyl-4H–1,3,5-thiadiazin-4-one in or on the raw agricultural commodities: Asparagus bean, edible podded at 0.02 ppm; bushberry subgroup 13–07B at 0.08 ppm, catjang bean, edible podded at 0.02 ppm; Chinese longbean, edible podded at 0.02 ppm; cowpea, edible podded at 0.02 ppm; french bean, edible podded at 0.02 ppm; garden bean, edible podded at 0.02 ppm; green bean, edible podded at 0.02 ppm; goa bean, edible podded at 0.02 ppm; guar bean, edible podded at 0.02 ppm; jackbean, edible podded at 0.02 ppm; kidney bean, edible podded at 0.02 ppm; lablab bean, edible podded at 0.02 ppm; navy bean, edible podded at 0.02 ppm; moth bean, edible podded at 0.02 ppm; mung bean, edible podded at 0.02 ppm; rice bean, edible podded at 0.02 ppm; scarlet runner bean, edible podded at 0.02 ppm; snap bean, edible podded at 0.02 ppm; sword bean, edible podded at 0.02 ppm; urd bean, edible podded at 0.02 ppm; vegetable soybean, edible podded at 0.02 ppm; velvet bean, edible podded at 0.02 ppm; wax bean, edible podded; winged pea, edible podded at 0.02 ppm; and yardlong bean, edible podded at 0.02 ppm.

In addition to the proposed tolerances, the IR–4 Project requests that EPA permit the buprofezin label instructions currently stated as ''For greenhouse tomatoes and peppers'', be revised to ''For Fruiting Vegetables (Crop Group 8–10)'', thus allowing buprofezin applications to all greenhouse-grown fruiting vegetables.

The enforcement analytical methods are available in PAM I and PAM II for the enforcement of buprofezin tolerances, which include gas chromatography methods with nitrogen phosphorus detection (GC/NPD), and a gas chromatography/mass spectrometry (GC/MS) method for confirmation of buprofezin residues in plant commodities to measure and evaluate buprofezin. *Contact:* RD.

Authority: 21 U.S.C. 346a.

Dated: June 15, 2020.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. 2020–13273 Filed 6–23–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1983–0002; FRL–10010–66–Region 5]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Partial Deletion of the Allied Chemical & Ironton Coke Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notification of intent.

SUMMARY: The Environmental Protection Agency (EPA) Region 5 is issuing a Notice of Intent to Delete soil (land), lagoon, and sediment portions of the Allied Chemical & Ironton Coke Superfund Site (Site) in Ironton, Ohio, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Ohio, through the Ohio Environmental Protection Agency (OEPA), have determined that all appropriate response actions identified for these Site media, other than operation and maintenance, monitoring, and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments must be received by July 24, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–SFUND–1983–0002, by one of the following methods:

https://www.regulations.gov. Follow the on-line instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is

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

Email: Deletions@usepa.onmicrosoft.com.

Written comments submitted by mail are temporarily suspended and no hand deliveries will be accepted. We encourage the public to submit comments via email or at *https://www.regulations.gov.*

Instructions: Direct your comments to Docket ID No. EPA–HQ–SFUND–1983–0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *https://www.regulations.gov* or email. The *https://www.regulations.gov* website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *https://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *https://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *https://www.regulations.gov* and at *https://www.epa.gov/superfund/allied-chemical-ironton* or you may contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

The EPA is temporarily suspending its Docket Center and Regional Records Centers for public visitors to reduce the risk of transmitting COVID–19. In addition, many site information repositories are closed and information in these repositories, including the deletion docket, has not been updated with hardcopy or electronic media. For further information and updates on EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets.*

The EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID–19.

FOR FURTHER INFORMATION CONTACT: Karen Cibulskis, NPL Deletions Coordinator, U.S. Environmental Protection Agency Region 5, at (312) 886–1843 or via email at *cibulskis.karen@epa.gov.*

SUPPLEMENTARY INFORMATION: This partial deletion pertains to the soil (land) portion of the Goldcamp Disposal Area (Operable Unit 1, or OU1); the soil (land) and lagoon portion of the Coke Plant/Lagoon Area (OU2), except for the OU2 ROD Soils Area 2 located within the bermed area of the East Tank Farm (see Figure 3 in the Docket); and all of the Tar Plant area (OU3), which addresses contaminated soil and sediment at the Tar Plant and in the adjacent Ohio River.

The OU2 ROD Soils Area 2 located within the bermed area of the East Tank Farm contains components of the groundwater treatment system and will not be remediated until after the groundwater cleanup is complete.

Therefore, the OU2 ROD Soils Area 2 is not being considered for deletion as part of this action. The contaminated groundwater at the Site, which is present below all three OUs but is being addressed as part of the OU1 and OU2 cleanup remedies, is undergoing a long-term cleanup and is also not being considered for deletion as part of this action. The OU2 ROD Soils Area 2 and the groundwater portions of the Allied Chemical Site (*i.e.,* the groundwater portion of OU1 and OU2, which includes the contaminated groundwater below OU3) will remain on the NPL.

In the ''Rules and Regulations'' section of today's **Federal Register**, we are publishing a direct final Notice of Partial Deletion of the Allied Chemical & Ironton Coke Superfund Site without prior Notice of Intent for Partial Deletion because EPA views this as a noncontroversial revision and anticipates no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final Notice of Partial Deletion, and those reasons are incorporated herein. If we receive no adverse comment(s) on this partial deletion action, we will not take further action on this Notice of Intent for Partial Deletion. If we receive adverse comment(s), we will withdraw the direct final Notice of Partial Deletion, and it will not take effect. We will, as appropriate, address all public comments in a subsequent final Notice of Partial Deletion based on this Notice of Intent for Partial Deletion. We will not institute a second comment period on this Notice of Intent for Partial Deletion. Any parties interested in commenting must do so at this time.

For additional information, see the direct final Notice of Partial Deletion which is located in the ''Rules and Regulations'' section of this **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1251 *et seq.;* 42 U.S.C. 9601–9657; E.O. 13626, 77 FR 56749, 3 CFR, 2013 Comp., p. 306; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: June 11, 2020.

Kurt Thiede,

Regional Administrator, Region 5.

[FR Doc. 2020–13301 Filed 6–23–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 745

[EPA–HQ–OPPT–2020–0063; FRL–10009–95]

RIN 2070–AK50

Review of Dust-Lead Post-Abatement Clearance Levels

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Reducing childhood lead exposure is a priority for EPA. As part of EPA's efforts to reduce childhood lead exposure, backed by the President's Task Force on Environmental Health Risks and Safety Risks to Children, EPA evaluated the current dust-lead clearance levels (DLCL). Clearance levels are currently defined as the maximum amount of lead permitted in dust on a surface following completion of an abatement activity. Surface dust is collected via dust wipe samples that are sent to a laboratory for analysis. The post-abatement dust-lead levels must be below the clearance levels. The DLCL have not changed since they were issued in 2001. EPA is now proposing to lower the DLCL from 40 micrograms of per square feet (μg/ft^2) and 250 μg/ft^2 to 10 μg/ft^2 and 100 μg/ft^2 for floors and window sills, respectively.

DATES: Comments must be received on or before August 24, 2020

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2020–0063, 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.*

Please note that due to the public health emergency the EPA Docket Center (EPA/DC) and Reading Room was closed to public visitors on March 31, 2020. Our EPA/DC staff will continue to provide customer service via email, phone, and webform. For further information on EPA/DC services, docket contact information and the current status of the EPA/DC and Reading Room, please visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Claire Brisse, National Program Chemicals Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: 202–564–9004; email address: *brisse.claire@epa.gov.* These phone numbers may also be reached by individuals who are deaf or hard of hearing, or who have speech disabilities, through the Federal Relay Service's teletype service at 800–877–8339.

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. Executive Summary

A. Does this action apply to me?

You may be potentially affected by this action if you conduct Lead-Based Paint (LBP) activities in accordance with 40 CFR 745.227, if you operate a training program required to be accredited under 40 CFR 745.225, if you are a firm or individual who must be certified to conduct LBP activities in accordance with 40 CFR 745.226, or if you conduct rehabilitations or maintenance activities in most pre-1978 housing that is covered by a Federal housing assistance program in accordance with 24 CFR part 35. You may also be affected by this action if you operate a laboratory that is recognized by EPA's National Lead Laboratory Accreditation Program (NLLAP) in accordance with 40 CFR 745.90, 745.223, 745.227, 745.327. You may also be affected by this action, in accordance with 40 CFR 745.107 and 24 CFR 35.88, as the seller or lessor of target housing, which is most pre-1978 housing. See 40 CFR 745.103 and 24 CFR 35.86. 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:

- Building construction (NAICS code 236), *e.g.,* single-family housing construction, multi-family housing construction, residential remodelers.
- Specialty trade contractors (NAICS code 238), *e.g.,* plumbing, heating, and air-conditioning contractors, painting and wall covering contractors, electrical contractors, finish carpentry contractors, drywall and insulation contractors, siding contractors, tile and terrazzo contractors, glass and glazing contractors.
- Real estate (NAICS code 531), *e.g.,* lessors of residential buildings and dwellings, residential property managers.
- Child day care services (NAICS code 624410).
- Elementary and secondary schools (NAICS code 611110), *e.g.,* elementary schools with kindergarten classrooms.
- Other technical and trade schools (NAICS code 611519), *e.g.,* training providers.
- Engineering services (NAICS code 541330) and building inspection services (NAICS code 541350), *e.g.,* dust sampling technicians.
- Lead abatement professionals (NAICS code 562910), *e.g.,* firms and supervisors engaged in LBP activities.
- Testing laboratories (NAICS code 541380) that analyze dust wipe samples for lead.
- Federal agencies that own residential property (NAICS code 92511, 92811).
- Property owners, and property owners that receive assistance through Federal housing programs (NAICS code 531110, 531311).

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

EPA is proposing this rule under sections 401 and 402 of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 *et seq.,* as created by Title X of the Housing and Community Development Act of 1992 (also known as the ''Residential Lead-Based Paint Hazard Reduction Act of 1992'' or ''Title X'') (Pub. L. 102–550) (Ref. 1).

TSCA section 402 (15 U.S.C. 2682) directs EPA to regulate LBP activities, which include risk assessments, inspections, and abatements. TSCA section 401 (15 U.S.C. 2681) defines abatements as ''measures designed to permanently eliminate lead-based paint hazards'' and the term includes ''all . . . cleanup . . . and post[-]abatement clearance testing activities'' (15 U.S.C. 2681(1)). EPA is further directed, in promulgating the regulations, to ''tak[e] into account reliability, effectiveness, and safety'' (15 U.S.C. 2682(a)(1)).

C. What action is the Agency taking?

Clearance levels are currently defined as ''the maximum amount of lead permitted in dust on a surface following

completion of an abatement activity'' (40 CFR 745.223). Surface dust is collected via dust wipe samples that are sent to a laboratory for analysis. The post-abatement dust-lead levels must be below the clearance levels, which are the standard used to evaluate the effectiveness of post-abatement cleanings. In 2001, EPA originally established DLCL of 40 μg/ft² for floors, 250 μg/ft² for window sills and 400 μg/ft² for window troughs in a final rule entitled, ''Identification of Dangerous Levels of Lead.'' See 66 FR 1206, January 5, 2001, also known as the 2001 LBP Hazards Rule (Ref. 2). EPA is proposing to revise the DLCL, set by the 2001 LBP Hazards Rule, from 40 μg/ft² to 10 μg/ft² for floor dust and from 250 μg/ft² to 100 μg/ft² for window sill dust. As explained elsewhere in this preamble, EPA is not proposing to revise the DLCL for window troughs at this time. The proposed DLCL of 10 μg/ft² on floors and 100 μg/ft² on window sills would not apply retroactively; that is, this proposed rule would not impose retroactive requirements on regulated entities that have previously performed post-abatement clearance testing using the original DLCL of 40 μg/ft² on floors or 250 μg/ft² on window sills. While EPA's dust-lead hazard standards (DLHS) do not compel property owners to evaluate their property for hazards or take control actions (40 CFR 745.61(c)), if someone opts to perform a lead-based paint activity such as an abatement, then EPA's regulations set requirements for doing so (40 CFR 745.220(d)). This proposed rule, if finalized, would require individuals and firms who perform an abatement to achieve the proposed DLCL at 10 μg/ft² on floors and 100 μg/ft² on window sills at the end of the abatement, which the 2019 rule updating the DLHS (''Review of the Dust-Lead Hazard Standards and the Definition of Lead-Based Paint,'' 84 FR 32632, July 9, 2019 (FRL–9995–49), also known as the 2019 DLHS Rule) did not require under EPA's regulations (Ref. 3). EPA is requesting comment on the appropriateness of the proposed, lower DLCL for both floors and window sills.

EPA is also proposing to clarify language that defines the achievement of post-abatement clearance, which explains what dust-lead levels are permitted on a surface following an abatement that would achieve clearance. The post-abatement clearance procedures set forth in 40 CFR 745.227 state that clearance is not achieved when post-abatement dust-lead levels (which are a measure of the mass of lead per area, commonly expressed in micrograms per square foot (μg/ft²)) equal or exceed the clearance levels (40 CFR 745.227(e)(8)(vii)). However, 40 CFR 745.223 defines clearance levels as ''the *maximum* amount of lead permitted in dust on a surface following completion of an abatement activity'' (40 CFR 745.223) (emphasis added). To resolve this discrepancy, EPA is proposing to conform the definition of clearance levels found in 40 CFR 745.223 to the post-abatement clearance procedures in 40 CFR 745.227, in order to clarify in the definition that the post-abatement dust-lead levels must be below the clearance levels.

EPA is requesting comments on all aspects of this proposal, including the window sill clearance options (40 μg/ft², 60 μg/ft², 80 μg/ft² and 100 μg/ft²) as presented in EPA's Technical Support Document that accompanies this proposal (Ref. 4).

D. Why is the Agency taking this action?

Reducing childhood lead exposure is an EPA priority. EPA continues to collaborate with its federal partners to reduce lead exposures and, in so doing, to explore ways to strengthen its relationships and partnerships with states, tribes, and localities. In December 2018, the President's Task Force on Environmental Health Risks and Safety Risks to Children released the *Federal Action Plan to Reduce Childhood Lead Exposures and Associated Health Impacts (Lead Action Plan)* (Ref. 5) to enhance the Federal Government's efforts to identify and reduce lead exposure while ensuring children impacted by such exposure are getting the support and care they need to prevent or mitigate any associated health effects. The Lead Action Plan is helping Federal agencies work strategically and collaboratively to reduce exposure to lead and improve children's health. Considering revisions to the DLCL is an action that EPA, in the Action Plan, committed to undertake given the importance of childhood lead exposure; dust-lead is a significant source of exposure for young children (Ref. 6).

In the 2001 LBP Hazards Rule, EPA first established the DLHS that identify dust-lead hazards and the clearance levels used to evaluate the effectiveness of cleaning following an abatement. Abatements are designed to permanently eliminate LBP hazards including dust-lead hazards.

In 2019, EPA re-evaluated the DLHS (Ref. 3). Based on that evaluation, the final rule revised the DLHS from 40 μg/ft² and 250 μg/ft² to 10 μg/ft² and 100 μg/ft² on floors and window sills, respectively. EPA based that decision on the best available science, the Agency's review of public comments received on the proposal for that rule, and consideration of the potential for risk reduction, including whether such actions were achievable.

At that time, EPA focused its rulemaking on the DLHS and the definition of LBP, which were the two actions that EPA had agreed to undertake in response to a 2009 citizen petition (Ref. 7). In that rulemaking, EPA did not propose to change DLCL in 40 CFR part 745, subpart L. However, EPA recognizes the important relationship between the DLHS and DLCL: The DLHS are used to identify dust-lead hazards and the DLCL are used to demonstrate that specific abatement activities have effectively and permanently eliminated those hazards. Therefore, the purpose of this rulemaking is to update the DLCL so that attaining these clearance levels demonstrate elimination of dust-lead hazards under the new standards. Accordingly, EPA is now proposing to lower the DLCL for floor dust to 10 μg/ft², and to lower the DLCL for window sill dust to 100 μg/ft², taking into account reliability, effectiveness, and safety.

E. What are the estimated incremental impacts of this action?

EPA has prepared an Economic Analysis (EA) of the potential incremental impacts associated with this rulemaking (Ref. 8) on a subset of target housing (*i.e.,* most pre-1978 housing) and child-occupied facilities affected by this proposed rule. The analysis, which is available in the docket, estimates incremental costs and benefits for abatements where a dust-lead level is between the current DLCL (40 μg/ft² for floors and 250 μg/ft² for window sills) and alternate levels, including the proposed DLCL of 10 μg/ft² for floors and 100 μg/ft² for window sills. Based on HUD data, EPA estimates that the vast majority of floors and window sills are already clearing at levels below the proposed DLCL after the completion of an abatement. In addition, there is uncertainty about whether some state and local regulations already use the EPA DLHS as DLCL, and about whether some abatement contractors will voluntarily conduct additional cleaning to ensure that dust-lead levels fall below the DLHS following the completion of an abatement. If these situations occur, then the costs and benefits of meeting the DLCL estimated in the EA would be attributable to the 2019 DLHS Rule and not to the proposed regulation.

As in the EA for the 2019 DLHS Rule, there is also uncertainty regarding the

estimated number of lead hazard reduction events that will be triggered by children with blood lead levels considered to be elevated. Most states set a blood lead level value at which an environmental investigation is recommended or required. Based on guidance posted on environmental and public health department websites for each state, these blood lead action levels range from 5 micrograms per deciliter (µg/dL) to 25 µg/dL. In eight states (AK, IN, MD, ME, MI, NE, OR, and PA) the action level for an environmental investigation is a blood lead level of 5 µg/dL. Fourteen states (CA, DC, GA, IL, KS, LA, NC, NH, NJ, NV, OH, TX, VT, WA, and WV) and the District of Columbia use an action level of 10 µg/dL. Nineteen states (AL, AZ, CO, DE, FL, HI, IA, ID, KY, MN, MO, MS, NM, NY, RI, SC, UT, VA, and WI) use an action level of 15 µg/dL. Four states (CT, MA, OK, and TN) use an action level of 20 µg/dL or above. Five states (AR, MT, ND, SD, and WY) have no policy recommendation or requirement for the blood lead level at which an environmental investigation should be conducted. The differences between states may reflect the prevalence of lead hazards in each state and their relative prioritization of lead hazards and other funding needs.

The EPA's analysis includes two scenarios for the number of instances where clearance testing is performed that will be affected by the rule: (1) Where dust-lead loadings are tested because a child's blood lead level equals or exceeds 5 µg/dL (the current Centers for Disease Control and Prevention (CDC) blood lead reference value (BLRV)) (Ref. 9), and a loading is at or above the DLHS; and (2) where dust-lead loadings are tested because a child's blood lead level equals or exceeds the action level set by the state the child lives in, and a loading is at or above the DLHS.

Consequently, the economic analysis includes a range for the number of dust lead reduction events possibly affected by this rule changing the clearance levels. The low end of the range is zero. This could result, for example, if state or local regulations or voluntary actions by abatement firms already cause dust-lead levels in all housing not subject to the LSHR to fall below 10 µg/ft² on floors and 100 µg/ft² on window sills. The upper end of the range is 28,000 events, which assumes that an environmental investigation that includes testing the dust-lead loadings in their home occurs when a child's blood lead level equals or exceeds 5 µg/dL. The EA also includes a scenario based on 6,000 events, which assumes that dust-lead loading tests occur in all instances when a child's blood lead level equals or exceeds the state action level. The benefit and cost estimates are highly sensitive to the range. The following is a brief outline of the estimated incremental impacts of this rulemaking.

- *Benefits.* Incremental actions to meet the proposed DLCL of 10 µg/ft² for floors and 100 µg/ft² for window sills after abatements where a baseline post-intervention loading is between the current DLCL of 40 µg/ft² for floors and 250 µg/ft² for window sills and the proposed DLCL would reduce exposure to lead, resulting in benefits from avoided adverse health effects. In the economic analysis of this rule, EPA quantified the benefits of reduced lead exposure to children from avoided Intelligence Quotient (IQ) loss as an indicator of improved cognitive function and, hence, lifetime earnings. For the subset of adverse health effects where these effects were quantified, the estimated annualized benefits are $0 million to $487 million per year using a 3% discount rate, and $0 million to $106 million per year using a 7% discount rate, with the range representing the uncertainties discussed above. There are additional unquantified benefits due to other avoided adverse health or behavioral effects in children, including attention-related behavioral problems, greater incidence of problem behaviors, decreased cognitive performance, reduced post-natal growth, delayed puberty, decreased hearing, and decreased kidney function (Ref. 10).
- *Costs.* This rule is estimated to affect between 0 and 28,000 events per year that incorporate an abatement activity, and to result in costs of $0 to $7 million or $0 to $35 million per year using either a 3% or a 7% discount rate. In most events affected by the proposed rule additional costs are incurred for specialized cleaning used to reduce dust-lead loadings to below the clearance levels. In some instances, floors will be sealed, overlaid or replaced, or window sills will be sealed or repainted.
- *Small entity impacts.* EPA estimates that this rule may impact approximately 0 to 10,200 small abatement firms; 0 to 9,000 would have cost impacts estimated at less than 1% of revenues, 0 to 1,000 would have impacts estimated between 1% and 3%, and 0 to 250 would have impacts estimated at greater than 3% of revenues. EPA's analysis assumes that in all cases the costs are borne entirely by the lead paint abatement firm (as opposed to being passed through to the property owner). However, it is more likely that some, or perhaps even most, of these costs will be passed on to the property owners.
- *Environmental justice and protection of children.* This rule would increase the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population or children.
- *Effects on state, local, and tribal governments.* The rule would not have any significant or unique effects on small governments, or federalism or tribal implications.

F. Children's Environmental Health

Lead exposure has the potential to impact individuals of all ages, but it is especially harmful to young children because the developing brain can be particularly sensitive to environmental contaminants (Refs. 11, 12). Exposure to lead is associated with increased risk of a number of adverse health or behavioral effects in children, including decreased cognitive performance, greater incidence of problem behaviors, and increased diagnoses of attention-related behavioral problems (Ref. 10). Furthermore, floor dust in homes and child-care facilities is a significant route of exposure for young children given their mouthing and crawling behavior and proximity to the floor. Therefore, the environmental health or safety risk addressed by this action may have a disproportionate effect on children (Ref. 4).

Consistent with the Agency's Policy on Evaluating Health Risks to Children (Ref. 13), EPA has evaluated the health effects in children of decreased lead exposure from the proposed lowering of the DLCL. EPA prepared a Technical Support Document (TSD) for this rulemaking, which models dust-lead exposures and estimates both blood lead levels (BLLs) and associated impacts on IQ at the proposed DLCL of 10 µg/ft² and 100 µg/ft² versus the current DLCL of 40 µg/ft² and 250 µg/ft² for on floors and window sills, respectively (Ref. 4). While no safe level of lead in blood has been identified (Ref. 5), the reductions in children's blood-lead levels resulting from this rule are expected to reduce the risk of adverse cognitive and developmental effects in children. The TSD shows that health risks to young children decrease with decreasing dust-lead levels.

G. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *http://www.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 *https://www.epa.gov/dockets/commenting-epa-dockets.html.*

II. Background

A. Health Effects

Lead exposure impacts individuals of all ages, but it is especially harmful to young children because the developing brain can be particularly sensitive to environmental contaminants (Ref. 11, 12). Ingestion of lead-contaminated dust is a major contributor to BLLs in children, particularly those who reside in homes built prior to 1978 (Ref. 14, 15). Infants and young children can be more highly exposed to lead through floor dust at home and in child-care facilities because they often put their hands and other objects that can have lead from dust on them into their mouths (Ref. 12).

Best available science informs EPA's understanding of the relationships between exposures to dust-lead loadings, BLLs, and adverse human health effects. These relationships are summarized in the Integrated Science Assessment for Lead (''Lead ISA'') (Ref. 16), which EPA released in June 2013, and the National Toxicology Program (NTP) Monograph on the Health Effects of Low-Level Lead, which was released by the Department of Health and Human Services in June 2012 (''NTP Monograph'') (Ref. 10).

The Lead ISA is a synthesis and evaluation of scientific information on the health and environmental effects of lead, including cognitive function decrements in children (Ref. 16).

The NTP, in 2012, completed an evaluation of existing scientific literature to summarize the scientific evidence regarding potential health effects associated with low-level lead exposure as indicated by BLLs less than 10 μg/dL. The evaluation specifically focused on the life stage (prenatal, childhood, adulthood) associated with these potential health effects, and on epidemiological evidence at BLLs less than 10 μg/dL, because health effects at higher BLLs are well-established. The NTP concluded that there is sufficient evidence for adverse health effects in children and adults at BLLs less than 10 μg/dL, and less than 5 μg/dL as well. The NTP concluded that there is sufficient evidence that BLLs less than 10 μg/dL are associated with delayed puberty, decreased hearing, and reduced post-natal growth. In children, there is sufficient evidence that BLLs less than 5 μg/dL are associated with increased diagnoses of attention-related behavioral problems, greater incidence of problem behaviors, and decreased cognitive performance. There is limited evidence that BLLs less than 5 μg/dL are associated with delayed puberty and decreased kidney function in children 12 years of age and older (Ref. 10).

For further information regarding lead and its health effects, and Federal actions taken to eliminate LBP hazards in housing, see the Lead Action Plan, the TSD for this rulemaking and the background section of the Lead Renovation, Repair and Painting Rule, issued on April 22, 2008 (also referred to as the ''RRP Rule,'' 73 FR 21692, April 22, 2008, codified at 40 CFR part 745, subpart E) (Ref. 4, 5, 17).

B. Federal Actions To Reduce Lead Exposures

In 1992, Congress enacted Title X of the Housing and Community Development Act (also known as the Residential Lead-Based Paint Hazard Reduction Act of 1992 or ''Title X'') (Ref. 1) in an effort to eliminate LBP hazards. Section 1018 of Title X required EPA and the U.S. Department of Housing and Urban Development (HUD) to promulgate joint regulations for disclosure of any known LBP or any known LBP hazards in target housing offered for sale or lease (known as the ''Disclosure Rule'') (Ref. 18). (''Target housing'' is defined in section 401(17) of TSCA, 15 U.S.C. 2681(17).) On March 6, 1996, the Disclosure Rule was codified at 40 CFR part 745, subpart F, for EPA, and 24 CFR part 35, subpart A, for HUD. It requires information disclosure activities before a purchaser or lessee is obligated under a contract to purchase or lease target housing.

TSCA section 402(a) directs EPA to promulgate regulations covering LBP activities to ensure persons performing these activities are properly trained, that training programs are accredited, and that contractors performing these activities are certified. On August 29, 1996, EPA published final regulations under TSCA section 402(a) that govern LBP inspections, risk assessments, and abatements in target housing and child occupied facilities (COFs) (also referred to as the ''LBP Activities Rule'', codified at 40 CFR part 745, subpart L) (Ref. 19). The definition of ''child-occupied facility'' is codified at 40 CFR 745.223 for purposes of LBP activities. Regulations promulgated under TSCA section 402(a) contain standards for performing LBP activities, taking into account reliability, effectiveness, and safety.

TSCA section 402(c)(3) directs EPA to promulgate regulations covering renovation or remodeling activities in target housing, public buildings constructed before 1978, and commercial buildings that create LBP hazards. EPA issued the final RRP Rule under TSCA section 402(c)(3) on April 22, 2008 (Ref. 17).

TSCA section 403, 15 U.S.C. 2683, gives EPA a related authority to carry out responsibilities for addressing LBP hazards under the Disclosure and LBP Activities Rules. TSCA section 403 requires EPA to promulgate regulations that ''identify . . . lead-based paint hazards, lead-contaminated dust, and lead-contaminated soil'' for purposes of TSCA Title IV and the Residential Lead-Based Paint Hazard Reduction Act of 1992. LBP hazards, under TSCA section 401, are defined as conditions of LBP and lead-contaminated dust and soil that ''would result'' in adverse human health effects (15 U.S.C. 2681(10)). TSCA section 401 defines lead-contaminated dust as ''surface dust in residential dwellings'' that contains lead in excess of levels determined ''to pose a threat of adverse health effects'' (15 U.S.C. 2681(11)). The 2001 LBP Hazards Rule established the DLHS to identify conditions of lead-contaminated dust that would result in adverse human health effects. These DLHS were revised in the 2019 DLHS Rule and are used to identify dust-lead hazards.

The 2001 LBP Hazards Rule also established the DLCL (also referred to as ''clearance levels'' and sometimes referred to elsewhere as ''clearance standards'') under TSCA section 402(a). These clearance levels are used to evaluate the effectiveness of cleaning following an abatement. As defined in TSCA Section 401 abatements are designed to permanently eliminate LBP hazards, including dust-lead hazards. For purposes of the DLCL, post-clearance dust-lead loadings below the

DLHS indicate permanent elimination of dust-lead hazards.

Pursuant to TSCA section 404, 15 U.S.C. 2684, and EPA's regulations at 40 CFR part 745, subpart Q, interested states, territories, and federally recognized tribes may apply for and receive authorization to administer their own LBP Activities and RRP programs. EPA's regulations are intended to reduce exposures, and the LBP Activities regulations in particular are intended to identify and mitigate hazardous levels of lead. Authorized programs must be ''at least as protective of human health and the environment as the corresponding federal program,'' and must provide for ''adequate enforcement.'' See 40 CFR 745.324(e)(2). The 2019 DLHS Rule revised the regulation to improve the process for states, federally recognized tribes, and territories with authorized LBP Activities programs to demonstrate that their programs meet the requirements of 40 CFR 745.325 (by submitting a report pursuant to 40 CFR 745.324(h) with such demonstration within two years of the effective date of a revision).

HUD's Lead Safe Housing Rule (LSHR) is codified in 24 CFR part 35, subparts B through R. The LSHR implements sections 1012 and 1013 of Title X. Under Title X, HUD has specific authority to control LBP and LBP hazards in federally-assisted target housing (including COFs that are part of an assisted target housing property covered by the LSHR, because they are part of the common area of the property). The LSHR aims in part to ensure that federally-owned or federally-assisted target housing is free of LBP hazards (Ref. 20). Under the LSHR, when a child under age six (6) with an elevated BLL residing in certain categories of assisted target housing is identified, the ''designated party'' and/or the housing owner shall undertake certain actions.

C. Applicability and Uses of the DLCL

The DLCL reviewed in this regulation support the LBP Activities program, and apply to target housing (*i.e.,* most pre-1978 housing) and COFs (*i.e.,* pre-1978 non-residential properties where children under the age of six (6) spend a significant amount of time such as child care centers and kindergartens). Apart from COFs, no other public and commercial buildings are covered by this rule. For further background on the types of buildings to which the LBP Activities program apply, refer to the proposed and final 2001 LBP Hazards Rule (Ref. 2).

The DLCL are incorporated into the post-abatement work practices outlined in the LBP Activities Rule (40 CFR 745.227). LBP Activities regulations apply to inspections, risk assessments, project design and abatement activities. Pre-abatement dust-lead testing occurs during a risk assessment, often initiated to comply with HUD's LSHR or in response to discovery of a child with a BLL that equals or exceeds the current CDC BLRV (Ref. 9), or the action level set by the state the child lives in. The objective of a risk assessment is to determine, and then report, the existence, nature, severity, and location of LBP hazards in residential dwellings and COFs through an on-site investigation. During a risk assessment, a risk assessor collects environmental samples that include dust wipe samples from floors and window sills that are sent to an NLLAP-recognized laboratory for analysis. The risk assessor then compares the results of the dust wipe samples against the DLHS. If the dust-lead loadings from the samples are at or above the applicable DLHS, indicating LBP hazards are present, the risk assessor will identify acceptable options for controlling the hazards in the respective property, which may include abatements and/or interim controls. TSCA section 401 defines abatements as, ''measures designed to permanently eliminate lead-based paint hazards,'' (15 U.S.C. 2681(1)), while interim controls are ''designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards,'' (40 CFR 745.83 and 745.223). These options should allow the property owner to make an informed decision about what actions should be taken to protect the health of current and future residents. Risk assessments can be performed only by certified risk assessors.

The DLCL are used to evaluate the effectiveness of a cleaning following an abatement. After an abatement is complete, a risk assessor or inspector determines whether there are any ''visible amounts of dust, debris or residue,'' which will need to be removed before clearance sampling takes place (40 CFR 745.227(e)(8)). Once the area is free of visible dust, debris and residue, and one hour or more after final post-abatement cleaning ceases, clearance sampling for dust-lead (via dust wipe samples) can take place and will be conducted ''using documented methodologies that incorporate adequate quality control procedures'' (40 CFR 745.227(e)(8)). Only a properly trained and certified risk assessor or inspector can conduct clearance sampling. A NLLAP-recognized laboratory must analyze the dust wipe samples and a risk assessor or inspector must compare the results from window sills and floors (and window troughs) to the appropriate DLCL. Every sample must test below the corresponding DLCL, and if a single sample is equal to or greater than the corresponding DLCL, then the abatement fails clearance and the components represented by the sample must be recleaned and retested (40 CFR 745.227(e)(8)). After the dust wipe samples show dust-lead loadings below the DLCL, an abatement report is prepared, copies of any reports required under the LBP Activities Rule are provided to the building owner (and to potential lessees and purchasers under the LBP Disclosure Rule by those building owners or their agents), and all required records are retained by the abatement firm or by the individuals who developed each report.

The DLCL cannot be used to identify housing that is free from exposure to lead, as exposures are dependent on many factors. For instance, the physical condition of a property may change over time, resulting in an increased exposure.

III. Proposed Rule

The purpose of this rulemaking is to update the DLCL so that attaining these clearance levels demonstrate elimination of the dust-lead hazard under the new standards. EPA is proposing to lower the DLCL for floors from 40 μg/ft² to 10 μg/ft². EPA is proposing to lower the DLCL for window sills from 250 μg/ft² to 100 μg/ft². Because there is no DLHS for window troughs, EPA is proposing no change to the DLCL for window troughs at this time. EPA is requesting comment on each of these DLCL.

A. Approach for Reviewing and the Selection of the Dust-Lead Clearance Levels

As EPA explained in the LBP Activities Rule (Ref. 19) (61 FR 45778, 45779), the work practice standards covered by those regulations are intended to ensure that abatements are conducted reliably, effectively, and safely. While considering those three criteria, the 2001 LBP Hazards Rule modified the work practice standards to include dust-lead clearance levels, which ''are used to evaluate the effectiveness of cleaning following an abatement.'' (Ref. 2) (66 FR 1206, 1211). The definition of abatement includes cleanup and post-abatement clearance testing activities, and abatements are designed to permanently eliminate LBP hazards including dust-lead hazards (40 CFR 745.223). A dust-lead hazard is identified by the DLHS and the DLCL are used to demonstrate that abatement activities effectively and permanently

eliminate those hazards. Therefore, in choosing which DLCL to propose in this rulemaking, EPA considered how the DLCL will support the reliability, effectiveness, and safety of abatements to permanently eliminate LBP hazards.

The 2001 LBP Hazards Rule adopted the rationale outlined in EPA's 1998 proposed rule (''Identification of Dangerous Levels of Lead,'' 63 FR 30302, 30341, June 3, 1998) (Ref. 21). See also Ref. 2 (66 FR 1206, 1222–1223). EPA chose DLCL that were ''achievable using products and methods known to be reliable and effective'' (Ref. 21). In the 2018 proposed rule for the 2019 DLHS Rule (''Review of the Dust-Lead Hazard Standards and the Definition of Lead-Based Paint,'' 83 CFR 30889, July 2, 2018), EPA acknowledged that if the DLHS were set too low, the effectiveness of the LBP Activities program may be harmed if the abatement projects became overly expensive and time consuming due to issues of achievability (Ref. 22). That same concern for achievability applies to EPA's decision on which DLCL to propose in this rulemaking. However, in the final 2019 DLHS Rule, EPA examined results of a survey of lead hazard control grantees conducted by HUD's Office of Lead Hazard Control and Healthy Homes (OLHCHH), and found that:

> ''reductions in dust-lead levels to 10 μg/ft² on floors and to 100 μg/ft² on window sills were shown to be technically achievable using existing cleaning practices, even though, at the time, the reductions had to be just down to 40 and 250 μg/ft², respectively'' (Ref. 23).

Therefore, the proposed DLCL of 10 μg/ft² on floors and 100 μg/ft² on window sills are shown to be achievable using available products and methods that are effective and reliable in permanently eliminating LBP hazards. For further information on the HUD Clearance Survey, see the preamble to the 2019 DLHS Rule.

In addition to the specific criteria of reliability, effectiveness, and safety, the 2001 LBP Hazards rulemaking considered the DLCL in the broader context of Title X, and selected DLCL that are compatible with a ''workable framework for lead-based paint hazard evaluation and reduction'' (Ref. 21). To this end, EPA chose DLCL that were consistent with the DLHS in part to ensure they were ''as easy as possible to understand and implement'' (Ref. 21).

EPA maintains the concern for consistency between the DLCL and DLHS for this rulemaking. During the DLHS rulemaking, multiple commenters claimed that not revising clearance levels creates confusion (Ref. 24). Compounding the potential for such confusion is the fact that, as indicated in the 2019 DLHS Rule and described in greater detail elsewhere in this preamble, HUD cross-references EPA's DLHS for clearance work practices under HUD's LSHR. This means that if EPA chooses different DLCL than the DLHS, a segment of the regulated community will have two sets of clearance levels to consider. Selecting DLCL at 10 μg/ft² on floors and to 100 μg/ft² on window sills will mitigate this confusion within the regulated community.

B. Technical Analysis

The TSD that accompanies this proposal evaluated the 2001 DLCL, the background dust-lead level, and the five DLCL options (15 μg/ft² for floors and 100 μg/ft² for window sills; and 10 μg/ft² for floors, and 40 μg/ft², 60 μg/ft², 80 μg/ft² and 100 μg/ft² for window sills) with values between background (lowest) and the 2001 DLCL (highest). The methods for estimating exposure and health impacts utilized for the 2019 DLHS rulemaking are reflected in the TSD for this rule to analyze the DLCL options. The various components of the model and input parameters used in the TSD for the DLHS and this rulemaking have been the subject of multiple Science Advisory Board Reviews, workshops and publications in the peer review literature (Ref. 4, 25). The analysis outlined in the 2019 DLHS Rule was used to identify conditions that would result in adverse health effects. Where the DLHS are used to identify conditions that would result in adverse health effects, the DLCL must demonstrate that those conditions identified by the DLHS have been eliminated. Therefore, the health impact analysis for the DLCL is less central to the decision-making for this rule than it was to the 2019 DLHS Rule. Regardless, EPA must understand the impact on public health when selecting the DLCL in order to inform the economic analysis.

The analyses that EPA developed and presented in both the TSD for the 2019 DLHS Rule and the TSD accompanying this proposal, were specifically designed to model potential health effects that might accrue to the subpopulation, *i.e.,* children living in pre-1940 and pre-1978 housing. EPA notes that its different program offices estimate exposures for different populations, different media, and under different statutory requirements and thus different models or parameters may be a better fit for their purpose. As such, the approach and modeling parameters chosen for this rulemaking should not necessarily be construed as appropriate for or consistent with the goals of other EPA programs (Ref. 4).

In its evaluation, EPA estimated BLLs and IQ changes as a proxy for changes in cognitive function in children below the age of six (6) exposed long-term to these analyzed dust-lead loading levels. As also reflected in the 2019 DLHS Rule, EPA generated two different modeling approaches to estimate the quantitative relationships between dust-lead and BLL data. The first approach used mechanistic modeling data that include consideration of age-specific ingestion rates, activity patterns, and background exposures. The second approach used empirical data that includes co-reported dust-lead and BLL measurements in the homes of children. The dust-lead and BLL data are used to develop an empirical relationship to estimate BLL for each candidate DLCL. Both approaches (mechanistic and empirical) are compared to provide independent confirmation of the relationship between dust-lead loadings and BLL. For additional information summarizing the methodologies employed in the TSD, see the 2018 preamble to the proposed DLHS rule (Ref. 22).

C. Effect of the Proposed Revised DLCL on EPA and HUD Programs

1. LBP Activities Rule—EPA Abatements

Abatements are any measures or set of measures designed to permanently eliminate lead-based paint hazards and include activities such as the removal of paint and dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of painted surfaces or fixtures, and all preparation, cleanup, disposal, and post-abatement clearance testing activities associated with such measures. Abatements must be conducted by certified abatement workers and supervisors. After LBP abatements are conducted, EPA's regulations require a certified inspector or risk assessor to conduct post-abatement clearance testing (via dust wipe samples) of the abated area. If the dust wipe sample results show dust-lead loadings equal to or exceeding the applicable clearance level, ''the components represented by the failed sample shall be recleaned and retested.'' See 40 CFR 745.227(e)(8)(vii). In other words, the abatement is not cleared until the dust wipe samples in the work area are below the clearance levels. Under this proposed rule, inspectors and risk assessors would compare dust wipe sampling results for floors and window sills to the lower proposed DLCL and the results for window

troughs to the current DLCL. Dust wipe sampling results at or above the proposed DLCL would indicate that the components represented by the sample must be recleaned and retested. The proposed rule does not change any other risk assessment requirements.

2. Renovation, Repair and Painting (RRP) Rule

Revising the DLCL will not trigger new requirements under the existing RRP Rule (40 CFR part 745, subpart E). The RRP Rule requires post-renovation cleaning verification under 40 CFR 745.85(b), but the rule does not require dust wipe sampling and analysis using the DLCL. However, although optional under the RRP Rule, dust wipe sampling for clearance using the DLCL in accordance with the LBP Activities Rule (40 CFR 745.227(e)(8)) may be required by contract or by another Federal, state, territorial, tribal, or local law or regulation. At this time, other than HUD's Lead Safe Housing Rule, EPA is not familiar with other laws and regulations that require clearance testing using EPA's DLCL.

3. EPA–HUD Disclosure Rule

Under the Disclosure Rule, prospective sellers and lessors of target housing must provide purchasers and renters with a federally approved lead hazard information pamphlet and disclose known LBP and/or LBP hazards, and any available records, reports, and additional information pertaining to LBP and/or LBP hazards. The information disclosure activities are required before a purchaser or renter is obligated under a contract to purchase or lease target housing. Records or reports pertaining to LBP and/or LBP hazards must be disclosed, including results from post-abatement clearance testing, regardless of whether the level of dust-lead is below the clearance levels.

The proposed DLCL of 10 μg/ft² on floors and 100 μg/ft² on window sills will not result in additional disclosures because there are no new information collection requirements to consider under this proposed rule. Property owners would already be disclosing results, records, reports, and any additional information that show dust-lead below the original DLCL of 40 μg/ft² on floors or below 250 μg/ft² on window sills, and any results, records, and reports of additional cleaning due to lower DLCL would be reflected in this same record.

4. LSHR Clearance Requirements

The DLCL in this proposal will not change the clearance levels that apply to hazard reduction activities under HUD's LSHR because the LSHR currently requires clearance at the DLHS level, which is reflected by the proposed DLCL. The LSHR requires certain hazard reduction activities to be performed in certain federally-owned and assisted target housing including abatements, interim controls, paint stabilization, and ongoing LBP maintenance. Hazard reduction activities are required in this housing when LBP hazards are identified or when maintenance or rehabilitation activities disturb paint known or presumed to be LBP. The LSHR's clearance regulations, 24 CFR 35.1340, specify requirements for clearance of these projects (when they disturb more than de minimis amounts of known or presumed lead-based painted surfaces, as defined in 24 CFR 35.1350(d)), including a visual assessment, dust sampling, submission of samples for analysis for lead in dust, interpretation of sampling results, and preparation of a report. As explained in the preamble to the 2019 DLHS Rule (Ref. 3), the LSHR clearance regulations cross-reference EPA's DLHS. As a result, the LSHR clearance standards were lowered to 10 μg/ft² and 100 μg/ft² for floors and window sills, respectively, when the 2019 DLHS Rule became effective on January 6, 2020. Accordingly, activities under the LSHR are currently required to be cleared using EPA's DLHS.

5. 2017 Policy Guidance—HUD Requirements for Lead Hazard Control Grants

On February 16, 2017, HUD's OLHCHH issued policy guidance to establish new and more protective requirements for dust-lead action levels for its Lead-Based Paint Hazard Control (LBPHC) and Lead Hazard Reduction Demonstration (LHRD) grantees (the requirements also apply to related HUD grants under similar names, including Lead Hazard Reduction (LHR) grants and their High Impact Neighborhoods and Highest Lead-Based Paint Abatement Needs grant categories (Ref. 26). In particular, the guidance adopted clearance levels of 10 μg/ft² and 100 μg/ft² for floors and window sills, respectively, for lead hazard control activities performed under these grant programs. The change in requirements were supported by scientific evidence on the adverse effects of lead exposure at low blood-lead levels in children, (<10 μg/dL) as well as the achievability of lower clearance levels based on the Lead Hazard Control Clearance Survey. The guidance clearance levels for floors and window sills are equal to the proposed DLCL. Consequently, the proposed changes to the DLCL that EPA may promulgate will not affect the clearance levels used by the LBPHC and LHRD grantees.

6. HUD Guidelines

The HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing were developed in 1995 under section 1017 of Title X. They provide detailed, comprehensive, technical information on how to identify LBP hazards in residential housing and COFs, and how to control such hazards safely and efficiently. The Guidelines were revised in 2012 to incorporate new information, technological advances, and new Federal regulations, including EPA's LBP hazard standards. Based on EPA's changes to the DLHS in 2019 and any changes, if made to the DLCL, HUD plans to revise Chapter 5 of the Guidelines on risk assessment and reevaluation and Chapter 15 on clearance, and make conforming changes elsewhere as needed.

7. Previous LBP-Related Activities

The DLCL are used to evaluate the effectiveness of a cleaning following an abatement. After the dust wipe samples show dust-lead loadings below the DLCL, an abatement report is prepared, copies of any reports required under the LBP Activities Rule are provided to the building owner (and to potential lessees and purchasers under the LBP Disclosure Rule by those building owners or their agents), and all required records are also retained by the abatement firm or by the individuals who developed each report. The proposed DLCL of 10 μg/ft² on floors and 100 μg/ft² on window sills will not impose retroactive requirements on regulated entities that have previously performed post-abatement clearance testing using the original DLCL of 40 μg/ft² on floors or 250 μg/ft² on window sills. The new requirements would only apply to post-abatement clearance sampling and analysis conducted after the effective date of the final rule.

D. State Authorization

Pursuant to TSCA section 404 and EPA's regulations at 40 CFR part 745, subpart Q, interested states, territories and federally recognized tribes may apply for and receive authorization to administer their own LBP Activities programs, as long as their programs are at least as protective of human health and the environment as the EPA's program and provide adequate enforcement. As part of the authorization process, states, territories

and federally recognized tribes must demonstrate to EPA that they meet the requirements of the LBP Activities Rule. If EPA finalizes the lower DLCL, a state, territory or federally recognized tribe must demonstrate that it meets the new requirements in its application for authorization or, if already authorized, in a report submitted under 40 CFR 745.324(h) no later than two years after the effective date of the new requirements. If an application for authorization has been submitted but not yet approved, the state, territory or federally recognized tribe must demonstrate that it meets the new requirements either by amending its application, or in a report it submits under 40 CFR 745.324(h) no later than two years after the effective date of the new requirements.

IV. Request for Comments

EPA is requesting comment on all aspects of this proposal, including but not limited to the topics specifically discussed in this paragraph. For example, EPA requests comment on EPA's proposal to lower the DLCL for floor dust to 10 μg/ft² and for window sill dust to 100 μg/ft². Because there is no DLHS for window troughs, EPA is proposing no change to the DLCL for window troughs at this time, and requests comment on this topic as well. EPA is requesting comment on the appropriateness of each of the DLCL, including the effectiveness of the proposed DLCL to ensure that an abatement has permanently eliminated a dust-lead hazard. EPA is also requesting comment on the ability of laboratories to analyze dust wipe samples in accordance with these proposed lower levels. In some cases, window sills may have a small surface area, therefore, EPA is requesting comment on the ability to collect a sufficient amount of dust-lead to meet all laboratories' quantitation limits with their existing analytical equipment for the range of window sill clearance options, 40 μg/ft², 60 μg/ft², 80 μg/ft² and 100 μg/ft² as presented in the EA and TSD. For further information on laboratory capabilities, see the preamble to the 2019 DLHS Rule. In general, EPA is requesting comments on all the options (15 μg/ft² for floors and 100 μg/ft² for window sills; and 10 μg/ft² for floors, and 40 μg/ft², 60 μg/ft², 80 μg/ft² and 100 μg/ft² for window sills) in the EA and TSD, as well as the methods, models, and data used to analyze the options presented in the EA and the TSD. In particular, EPA is requesting comment on the assumption, derived from HUD data, that 18% of the housing units that conduct abatements would not achieve dust-lead loadings below the 2019 DLHS of 10 μg/ft² for floors and 100 μg/ft² for window sills in the baseline.

V. References

The following is a list of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

1. Public Law 102–550, Title X—Housing and Community Development Act, enacted October 28, 1992 (also known as the Residential Lead-Based Paint Hazard Reduction Act of 1992 or ''Title X'') (42 U.S.C. 4851 *et seq.*). *https://www.govinfo.gov/content/pkg/USCODE-2017-title42/html/USCODE-2017-title42-chap63A-sec4851.htm.*
2. U.S. EPA. Lead; Identification of Dangerous Levels of Lead; Final Rule. **Federal Register** (66 FR 1206, January 5, 2001) (FRL–6763–5). *https://www.federalregister.gov/documents/2001/01/05/01-84/lead-identification-of-dangerous-levels-of-lead.*
3. U.S. EPA. Review of the Dust-Lead Hazard Standards and the Definition of Lead-Based Paint; Final Rule. **Federal Register** (84 FR 32632, July 9, 2019) (FRL–9995–49). *https://www.federalregister.gov/documents/2019/07/09/2019-14024/review-of-the-dust-lead-hazard-standards-and-the-definition-of-lead-based-paint.*
4. U.S. EPA, Office of Pollution Prevention and Toxics. *Technical Support Document for Residential Dust-lead Clearance Levels Rulemaking Estimation of Blood Lead Levels and Effects from Exposures to Dust-lead.* June 2020.
5. President's Task Force on Environmental Health Risks and Safety Risks to Children. *Federal Action Plan to Reduce Childhood Lead Exposures and Associated Health Impacts.* December 2018. *https://www.epa.gov/lead/federal-action-plan-reduce-childhood-lead-exposure.*
6. U.S. EPA. *Implementation Status of EPA Actions Under the 2018 Federal Action Plan To Reduce Childhood Lead Exposures and Associated Health Impacts: Fiscal Year 2019, 4th Quarter.* October 2019. *https://www.epa.gov/leadactionplanimplementation/implementation-status-epa-actions-under-2018-federal-action-plan-1#goal1.*
7. Sierra Club et al. Letter to Lisa Jackson RE: Citizen Petition to EPA Regarding the Paint and Dust Lead Standards. August 10, 2009. *https://www.epa.gov/sites/production/files/2015-10/documents/epa_lead_standards_petition_final.pdf.*
8. U.S. EPA, Office of Pollution Prevention and Toxics. *Economic Analysis of the Proposed Rule to Revise the TSCA Dust-Lead Clearance Levels.* June 2020.
9. CDC. *Childhood Blood Lead Levels in Children Aged <5 Years—United States, 2009–2014.* CDC Morbidity and Mortality Weekly Report, Vol. 66 No. 3, January 20, 2017. *https://www.cdc.gov/mmwr/volumes/66/ss/ss6603a1.htm.*
10. HHS, National Toxicology Program. *NTP Monograph on Health Effects of Low-Level Lead.* National Institute of Environmental Health Sciences, Research Triangle Park, NC. NIH Pub. No. 12–5996. ISSN 2330–1279. June 13, 2012. *https://ntp.niehs.nih.gov/ntp/ohat/lead/final/monographhealtheffects lowlevellead_newissn_508.pdf.*
11. Agency for Toxic Substances and Disease Registry, Division of Toxicology and Human Health Sciences. *Lead—ToxFAQs™ CAS #7439–92–1.* August 2007. *https://www.atsdr.cdc.gov/toxfaqs/tfacts13.pdf.*
12. U.S. EPA. *Exposure Factors Handbook 2011 Edition (Final Report).* U.S. Environmental Protection Agency, Washington, DC, EPA/600/R–09/052F. September 2011. *https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=236252.*
13. U.S. EPA. *Policy on Evaluating Health Risks to Children.* Policy. October 1995. *https://www.epa.gov/sites/production/files/2014-05/documents/1995_childrens_health_policy_statement.pdf.*
14. Zartarian, V., Xue, J., Tornero-Velez, R., & Brown, J. *Children's Lead Exposure: A Multimedia Modeling Analysis to Guide Public Health Decision-Making.* Environmental Health Perspectives, 125(9), 097009–097009. September 12, 2017. *https://doi.org/10.1289/EHP1605.*
15. President's Task Force on Environmental Health Risks and Safety Risks to Children. *Key Federal Programs to Reduce Childhood Lead Exposures and Eliminate Associated Health Impacts.* November 2016. *https://ptfceh.niehs.nih.gov/features/assets/files/key_federal_programs_to_reduce_childhood_lead_exposures_and_eliminate_associated_health_impactspresidents_508.pdf.*
16. U.S. EPA. *Integrated Science Assessment (ISA) for Lead (Final Report, June 2013).* U.S. EPA, Washington, DC, EPA/600/R–10/075F, 2013. *https://www.epa.gov/isa/integrated-science-assessment-isa-lead.*
17. U.S. EPA. Lead; Renovation, Repair, and Painting Program; Final Rule. **Federal Register** (73 FR 21692, April 22, 2008) (FRL–8355–7). *https://www.federalregister.gov/citation/73-FR-21692.*
18. HUD, EPA. Lead; Requirements for Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards in Housing; Final Rule. **Federal Register** (61 FR 9064, March 6, 1996) (FRL–5347–9). *https://www.federalregister.gov/citation/61-FR-9064.*
19. U.S. EPA. Lead; Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; Final Rule. **Federal Register** (61 FR 45778, August 29, 1996) (FRL–5389–9). *https://*

www.federalregister.gov/citation/61-FR-45778.

20. HUD. Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance; Response to Elevated Blood Lead Levels; Final Rule. **Federal Register** (82 FR 4151, January 13, 2017) (FR–5816–F–02). *https://www.federalregister.gov/documents/2017/01/13/2017-00261/requirements-for-notification-evaluation-and-reduction-of-lead-based-paint-hazards-in-federally.*
21. U.S. EPA. Lead; Identification of Dangerous Levels of Lead; Proposed Rule. **Federal Register** (63 FR 30302, June 3, 1998) (FRL–5791–9). *https://www.federalregister.gov/documents/1998/06/03/98-14736/lead-identification-of-dangerous-levels-of-lead.*
22. U.S. EPA. Review of the Dust-Lead Hazard Standards and the Definition of Lead-Based Paint; Proposed Rule. **Federal Register** (83 FR 30889, July 2, 2018) (FRL–9976–04). *https://www.federalregister.gov/documents/2018/07/02/2018-14094/review-of-the-dust-lead-hazard-standards-and-the-definition-of-lead-based-paint.*
23. HUD, Office of Lead Hazard Control and Healthy Homes. *Lead Hazard Control Clearance Survey.* Final Report. October 2015. *https://www.hud.gov/sites/documents/clearancesurvey_24oct15.pdf.*
24. U.S. EPA. *Review of the Dust-Lead Hazard Standards and the Definition of Lead-Based Paint RIN 2070–AJ82 Response to Comment.* June 2019. *https://www.regulations.gov/document?D=EPA-HQ-OPPT-2018-0166-0571.*
25. U.S. EPA, Office of Pollution Prevention and Toxics. *Technical Support Document for Residential Dust-lead Hazard Standards Rulemaking Approach taken to Estimate Blood Lead Levels and Effects from Exposures to Dust-lead.* June 2019.
26. HUD. *Revised Dust-Lead Action Levels for Risk Assessment and Clearance; Clearance of Porch Floors.* Policy Guidance 2017–01 Rev 1. February 16, 2017. *https://www.hud.gov/sites/documents/LEADDUSTLEVELS_REV1.pdf.*

VI. Statutory and Executive Order Reviews

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

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

This action is an economically significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). Any changes made in response to OMB recommendations have been documented in the docket. The Agency prepared an analysis of the potential costs and benefits associated with this action, which is available in the docket (Ref. 8).

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

This action is expected to be an Executive Order 13771 regulatory action (82 FR 9339, February 3, 2017). Details on the estimated costs of this proposed rule can be found in EPA's analysis of the potential costs and benefits associated with this action (Ref. 8).

C. Paperwork Reduction Act (PRA)

This action does not directly impose an information collection burden under the PRA, 44 U.S.C. 3501 *et seq.* Under 24 CFR part 35, subpart A, and 40 CFR 745, subpart F, sellers and lessors must already provide purchasers or lessees any available records or reports ''pertaining to'' LBP, LBP hazards and/or any lead hazard evaluative reports available to the seller or lessor. Accordingly, a seller or lessor must disclose any reports showing dust-lead levels, regardless of the value. Thus, this action would not result in additional disclosures. Because there are no new information collection requirements to consider under the proposed rule, or any changes to the existing requirements that might impact existing ICR burden estimates, additional OMB review and approval under the PRA is not necessary.

D. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 *et seq.* The small businesses subject to the requirements of this action are abatement firms that may incur costs associated with additional cleaning and sealing in houses where a post-abatement loading is between the current DLCL of 40 μg/ft^2 for floors and 250 μg/ft^2 for window sills, and the proposed DLCL of 10 μg/ft^2 for floors and 100 μg/ft^2 for window sills.

EPA's Economic Analysis (Ref. 8) presents low and high scenarios for the number of housing units where a child with a blood lead level that equals or exceeds a Federal or state trigger value lives. For the low scenario, environmental investigations are assumed to be conducted when a child's blood lead level equals or exceeds the trigger value set by that child's state. These values vary from 5 μg/dL to 25 μg/dL, depending on the state. For the high scenario, environmental investigations are assumed to be conducted when a child's blood lead level equals or exceeds the CDC's reference level of 5 μg/dL. The two scenarios function as bounding estimates, and a more realistic assessment of the number of environmental investigations is that they are between the high and low scenarios. The low and high scenarios for the number of environmental investigations affect the estimated number of small business that might incur costs for cleaning and additional dust wipe testing if EPA promulgates the clearance levels in this proposed rule.

The Agency has determined that this rule may impact approximately 0 to 10,200 small abatement firms, with 0 to 9,000 having cost impacts less than 1% of revenues, 0 to 1,000 having impacts between 1% and 3%, and 0 to 250 having impacts greater than 3% of revenues. Details of the analysis are presented in the EA, which is available in the docket (Ref. 8).

In addition to the use of the high scenario, the analysis makes a series of other assumptions that are likely to lead to an overestimate of small entity impacts. In order to estimate the potential impacts of the rule, EPA assumed that an environmental investigation occurs whenever a child's blood lead level is found to equal or exceed a Federal or state trigger value; that the environmental investigation always includes dust wipe testing of the child's home; and that a clean-up occurs whenever the environmental investigation indicates that dust-lead loadings exceed a hazard standard. Neither the DLCL nor the other provisions of EPA's LBP activities regulations require property owners to evaluate their properties for the presence of dust-lead hazards, or to take action to address the hazards if dust-lead hazards are identified.

The analysis also assumes that in all cases where a dust-lead hazard is identified, the property owner performs at least one baseline abatement activity. This likely overestimates costs because some events may only involve interim controls, and EPA does not require clearance testing for such events.

Finally, the analysis assumes that in all cases the costs are borne entirely by the lead paint abatement firm (as opposed to being passed through to the property owner). However, it is more likely that some, or perhaps even most, of these costs will be passed on to the property owners.

In light of these conservative assumptions, the small entity impacts analysis likely overstates the number of small businesses with large impacts.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The total estimated annual cost of the proposed rule is $0 to 7 million to $0 to 35 million per year (Ref. 8), which does not exceed the inflation-adjusted unfunded mandate threshold of $156 million.

F. Executive Order 13132: Federalism

This action does not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. States that have authorized LBP Activities programs must demonstrate that they have DLCL at least as protective as the levels at 40 CFR 745.227. However, authorized States are under no obligation to continue to administer the LBP Activities program, and if they do not wish to adopt the new DLCL they can relinquish their authorization. In the absence of a State authorization, EPA will administer these requirements. Thus, Executive Order 13132 does not apply to this action.

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

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). Federally recognized tribes that have authorized LBP Activities programs must demonstrate that they have DLCL at least as protective as the clearance level at 40 CFR 745.227. However, these authorized tribes are under no obligation to continue to administer the LBP Activities program, and if they do not wish to adopt the new DLCL they can relinquish their authorization. In the absence of a tribal authorization, EPA will administer these requirements. Thus, Executive Order 13175 does not apply to this action.

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

This action is subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is economically significant as defined in Executive Order 12866, and because the environmental health or safety risk addressed by this action may have a disproportionate effect on children (Ref. 4).

The primary purpose of this rule is to clear abatements to a level that can reliably, effectively and safely eliminate LBP hazards in target housing, including target housing where children reside, and COFs. EPA's analysis indicates that there will be approximately 10,500 to 51,000 children per year affected by the rule (Ref. 8).

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

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution or use of energy.

J. National Technology Transfer and Advancement Act (NTTAA)

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.

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

EPA believes that this action does not have disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994).

List of Subjects in 40 CFR Part 745

Environmental protection, Abatement, Child-occupied facility, Clearance levels, Hazardous substances, Lead, Lead poisoning, Lead-based paint, Target housing.

Dated: June 17, 2020.

Andrew Wheeler,

Administrator.

Therefore, it is proposed that 40 CFR chapter I, subchapter R, be amended as follows:

PART 745—[AMENDED]

■ 1. The authority citation for part 745 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2681–2692 and 42 U.S.C. 4852d.

■ 2. Amend § 745.223 by revising the definition for ''Clearance levels'' to read as follows:

§ 745.223 Definitions.

* * * * *

Clearance levels are values that indicate the amount of lead in dust on a surface following completion of an abatement activity. To achieve clearance when dust sampling is required, values below these levels must be achieved.

* * * * *

■ 3. Amend § 745.227 by revising paragraph (e)(8)(viii) to read as follows:

§ 745.227 Work practice standards for conducting lead-based paint activities: Target housing and child-occupied facilities.

* * * * *

(e) * * *

(8) * * *

(viii) The clearance levels for lead in dust are 10 μg/ft² for floors, 100 μg/ft² for interior window sills, and 400 μg/ft² for window troughs.

* * * * *

[FR Doc. 2020–13582 Filed 6–23–20; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 85, No. 122

Wednesday, June 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

[Document Number AMS–SC–19–0036, SC–19–330]

Revision of Three U.S. Grade Standards for Carrots

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: The Agricultural Marketing Service (AMS) of the Department of Agriculture (USDA) is revising the U.S. Standards for Grades of Topped Carrots, U.S. Standards for Grades of Bunched Carrots, and U.S. Standards for Grades of Carrots with Short Trimmed Tops. AMS is adding more U.S. No. 1 grades to accommodate carrots of colors other than orange, orange red, and orange scarlet. The current U.S. No. 1 grades will remain unchanged. In addition, AMS is removing the Unclassified section and renumbering sections due to the additional grades.

DATES: July 24, 2020.

FOR FURTHER INFORMATION CONTACT: David G. Horner, USDA, Specialty Crops Inspection Division, 100 Riverside Parkway, Suite 101, Fredericksburg, VA 22406, by phone (540) 361–1128; fax (540) 361–1199; or, email *Dave.Horner@usda.gov*. Copies of the revised U.S. Standards for Grades of Topped Carrots, U.S. Standards for Grades of Bunched Carrots, and U.S. Standards for Grades of Carrots with Short Trimmed Tops are available at *http://www.regulations.gov* or on the AMS website at *www.ams.usda.gov/grades-standards/vegetables.*

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627) as amended, directs and authorizes the Secretary of Agriculture ''to develop and improve standards of quality, condition, quantity, grade, and packaging, and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices.''

AMS is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request. The U.S. Standards for Grades of Fruits and Vegetables that are voluntary and no longer appear in the Code of Federal Regulations (60 FR 62172, December 4, 1995) are maintained by AMS at: *http://www.ams.usda.gov/grades-standards.* AMS is revising these U.S. Standards for Grades using the procedures that appear in part 36 of Title 7 of the Code of Federal Regulations (7 CFR part 36).

Background

AMS continually reviews all fruit and vegetable grade standards to ensure their usefulness to the industry, modernize language, and remove duplicative terminology. On December 22, 2008, AMS published a notice in the **Federal Register** (73 FR 78286) regarding revising the three U.S. grade standards for carrots to accommodate colors other than orange, orange red, and orange scarlet. The notice proposed revising the color section to allow carrots of any color characteristic of the variety to be graded using the standards. Also, the similar varietal characteristic requirement would have been amended to allow mixed colors and/or types when designated as a mixed or specialty pack. The industry as a whole opposed these revisions on the basis that non-orange carrots include heirloom carrots that may not have been bred for uniformity and may not have the same type of characteristics of orange carrots.

After gathering more feedback from the industry, AMS developed additional grades to accommodate other colors. For the Topped Carrots, the two new grades are U.S. No. 1 Color and U.S. No. 1 Jumbo Color. For the Bunched and Short Trimmed Carrots, the new grade is U.S. No. 1 Color. The current grades remain unchanged. The new grades are identical to the current grades except for the color requirement (the following tables summarize the revisions).

AMS spoke with several major U.S. carrot growers by telephone and emailed them a discussion paper on the proposed revisions. One major U.S. carrot grower stated that they were in favor of establishing a U.S. grade for colored carrots. No one opposed the changes.

On January 28, 2020, AMS published a notice in the **Federal Register** (85 FR 4913) proposing to revise the three U.S. carrot standards by adding more U.S. No. 1 grades to accommodate carrots of colors other than orange, orange red, and orange scarlet. In addition, AMS proposed to remove the Unclassified section and renumber sections due to the additional grades. The public submission period closed March 30, 2020, with 10 comments submitted.

All of the comments were submitted by the general public. Six comments supported the proposed revisions; three were beyond the scope of the notice; and one individual did not support the proposed changes due to not understanding AMS' intentions. The following addresses those misunderstandings.

- The individual stated, ''The USDA already knows what constitutes a good quality carrot.'' From additional remarks, the individual did not understand that AMS is part of the USDA. It is the USDA that proposed these revisions.
- The individual stated, ''There are standards for carrots that are not orange, orange red, or orange scarlet.'' There were no U.S. grade standards for carrots unless they were orange, orange red, or orange scarlet. For example, a maroon colored carrot could not be certified to a U.S. grade.
- The individual stated, ''There are already provisions in place for color defects in carrots . . . Adding mixed colors to the standard could jeopardize the entire quality check system.'' This comment implies that the commenter believes ''mixed colors'' refers to an individual carrot of more than one color. ''Mixed colors'' refers to packing carrots of different solid colors in the same package. Individual carrots are not more than one color. The industry already markets mixed color packs; however, the package could not be assigned a U.S. grade.

In addition to including the new U.S. No. 1 grades, AMS is removing the Unclassified section from the carrot standards. AMS is removing this section in all standards as they are revised because it is no longer considered necessary. The category was never a grade and only showed that no grade was applied to the lot.

Finally, some sections are renumbered due to the additional grades. The following tables summarize the revisions.

Previous	Revised	Summary
U.S. Topped Carrot Standards		
§ 51.2360 U.S. Extra No. 1	§ 51.2360 U.S. Extra No. 1	All remain unchanged.
§ 51.2361 U.S. No. 1	§ 51.2361 U.S. No. 1.	
§ 51.2362 U.S. No. 1 Jumbo	§ 51.2362 U.S. No. 1 Jumbo.	
	§ 51.2363 U.S. No. 1 Color and U.S. No. 1 Jumbo Color. "U.S. No. 1 Color" or "U.S. No. 1 Jumbo Color" consists of carrots which meet the requirements of the U.S. No. 1 or U.S. No. 1 Jumbo grades except for fairly well colored. All roots must show good characteristic color, which means the root has a uniform characteristic color for the variety over practically the entire surface. Roots may be comingled with varieties of different colors, provided roots are of the same type. (See § 51.2365.).	U.S. No. 1 Color and U.S. No. 1 Jumbo Color grades are added to accommodate other colors. The U.S. No. 1 Color and U.S. No. 1 Jumbo Color grades are identical to the U.S. No. 1 and U.S. No. 1 Jumbo grades, except for the color requirement. The new grades ensure all grades are premium quality, provide greater flexibility, and bring the standards in line with current marketing trends.
§ 51.2363 U.S. No. 2	§ 51.2364 U.S. No. 2	Remains the same except section number changes from 51.2363 to 51.2364. The U.S. No. 2 grade does not have any color requirements.
§ 51.2364 Unclassified "Unclassified"' consists of carrots which have not been classified in accordance with any of the foregoing grades. The term "unclassified" is not a grade within the meaning of these standards, but is provided as a designation to show that no grade has been applied to the lot.	Removed	AMS is removing this section in all standards as they are revised as it is no longer considered necessary. The category was never a grade and only showed that no grade was applied to the lot.
§ 51.2365 Tolerances . . . (a) Defects . . . (2) U.S. No. 1 and U.S. No. 1 Jumbo grades. Ten percent for carrots in any lot which fail to meet the requirements of the grade: Provided, That not more than one-half of this amount, or 5 percent, shall be allowed for defects causing serious damage, including therein not more than 2 percent for carrots affected by soft rot.	§ 51.2365 Tolerances . . . (a) Defects . . . (2) U.S. No. 1, U.S. No. 1 Jumbo, U.S. No. 1 Color, and U.S. No. 1 Jumbo Color grades. Ten percent for carrots in any lot which fail to meet the requirements of the grade: Provided, That not more than one-half of this amount, or 5 percent, shall be allowed for defects causing serious damage, including therein not more than 2 percent for carrots affected by soft rot.	The revised U.S. No. 1 Color and U.S. No. 1 Jumbo Color grades have the same tolerances as the other grades in this section, which all remain unchanged.
U.S. Bunched Carrot Standards		
§ 51.2455 U.S. No. 1	§ 51.2455 U.S. No. 1	Remains unchanged.
	§ 51.2456 U.S. No. 1 Color "U.S. No. 1 Color" consists of carrots which meet the requirements of U.S. No. 1 except for fairly well colored. All roots must show good characteristic color, which means the root has a uniform characteristic color for the variety over practically the entire surface. Roots may be comingled with varieties of different colors, provided roots are of the same type.	U.S. No. 1 Color grade is added to accommodate other colors. The U.S. No. 1 Color is identical to the U.S. No. 1 grade, except for the color requirement. The new grade ensures all grades are premium quality, provides greater flexibility, and brings the standards in line with current marketing trends.
§ 51.2456 U.S. Commercial	§ 51.2457 U.S. Commercial	Remains the same except section number changes from 51.2456 to 51.2457.
§ 51.2457 Unclassified "Unclassified" consists of carrots which have not been classified in accordance with either of the foregoing grades. The term "unclassified" is not a grade within the meaning of these standards, but is provided as a designation to show that no grade has been applied to the lot.	Removed	AMS is removing this section in all standards as they are revised as it is no longer considered necessary. The category was never a grade and only showed that no grade was applied to the lot.
U.S. Short Trimmed Carrot Standards		
§ 51.2485 U.S. No. 1	§ 51.2485 U.S. No. 1	Remains unchanged.

Previous	Revised	Summary
.....	§ 51.2486 U.S. No. 1 Color ..... "U.S. No. 1 Color" consists of carrots which meet the requirements of U.S. No. 1 except for fairly well colored. All roots must show good characteristic color, which means the root has a uniform characteristic color for the variety over practically the entire surface. Roots may be comingled with varieties of different colors, provided roots are of the same type.	U.S. No. 1 Color grade is added to accommodate other colors. The U.S. No. 1 Color grade is identical to the U.S. No. 1 grade, except for the color requirement. The new grade ensures all grades are premium quality, provides greater flexibility, and brings the standards in line with current marketing trends.
§ 51.2486 U.S. Commercial	§ 51.2487 U.S. Commercial	Remains the same except section number changes from 51.2486 to 51.2487.
§ 51.2487 Unclassified ..... "Unclassified" consists of carrots which have not been classified in accordance with either of the foregoing grades. The term "unclassified" is not a grade within the meaning of these standards, but is provided as a designation to show that no grade has been applied to the lot.	Removed	AMS is removing this section in all standards as they are revised as it is no longer considered necessary. The category was never a grade and only showed that no grade was applied to the lot.

Bruce Summers,

Administrator,Agricultural Marketing Service.

[FR Doc. 2020–12828 Filed 6–23–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. AMS–CP–20–0059]

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: This notice announces the Agricultural Marketing Service's (AMS) intention to request approval, from the Office of Management and Budget, for an extension of the currently approved information collection request Web-Based Supply Chain Management (WBSCM) system. This information collection is necessary to support the procurement of agricultural commodities for domestic and international nutrition assistance programs. AMS issues invitations to purchase fresh and processed commodities for domestic and international nutrition assistance programs on a year-round basis. The extension of the information collection request is required to continue using the WBSCM system, which allows respondents to submit information entered and received electronically in WBSCM. Vendors will be able to access electronically. The information collection burden for respondents should not increase.

DATES: Comments on this notice must be received by August 24, 2020 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit comments concerning this notice by using the electronic process available at *www.regulations.gov* or to Director, USDA/AMS–WBSCM Management Division, P.O. Box 419205, Kansas City, Missouri 64141–6205. All comments should reference the docket number, the date, and the page number of this issue of the **Federal Register**. All comments received will be posed without change, including personal information provided, at *www.regulations.gov* and will be included in the record and made available to the public.

FOR FURTHER INFORMATION CONTACT: Chad Burke, Director; WBSCM Management Division, *chad.burke@usda.gov* (202) 720–4517.

SUPPLEMENTARY INFORMATION:

Title: Web-Based Supply Chain Management.

OMB Number: 0581–0273.

Expiration Date of Approval: August 31, 2020.

Type of Request: Extension of a currently approved information collection.

Abstract: AMS purchases commodities for various domestic and international nutrition assistance programs and provides support for commodity markets with surplus inventory. AMS issues invitations to purchase agricultural commodities for use in domestic and international nutrition assistance programs. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this information collection request is for the extension of the currently approved information collection for the WBSCM system where respondents will submit information electronically via that system. Vendor information, annual certification information, and all commodity offer information will be existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information per response.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching WBSCM to see the date and time the system shows for receipt of bid, bid modification, or bid cancellation information. At bid opening date and time, the bid information is evaluated through the WBSCM system.

Acceptances will be sent to the successful offerors electronically. Awarded contracts will be posted on the AMS website.

Respondents: Businesses.

Estimated Number of Respondents: 330.

Estimated Total Annual Responses: 189,892.

Estimated Number of Responses per Respondent: 575.43.

Estimated Total Annual Burden on Respondents: 48,375.76 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;

(3) ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received will be available for public inspection during regular business hours at the same address.

Bruce Summers,

Administrator, Agricultural Marketing Service.

[FR Doc. 2020–13523 Filed 6–23–20; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2020–0052]

Notice of Request for Revision to and Extension of Approval of an Information Collection; Bovine Spongiform Encephalopathy; Importation of Animals and Animal Products

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and extension of approval of an information collection associated with activities to prevent the introduction of bovine spongiform encephalopathy into the United States.

DATES: We will consider all comments that we receive on or before August 24, 2020.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2020-0052.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2020–0052, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2020-0052* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the regulations to prevent the introduction of bovine spongiform encephalopathy into the United States, contact Dr. Alexandra MacKenzie, Senior Veterinary Medical Officer, USDA, APHIS Veterinary Services, 4700 River Road Unit 40, Riverdale, MD 20737; (301) 851–3411; *alexandra.mackenzie@usda.gov.* For information on the information collection process, contact Mr. Joseph Moxey, APHIS Information Collection Coordinator, at (301) 851–2483; *joseph.moxey@usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Bovine Spongiform Encephalopathy; Importation of Animals and Animal Products.

OMB Control Number: 0579–0393.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: The Animal Health Protection Act (7 U.S.C. 8301 *et seq.*) authorizes the Secretary of Agriculture to, among other things, prohibit or restrict the importation and interstate movement of animals and animal products into or through the United States to prevent the introduction and dissemination of animal diseases and pests.

To guard against the introduction of animal diseases, the Animal and Plant Health Inspection Service (APHIS) regulates the importation of animals and animal products into the United States. The regulations in 9 CFR parts 92, 93, 94, 95, and 96 govern the importation of certain animals, birds, poultry, meat, and other animal products and byproducts into the United States to prevent the introduction of various animal diseases, including bovine spongiform encephalopathy (BSE), a chronic degenerative disease that affects the central nervous system of cattle.

Section 92.5 of the regulations provides that all countries of the world are considered by APHIS to be in one of three BSE risk categories: Negligible risk, controlled risk, or undetermined risk. These risk categories are defined in § 92.1. Any region that is not classified by APHIS as presenting either negligible risk or controlled risk for BSE is considered to present an undetermined risk. Under the regulations, APHIS may classify a region for BSE in one of two ways. One way is for countries that have not received a risk classification from the World Organization for Animal Health (OIE) to request classification by APHIS. The other way is for APHIS to concur with the classification given to a country by the OIE.

To ensure BSE is not introduced into the United States, the regulations place specific conditions on the importation of animals and animal products. These requirements necessitate the use of several information collection activities, including, but not limited to, certifications, official identification, request for and retention of classification as negligible or controlled risk, declarations of importation, import and export certificates, applications, import and movement permits, agreements, certification statements, seals, notifications, and recordkeeping.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities, as described, for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate 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;

(2) Evaluate the accuracy of our estimate of the burden of the 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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 0.55 hours per response.

Respondents: Shippers, U.S. importers of regulated animal products, herd owners, salaried veterinarians of foreign regions, foreign exporters of processed animal protein and other regulated materials and products, accredited veterinarians, slaughter facility managers, and educators and researchers.

Estimated annual number of respondents: 2,225.

Estimated annual number of responses per respondent: 239.

Estimated annual number of responses: 532,451.

Estimated total annual burden on respondents: 292,884 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

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.

Done in Washington, DC, this 18th day of June 2020.

Mark Davidson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2020–13533 Filed 6–23–20; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Rural Business-Cooperative Service

Notice of Funds Availability for the Higher Blends Infrastructure Incentive Program (HBIIP) for Fiscal Year 2020; Correction

AGENCY: Commodity Credit Corporation and the Rural Business-Cooperative Service, Department of Agriculture (USDA).

ACTION: Notice; correction.

SUMMARY: The Commodity Credit Corporation and the Rural Business-Cooperative Service, USDA published a notice in the **Federal Register** on May 5, 2020 regarding the Notice of Funds Availability for the Higher Blends Infrastructure Incentive Program (HBIIP) for Fiscal Year 2020. This document inadvertently did not include all the Western states in Section V. Application Review Information, A. Criteria, 2. This notice corrects that omission.

FOR FURTHER INFORMATION CONTACT: Anthony Crooks: Telephone (202) 205–9322, email: *EnergyPrograms@usda.gov.* Persons with disabilities that require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice).

SUPPLEMENTARY INFORMATION:

Correction

1. In the **Federal Register** of May 5, 2020, in FR Doc. 2020–09685, on page 26662, in the third column, correct (viii), 2. to read: The Western States and U.S. Territories, including—Alaska, Arkansas, Arizona, California, Colorado, Hawaii, Idaho, Iowa, Kansas, Louisiana, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Texas, Utah, Washington, Wyoming, and the U.S. Territories of Puerto Rico, the U.S. Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa.

Robert Stephenson,

Executive Vice President, Commodity Credit Corporation.

Mark Brodziski,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. 2020–13360 Filed 6–23–20; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Arkansas Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Arkansas Advisory Committee (Committee) will hold a meeting on Wednesday July 15, 2020 at 12:30 p.m. Central time. The Committee will discuss publication of their study of civil rights and mass incarceration in the state, as well as other civil rights topics for future study.

DATES: The meeting will take place on Wednesday July 15, 2020 at 12:30 p.m. Central.

Public Call Information: Dial: 800–353–6461, Conference ID: 8964378.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public can listen to these discussions. These meetings are available to the public through the above call in numbers. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit, U.S. Commission on Civil Rights, 230 S Dearborn, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324, or emailed to Corrine Sanders at *csanders@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Arkansas Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

Welcome and Roll Call
Civil Rights in Arkansas
Future Plans and Actions
Public Comment
Adjournment

Dated: June 18, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–13569 Filed 6–23–20; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the North Dakota Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meetings.

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 briefings of the North Dakota Advisory Committee to the Commission will be held on the following Tuesdays: July 7, at 1:30 p.m. (CDT) and July, 14 and July 21, 2020 at

12:00 p.m. (CDT). The purpose of the briefings is to hear from presenters on fair housing issues in North Dakota.

Dates and Times: Tuesdays: July 7, 2020 at 1:30 p.m. (CDT) and July 14 and July 21 at 12:00 p.m. (CDT).

Public Call-In Information: 1–800–367–2403; conference ID: 5743407.

TDD: Dial Federal Relay Service 1–800–877–8339 and give the operator the above numbers.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor, at *ebohor@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; conference ID: 5743407. Please be advised that before placing them 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 1–800–877–8339 and providing the operator with the toll-free conference call-in number: 1–800–367–2403; conference ID: 5743407.

Members of the public are invited to make statements during the open comment period of the briefings or submit written comments. The comments must be received in the regional office approximately 30 days after each scheduled meeting. Written comments may be emailed to Evelyn Bohor at *ebohor@usccr.gov.* Persons who desire additional information may contact Evelyn Bohor at 202–921–2212.

Records and documents discussed during the briefings will be available for public viewing as they become available at this FACA link; click the ''Meeting Details'' and ''Documents'' links. 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 agency at the above phone number or email address.

Agenda: Tuesdays: July 7, 2020 at 1:30 p.m. (CDT) and July 14 and July 21 at 12:00 p.m. (CDT)

- Roll call
- Panel for Fair Housing Project
- Open Comment
- Next Steps
- Other Business
- Adjourn

Dated: June 19, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–13603 Filed 6–23–20; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Illinois Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights and the Federal Advisory Committee Act that the Illinois Advisory Committee (Committee) will hold a meeting via teleconference on Wednesday, July 1, 2020 at 1:00 p.m. Central Time, the purpose of the meeting is to review the draft report on Fair Housing in Illinois.

DATES: The meeting will be held on Wednesday, July 1, 2020 at 1:00 p.m. Central Time.

Public Call Information: Dial: 800–367–2403, Conference ID: 7353600.

FOR FURTHER INFORMATION CONTACT: David Barreras, Designated Federal Official, at *dbarreras@usccr.gov* or 202–499–4066.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion. This meeting is available to the public through the call in information listed above. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement to the Committee as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Carolyn Allen at *callen@usccr.gov.in* the Regional Program Unit Office/Advisory Committee Management Unit. Persons who desire additional information may contact the Regional Program Unit at 202–499–4066.

Records generated from this meeting may be inspected and reproduced at the Chicago office, as they become available, both before and after the meeting. Records of the meeting will be available for public viewing as they become available at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzlZAAQ* under the Commission on Civil Rights, Illinois Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Chicago Office at the above email or phone number.

Agenda

I. Welcome and Roll Call
II. Discussion of Draft Report on Fair Housing in Illinois
III. Public Comment
IV. Adjournment

Dated: June 18, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–13568 Filed 6–23–20; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Nebraska Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Nebraska Advisory Committee (Committee) will hold a meeting on Monday, July 27, 2020 at 12:00 p.m. Central time. The Committee will discuss civil rights concerns in the state.

DATES: The meeting will take place on Monday July 27, 2020 at 12:00 p.m. Central time.

Public Call Information: Dial: 800–367–2403, Conference ID: 7138878.

FOR FURTHER INFORMATION CONTACT: Melissa Wojnaroski, DFO, at *mwojnaroski@usccr.gov* or 312–353–8311.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. Committee meetings are available to the public through the above listed call in number. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit, U.S. Commission on Civil Rights, 230 S. Dearborn, Suite 2120, Chicago, IL 60604. They may also be faxed to the Commission at (312) 353–8324, or emailed to Corrine Sanders at *csanders@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Virginia Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

Welcome and Roll Call
Civil Rights in Nebraska
Future Plans and Actions
Public Comment
Adjournment

Dated: June 19, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–13595 Filed 6–23–20; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New York 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 planning meeting of the New York Advisory Committee to the Commission will convene by conference call, on Wednesday, June 24, 2020 at 9:30 a.m. (EST). The purpose of the meeting is to introduce the reappointed chair and newly appointed members to the Committee and discuss civil rights issues in the state.

DATES: Wednesday, June 24, 2020 at 9:30 a.m. (EST).

Call-In Information: 1(206) 800–4892 and conference call ID: 249029919#.

FOR FURTHER INFORMATION CONTACT: David Barreras at *dbarreras@usccr.gov* or (202) 499–4066.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the telephone number and conference ID listed above. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. 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-in numbers: 1–206–800–4892 and conference call ID: 249029919#.

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 respective meeting. Written comments may be emailed to *dbarreras@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at 202–499–4066. Records and documents discussed during the meeting will be available for public viewing as they become available at *https://www.facadatabase.gov/FACA/apex/FACAPublicCommittee?id=a10t0000001gzmAAAQ click* the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Midwestern 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 Midwestern Regional Office at the above phone number or email.

Agenda

I. Welcome and Roll Call
II. Introduction of the reappointed chair and newly appointed members to the Committee
III. Discussion: Civil Rights Issues in the State
IV. Public Comment
V. Adjournment

Dated: June 18, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–13567 Filed 6–23–20; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Maine Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Maine Advisory Committee (Committee) will hold a meeting on Thursday, July 16, 2020, at 2:00 p.m. (EDT) for the purpose of hearing testimony about digital equity issues in Maine.

DATES: The meeting will be held on Thursday, July 16, 2020, at 2:00 p.m. EDT.

Public Call Information: Dial: 1–800–367–2403; conference ID: 3382059.

FOR FURTHER INFORMATION CONTACT: Evelyn Bohor, at *ero@usccr.gov* or 202–921–2212.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the above listed toll-free number. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow

members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number: 1–800–367–2403; conference ID: 3382059.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Evelyn Bohor at *ero@usccr.gov.* Persons who desire additional information may contact the Eastern Regional Office at (202) 376–7533.

Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Maine Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Eastern Regional Office at the above email or phone number.

Agenda

Thursday, July 16, 2020 at 2:00 p.m. (EDT)

- Welcome/Opening
- Briefing on Digital Equity
- Next Steps
- Other Business
- Public Comment
- Adjournment

Dated: June 19, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–13592 Filed 6–23–20; 8:45 am]

BILLING CODE 6335–01–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

6/6/2020 through 6/18/2020

Firm name	Firm address	Date accepted for investigation	Product(s)
Westco Metalcraft, Inc	31846 Glendale Street, Livonia, MI 48150	6/9/2020	The firm manufactures stamped metal parts used in mufflers and exhaust pipes for motor vehicles.
Modern Screw Products Company, Inc.	2307 North 9th Street, ... St. Louis, MO 63102	6/18/2020	The firm manufactures steel screws.

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.

Miriam Kearse,

Lead Program Analyst.

[FR Doc. 2020–13565 Filed 6–23–20; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–11–2020]

Foreign-Trade Zone (FTZ) 119—Minneapolis, Minnesota; Authorization of Production Activity; SICK Product & Competence Center Americas, LLC; (Safety and Tracking Systems, Safety Light Curtains, and Connector Assemblies); Savage, Minnesota

On February 20, 2020, the Greater Metropolitan Area FTZ Commission, grantee of FTZ 119, submitted a notification of proposed production activity to the FTZ Board on behalf of SICK Product & Competence Center Americas, LLC, within Subzone 119G, in Savage, Minnesota.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (85 FR 12892, March 5, 2020). On June 19, 2020, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including Section 400.14.

Dated: June 19, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–13643 Filed 6–23–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–832; C–475–833; A–570–026; C–570–027]

Corrosion-Resistant Steel Products From Italy and the People's Republic of China: Notice of Court Decision Not in Harmony With Final Scope Ruling and Notice of Amended Final Scope Ruling Pursuant to Court Decision

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is notifying the public that the Court of International Trade's (CIT) final judgment in this case is not in harmony with Commerce's final scope ruling. Commerce is therefore amending its scope ruling to find that certain corrosion-resistant steel (CORE) products exported by Trendium Pools, Inc. (Trendium) are not within the scope of the antidumping (AD) and countervailing duty (CVD) orders on CORE products from Italy and the People's Republic of China (China).

DATES: Applicable March 29, 2020.

FOR FURTHER INFORMATION CONTACT: Lauren Caserta, 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) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

On February 9, 2018, Trendium submitted a complete scope ruling request,[1] asking Commerce to confirm its claim that pool kits and individual pool walls containing components manufactured from CORE of Chinese and Italian origin are outside the scope of the AD and CVD *Orders* on CORE from Italy and China.[2]

Commerce issued its Final Scope Ruling on May 10, 2018. In evaluating the merchandise at issue, which included potentially subject merchandise as components, Commerce looked to the Court of Appeals for the Federal Circuit's (Federal Circuit) reasoning in *Mid Continent Corporation* v. *United States*[3] for guidance. As a result of this analysis, Commerce determined that the components of Trendium's pool kits and pool walls manufactured from Italian- and Chinese-origin CORE that otherwise satisfy the size and composition requirements of the *Orders* are covered by the scope of the *Orders.* As a result of the Final Scope Ruling, Commerce instructed U.S. Customs and Border Protection (CBP) to continue the suspension of liquidation of entries of certain CORE products from Italy and China by Trendium, including components of pool kits and pool walls that have been fabricated by Trendium from CORE manufactured in Italy or China.[4]

Trendium challenged Commerce's Final Scope Ruling before the CIT. On August 20, 2019, the CIT issued its decision, holding that Commerce had erred in relying on *Mid Continent* and conducting the two-step analysis explained therein because, in the Court's opinion, the record evidence showed that Trendium's pool products were finished goods.[5] The CIT also concluded that Trendium's pool products were not covered by scope of the *Orders* because, in its view, the plain language of the *Orders* excluded downstream products and the information relied upon by Commerce did not support finding otherwise.[6] The CIT remanded the Final Scope Ruling to Commerce for further consideration, consistent with the CIT's opinion.[7]

Pursuant to the CIT's instructions, on remand, and under respectful protest, Commerce found that the CORE components of Trendium's pool kits and pool walls manufactured from Chinese- and Italian-origin CORE did not fall within the scope of the *Orders.*[8] On March 19, 2020, the CIT sustained Commerce's Final Remand Results.[9]

Timken Notice

In its decision in *Timken,*[10] as clarified by *Diamond Sawblades,*[11] the Federal Circuit held that, pursuant to sections 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of a court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's March 19, 2020 judgment in this case constitutes a final decision of the court that is not in harmony with Commerce's Final Scope Ruling. This notice is published in fulfilment of the publication requirements of *Timken.*

Amended Final Scope Ruling

There is now a final court decision with respect to the Trendium Final Scope Ruling. Therefore, Commerce is amending its scope ruling and finds that the scope of the *Orders* does not cover the products addressed in the Final Scope Ruling and the Final Remand Results. The period to appeal the CIT's ruling expired on May 18, 2020. Because no parties appealed the CIT's ruling, Commerce will instruct CBP to lift suspension of liquidation of the CORE components subject to Trendium's Scope Request and to liquidate such entries without regard to antidumping or countervailing duties. In addition, Commerce will instruct CBP to release any cash deposits collected pursuant to the *Orders* on such entries currently awaiting liquidation.

Notification to Interested Parties

This notice is issued and published in accordance with section 516A(e)(1) of the Act.

Dated: June 16, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–13642 Filed 6–23–20; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See* Trendium's Letter, ''Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, Korea and Taiwan, Scope Ruling Request for Finished Pool Kits and Pool Walls,'' dated November 28, 2017; *see also* Trendium's Letter, ''Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, Korea and Taiwan, Supplemental Questionnaire Response Regarding Scope Ruling Request for Finished Pool Kits and Pool Walls,'' dated February 9, 2018.

[2] *See Certain Corrosion-Resistant Steel Products from India, Italy, the People's Republic of China, the Republic of Korea and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan, and Antidumping Duty Orders,* 81 FR 48390 (July 25, 2016), and *Certain Corrosion-Resistant Steel Products from India, Italy, Republic of Korea and the People's Republic of China: Countervailing Duty Order,* 81 FR 48387 (July 25, 2016) (collectively, the *Orders*).

[3] *See Mid Continent Nail Corporation* v. *United States,* 725 F.3d 1295 (Fed. Cir. 2013) (*Mid Continent*).

[4] *See* Message Numbers 8141305, 8141304, 8040303, and 8141312, dated May 21, 2018.

[5] *See Trendium Pool Products, Inc.* v. *United States,* Court No. 18–00132, Slip Op. 19–113 (CIT August 20, 2019) at 11 n.3.

[6] *Id.* at 10, 14, 16.

[7] *Id.* at 17–18.

[8] *See* Final Results of Redetermination Pursuant to Court Remand, *Trendium Pool Products, Inc.* v. *United States,* Court No. 18–00132, Slip Op. 19–113 (CIT August 20, 2019), dated November 17, 2019 (Final Remand Results).

[9] *See Trendium Pool Products, Inc.* v. *United States,* Court No. 18–00132, Slip Op. 20–36 (CIT March 19, 2020) at 1.

[10] *See Timken Co.* v. *United States,* 893 F. 2d 337, 341 (Fed. Cir. 1990) (*Timken*).

[11] *See Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F. 3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–053]

Certain Aluminum Foil From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination of No Shipments, and Partial Rescission; 2017–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily finds that exporters of certain aluminum foil (aluminum foil) from the People's Republic of China (China) sold subject merchandise in the United States at prices below normal value during the period of review (POR) November 2, 2017 through March 31, 2019. We invite all interested parties to comment on these preliminary results.

DATES: Applicable June 24, 2020.

FOR FURTHER INFORMATION CONTACT: Chelsey Simonovich or Michael J. Heaney, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1979, or (202) 482–4475, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 13, 2019, Commerce initiated an administrative review of the antidumping duty order on aluminum foil from China,[1] in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).[2] The administrative review covers two mandatory respondents: (1) Jiangsu Zhongji Lamination Materials Co., (HK) Ltd.; Jiangsu Zhongji Lamination Materials Stock Co., Ltd.; Jiangsu Zhongji Lamination Materials Co., Ltd.; and Jiangsu Huafeng Aluminum Industry Co., Ltd. (collectively, Zhongji),[3] and (2) Xiamen Xiashun Aluminum Foil Co., Ltd. (Xiamen Xiashun). The administrative review also covers 10 other companies that were not selected for individual examination. For details regarding the events that occurred subsequent to the initiation of the review, *see* the Preliminary Decision Memorandum.[4]

Pursuant to section 751(a)(3)(A) of the Act, Commerce determined that it was not practicable to complete the preliminary results of this review within the 245 days and postponed the preliminary results by 120 days.[5] On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days, thereby extending the deadline for these results until June 18, 2020.[6]

Scope of the Order

The merchandise covered by this administrative review is aluminum foil from China. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.[7]

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Act. We calculated export prices in accordance with section 772 of the Act. Because China is a non-market economy (NME) within the meaning of section 771(18) of the Act, normal value has been calculated in accordance with section 773(c) of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. A list of the topics included in the Preliminary Decision Memorandum is included at the Appendix to this notice. The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum is available at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content.

Separate Rates

Commerce preliminarily determines that information placed on the record by Zhongji; Xiamen Xiashun; Alcha International Holdings Limited; Dingsheng Aluminum Industries Hong Kong Trading Co.; Granges Aluminum (Shanghai) Co., Ltd; Hangzhou Dingsheng Import & Export Co., Ltd.; Hunan Suntown Marketing Limited; Jiangsu Alcha Aluminum Co., Ltd.; Shanghai Shenyan Packaging Materials Co.; SNTO International Trade Limited; and Suzhou Manakin Aluminum Processing Technology Co., Ltd. demonstrates that these entities are entitled to separate rate status.[8] For additional information, *see* the Preliminary Decision Memorandum.

Preliminary Determination of No Shipments

One company that received a separate rate in previous segments of this proceeding and is subject to this review reported that it did not have any exports of subject merchandise during the POR.[9] To date, we have not received any contrary information from either U.S. Customs and Border Protection (CBP) in response to our inquiry or any other sources that this company had any shipments of the subject merchandise sold to the United States during the POR.[10] Further, consistent with our practice in NME cases, we find that it is not appropriate to rescind the review with respect to this company but, rather, to complete the review and issue

---

[1] *See Certain Aluminum Foil from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 83 FR 17362 (April 19, 2018) (*Order*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 27587 (June 13, 2019) (*Initiation Notice*).

[3] In the less-than-fair-value (LTFV) investigation, we collapsed Jiangsu Zhongji Lamination Materials Co., (HK) Ltd.; Jiangsu Zhongji Lamination Materials Stock Co., Ltd.; Jiangsu Zhongji Lamination Materials Co., Ltd.; and Jiangsu Huafeng Aluminum Industry Co., Ltd. as a single entity. *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 (November 2, 2017), and accompanying Preliminary Decision Memorandum at 16–18, 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). We find that record evidence in this administrative review supports continuing to treat these companies as a single entity. *See* Memorandum, ''Zhongji Analysis for the Preliminary Results,'' dated concurrently with this notice.

[4] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review of Certain Aluminum Foil from the People's Republic of China; 2018–2019,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] *See* Memorandum, ''Aluminum Foil from the People's Republic of China: Extension of Time Limit Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated December 18, 2019; *see also* Memorandum, ''Certain Aluminum Foil from the People's Republic of China: Extension of Time Limit Deadline for Preliminary Results of Antidumping Duty Administrative Review,'' dated March 13, 2020.

[6] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID–19,'' dated April 24, 2020.

[7] *See* Preliminary Decision Memorandum at 4.

[8] *See* Preliminary Decision Memorandum at 6–9.

[9] *See* Jiangsu Dingsheng New Materials Joint-Stock Co., Ltd.'s Letter, ''No Shipment Letter for Jiangsu Dingsheng in the Administrative Review of the Antidumping Duty Order on Aluminum Foil from the People's Republic of China,'' dated July 12, 2019.

[10] *See* Memorandum, ''No Shipment Inquiry with Respect to the Companies Below During the Period 11/02/2017 through 03/31/2019,'' dated May 28, 2020.

appropriate instructions to CBP based on the final results of review.[11]

China-Wide Entity

Commerce's policy regarding conditional review of the China-wide entity applies to this administrative review.[12] Under this policy, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. Because no party requested a review of the China-wide entity in this review, the entity is not under review and the entity's rate (*i.e.,* 105.80 percent) is not subject to change.[13]

Partial Rescission of Review

Section 351.213(d)(1) of Commerce's regulations provides that Commerce will rescind an administrative review, in whole or in part, if the party that requested the review withdraws its request for review within 90 days of the date of publication of the notice of initiation of the requested review. Commerce published the initiation of this administrative review on June 13, 2019.[14]

On September 11, 2019, the Aluminum Association Trade Enforcement Working Group and its individual members [15] withdrew its review request for the following companies: (1) Alcha International Holdings Limited; (2) Baotou Alcha Aluminum Co., Ltd.; (3) Guangxi Baise Xinghe Aluminum Industry Co., Ltd.; (4) Hangzhou Five Star Aluminum Co., Ltd.; (5) Hangzhou Teemful Aluminum Co., Ltd.; (6) Huafon Nikkei Aluminum Co., Ltd.; (7) Jiangsu Alcha Aluminum Corporation; (8) Jiangsu Dolphin Pack Co.; (9) Luoyang Longding Aluminum Industries Co., Ltd.; (10) Suntown Technology Group Limited; (11) Walson (HK) Trading Co., Limited; (12) Yuntai Donghai Aluminum Foil Co., Limited; (13) Yuntai Jintai International Trade Co., Ltd; (14) Yinbang Clad; and (15) Zhejiang Zhongjin.[16] Because the review requests for each of the 15 companies named above have been timely withdrawn and because no other party has requested a review of these companies, we are rescinding this review with respect to these 15 companies.

Adjustments for Export Subsidies

Commerce has preliminarily adjusted Zhongji's and Xiamen Xiashun's U.S. prices for export subsidies, pursuant to section 772(c)(1)(C) of the Act.

Preliminary Results of the Review

Commerce preliminarily determines that the following weighted-average dumping margins exist for the period November 2, 2017 through March 31, 2019:

Exporter	Weighted-average margin (percent)
Jiangsu Zhongji Lamination Materials Co., (HK) Ltd./Jiangsu Zhongji Lamination Materials Stock Co., Ltd./Jiangsu Zhongji Lamination Materials Co., Ltd./Jiangsu Huafeng Aluminum Industry Co., Ltd	0.00
Xiamen Xiashun Aluminum Foil Co., Ltd	106.21
Alcha International Holdings Limited	106.21
Dingsheng Aluminum Industries Hong Kong Trading Co	106.21
Granges Aluminum (Shanghai) Co., Ltd	106.21
Hangzhou Dingsheng Import & Export Co., Ltd	106.21
Hunan Suntown Marketing Limited	106.21
Jiangsu Alcha Aluminum Co., Ltd	106.21
Shanghai Shenyan Packaging Materials Co	106.21
SNTO International Trade Limited	106.21
Manakin Aluminum Processing Technology Co., Ltd	106.21

For the respondents which are eligible for a separate rate, but not selected for individual examination in this administrative review, we have assigned a margin based on the weighted-average dumping margin calculated for Xiamen Xiashun, the only mandatory respondent with a margin that is not zero, *de minimis,* or based entirely on adverse facts available, consistent with section 735(c)(3)(A) of the Act.

Disclosure and Public Comment

Commerce intends to disclose the calculations performed for these preliminary results to the parties within five days of the date of publication of this notice, in accordance with 19 CFR 351.224(b). Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs no later than 30 days after the date of publication of this notice. Rebuttal briefs, the content of which is limited to issues raised in the case briefs, may be filed no later than seven days after the date for filing case briefs.[17] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[18] Case and rebuttal briefs should be filed using ACCESS [19] and must be served on interested parties.[20] Executive summaries should be limited to five pages total, including footnotes. Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information, until July 17, 2020, unless extended.[21]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically filed document must be received successfully in its entirety by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; (3) whether any

[11] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65694–95 (October 24, 2011).

[12] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[13] *See Order,* 83 FR at 17363.

[14] *See Initiation Notice.*

[15] The individual members of the Aluminum Association Trade Enforcement Working Group are: JW Aluminum Company, Novelis Corporation, and Reynolds Consumer Products LLC.

[16] *See* Aluminum Trade Enforcement Working Group's Letter, ''1st Administrative Review of the Antidumping Duty Order on Certain Aluminum Foil from the People's Republic of China—Petitioner's Partial Withdrawal of Review Requests,'' dated September 11, 2019.

[17] *See* 19 CFR 351.309(d).

[18] *See* 19 CFR 351.309(c)(2) and (d)(2).

[19] *See generally* 19 CFR 351.303.

[20] *See* 19 CFR 351.303(f).

[21] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 29615 (May 18, 2020).

participant is a foreign national; and (4) a list of issues parties intend to discuss. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs.[22] If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined.[23] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any briefs, within 120 days of publication of these preliminary results, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

Assessment Rates

Upon issuance of the final results, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review. If Zhongji's or Xiamen Xiashun's weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.50 percent) in the final results of this review, Commerce will calculate importer-specific assessment rates, in accordance with 19 CFR 351.212(b)(1).[24] For Zhongji and Xiamen Xiashun, Commerce intends to calculate an importer-specific per-unit assessment rate by dividing the amount of dumping for reviewed sales to the importer by the total sales quantity associated with those transactions. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is not zero or *de minimis.* If Zhongji's or Xiamen Xiashun's weighted-average dumping margin is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. In accordance with section 751(a)(2)(C) of the Act, the final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review where applicable.

For entries that were not reported in the U.S. sales data submitted by companies individually examined during this review, Commerce will instruct CBP to liquidate such entries at the rate for the China-wide entity.[25] Additionally, if Commerce determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's case number (*i.e.,* at that exporter's cash deposit rate) will be liquidated at the rate for the China-wide entity.[26] We intend to issue instructions to CBP 15 days after the publication date of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the finals results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Zhongji or Xiamen Xiashun will be the rate established in the final results of this review (except, if the *ad valorem* rate is *de minimis,* then the cash deposit rate will be zero); (2) for previously investigated or reviewed Chinese and non-Chinese exporters not listed above that have received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific cash deposit rate published for the most recently completed period; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity; and (4) for all non-Chinese exporters of subject merchandise which have not received their own separate rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification to Interested Parties

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213 and 351.221(b)(4).

Dated: June 17, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Preliminary Determination of No Shipments
V. Rescission of Review, In Part
VI. Discussion of the Methodology
VII. Recommendation

[FR Doc. 2020–13640 Filed 6–23–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–817]

Silicon Metal From Russia: Continuation of Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC) that revocation of the antidumping duty (AD) order on silicon metal from Russia would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, Commerce is publishing a notice of continuation of the AD order.

DATES: Applicable June 24, 2020.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley, 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) 482–3148.

SUPPLEMENTARY INFORMATION:

Background

On March 26, 2003, Commerce published the AD order on silicon metal from Russia.[1] On June 4, 2019,

[22] *See* 19 CFR 351.310(c).

[23] *See* 19 CFR 351.310(d).

[24] *See Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012).

[25] *See Non-Market Economy Antidumping Proceedings,* 76 FR at 65694–95.

[26] *Id.*

[1] *See Antidumping Duty Order: Silicon Metal from Russia,* 68 FR 14578 (March 26, 2003) (AD

Continued

Commerce initiated the third five-year (sunset) review of the AD order, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] As a result of its review, Commerce determined, pursuant to sections 751(c)(1) and 752(c) of the Act, that revocation of the AD order on silicon metal from Russia would likely lead to a continuation or recurrence of dumping. Commerce, therefore, notified the ITC of the magnitude of the margins likely to prevail should the AD order be revoked, in accordance with section 752(c)(3) of the Act.[3]

On June 3, 2020, the ITC determined that revocation of the AD order would lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time, pursuant to sections 751(c) and 752(a) of the Act.[4]

Scope of the Order

The product covered by this order is silicon metal, which generally contains at least 96.00 percent but less than 99.99 percent silicon by weight. The merchandise covered by this order also includes silicon metal from Russia containing between 89.00 and 96.00 percent silicon by weight, but containing more aluminum than the silicon metal which contains at least 96.00 percent but less than 99.99 percent silicon by weight. Silicon metal currently is classifiable under subheadings 2804.69.10 and 2804.69.50 of the Harmonized Tariff Schedule of the United States (HTSUS). This order covers all silicon metal meeting the above specification, regardless of tariff classification.

Continuation of the AD Order

As a result of the determinations by Commerce and the ITC that revocation of the AD order would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the AD order on silicon metal from Russia. U.S. Customs and Border Protection will continue to collect AD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the order will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year review of the order not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Administrative Protective Order (APO)

This notice also serves as the only reminder to parties subject to APO of their responsibility concerning the return, destruction, or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO which may be subject to sanctions.

Notification to Interested Parties

This five-year (sunset) review and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: June 17, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–13641 Filed 6–23–20; 8:45 am]

BILLING CODE 3510–DS–P

order), amended by *Silicon Metal from the Russian Federation; Notice of Amended Final Determination Pursuant to Court Decision,* 71 FR 8277 (February 16, 2006).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 84 FR 25741 (June 4, 2019).

[3] *See Silicon Metal from the Russian Federation: Final Results of Expedited Third Sunset Review of the Antidumping Duty Order,* 84 FR 54594 (October 10, 2019).

[4] *See Silicon Metal from Russia,* 85 FR 34237 (June 3, 2020).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–062]

Cast Iron Soil Pipe Fittings From the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review 2018–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that Wor-Biz Industrial Product Co., Ltd. (Anhui) (Wor-Biz), an exporter of cast iron soil pipe fittings (soil pipe fittings) from the People's Republic of China (China), sold subject merchandise in the United States at prices below normal value (NV) during the period of review (POR) February 20 2018 through July 31, 2019. We also preliminarily determine that Qinshui Shunshida Casting Co., Ltd. (Shunshida) is not eligible for a separate rate and is, therefore, part of the China-wide entity. We invite interested parties to comment on these preliminary results.

DATES: Applicable June 24, 2020.

FOR FURTHER INFORMATION CONTACT: Michael Bowen or Samantha Kinney, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0768 or (202) 482–2285, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 7, 2019, Commerce published a notice of initiation of an administrative review of the antidumping duty order on soil pipe fittings from China.[1] This administrative review covers 11 companies, including two mandatory respondents: Wor-Biz[2] and Shunshida. We preliminarily determine that sales of subject merchandise by Wor-Biz have been made at prices below NV. Shunshida did not respond to our questionnaire and has filed no submissions on the record of this administrative review. We therefore consider Shunshida to be part of the China-wide entity. In addition, we are preliminarily granting separate rates to five producers/exporters, including Wor-Biz.

On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days, thereby extending the deadline for these results until June 22, 2020.[3]

Scope of the Order[4]

The products covered by the *Order* are soil pipe fittings from China. For a complete description of the scope of this administrative review, *see* the Preliminary Decision Memorandum.[5]

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 84 FR 53411 (October 7, 2019) (*Initiation Notice*).

[2] On January 8, 2020, Commerce determined that Wor-Biz Industrial Product Co., Ltd. (Anhui) is the successor-in-interest to Wor-Biz Trading Co., Ltd (Anhui) and is therefore entitled to that company's cash deposit rate with respect to entries of subject merchandise. *See Cast Iron Soil Pipe Fittings from the People's Republic of China: Final Results of Changed Circumstances Review,* 85 FR 881 (January 8, 2020).

[3] *See* Memorandum, ''Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews in Response to Operational Adjustments Due to COVID–19,'' dated April, 24, 2020.

[4] *See Cast Iron Soil Pipe Fittings from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 83 FR 44570 (August 31, 2018) (the *Order*).

[5] *See* Memorandum, ''Decision Memorandum for the Preliminary Results in the Antidumping Duty Administrative Review; Cast Iron Soil Pipe Fittings from the People's Republic of China; 2018–2019,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

Separate Rates

We preliminarily determine that, in addition to Wor-Biz, four companies not individually examined are eligible for separate rates in this administrative review: Dalian Lino F.T.Z. Co., Ltd., Dalian Metal I/E Co., Ltd., Dinggin Hardware (Dalian) Co., Ltd., and Shijiazhuang Asia Casting Co., Ltd.[6]

Under section 735(c)(5)(A) of the Tariff Act of 1930, as amended (the Act), which refers to the establishment of the all-others rate in market economy less-than-fair-value investigations, and to which we look for guidance in determining the rate for non-individually examined separate rate respondents in non-market-economy (NME) administrative reviews, the all-others rate is normally ''an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely {on the basis of facts available (FA)}.'' For the preliminary results of this administrative review, Commerce has calculated an estimated dumping margin only for Wor-biz.[7] Because the estimated dumping margin for Wor-biz is the only available calculated margin for this POR, we are assigning this rate to all eligible non-selected respondents who qualify for a separate rate in this administrative review.

The China-Wide Entity

Commerce's policy regarding conditional review of the China-wide entity applies to this administrative review.[8] Under this policy, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. Because no party requested a review of the China-wide entity, the entity is not under review, and the entity's rate is not subject to change.

Commerce considers all companies for which a review was requested and which did not demonstrate separate rate eligibility to be part of the China-wide entity.[9] For the preliminary results of this review, we consider the following six companies including Shunshida to be part of the China-wide entity: Golden Orange International Ltd., Hebei Metals & Engineering Products Trading Co., Ltd., Qinshui Shunshida Casting Co., Ltd., Richang Qiaoshan Trade Co., Ltd., Shanxi Zhongrui Tianyue Trading Co., Ltd., and Yangcheng Country Huawang Universal. For additional information, *see* the Preliminary Decision Memorandum.

Methodology

We are conducting this review in accordance with section 751(a)(1)(B) of the Act and 19 CFR 351.213. We calculated export prices for Wor-Biz in accordance with section 772(a) of the Act. Because China is an NME within the meaning of section 771(18) of the Act, we calculated NV in accordance with section 773(c) of the Act. Additionally, as discussed above, we are considering Shunshida to be part of the China-wide entity.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed at *http://enforcement.trade.gov/frn/index.html.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content. A list of topics discussed in the Preliminary Decision Memorandum is included at the Appendix to this notice.

Preliminary Results of the Administrative Review

We preliminarily determine that the following weighted-average dumping margins exist for the administrative review covering the period February 20, 2018 through July 31, 2019:

Exporters	Weighted-average dumping margin (percent)
Dalian Lino F.T.Z. Co., Ltd	18.16
Dalian Metal I/E Co., Ltd	18.16
Dinggin Hardware (Dalian) Co., Ltd	18.16
Shijiazhuang Asia Casting Co., Ltd	18.16
Wor-Biz Industrial Product Co., Ltd (Anhui)	18.16

Disclosure and Public Comment

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review.[10] Rebuttals to case briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the date for filing case briefs.[11] Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information, until July 17, 2020, unless extended.[12] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

All submissions to Commerce must be filed electronically using Enforcement and Compliance's electronic records system, ACCESS.[13] An electronically filed document must be received successfully in its entirety by ACCESS, by 5:00 p.m. Eastern Time on the date that the document is due.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed.

[6] *See* Preliminary Decision Memorandum at 5–7.

[7] *See* Memorandum, ''Preliminary Margin Calculation for Wor-Biz Industrial Product Co., Ltd. (Anhui),'' dated concurrently with this notice. *See also* Preliminary Decision Memorandum at 13–23.

[8] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[9] *See Initiation Notice,* 84 FR at 53412 (''All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below.'').

[10] *See* 19 CFR 351.309(c).

[11] *See* 19 CFR 351.309(d); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020) (''To provide adequate time for release of case briefs via ACCESS, E&C intends to schedule the due date for all rebuttal briefs to be 7 days after case briefs are filed (while these modifications are in effect).'').

[12] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 29615 (May 18, 2020).

[13] *See* 19 CFR 351.303.

Unless otherwise extended, we intend to issue the final results of this administrative review, which will include the results of our analysis of the issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

Assessment Rates

Upon issuance of the final results, Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review, in accordance with 19 CFR 351.212(b). Commerce intends to issue assessment instructions to CBP 15 days after the publication of the final results of this review.

For any individually examined respondent whose (estimated) *ad valorem* weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.50 percent) in the final results of this review, Commerce will calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales and the total quantity of those sales, in accordance with 19 CFR 351.212(b)(1).[14] Commerce will also calculate (estimated) *ad valorem* importer-specific assessment rates with which to assess whether the per-unit importer-specific assessments rates are *de minimis.* We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific *ad valorem* assessment rate calculated in the final results of this review is not zero or *de minimis.* Where either the respondent's *ad valorem* weighted-average dumping margin is zero or *de minimis,* or an importer-specific *ad valorem* assessment rate is zero or *de minimis,*[15] we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For the respondents that were not selected for individual examination in this administrative review that qualified for a separate rate, the assessment rate will be the separate rate established in the final results of this administrative review. If, in the final results, this rate is zero or *de minimis* (*i.e.,* less than 0.5 percent), Commerce will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. For entries that were not reported in the U.S. sales databases submitted by the individually examined respondent, and for the six companies that did not qualify for a separate rate in the administrative review, Commerce will instruct CBP to liquidate such entries at the China-wide rate (*i.e.,* 360.30 percent).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for all shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) For the companies listed above that have a separate rate, the cash deposit rate will be that established in the final results; (2) for previously investigated or reviewed Chinese and non-Chinese exporters for which a review was not requested and that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity (*i.e.,* 360.30 percent); and (4) for all non-Chinese exporters of subject merchandise that have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing the preliminary results of this review in accordance with sections 751(a)(l), 751(a)(3), and 777(i)(l) of the Act and 19 CFR 351.213 and 351.221(b)(4).

Dated: June 18, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Review
IV. Scope of the Order
V. Selection of Respondents
VI. Discussion of the Methodology
VII. Recommendation

[FR Doc. 2020–13639 Filed 6–23–20; 8:45 am]

BILLING CODE 3510–DS–P

[14] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012), for the assessment rate calculation method adopted in these preliminary results.

[15] *See* 19 CFR 351.106(c)(2).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA233]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Alameda Marina Shoreline Improvement Project

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

ACTION: Notice; issuance of two incidental harassment authorizations.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued two incidental harassment authorizations (IHAs) to Pacific Shops, Inc. (Pacific Shops) to incidentally harass, by Level B harassment only, marine mammals during construction activities associated with the Alameda Marina Shoreline Improvement Project in Alameda, CA.

DATES: These authorizations are effective from August 1, 2020 to July 31, 2021 for Year 1 activities, and August 1, 2021 to July 31, 2022 for Year 2 activities.

FOR FURTHER INFORMATION CONTACT: Leah Davis, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

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

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the 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 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 November 25, 2019, NMFS received a request from Pacific Shops, Inc. (Pacific Shops) for two IHAs to take marine mammals incidental to construction activities at the Alameda Marina in Alameda, CA over two years. The applicant expects to conduct vibratory pile removal and vibratory and impact installation during Year 1, and vibratory and impact pile installation during Year 2. The application was deemed adequate and complete on April 9, 2020. Pacific Shops' request is for take of a small number of six species of marine mammals, by Level B harassment. Neither Pacific Shops nor NMFS expects serious injury or mortality to result from this activity and, therefore, IHAs are appropriate.

Description of the Specified Activity

Overview

Pacific Shops is planning to conduct improvements to the Alameda Marina and its shoreline in Alameda, CA over a two-year construction period. The project will address climate resiliency and rehabilitate existing shoreline and marina facilities so that the shoreline meets current seismic resistance criteria and addresses sea level rise risk. The project will update the existing marina facilities, reconfigure some of the existing marina piers, and provide the public with more aquatic recreational opportunities. The construction activities include vibratory and impact pile driving and removal which will ensonify the Oakland Estuary over approximately 68 days in Year 1, and 98 days in Year 2.

A detailed description of the planned project is provided in the **Federal Register** notice for the proposed IHA (85 FR 23790; April 29, 2020). Since that time, no changes have been made to the planned construction activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specific activity.

Comments and Responses

A notice of NMFS' proposal to issue an IHA to Pacific Shops was published in the **Federal Register** on April 29, 2020 (85 FR 23790). That notice described, in detail, Pacific Shops' activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals, their habitat, planned amount and manner of take, and planned mitigation, monitoring and reporting measures. During the 30-day public comment period, NMFS received a comment letter from the Marine Mammal Commission (Commission). NMFS also received a letter from the general public. All substantive recommendations are responded to here. Please see the Commission's letter for full detail regarding justification for their recommendations, available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.*

Comment 1: Regarding bubble curtains, the Commission recommends that NMFS (1) consult with acousticians, including those at UW–APL, regarding the appropriate source level reduction factor to use to minimize near-field (<100 meters (m)) and far-field (>100 m) effects on marine mammals or (2) use the data NMFS has compiled regarding source level reductions at 10 m for near-field effects and assume no source level reduction for far-field effects for all relevant incidental take authorizations. The Commission explicitly requests a detailed response to both parts of this recommendation if NMFS does not follow or adopt it, as required under section 202(d) of the MMPA.

Response: NMFS has previously outlined our rationale for the bubble curtain source level reduction factor (84 FR 64833, November 25, 2019) in response to a similar comment from the Commission. NMFS disagrees with the Commission regarding this issue, and does not adopt the recommendation. NMFS will provide a detailed explanation of its decision within 120 days, as required by section 202(d) of the MMPA.

Comment 2: The Commission recommends that NMFS increase the shutdown zone for high-frequency cetaceans during impact installation of 36-inch (in) steel piles from 400 m to 410 m to include the entire Level A harassment zone.

Response: NMFS does not concur and does not accept the Commission's recommendation. Given the duration component associated with actual occurrence of Level A harassment take, a 400 m shutdown zone is sufficient to prevent any potential for permanent threshold shift (PTS), *i.e.,* Level A harassment take, in an estimated 406m Level A harassment zone.

Comment 3: The Commission recommends that NMFS authorize up to five Level A harassment takes of harbor seals during Year 2 to account for protected species observers' (PSO) inability to monitor where seals are located underwater and for how long, and for visual obstructions that limit PSO observations of the zones. The Commission states that any seal that surfaces in the Level A harassment zone would be enumerated as a Level A harassment take.

Response: NMFS does not adopt the Commission's recommendation to authorize Level A harassment take of harbor seals. Given the duration component associated with potential occurrence of permanent threshold shift (PTS), NMFS disagrees with the assumption that a seal which appears in the Level A harassment zone has necessarily incurred PTS (Level A harassment). As stated in this **Federal Register** notice, the **Federal Register** notice for the proposed IHA, and proposed and final IHAs, monitoring reports must include the estimated time that an observed marine mammal spent within the Level A and Level B harassment zones while the source was active. However, simply because a PSO observes an animal within the Level A harassment zone does not mean that animal was taken by Level A harassment.

Comment 4: The Commission suggested that NMFS underestimated California sea lion takes based on Pacific Shops' in-situ monitoring, and recommended that NMFS authorize at least 17, rather than 14, Level B harassment takes of California sea lions in Year 1 and 25, rather than 20, Level B harassment takes in Year 2.

Response: NMFS agrees that we must authorize a sufficient number of Level B harassment takes. Pacific Shops monitored for marine mammals at the project site on four days in June 2019 and observed one sea lion during that period. NMFS considered that sighting in combination with sightings reported through other avenues (see Estimated Take section, below). NMFS concurred with Pacific Shops' estimate that one California sea lion may occur in the project area every five project days, resulting in an estimated 14 Level B harassment takes in Year 1, and 20 Level B harassment takes in Year 2. NMFS disagrees with the Commission's recommended take estimate. It is not appropriate to apply Pacific Shops' sighting of one sea lion over four days of monitoring as a sighting rate, given the limited monitoring period and additional information available. The additional information suggests that the sighting rate is less than one sea lion per four days.

Comment 5: The Commission provided several recommendations related to Pacific Shops' proposed hydroacoustic monitoring plan. It recommends that NMFS (1) ensure that its internal acoustics expert reviews (a) the hydroacoustic monitoring plan before Pacific Shops implements it and (b) the hydroacoustic monitoring data and resulting Level A and B harassment zones before NMFS revises them and (2) specify in section 6(c) of the final authorizations a sufficient number of each type and size of pile and installation/removal method for which measurements would be obtained. The Commission also recommended that NMFS require all applicants proposing or required to conduct hydroacoustic monitoring to provide their proposed hydroacoustic monitoring plans prior to publication of the proposed authorization in the **Federal Register**.

Response: NMFS agrees that it is important to ensure adequate review of hydroacoustic monitoring plans before they are implemented by applicants and monitoring data before Level A and Level B harassment zones are subsequently adjusted, if appropriate. Pacific Shops provided a copy of their proposed plan to NMFS prior to NMFS' publication of the proposed authorization in the **Federal Register**. NMFS reviewed Pacific Shops' proposed hydroacoustic monitoring plan, and NMFS advised Pacific Shops on required adjustments to support adequate data collection according to accepted methodological standards. NMFS will also review the resulting data prior to adjusting the Level A and Level B harassment zone sizes. The issued IHA notes that Pacific Shops must conduct acoustic monitoring for the number of each pile type and size indicated in the hydroacoustic monitoring plan. NMFS feels it is important to state the objectives of the proposed acoustic monitoring in the notice of the proposed IHA. However, the basic methodological details follow widely accepted practices and, therefore, it is unnecessary to provide these plans for public review.

Comment 6: The Commission recommends that NMFS require Pacific Shops to position its far-field protected species observer (PSO) sufficiently in the far field and not within a few hundred meters of the pile-driving or—removal site, considering locations on the perimeter of Grand Harbor, Fortmann Marina, or Union Point Marina, along the Coast Guard (CG) Island, and at the farthest points of land surrounding Encinal Basin depending on the activity conducted. Location of the PSOs should be stipulated in the final authorizations.

Response: Most of the suggested locations were included in the applicant's initial evaluation of potential monitoring locations. After re-evaluating the proposed locations, and all of the locations suggested by the Commission, NMFS and the applicant still find that the best location for the far field PSO is on top of the barge at the end of Pier 5 (12.6 ft. (3.8 m) high) within the Alameda Marina. This elevated location has an excellent view in all directions, is safe for the observer, and continued access for PSOs is not a concern.

The applicant raised concerns regarding access, visibility, and safety at the other locations. The applicant did not expect that they would be granted long-term access to the neighboring marinas, as they are privately owned. CG Island is an active Coast Guard base, and access to this federal site is very limited and generally not accessible to non-military personnel. It is also unlikely that these sites would allow the applicant to build a tower structure for elevated viewing at these locations. Given the topography, elevated viewing significantly enhances visibility of the monitoring area.

Additionally, except for CG Island, each of the locations is inset somewhat into the shoreline, thereby restricting visibility in one direction or another. The dock on the southwest side of CG Island could potentially provide good visibility except when ships are at the dock, when visibility would be almost completely blocked.

The applicant previously considered a public park just north of Union Point Marina where access would be less of an issue, but it is not a safe location for observers.

The near-field PSO's view will be limited to the marina. The far-field PSO (on the barge) will be in an excellent position to alert the near-field PSO of approaching animals. Therefore, as noted above, NMFS requires Pacific Shops to station their far-field PSO on the barge at the end of Pier 5, and has included the final PSO locations in the authorizations.

Comment 7: The Commission recommends that NMFS revise its standard condition for ceasing in-water heavy machinery activities to include, as examples, movement of the barge to the pile location, positioning of the pile on the substrate, use of barge-mounted excavators, and dredging in all draft and final incidental take authorizations involving pile driving and removal.

Response: NMFS does not adopt this recommendation as stated. The examples are simply intended to serve as examples. We will consider revising these examples on a case-specific basis.

Comment 8: The Commission recommends that NMFS ensure that Pacific Shops keeps a running tally of the total takes, based on observed and extrapolated takes, for Level B harassment consistent with condition 4(i) of the final authorizations.

Response: We agree that Pacific Shops must ensure they do not exceed authorized takes but do not concur with the recommendation. NMFS is not responsible for ensuring that Pacific Shops does not operate in violation of an issued IHA.

Comment 9: The Commission recommends that NMFS refrain from issuing renewals for any authorization and instead use its abbreviated **Federal Register** notice process. If NMFS continues to propose to issue renewals, 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 and, (2) if NMFS declines to adopt this recommendation, explain fully its rationale for not doing so.

Response: NMFS has stated in the issued IHAs that a renewal is a one-time opportunity. NMFS will provide a further detailed explanation of its decision within 120 days, as required by section 202(d) of the MMPA.

Comment 10: The Commission expressed concern that, if a renewal is issued for Year 1 construction activities, the timing of these activities could overlap with the scheduled Year 2 construction activities. The Commission recommends that NMFS either make its determinations regarding small numbers and negligible impact based on the total number and type of taking for each species or stock for both authorizations combined or delay the Year 2 activities until 2022 if a renewal authorization is issued for the Year 1 activities.

Response: Pacific Shops' proposed construction activities would occur in linear fashion according to the schedule that informs their request for two consecutive IHAs, and which was described in detail in our notice of proposed IHAs. Therefore, activities described in association with the Year 1 IHA would not occur concurrently with activities described in association with the Year 2 IHA, whether occurring under the issued Year 1 IHA or under a renewal of the Year 1 IHA, if necessary. Therefore, the Commission's recommendation is moot.

Changes From the Proposed IHA to Final IHA

The applicant is now planning to begin construction in August 2020 rather than June 2020, as included in the proposed authorization. As such, the effective dates of the IHAs are now August 1, 2020–July 31, 2021 (Year 1) and August 1, 2021 to July 31, 2022 (Year 2). Additionally, NMFS modified the Level A and Level B harassment zones for impact and vibratory pile driving of 36-in piles to reflect that the applicant will drive a max of two piles per day in Year 1, and one pile per day in Year 2. We also made some small clarifications to the hydroacoustic monitoring reporting requirements, and corrected typographical errors in the Level A harassment isopleths.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS's Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS's website (*https://www.fisheries.noaa.gov/find-species*).

Table 1 lists all species with expected potential for occurrence in Alameda, CA 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 is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS's SARs). While no mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprise that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS's U.S. Pacific SARs (*e.g.,* Carretta *et al.,* 2019). All values presented in Table 1 are the most recent available at the time of publication and are available in the 2018 SARs (Carretta *et al.,* 2019) and draft 2019 SARs (available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/draft-marine-mammal-stock-assessment-reports*).

TABLE 1—SPECIES THAT SPATIALLY CO-OCCUR WITH THE ACTIVITY TO THE DEGREE THAT TAKE MAY OCCUR

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 Odontoceti (toothed whales, dolphins, and porpoises)						
Family Delphinidae:						
Bottlenose Dolphin	*Tursiops truncatus*	California Coastal	-, -, N	453 (0.06, 346, 2011)	2.7	>2.0
Family Phocoenidae (porpoises):						
Harbor porpoise	*Phocoena phocoena*	San Francisco/Russian River	-, -, N	9,886 (0.51, 2019)	66	0
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
Northern fur seal	*Callorhinus ursinus*	California	-, D, N	14,050 (N/A, 7,524, 2013)	451	1.8
		Eastern North Pacific	-, D, N	620,660 (0.2, 525,333, 2016)	11,295	399
Family Phocidae (earless seals):						
Northern elephant seal	*Mirounga angustirostris*	California Breeding	-, -, N	179,000 (N/A, 81,368, 2010)	4,882	8.8
Harbor seal	*Phoca vitulina*	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 online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance.

[3] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury (M/SI) from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

Harbor seal and California sea lion spatially co-occur with the activity to the degree that take is reasonably likely to occur, and we have authorized take of these species. For bottlenose dolphin, harbor porpoise, northern fur seal, and northern elephant seal, occurrence is such that take is possible, and we have authorized take of these species also. All species that could potentially occur in the project area are included in Pacific Shops' IHA application (see application, Table 4). While gray whale and humpback whale could potentially occur in the area, the spatial occurrence of these species is such that take is not expected to occur, and they are not discussed further beyond the explanation provided here. In recent years there have been an increased number of gray whales in the San Francisco Bay, but they primarily occur in the western and central Bay (W. Keener, pers. comm. 2019), and none have been reported in the Estuary (NMFS 2019a, 2019b). Humpbacks have regularly been seen inside the Bay, primarily in the western Bay, from April through November since 2016 (W. Keener, pers. comm. 2019), and sometimes venture up the Delta waterway (*e.g.,* Gulland *et al.* 2008), but have not been recorded in the Estuary (NMFS 2019a, 2019b). Additionally, both gray whales and humpback whales are not expected to enter the project area due to the narrow channel width and shallow water depths.

A detailed description of the species likely to be affected by the Alameda Marina Shoreline Improvement Project, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (85 FR 23790; April 29, 2020); since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to that **Federal Register** notice for these descriptions. Please also refer to NMFS' website (*https://www.fisheries.noaa.gov/find-species*) for generalized species accounts.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

Underwater noise from impact and vibratory pile driving activities associated with the Alameda Marina Shoreline Improvement Project have the potential to result in harassment of marine mammals in the vicinity of the action area. The **Federal Register** notice for the proposed IHA (85 FR 23790; April 29, 2020) included a discussion of the potential effects of such disturbances on marine mammals and their habitat, therefore that information is not repeated in detail here; please refer to that **Federal Register** notice (85 FR 23790; April 29, 2020) for that information.

Estimated Take

This section provides an estimate of the number of incidental takes authorized through these IHAs, which inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

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

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns and/or temporary threshold shift (TTS) for individual marine mammals resulting from exposure to pile driving and removal noise. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.,* shutdown zones) discussed in detail below in the Mitigation Measures section, Level A harassment is neither anticipated nor authorized. As described previously, no mortality is anticipated or authorized for this activity.

Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the take estimate.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment for Non-Explosive Sources—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 120 dB re 1 μPa (rms) (microPascal, root mean square) for continuous (*e.g.,* vibratory pile-driving, drilling) and above 160 dB re 1 μPa (rms) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources.

Pacific Shops' activity includes the use of continuous (vibratory pile driving) and impulsive (impact pile driving) sources, and therefore the 120 and 160 dB re 1 μPa (rms) are applicable.

Level A Harassment for Non-Explosive Sources—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine

Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). Pacific Shops' activity includes the use of impulsive (impact pile driving) and non-impulsive (vibratory pile driving) sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 2—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing Group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa²s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript ''flat'' is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the project. Marine mammals are expected to be affected via sound generated by the primary components of the project (*i.e.,* impact pile driving and vibratory pile driving and removal). The largest calculated Level B harassment zone is 21.5 kilometers (km) (13.4 miles (mi)) from the source, however, the zone of influence (ZOI) is functionally only 1.43 km² (0.6 mi²) due to the geography of the Estuary.

The project includes vibratory and impact pile installation and vibratory pile removal. Source levels of pile installation and removal activities are based on reviews of measurements of the same or similar types and dimensions of piles available in the literature. Source levels for vibratory installation and removal of piles of the same diameter are assumed the same. Source levels for each pile size and activity are presented in Table 3.

The source level for vibratory removal of timber piles is from in-water measurements generated by the Greenbusch Group (2018) from the Seattle Pier 62 project (83 FR 39709; August 10, 2018). Hydroacoustic monitoring results from Pier 62 determined unweighted rms ranging from 140 dB to 169 dB. NMFS analyzed source measurements at different distances for all 63 individual timber piles that were removed at Pier 62 and normalized the values to 10 m. The results showed that the median is 152 dB SPLrms.

Pacific Shops will implement bubble curtains (*e.g.* pneumatic barrier typically comprised of hosing or PVC piping that disrupts underwater noise propagation; see Mitigation Measures section below) during impact pile driving of the wide flange beams, 30-in steel pipe piles, and 36-in steel pipe piles. They have reduced the source level for these activities by 7dB (a conservative estimate based on several studies including Austin *et al.,* 2016 and Caltrans, 2015).

TABLE 3—PROJECT SOUND SOURCE LEVELS

Pile type	Source level @10 m			Source
	dB RMS	dB peak	dB SEL	
VIBRATORY				
16-in Timber (removal)	152			The Greenbusch Group, Inc 2018.
12-in Square Concrete (removal)	155			CalTrans 2015 (Based on 12-in steel pipe pile).
Steel sheet pile	160			CalTrans 2015 (Based on 24-in AZ steel sheet).
30-in Steel Pipe	170			CalTrans 2015 (Based on 36-in steel pipe pile).
36-in Steel Pipe	170			CalTrans 2015.
Wide Flange Beam	155			Based on 38-in x 18-in king piles at the Naval Station Mayport in Jacksonville, Florida.

TABLE 3—PROJECT SOUND SOURCE LEVELS—Continued

Pile type	Source level @10 m			Source
	dB RMS	dB peak	dB SEL	
IMPACT				
14-in Square Concrete	166	185	155	CalTrans 2015 (Based on 18-inch concrete piles).
16-in Square Concrete	166	185	155	CalTrans 2015 (Based on 18-inch concrete piles).
24-in Concrete piles	176	188	166	CalTrans 2015.
Wide Flange Beam (attenuated in parentheses)	194 (187)	207 (200)	178 (171)	CalTrans 2015 (Source levels based on 24-in steel pipe pile).
30-in Steel Pipe (attenuated in parentheses)	190 (183)	210 (203)	177 (170)	CalTrans 2015.
36-in Steel Pipe (attenuated in parentheses)	193 (186)	210 (203)	183 (176)	CalTrans 2015.

Transmission loss (TL) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. TL parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater TL is:

$$TL = B * Log_{10} (R_1/R_2),$$

where

TL = transmission loss in dB

B = transmission loss coefficient

R_1 = the distance of the modeled SPL from the driven pile, and

R_2 = the distance from the driven pile of the initial measurement

Absent site-specific acoustical monitoring with differing measured transmission loss, a practical spreading value of 15 is used as the transmission loss coefficient in the above formula. Site-specific transmission loss data for Alameda Marina are not available, therefore the default coefficient of 15 is used to determine the distances to the Level A and Level B harassment thresholds.

TABLE 4—PILE DRIVING SOURCE LEVELS AND DISTANCES TO LEVEL B HARASSMENT THRESHOLDS

Source	Source level at 10 m (dB re 1 μPa rms)	Level B harassment threshold (dB re 1 μPa rms)	Distance to Level B harassment threshold (m)
VIBRATORY			
16-in Timber (removal)	152	120	1,359
12-in Square Concrete (removal)	155		2,154
Steel sheet pile	160		4,642
30-in Steel Pipe	170		21,544
36-in Steel Pipe	170		21,544
Wide Flange Beam	155		2,154
IMPACT			
14-in Square Concrete	166	160	25
16-in Square Concrete	166		25
24-in Concrete piles	176		117
Wide Flange Beam (attenuated [a])	194 (187)		[b] 631
30-in Steel Pipe (attenuated [a])	190 (183)		[b] 341
36-in Steel Pipe (attenuated [a])	193 (186)		[b] 541

[a] Includes 7dB reduction for use of bubble curtain.
[b] Calculated using attenuated source level.

When the NMFS Technical Guidance (2016) was published, in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we developed a User Spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools, and will qualitatively address the output where appropriate. For stationary sources such has pile driving, NMFS User Spreadsheet predicts the distance at which, if a marine mammal remained at that distance the whole duration of the activity, it would incur PTS. Inputs used in the User Spreadsheet, and the resulting isopleths are reported below.

TABLE 5—USER SPREADSHEET INPUT PARAMETERS USED FOR CALCULATING LEVEL A HARASSMENT ISOPLETHS

Pile size and installation method	Spreadsheet tab used	Weighting factor adjustment (kHz)	Source level	Number of piles within 24-h period	Duration to drive a single pile (minutes)	Number of strikes per pile	Propagation (xLogR)	Distance from source level measurement (m)
16-in Timber (removal)	A.1) Vibratory pile driving	2.5	[a] 152	10	5		15	10
12-in Square Concrete (removal).			[a] 155	10	5			
Steel sheet pile			[a] 160	20	10			
30-in Steel Pipe			[a] 170	1	10			
36-in Steel Pipe			[a] 170	[d] 2 or 1	10			
Wide Flange Beam			[a] 155	4	10			
IMPACT								
14-in Square Concrete	E.1) Impact pile driving	2	[b] 155	4		500	15	10
16-in Square Concrete			[b] 155	4				
24-in Concrete piles			[b] 166	4				
Wide Flange Beam (attenuated).			[b c] 171	4				
30-in Steel Pipe (attenuated)			[b c] 170	1				
36-in Steel Pipe (attenuated)			[b c] 176	[d] 2 or 1				

[a] dB RMS SPL at 10m
[b] dB SEL at 10m
[c] Includes 7dB reduction from use of bubble curtain.
[d] Two piles within a 24-hour period during Year 1 activities, one pile within a 24-hour period during Year 2 activities.

TABLE 6—CALCULATED DISTANCES TO LEVEL A HARASSMENT ISOPLETHS

Source	Level A—radius to isopleth (m)			
	MF cetaceans	HF cetaceans	Phocids	Otariids
VIBRATORY				
16-in Timber (removal)	<1	2	<1	<1
12-in Square Concrete (removal)	<1	4	2	<1
Steel sheet pile	1	19	8	<1
30-in Steel Pipe	<1	12	5	<1
36-in Steel Pipe (Year 1)	1	19	8	<1
36-in Steel Pipe (Year 2)	<1	12	5	<1
Wide Flange Beam	<1	3	1	<1
IMPACT				
14-in Square Concrete	<1	26	12	<1
16-in Square Concrete	<1	26	12	<1
24-in Concrete piles	4	139	62	5
Wide Flange Beam (attenuated)	9	299	135	10
30-in Steel Pipe (attenuated)	3	102	46	3
36-in Steel Pipe (Year 1, attenuated)	12	406	183	13
36-in Steel Pipe (Year 2, attenuated)	8	256	115	8

Marine Mammal Occurrence and Take Calculation and Estimation

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations. We describe how the information provided above is brought together to produce a quantitative take estimate.

Bottlenose Dolphin

Bottlenose dolphins began entering San Francisco Bay in 2010 (Szczepaniak 2013). They primarily occur in the western Central and South Bay, from the Golden Gate Bridge to Oyster Point and Redwood City. However, one individual has been regularly seen in the Bay since 2016 near the former Alameda Air Station (Perlman 2017; W. Keener, pers. comm. 2017), and five animals were regularly seen in the summer and fall of 2018 in the same location (W. Keener, pers. comm. 2019). This area is on the far side of Alameda Island from the project area, approximately 6.8 mi (10.9 km) by water.

There have been no formal surveys of marine mammals in the Estuary before 2019 (W. Keener, pers. comm, 2019), and no known reports of bottlenose dolphins in the Estuary between 2006 and May 2019 (NMFS 2019a, 2019b). The two closest known sightings to the project area were of a single dolphin on one occasion and an adult and juvenile on another occasion in February 2019. Both sightings were on the edge of the Inner Harbor Entrance Channel to the northwest of the Estuary, approximately 5.8 mi (9.3 km) from the project area (W. Keener, pers. comm., 2019).

Pacific Shops conducted 30 hours of monitoring over four days in June 2019 at the project site, and did not observe any bottlenose dolphins. Additionally, six local frequent users of the Estuary interviewed for this project reported never having seen a bottlenose dolphin in the Estuary. However, the applicant has requested the authorization of Level B harassment take of bottlenose dolphins due to their year-round presence in the Bay, regular proximity to the work area, and potential to enter the Level B harassment zone while pile driving or removal are underway.

Pacific Shops conservatively estimates that a group of two bottlenose dolphins may occur in the project area

every 10 project days. NMFS concurs that this approach is reasonable given the available information. Pacific Shops has requested, and NMFS has authorized, 14 Level B harassment takes of bottlenose dolphins during Year 1 (2 individuals/10 days * 68 project days = 14 Level B harassment takes), and 20 Level B harassment takes of bottlenose dolphins during Year 2 (2 individuals/10 days * 98 project days = 20 Level B harassment takes).

The largest Level A harassment zone for mid-frequency cetaceans extends 12 m from the source during impact pile driving of 36-in steel pipe piles during Year 1, and 9 m from the source during impact pile driving of wide flange beams in Year 2 (Table 6). Pacific Shops is planning to implement a 25 m shutdown zone during those activities (Table 8). Given the small size of the Level A harassment zones, the shutdown zones are expected to eliminate the potential for Level A harassment take of bottlenose dolphins. Therefore, NMFS has not authorized Level A harassment take of bottlenose dolphins.

Harbor Porpoise

Historically, harbor porpoise primarily occur near the Golden Gate Bridge, Marin County, and the city of San Francisco on the northwest side of the Bay (Keener *et al.* 2012, Stern *et al.* 2017). However, in the summer of 2017 and 2018, mom-calf pairs and small groups (one to four individuals) were seen to the north and west of Treasure Island, and just south of YBI (Caltrans 2018a, 2019), indicating that their range may be expanding within the Bay.

No formal surveys of marine mammals were conducted in the Estuary before 2019 (W. Keener, pers. comm. 2019). The applicant conducted 30 hours of monitoring over four days in June 2019 at the project site, and did not observe any harbor porpoises. Six local frequent users of the Estuary interviewed for this project reported never seeing a harbor porpoise in the Estuary. Between 2006 and June 2019, one harbor porpoise stranded in the Estuary. The animal was in an advanced state of decomposition (NMFS 2019a), indicating that it probably died outside of the Estuary and floated in. However, given their year-round residency in the Bay, their proximity to the work area, and their seemingly expanding range within the Bay, the applicant has requested the authorization of Level B harassment take of harbor porpoise.

Pacific Shops conservatively estimates that a group of two harbor porpoises may occur in the project area every 10 project days. NMFS concurs that this approach is reasonable given the available information. Pacific Shops has requested, and NMFS has authorized, 14 Level B harassment takes of harbor porpoise during Year 1 (2 individuals/10 days * 68 project days = 14 Level B harassment takes), and 20 Level B harassment takes of harbor porpoise during Year 2 (2 individuals/10 days * 98 project days = 20 Level B harassment takes).

The largest Level A harassment zone for high-frequency cetaceans extends 406 m from the source during impact pile driving of 36-in steel pipe piles in Year 1, and 299 m during impact installation of wide flange beams in Year 2 (Table 6). We do not expect a harbor porpoise to remain within the Level A harassment zone during either activity for a long enough period to incur PTS. Pacific Shops is planning to implement 400 m and 300m shutdown zones, respectively, during those activities (Table 8). These shutdown zones include the respective 11.7 m and 7.4 m peak PTS isopleths. Pacific Shops will station a far field PSO on a 3.8m (12.5 ft) high barge, and the nearfield PSO on a metal storage container approximately 2.6m (8.5 ft) high. NMFS expects that these elevated locations, in combination with the anticipated ideal weather conditions, will allow PSOs to effectively observe harbor porpoises at 400 m. Therefore, the shutdown zones are expected to eliminate the potential for Level A harassment take of harbor porpoise, and NMFS has not authorized Level A harassment take of harbor porpoise.

California Sea Lion

There have been no formal surveys of marine mammals in the Oakland Estuary before 2019 (W. Keener, pers. comm. 2019). The few sightings that have been recorded have been opportunistic, including a sea lion observed in May 2017 in the small canal that connects Lake Merritt with the Estuary (Martichoux, 2017). Between 2006 and May 2019, 18 confirmed sea lion sightings in the Estuary were reported to TMMC and California Academy of Sciences (CAS) (NMFS 2019a, 2019b), and between 2006 and June 2019, three sea lions stranded in the Estuary (NMFS 2019a, 2019b). The applicant conducted 30 hours of monitoring over four days in June 2019 at the project site, and observed one sea lion near the project site, across the Estuary under the Coast Guard dock approximately 1130 ft (345 m) from the Alameda Marina shoreline. Interviews with local frequent users of the Estuary confirm that sightings of sea lions are rare. Two people interviewed reported seeing one to two sea lions per year in the Estuary. California sea lions forage for Pacific herring in eelgrass beds in the winter (Schaeffer *et al.* 2007), however, there are no eelgrass beds in the Estuary to attract foraging sea lions.

Pacific Shops conservatively estimates that one California sea lion may occur in the project area every five project days. NMFS concurs that this approach is reasonable given the available information. Therefore Pacific Shops has requested, and NMFS has authorized, 14 Level B harassment takes of California sea lion during Year 1 (1 individual/5 days * 68 project days = 14 Level B harassment takes), and 20 Level B harassment takes of California sea lion during Year 2 (1 individual/5 days * 98 project days = 20 Level B harassment takes).

The largest Level A harassment zone for otariids extends 13 m from the source during impact pile driving of 36-in steel pipe piles in Year 1, and 10 m from the source during impact pile driving of wide flange beams in Year 2 (Table 6). Pacific Shops is planning to implement a 25 m shutdown zone during those activities (Table 8). Given the small size of the Level A harassment zones, we expect the shutdown zones to eliminate the potential for Level A harassment take of California sea lion. Therefore, NMFS has not authorized Level A harassment take of California sea lion.

Northern Fur Seal

There are no available density estimates of northern fur seals in the project area, and northern fur seals have not been reported in the Estuary (NMFS 2019b). The applicant conducted 30 hours of monitoring over four days in June 2019 at the project site and did not observe any fur seals. Between 2006 and May 2019 there were no reports of stranded fur seals in the Estuary (NMFS 2019a, 2019b). Interviews with frequent users of the Estuary also reported they had never seen a fur seal in the Estuary. However, to account for the possible rare presence of the species in the action area, NMFS has authorized six Level B harassment takes of northern fur seal during Year 1, and nine Level B harassment takes of northern fur seal during Year 2.

The largest Level A harassment zone for otariids extends 13 m from the source during impact pile driving of 36-in steel pipe piles in Year 1, and 10 m from the source during impact pile driving of wide flange beams in Year 2 (Table 6). Pacific Shops is planning to implement a 25 m shutdown zone during those activities (Table 8). Given the small size of the Level A harassment

zones, we expect the shutdown zones to eliminate the potential for Level A harassment take of northern fur seal. Therefore, NMFS has not authorized Level A harassment take of northern fur seal.

Northern Elephant Seal

There are no available density estimates of northern elephant seals in the project area. Generally, only juvenile elephant seals enter the Bay seasonally and do not remain long if they are healthy. From mid-February to the end of June, TMMC reports the most strandings, primarily of malnourished juveniles (TMMC, 2019). However, no elephant seals, alive or stranded, have been reported in the Estuary (NMFS 2019a, 2019b). The applicant conducted 30 hours of monitoring over four days in June 2019 at the project site and did not observe any elephant seals. Interviews with frequent users of the Estuary also reported they had never seen an elephant seal in the Estuary. However, to account for the possible rare presence of the species in the action area, NMFS has authorized six Level B harassment takes of northern elephant seal during Year 1, and nine Level B harassment takes of northern elephant seal during Year 2.

The largest Level A harassment zone for phocids extends 183 m from the source during impact pile driving of 36-in steel pipe piles in Year 1, and 135 m from the source during impact pile driving of wide flange beams in Year 2 (Table 6). Pacific Shops is planning to implement a 190 m and 140 m shutdown zone, respectively, during those activities (Table 8). Given the small size of the Level A harassment zones, we expect the shutdown zones to eliminate the potential for Level A harassment take of northern elephant seal. Therefore, NMFS has not authorized Level A harassment take of northern elephant seal.

Harbor Seal

There have been no formal surveys of marine mammals in the Estuary before 2019 (W. Keener, pers. comm. 2019), and the few recorded harbor seal sightings have been opportunistic. The applicant conducted 30 hours of monitoring over four days in June 2019 at the project site and did not observe any harbor seals. A local recreational boater who lives on his boat full-time in the existing Alameda Marina reported seeing a harbor seal approximately twice a week throughout 2019 (G. Dees, pers. comm. 2019). Another recreational boater who is occasionally on her boat in Alameda Marina reported a harbor seal in the marina on five days in August through October 2019 (T. Drake, pers. comm. 2019). This respondent also reported that a single harbor seal occasionally hauled out on the marina docks for several hours. Two staff members of a local marina reported an average of two harbor seals per month in the Estuary. There were only four confirmed harbor seal sightings reported in the Estuary to TMMC and CAS between 2006 and May 2019 (NMFS 2019a, 2019b), and a dead harbor seal at Pier 2 in the existing Alameda Marina on October 27, 2019 (T. Drake, pers. comm. 2019).

The number of harbor seals hauled out on a floating platform at the Alameda Breakwater, approximately 7.8 mi (12.6 km) from the project area, has been recorded almost every day since March 2014 (M. Klein and R. Bangert, pers. comm. 2019). Between zero and 75 seals haul out each day. More animals are present in the winter during the herring run. However, based on observations at the Alameda Marina, we do not expect the counts at the Alameda Breakwater to be representative of harbor seal presence in the project area.

Between 2006 and June 2019, only two harbor seals stranded in the Estuary (NMFS 2019a, 2019b). In August 2017, a harbor seal was seen in Lake Merritt, after transiting through the Estuary (Martichoux 2017). Grigg *et al.* (2012) tagged 19 harbor seals at Castro Rocks, approximately 15.2 mi (24.5 km) north-northeast of the project area. Although some ranged as far as the South Bay, approximately 39 mi (63 km) from Castro Rocks, none were recorded in the Estuary (Grigg *et al.* 2012).

Pacific Shops conservatively estimates that one harbor seal may enter the project area per project day. NMFS concurs that this approach is reasonable given the available information. Therefore, Pacific Shops has requested, and NMFS has authorized, 68 Level B harassment takes of harbor seal in Year 1 (1 harbor seal per day × 68 project days = 68 Level B harassment takes), and 98 Level B harassment takes of harbor seal in Year 2 (1 harbor seal per day × 98 project days = 98 Level B harassment takes).

The largest Level A harassment zone for phocids extends 183 m from the source during impact pile driving of 36-in steel pipe piles in Year 1, and 135 m from the source during impact pile driving of wide flange beams in Year 2 (Table 6). We do not expect a harbor seal to remain within the Level A harassment zone for a long enough period to incur PTS. Pacific Shops is planning to implement a 190 m and 140 m shutdown zone, respectively, during the activities referenced above (Table 8), and there is no peak PTS isopleth for phocids for either activity. Additionally, as noted previously, PSOs would be observing from elevated structures (a 2.6m (8.5 ft) high storage container in the nearfield and 3.8 m (12.6 ft) high barge in the far-field) which would further increase their ability to detect harbor seals within this zone. Therefore, the shutdown zones are expected to eliminate the potential for Level A harassment take of harbor seal, and NMFS has not authorized Level A harassment take of harbor seal.

TABLE 7—ESTIMATED TAKE BY LEVEL B HARASSMENT, BY SPECIES AND STOCK

Common name	Stock	Stock abundance	Year 1 Level B harassment take (percent of stock)	Year 2 Level B harassment take (percent of stock)
Bottlenose Dolphin	California Coastal	453	14 (3.1)	20 (4.4)
Harbor Porpoise	San Francisco/Russian River	9,886	14 (0.1)	20 (0.2)
California Sea Lion	United States	257,606	14 (0.01)	20 (0.01)
Northern Fur Seal	California	14,050	6 (0.04)	9 (0.06)
	Eastern North Pacific	620,660	(<0.01)	(<0.01)
Northern Elephant Seal	California Breeding	179,000	6 (<0.01)	9 (<0.01)
Harbor Seal	California	30,968	68 (0.2)	98 (0.3)

Mitigation Measures

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

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

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) the practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

In addition to the measures described later in this section, Pacific Shops will employ the following mitigation measures:

- For in-water heavy machinery work other than pile driving, if a marine mammal comes within 10 m, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions;
- Conduct briefings between construction supervisors and crews and the marine mammal monitoring team prior to the start of all pile driving activity and when new personnel join the work, to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures;
- For those marine mammals for which Level B harassment take has not been requested, in-water pile installation/removal will shut down immediately if such species are observed within or entering the Level B harassment zone; and
- If take reaches the authorized limit for an authorized species, pile installation will be stopped as these species approach the Level B harassment zone to avoid additional take.

The following mitigation measures apply to Pacific Shops' in-water construction activities.

- *Establishment of Shutdown Zones*—Pacific Shops will establish shutdown zones for all pile driving and removal activities. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones will vary based on the activity type and marine mammal hearing group. The largest shutdown zones are generally for high frequency cetaceans, as shown in Table 8.
- The placement of PSOs during all pile driving and removal activities (described in detail in the Monitoring and Reporting section) will ensure that the entire shutdown zone is visible during pile installation. Should environmental conditions deteriorate such that marine mammals within the entire shutdown zone would not be visible (*e.g.,* fog, heavy rain), pile driving and removal must be delayed until the PSO is confident marine mammals within the shutdown zone could be detected.

TABLE 8—SHUTDOWN ZONES DURING PILE INSTALLATION AND REMOVAL

Source	Shutdown zone (m)			
	MF cetaceans	HF cetaceans	Phocids	Otariids
VIBRATORY				
16-in Timber (removal)	10	10	10	10
12-in Square Concrete (removal).				
Steel sheet pile.				
30-in Steel Pipe		25		
36-in Steel Pipe (Year 1).				
36-in Steel Pipe (Year 2).				
Wide Flange Beam		10		
IMPACT				
14-in Square Concrete	25	30	25	25
16-in Square Concrete.				
24-in Concrete piles		140	70	
Wide Flange Beam		300	140	
30-in Steel Pipe		140	70	
36-in Steel Pipe (Year 1)		[a] 400	190	
36-in Steel Pipe (Year 2)	10	260	120	10

[a] This shutdown zone is smaller than the 406 m Level A harassment zone. NMFS expects that this shutdown zone is sufficient to prevent Level A harassment, given the duration component associated with Level A harassment take.

• *Monitoring for Level B Harassment*—Pacific Shops will monitor the Level B harassment zones (areas where SPLs are equal to or exceed the 160 dB rms threshold for impact driving and the 120 dB rms threshold during vibratory pile driving) and the Level A harassment zones. Monitoring zones provide utility for observing by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project area outside the shutdown zone and thus prepare for a potential cease of activity should the animal enter the shutdown zone. Placement of PSOs on the shorelines around Alameda Marina will allow PSOs to observe marine mammals within the Level B harassment zones. However, due to the large Level B harassment zones (Table 4), PSOs will not be able to effectively observe the entire zone. Therefore, Level B harassment exposures will be recorded and extrapolated based upon the number of observed takes and the percentage of the Level B harassment zone that was not visible.

• *Pre-activity Monitoring*—Prior to the start of daily in-water construction activity, or whenever a break in pile driving/removal of 30 minutes or longer occurs, PSOs will observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone will be considered cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zone, a soft-start cannot proceed until the animal has left the zone or has not been observed for 15 minutes. When a marine mammal for which Level B harassment take is authorized is present in the Level B harassment zone, activities may begin and Level B harassment take will be recorded. If the entire Level B harassment zone is not visible at the start of construction, pile driving activities can begin. If work ceases for more than 30 minutes, the pre-activity monitoring of the shutdown zones will commence.

• *Soft Start*—Soft-start procedures are believed to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors will be required to provide an initial set of three strikes from the hammer at reduced energy, followed by a thirty-second waiting period. This procedure will be conducted three times before impact pile driving begins. Soft start will 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 30 minutes or longer.

• *Pile driving energy attenuator*—Pacific Shops will use a marine pile-driving energy attenuator (*i.e.,* air bubble curtain system) during impact pile driving of the wide flange beams, 30-in steel pipe piles, and 36-in steel pipe piles. The use of sound attenuation will reduce SPLs and the size of the zones of influence for Level A harassment and Level B harassment. Bubble curtains will meet the following requirements:

○ The bubble curtain must distribute air bubbles around 100 percent of the piling perimeter for the full depth of the water column.

○ The lowest bubble ring shall be in contact with the mudline for the full circumference of the ring, and the weights attached to the bottom ring shall ensure 100 percent mudline contact. No parts of the ring or other objects shall prevent full mudline contact.

○ The bubble curtain shall be operated such that there is proper (equal) balancing of air flow to all bubblers.

Based on our evaluation of the applicant's planned measures, as well as other measures considered by NMFS, NMFS has determined that the mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

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

• Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density).

• Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) Action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas).

• Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.

• How anticipated responses to stressors impact either: (1) Long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.

• Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).

• Mitigation and monitoring effectiveness.

Visual Monitoring

Marine mammal monitoring must be conducted in accordance with the Marine Mammal Monitoring Plan, dated June 2020. Marine mammal monitoring during pile driving and removal must be conducted by NMFS-approved PSOs in a manner consistent with the following:

• Independent PSOs (*i.e.,* not construction personnel) who have no other assigned tasks during monitoring periods must be used;

• Where a team of three or more PSOs are required, a lead observer or monitoring coordinator must be designated. The lead observer must have prior experience working as a marine mammal observer during construction;

• Other PSOs may substitute education (degree in biological science or related field) or training for experience; and

• Pacific Shops must submit PSO CVs for approval by NMFS prior to the onset of pile driving.

PSOs must have the following additional qualifications:

• Ability to conduct field observations and collect data according to assigned protocols;

• Experience or training in the field identification of marine mammals,

including the identification of behaviors;

• Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;

• Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and

• Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

Two PSOs will monitor for marine mammals during all pile driving and removal activities. PSO locations will provide an unobstructed view of all water within the shutdown zone, and as much of the Level A and Level B harassment zones as possible. PSO locations are as follows:

• On top of a metal storage container at the pile driving site or best vantage point practicable to monitor the shutdown zone; and

• On the barge at the end of Pier 5.

Monitoring will be conducted 30 minutes before, during, and 30 minutes after pile driving/removal activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven or removed. 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 or drilling equipment is no more than 30 minutes.

Acoustic Monitoring

Pacific Shops intends to conduct a sound source verification (SSV) study to confirm the sound source levels, transmission loss coefficient, and size of the Level A and Level B harassment zones. They intend to request a modification to the zones, if appropriate based on the results of the SSV study. Their plan follows accepted methodological standards to achieve their objectives, and is available on NMFS' website at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.* If NMFS approves the results of the SSV study, we will modify the zone sizes based on the approved data. Acoustic monitoring report requirements are listed in the *Reporting* section, below.

Reporting

A draft marine mammal monitoring report will be submitted to NMFS within 90 days after the completion of pile driving and removal activities. The report will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

• 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 and estimated time spent within the Level A and Level B harassment zones while the source was active.

• 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.

• 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.

If no comments are received from NMFS within 30 days, the draft report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

Pacific Shops must include the following information in their acoustic monitoring report.

• Hydrophone equipment and methods: Recording device, sampling rate, distance (m) from the pile where recordings were made; depth of recording device(s).

• Type and size of pile being driven, substrate type, method of driving during recordings.

• Whether a sound attenuation device is used, and if so, duration of its use per pile.

• For impact pile driving: Pulse duration and mean, median, and maximum sound levels (dB re: 1μPa): 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).

• For vibratory driving/removal: Mean, median, and maximum sound levels (dB re: 1μPa): SPLrms, SELcum, and timeframe over which the sound is averaged.

• Number of strikes (impact) or duration (vibratory) per pile measured, one-third octave band spectrum, power spectral density plot.

• Estimated source levels referenced to 10 m, transmission loss coefficients, and estimated Level A and Level B harassment zones.

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, the IHA-holder shall report the incident to the Office of Protected Resources (OPR) (301–427–8401), NMFS and to the West Coast Region Stranding Hotline (866–767–6114) as soon as feasible. If the death or injury was clearly caused by the specified activity, the IHA-holder must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHA. The IHA-holder must not resume their activities until notified by NMFS.

The report must include the following information:

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

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

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

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

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

vi. General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

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

To avoid repetition, this introductory discussion of our analyses applies to all of the species listed in Table 7, given that many of the anticipated effects of this project on different marine mammal stocks are expected to be relatively similar in nature. Also, because the nature of the estimated takes anticipated to occur are identical in Years 1 and 2, and the number of estimated takes in each year are extremely similar, the analysis below applies to each of the IHAs.

The nature of the pile driving project precludes the likelihood of serious injury or mortality, and the mitigation is expected to ensure that no Level A harassment occurs, which would be unlikely to occur even absent the required mitigation. For all species and stocks, take will occur within a limited, confined area (Oakland Estuary) of any given stock's range. Take will be limited to Level B harassment only due to potential behavioral disturbance and TTS. Effects on individuals that are taken by Level B harassment, on the basis of reports in the literature as well as monitoring from other similar activities, will likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff 2006; HDR, Inc. 2012; Lerma 2014; ABR 2016). Level B harassment will be reduced to the level of least practicable adverse impact through use of mitigation measures described herein. Further, the amount of take authorized for any given stock is extremely small when compared to stock abundance.

Exposure to noise resulting in Level B harassment for all species is expected to be temporary and minor due to the general lack of use of the Oakland Estuary by marine mammals, as previously explained. In general, marine mammals are only occasionally sighted within the Oakland Estuary. Any behavioral harassment occurring during the project is highly unlikely to impact the health or fitness of any individuals, much less effect annual rates of recruitment or survival. Any harassment will be brief, and if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activity is occurring.

As previously discussed, the closest harbor seal pupping area is 24.5 km (15.2 mi) from the project area. However, there are no habitat areas of particular importance for marine mammals within the Oakland Estuary, and it is not preferred habitat for marine mammals. Therefore, we expect that animals annoyed by project sound will simply avoid the area and use more-preferred habitats, particularly as the project will only occur on approximately 68 days in Year 1, and 98 days in Year 2, for up to approximately 9.5 hours per day.

The project is also not expected to have significant adverse effects on affected marine mammals' habitats. The project activities will not modify existing marine mammal habitat for a significant amount of time. The activities may cause some fish to leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities and the relatively small area of the habitat that may be affected, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality or serious injury is anticipated or authorized.
- No Level A harassment is anticipated or authorized.
- The number and intensity of anticipated takes by Level B harassment is relatively low for all stocks.
- No biologically important areas have been identified within the project area.
- For all species, the Oakland Estuary is a very small part of their range.
- For all species, Level B harassment takes authorized in each IHA will affect less than five percent of each stock.

Year 1 IHA—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 Pacific Shops' construction activities will have a negligible impact on the affected marine mammal species or stocks.

Year 2 IHA—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 Pacific Shops' 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 Sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers 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.

Table 7 includes the number of takes for each species authorized to be taken as a result of activities in Year 1 and Year 2 of this project. Our analysis shows that less than one-third of the best available population abundance estimate of each stock could be taken by harassment during each project year. In fact, for each stock, the take authorized each year comprises less than five percent of the stock abundance. The number of animals authorized to be taken for each stock discussed above would be considered small relative to the relevant stock's abundances even if each estimated taking occurred to a new individual, which is an unlikely scenario.

Year 1 IHA—Based on the analysis contained herein of the activity (including the 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 size of the affected species or stocks in Year 1 of the project.

Year 2 IHA—Based on the analysis contained herein of the activity (including the 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 size of the affected species or stocks in Year 2 of the project.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks will not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

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.

No incidental take of ESA-listed species is authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for 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 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.

Authorization

NMFS has issued an IHA to Pacific Shops, Inc. for the potential harassment of small numbers of six marine mammal species incidental to the Alameda Marina Shoreline Improvement Project in Alameda, CA, provided the previously mentioned mitigation, monitoring and reporting requirements are followed.

Dated: June 19, 2020.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–13652 Filed 6–23–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XR101]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys off of Massachusetts, Rhode Island, Connecticut, New York and New Jersey

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from Equinor Wind, LLC (Equinor) for authorization to take marine mammals incidental to marine site characterization surveys in the Atlantic Ocean in the area of the Commercial Leases of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS–A 0520 and OCS–A 0512) and along potential submarine cable routes to a landfall location in Massachusetts, Rhode Island, Connecticut, New York or New Jersey. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-year renewal that could be issued under certain circumstances and if all requirements are met, as described in Request for Public Comments at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorizations and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than July 24, 2020.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Physical comments should be sent to 1315 East-West Highway, Silver Spring, MD 20910 and electronic comments should be sent to *ITP.pauline@noaa.gov.*

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. All comments received are a part of the public record and will generally be posted online at *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Rob Pauline, Office of Protected Resources, NMFS, (301) 427–8401. Electronic copies of the applications and

supporting documents, as well as a list of the references cited in this document, may be obtained by visiting the internet at: *www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-other-energy-activities-renewable.* In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

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

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

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

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must 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 preliminarily determined that the proposed action qualifies to be categorically excluded from further NEPA review.

Information in Equinor's application and this notice collectively provide the environmental information related to proposed issuance of these regulations and subsequent incidental take authorization for public review and comment. We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the request for incidental take authorization.

Summary of Request

On January 30, 2020, NMFS received a request from Equinor for an IHA to take marine mammals incidental to marine site characterization surveys in the Atlantic Ocean in the area of the Commercial Leases of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS–A 0520 and OCS–A 0512) and along potential submarine cable routes to a landfall location in Massachusetts, Rhode Island, Connecticut, New York or New Jersey. A revised application was received on March 31, 2020. NMFS deemed that request to be adequate and complete. On May 22, Equinor notified NMFS of a revision to their proposed activities and submitted a revised IHA application reflecting the change. Equinor's request is for the take of 17 marine mammal stocks, by Level B harassment only. Neither Equinor nor NMFS expects serious injury or mortality to result from this activity and the activity is expected to last no more than one year, therefore, an IHA is appropriate.

Description of the Proposed Activity

Overview

Equinor proposes to conduct marine site characterization surveys, including high-resolution geophysical (HRG) and geotechnical surveys, in the area of Commercial Leases of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf #OCS–A 0520 and #OCS–A 0512 (Lease Areas) and along potential submarine cable routes offshore Massachusetts, Rhode Island, Connecticut, New York and New Jersey.

The purpose of the proposed surveys is to support the preliminary site characterization, siting, and engineering design of offshore wind project facilities including wind turbine generators, offshore substations, and submarine cables within the Lease Areas and in export cable route areas (ECRAs). As many as two survey vessels may operate concurrently as part of the proposed surveys. Underwater sound resulting from Equinor's proposed surveys has the potential to result in the incidental take of marine mammals in the form of behavioral harassment.

Dates and Duration

The estimated duration of the HRG surveys is expected to be up to 218 total days over the course of one year. Geotechnical sampling is anticipated to occur for a total of 135 days over the course of one year. This schedule is based on 24-hour operations and includes potential down time due to inclement weather.

Specific Geographic Region

Equinor's survey activities would occur in the Northwest Atlantic Ocean within Federal and state waters. Surveys would occur in the Lease Areas and in ECRAs offshore Massachusetts, Rhode Island, Connecticut, New York and New Jersey (see Figure 1–1 in the IHA application).

Detailed Description of the Specified Activities

Equinor's proposed marine site characterization surveys include HRG and geotechnical survey activities. These survey activities would occur within the Lease Areas and within ECRAs between the Lease Areas and the coasts of Massachusetts, Rhode Island, Connecticut, New York and New Jersey. For the purpose of this IHA the Lease Areas and ECRAs are collectively referred to as the Project Area.

Geophysical and shallow geotechnical survey activities are anticipated to be supported by vessels which will maintain a speed of approximately 4 knots (kn) while transiting survey lines. The proposed HRG and geotechnical survey activities are described below.

Geotechnical Survey Activities

Equinor's proposed geotechnical survey activities would include the following:

- Sample boreholes to determine geological and geotechnical characteristics of sediments;
- Deep cone penetration tests (CPTs) to determine stratigraphy and in situ conditions of the deep surface sediments; and

• Vibracores to determine the geological and geotechnical characteristics of the sediments.

Geotechnical investigation activities are anticipated to be conducted from a drill ship equipped with dynamic positioning (DP) thrusters. It is anticipated that vibracore samples, borings and CPT may be obtained at each planned wind turbine location in the Lease Areas. Impact to the seafloor from this equipment will be limited to the minimal contact of the sampling equipment, and inserted boring and probes.

In considering whether marine mammal harassment is an expected outcome of exposure to a particular activity or sound source, NMFS considers the nature of the exposure itself (*e.g.,* the magnitude, frequency, or duration of exposure), characteristics of the marine mammals potentially exposed, and the conditions specific to the geographic area where the activity is expected to occur (*e.g.,* whether the activity is planned in a foraging area, breeding area, nursery or pupping area, or other biologically important area for the species). We then consider the expected response of the exposed animal and whether the nature and duration or intensity of that response is expected to cause disruption of behavioral patterns (*e.g.,* migration, breathing, nursing, breeding, feeding, or sheltering) or injury.

Geotechnical survey activities would be conducted from a drill ship equipped with DP thrusters. DP thrusters would be used to position the sampling vessel on station and maintain position at each sampling location during the sampling activity. Sound produced through use of DP thrusters is similar to that produced by transiting vessels and DP thrusters are typically operated either in a similarly predictable manner or used for short durations around stationary activities. NMFS does not believe acoustic impacts from DP thrusters are likely to result in take of marine mammals in the absence of activity- or location-specific circumstances that may otherwise represent specific concerns for marine mammals (*i.e.,* activities proposed in area known to be of particular importance for a particular species), or associated activities that may increase the potential to result in take when in concert with DP thrusters. In this case, we are not aware of any such circumstances. Therefore, NMFS believes the likelihood of DP thrusters used during the proposed geotechnical surveys resulting in harassment of marine mammals to be so low as to be discountable. As DP thrusters are not expected to result in take of marine mammals, these activities are not analyzed further in this document.

Field studies conducted off the coast of Virginia to determine the underwater noise produced by CPTs and borehole drilling found that these activities did not result in underwater noise levels that exceeded current thresholds for Level B harassment of marine mammals (Kalapinski, 2015). Given the small size and energy footprint of geotechnical survey activities, NMFS believes the likelihood that noise from these activities would exceed the Level B harassment threshold at any appreciable distance is so low as to be discountable. Therefore, geotechnical survey activities are not expected to result in harassment of marine mammals and are not analyzed further in this document.

Geophysical Survey Activities

Equinor has proposed that HRG survey operations would be conducted continuously 24 hours per day. Based on 24-hour operations, the estimated total duration of the proposed activities would be approximately 218 survey days (Table 1). These estimated durations include estimated weather down time.

TABLE 1—SUMMARY OF PROPOSED HRG SURVEY SEGMENTS

Survey segment	Duration (survey days)
ECRA 1	11.25
ECRA 2	70.25
ECRA 3	11.25
ECRA 4	125.25
All survey areas combined	218

Equinor's HRG survey activities would be supported by a maximum of two concurrently-operating source vessels. HRG equipment on the survey vessel would either be mounted to or towed behind the survey vessel. Vessels would operate at a typical survey speed of approximately 4 knots (7.4 km per hour) while surveying. Surveys within the Lease Areas would be conducted along tracklines spaced a minimum of 30 meters (m) (98 feet (ft)) apart. Up to two cable route corridors within the ECRAs (Figure 1–1 in the IHA application) would be surveyed along tracklines that would also be spaced a minimum of 30 m (98 ft) apart. The full survey protocol is designed to meet BOEM requirements as defined in the July 2015 ''Guidelines for Providing Geophysical, Geotechnical, and Geohazard Information Pursuant to 30 CFR part 585'' and the March 2017 ''Guidelines for Providing Archeological and Historical Property Information Pursuant to 30 CFR part 585.''

Equinor has proposed to deploy some types of HRG equipment on a Surveyor Remotely Operated Vehicle (SROV) (see Figure 1–3 in the IHA application). The SROV is fully controlled from the surface vessel and is equipped with multibeam echosounders, triangulating lasers, and video-photo mosaic cameras as well as side scan sonar, a shallow penetration sub-bottom profiler, and gradiometer. It is specially designed to increase the progress rate during the survey along tracklines where medium penetration sub-bottom profiler data is not required. SROV operations facilitate better trackline fidelity compared to traditional vessel-based survey operations as the SROV is de-coupled from the surface motion of the water and is not affected by wind or wave action. Equinor estimates that the SROV, which would not exceed the speed of the mother ship, has the potential to increase survey efficiency by 25 percent over vessel-based surveys due to an ability to survey with quicker line turns, resulting in fewer re-runs of tracklines. The SROV also minimizes limitations on surveys that may otherwise result from adverse weather conditions. The SROV would maintain a depth of no higher than 6 m above the seabed at all times while actively surveying, in accordance with BOEM guidelines for acceptable operation of a gradiometer.

The geophysical survey activities proposed by Equinor would include the following:

• Shallow Penetration sub-bottom profilers (SBP) (Pinger/CHIRP/Parametric) to map near-surface stratigraphy (0 to 5 m (0 to 16 ft) of sediment below the seabed). SBP emit sonar pulses that increase in frequency (3.5 to 200 kiloHertz (kHz)) over time. The pulse length frequency range can be adjusted depending on project needs. The shallow penetration SBPs are only operated from the SROV.

• Medium Penetration SBPs (Sparker/Boomer) to map deeper subsurface stratigraphy as needed. A medium SBP system emits acoustic pulses from 50 kHz to 4 kHz, omnidirectional from the source that can penetrate hundreds of meters into the seafloor. Medium penetration SBPs are usually towed behind the vessel with adjacent hydrophone arrays to detect the return signals.

• Ultra-Short Baseline (USBL) Positioning and Global Acoustic Positioning System (GAPS) to provide high accuracy ranges by measuring the time between the acoustic pulses transmitted by the vessel transceiver and the equipment necessary to produce the acoustic profile. USBL/GAPS are

two-component systems usually with a hull or side pole mounted transceiver and one or more transponders on the seabed or the equipment.

• Single and Multibeam Depth Sounders to determine water depths and general topography. The multibeam echosounder sonar system projects sonar pulses in several angled beams from a transducer mounted to SROV. The beams radiate out from the transducer in a fan-shaped pattern orthogonally to the ship's direction. This equipment would only be operated from the SROV and operates above 180 kHz (outside the functional hearing ranges of all marine mammals).

• Side scan sonar (SSS) for seabed sediment classification purposes and to identify man-made acoustic targets on the seafloor. This sonar device emits conical or fan-shaped pulses down toward the seafloor in multiple beams at a wide angle, perpendicular to the path of the sensor through the water. The acoustic return of the pulses can be joined to form an image of the sea bottom within the swath of the beam. SSSs are typically towed behind the vessel or mounted to the hull. The SSS would only be operated from the SROV and operates above 180 kHz (outside the functional hearing ranges of all marine mammals).

• Sound Velocity Profiler to measure speed of sound to make corrections for calibration of equipment. Sound Velocity Profilers operate above 180 kHz (outside the functional hearing ranges of all marine mammals).

• Marine Gradiometer (magnetometer) to detect and map ferrous objects on and below the seafloor which may cause a hazard, including anchors, chains, cables, scattered shipwreck debris, unexploded ordnances, aircraft, and any other objects with a magnetic expression. Note that the magnetometer is not a sound source.

The deployment of HRG survey equipment, including some of the equipment planned for use during Equinor's proposed activity, produces sound in the marine environment that has the potential to result in harassment of marine mammals. However, sound propagation of HRG sources is dependent on several factors including operating mode, frequency, depth of source and beam direction of the equipment; thus, potential impacts to marine mammals from HRG equipment are driven by the specification of individual HRG sources. The specifications of the potential equipment planned for use during HRG survey activities (Table 1–1 in the IHA application) were analyzed to determine which types of equipment would have the potential to result in harassment of marine mammals. Based on the best available information, the likelihood of HRG equipment that operates either at frequency ranges that fall outside the functional hearing ranges of marine mammals (*e.g.,* above 180 kHz) or within marine mammal functional hearing ranges but with low sound source levels (*e.g.,* a single pulse at less than 200 decibel (dB) re re 1 micro-Pascal (μPa)) to result in the take of marine mammals is so low as to be discountable. These equipment types were therefore eliminated from further analysis. As noted above, these include: The multibeam echosounder, Sound Velocity Profiler, and SSS. As we have determined these sources will not result in the take of marine mammals, they are not analyzed further in this document. In addition, the Marine Gradiometer (magnetometer) is not a sound source and therefore does not have the potential to result in take of marine mammals, and is therefore not analyzed further in this document. As described above, the SROV would maintain a depth of no higher than 6 m above the seabed at all times while actively surveying. Thus, a marine mammal would have to pass between the SROV and the seabed and through the beam of the HRG source in order to be exposed to noise from HRG equipment operating from the SROV. As the SROV would never operate more than 6 m above the seabed while operating active HRG equipment, this is extremely unlikely to occur. In addition, the shallow penetration SBP that is operated from the SROV has a narrow beam (maximum of 36 degrees). Therefore, NMFS has determined the potential for take of marine mammals as a result of exposure to HRG equipment operated from the SROV is so low as to be discountable, and HRG equipment operated from the SROV is not analyzed further in this document.

Table 2 identifies the representative survey equipment that may be used in support of proposed vessel-based geophysical survey activities that has the potential to result in the take of marine mammals. As described above, HRG equipment operated from the SROV but not the vessel are not expected to result in the incidental take of marine mammals and are therefore not shown in Table 2 (all HRG equipment types proposed for use by Equinor, including those operated from the SROV, are shown in Table 1–1 of the IHA application). Geophysical surveys are expected to use multiple equipment types concurrently in order to collect multiple aspects of geophysical data along one transect.

TABLE 2—SUMMARY OF VESSEL-BASED HRG SURVEY EQUIPMENT PROPOSED FOR USE BY EQUINOR WITH THE POTENTIAL TO RESULT IN THE TAKE OF MARINE MAMMALS

HRG equipment type	Equipment	Operating frequency	SL rms (dB re 1 μPa m)	SL pk (dB re 1 μPa m)	Pulse duration (milli-second)	Repetition rate (Hz)	Beam width (degrees)
Subsea Positioning/ USBL [1].	Kongsberg HiPAP 501/ 502.	21–31	190	207	2	1	15.
Medium Sub-bottom Profiler [2].	Geo-Source 400 Tip Sparker Source. (800 J)	0.25 to 3.25	203	213	2	4	Omni-directional.

[1] Sound source characteristics from manufacturer specifications.
[2] SLs as reported for the ELC820 sparker in Crocker and Fratantonio (2016) which represents the most applicable proxy to the Geo-Source 800–J sparker expected for use during Equinor's proposed surveys.

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (please see Proposed Mitigation and Proposed Monitoring and Reporting).

Description of Marine Mammals in the Area of Specified Activity

Sections 3 and 4 of the IHA application summarize available

information regarding status and trends, distribution and habitat preferences, and behavior and life history, of the potentially affected species. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*www.fisheries.noaa.gov/find-species*). All species that could potentially occur in the proposed survey areas are included in Table 4–1 of the IHA application. However, the temporal and/or spatial occurrence of several species listed in Table 7–2 of the IHA application is such that take of these species is not expected to occur either because they have very low densities in the project area or are known to occur further offshore than the project area. These are: The blue whale (*Balaenoptera musculus*), Bryde's whale (*Balaenoptera edeni*), Cuvier's beaked whale (*Ziphius cavirostris*), four species of Mesoplodont beaked whale (*Mesoplodon* spp.), dwarf and pygmy sperm whale (*Kogia sima* and *Kogia breviceps*), short-finned pilot whale (*Globicephala macrorhynchus*), northern bottlenose whale (*Hyperoodon ampullatus*), killer whale (*Orcinus orca*), pygmy killer whale (*Feresa attenuata*), false killer whale (*Pseudorca crassidens*), melon-headed whale (*Peponocephala electra*), striped dolphin (*Stenella coeruleoalba*), white-beaked dolphin (*Lagenorhynchus albirostris*), pantropical spotted dolphin (*Stenella attenuata*), Fraser's dolphin (*Lagenodelphis hosei*), rough-toothed dolphin (*Steno bredanensis*), Clymene dolphin (*Stenella clymene*), spinner dolphin (*Stenella longirostris*), and hooded seal (*Cystophora cristata*). As take of these species is not anticipated as a result of the proposed activities, these species are not analyzed further.

Table 3 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 is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no mortality is anticipated or authorized here, PBR is included here as a gross indicator of the status of the species and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. Atlantic SARs. All values presented in Table 3 are the most recent available at the time of publication and are available in the 2019 draft Atlantic SARs (Hayes *et al.,* 2019), available online at*: www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region.*

TABLE 3—MARINE MAMMALS KNOWN TO OCCUR IN THE SURVEY AREA THAT MAY BE AFFECTED BY EQUINOR'S PROPOSED ACTIVITY

Common Name (scientific name)	Stock	MMPA and ESA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	Predicted abundance (CV) [3]	PBR [4]	Annual M/SI [4]	Occurrence in project area
Toothed whales (Odontoceti)							
Sperm whale (*Physeter macrocephalus).*	North Atlantic	E; Y	4,349 (0.28; 3,451; n/a)	5,353 (0.12)	6.9	0.0	Rare.
Atlantic white-sided dolphin (*Lagenorhynchus acutus).*	W. North Atlantic	-; N	93,233 (0.71; 54,443; n/a)	37,180 (0.07)	544	26	Common.
Atlantic spotted dolphin (*Stenella frontalis*).	W. North Atlantic	-; N	39,921 (0.27; 32,032; 2012)	55,436 (0.32)	320	0	Common.
Common dolphin (*Delphinus delphis).*	W. North Atlantic	-; N	172,825 (0.21; 145,216; 2011).	86,098 (0.12)	1,452	419	Common.
Bottlenose dolphin (*Tursiops truncatus).*	W. North Atlantic, Offshore	-; N	62,851 (0.23; 51,914; 2011)	[5] 97,476 (0.06)	519	28	Common offshore.
	W. North Atlantic, Northern Coastal Migratory.	-; N	6,639 (0.41; 4,759; 2015)		48	6.1–13.2	Common near-shore.
Long-finned pilot whale (*Globicephala melas).*	W. North Atlantic	-; N	39,215 (0.3; 30,627; n/a)	[5] 18,977 (0.11)	306	21	Rare.
Risso's dolphin (*Grampus griseus*).	W. North Atlantic	-; N	35,493 (0.19; 30,289; 2011)	7,732 (0.09)	303	54.3	Rare.
Harbor porpoise (*Phocoena phocoena).*	Gulf of Maine/Bay of Fundy	-; N	95,543 (0.31; 74,034; 2011)	* 45,089 (0.12)	851	217	Common.
Baleen whales (Mysticeti)							
Fin whale (*Balaenoptera physalus).*	W. North Atlantic	E; Y	7,418 (0.25; 6,025; n/a)	4,633 (0.08)	12	2.35	Year round in continental shelf and slope waters.
Sei whale (*Balaenoptera borealis).*	Nova Scotia	E; Y	6,292 (1.015; 3,098; n/a)	* 717 (0.30)	6.2	1.0	Year round in continental shelf and slope waters.
Minke whale (*Balaenoptera acutorostrata).*	Canadian East Coast	-; N	24,202 (0.3; 18,902; n/a)	* 2,112 (0.05)	8.0	7.0	Year round in continental shelf and slope waters.
Humpback whale (*Megaptera novaeangliae).*	Gulf of Maine	-; N	1,396 (0; 1,380; n/a)	* 1,637 (0.07)	22	12.15	Common year round.

TABLE 3—MARINE MAMMALS KNOWN TO OCCUR IN THE SURVEY AREA THAT MAY BE AFFECTED BY EQUINOR'S PROPOSED ACTIVITY—Continued

Common Name (scientific name)	Stock	MMPA and ESA status; strategic (Y/N) [1]	Stock abundance (CV, N_{min}, most recent abundance survey) [2]	Predicted abundance (CV) [3]	PBR [4]	Annual M/SI [4]	Occurrence in project area
North Atlantic right whale (*Eubalaena glacialis*).	W. North Atlantic	E; Y	428 (0; 418; n/a)	* 535 (0.45)	0.8	6.85	Occur seasonally.
Earless seals (Phocidae)							
Gray seal [6] (*Halichoerus grypus*).	W. North Atlantic	-; N	27,131 (0.19; 23,158; n/a)	n/a	1,389	5,410	Common.
Harbor seal (*Phoca vitulina*)	W. North Atlantic	-; N	75,834 (0.15; 66,884; 2012)	n/a	2,006	350	Common.
Harp seal [7] (*Pagophilus groenlandicus*).	W. North Atlantic	-; N	Unknown (n/a; n/a; n/a)	n/a	unk.	232,422	Rare.

[1] 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 (see footnote 3) 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] Stock abundance as reported in NMFS marine mammal stock assessment reports (SAR) except where otherwise noted. SARs available online 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, abundance estimates are actual counts of animals and there is no associated CV. The most recent abundance survey that is reflected in the abundance estimate is presented; there may be more recent surveys that have not yet been incorporated into the estimate. All values presented here are from the 2019 draft Atlantic SARs (Hayes *et al.,* 2019).

[3] This information represents species- or guild-specific abundance predicted by recent habitat-based cetacean density models (Roberts *et al.,* 2016, 2017, 2018). These models provide the best available scientific information regarding predicted density patterns of cetaceans in the U.S. Atlantic Ocean, and we provide the corresponding abundance predictions as a point of reference. Total abundance estimates were produced by computing the mean density of all pixels in the modeled area and multiplying by its area. For those species marked with an asterisk, the available information supported development of either two or four seasonal models; each model has an associated abundance prediction. Here, we report the maximum predicted abundance.

[4] Potential biological removal, 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 size (OSP). Annual M/SI, 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 values often cannot be determined precisely and is in some cases presented as a minimum value. All M/SI values are as presented in the draft 2019 SARs (Hayes *et al.,* 2019).

[5] Abundance estimates are in some cases reported for a guild or group of species when those species are difficult to differentiate at sea. Similarly, the habitat-based cetacean density models produced by Roberts *et al.* (2016, 2017, 2018) are based in part on available observational data which, in some cases, is limited to genus or guild in terms of taxonomic definition. Roberts *et al.* (2016, 2017, 2018) produced density models to genus level for *Globicephala* spp. and produced a density model for bottlenose dolphins that does not differentiate between offshore and coastal stocks.

[6] NMFS stock abundance estimate applies to U.S. population only, actual stock abundance is approximately 505,000.

[7] Stock abundance estimate is not available in NMFS SARs and predicted abundance estimate is not provided in Roberts *et al.* (2016, 2017, 2018).

Four marine mammal species that are listed under the ESA may be present in the survey area and are included in the take request: the North Atlantic right, fin, sei, and sperm whale.

Below is a description of the species that have the highest likelihood of occurring in the project area and are thus expected to potentially be taken by the proposed activities. For the majority of species potentially present in the specific geographic region, NMFS has designated only a single generic stock (*e.g.,* ''western North Atlantic'') for management purposes. This includes the ''Canadian east coast'' stock of minke whales, which includes all minke whales found in U.S. waters, and is also a generic stock for management purposes. For humpback whales, NMFS defines stocks on the basis of feeding locations (*i.e.,* Gulf of Maine). However, references to humpback whales in this document refer to any individuals of the species that are found in the specific geographic region.

North Atlantic Right Whale

The North Atlantic right whale ranges from calving grounds in the southeastern United States to feeding grounds in New England waters and into Canadian waters (Hayes *et al.,* 2018). Surveys have demonstrated the existence of seven areas where North Atlantic right whales congregate seasonally, including in Georges Bank, off Cape Cod, and in Massachusetts Bay (Hayes *et al.,* 2018). In the late fall months (*e.g.* October), right whales are generally thought to depart from the feeding grounds in the North Atlantic and move south to their calving grounds off Georgia and Florida. However, recent research indicates our understanding of their movement patterns remains incomplete (Davis *et al.,* 2017). A review of passive acoustic monitoring data from 2004 to 2014 throughout the western North Atlantic demonstrated nearly continuous year-round right whale presence across their entire habitat range (for at least some individuals), including in locations previously thought of as migratory corridors, suggesting that not all of the population undergoes a consistent annual migration (Davis *et al.,* 2017).

Aerial surveys indicate that right whales are consistently detected within and near Lease Area 0520 and surrounding survey areas, particularly ECRA–1 and the eastern portion of ECRA–2 (see Figure 4–1 in the IHA application), during winter and early spring. It appears that right whales begin to arrive in this area in December and remain in the area through at least April. Acoustic detections of right whales within the MA and RI/MA Wind Energy Areas (WEAs), which include the proposed survey areas, were documented during all months of the year, although the highest number of detections between December and late May (Kraus *et al.* 2016). Aerial survey data indicate that right whales occur at elevated densities in the survey areas south and southwest of Martha's Vineyard and Nantucket, and in Cape Cod Bay, between December and May (Roberts *et al.* 2018; Leiter *et al.* 2017; Kraus *et al.* 2016).

The western North Atlantic right whale population demonstrated overall growth of 2.8 percent per year between 1990 to 2010, despite a decline in 1993 and no growth between 1997 and 2000 (Pace *et al.* 2017). However, since 2010 the population has been in decline, with a 99.99 percent probability of a decline of just under 1 percent per year (Pace *et al.,* 2017). Between 1990 and 2015, calving rates varied substantially, with low calving rates coinciding with all three periods of decline or no growth (Pace *et al.,* 2017). On average, North Atlantic right whale calving rates are estimated to be roughly half that of southern right whales (*Eubalaena australis*) (Pace *et al.,* 2017), which are increasing in abundance (NMFS, 2015).

In 2018, no new North Atlantic right whale calves were documented in their calving grounds, representing the first time since annual NOAA aerial surveys began in 1989 that no new right whale calves were observed. Seven right whale calves were documented in 2019 and ten right whale calves were observed in 2020. The current best estimate of population abundance for the species is 409 individuals, based on data as of September, 2019 (Pettis *et al.,* 2019).

Elevated North Atlantic right whale mortalities have occurred since June 7, 2017 along the U.S. and Canadian coast. As of June, 2020, a total of 30 confirmed dead stranded whales (21 in Canada; 9 in the United States) have been documented. This event has been declared an Unusual Mortality Event (UME), with human interactions, including entanglement in fixed fishing gear and vessel strikes, implicated in at least 15 of the mortalities thus far. More information is available online at: *www.fisheries.noaa.gov/national/marine-life-distress/2017-2019-north-atlantic-right-whale-unusual-mortality-event.*

The proposed survey areas are part of a biologically important migratory area for North Atlantic right whales; this important migratory area is comprised of the waters of the continental shelf offshore the East Coast of the United States and extends from Florida through Massachusetts. NMFS' regulations at 50 CFR part 224.105 designated nearshore waters of the Mid-Atlantic Bight as Mid-Atlantic U.S. Seasonal Management Areas (SMA) for right whales in 2008. SMAs were developed to reduce the threat of collisions between ships and right whales around their migratory route and calving grounds. Within SMAs, the regulations require a mandatory vessel speed (less than 10 knots) for all vessels greater than 65 ft. Five SMAs overlap spatially, either fully or partially, with the proposed survey areas. These include: the Off Race Point SMA (in effect from January 1 through May 15); the Cape Cod Bay SMA (in effect from March 1 through April 30); the Great South Channel SMA (in effect from April 1 through July 31); the Block Island Sound SMA (in effect from November 1 through April 30); and the New York/New Jersey SMA (in effect from November 1 through April 30).

NMFS has designated two critical habitat areas for the North Atlantic right whale under the ESA: The Gulf of Maine/Georges Bank region, and the southeast calving grounds from North Carolina to Florida. Portions of the proposed survey areas overlap spatially with the Gulf of Maine/Georges Bank critical habitat which was established due to the area's significance for right whale foraging (81 FR 4837, January 27, 2016). The rulemaking establishing critical habitat in the Gulf of Maine/Georges Bank region that partially overlaps the proposed survey area identified that area as particularly suitable to aggregations of *Calanus finmarchicus* (a species of copepod that is a preferred prey of the North Atlantic right whale) and recognized that features of habitat in the area were deemed essential to the conservation of the species (81 FR 4837, January 27, 2016). Measures to minimize potential impacts to North Atlantic right whales within SMAs and designated critical habitat are described under Proposed Mitigation.

Humpback Whale

Humpback whales are found worldwide in all oceans. Humpback whales were listed as endangered under the Endangered Species Conservation Act (ESCA) in June 1970. In 1973, the ESA replaced the ESCA, and humpback whales continued to be listed as endangered. On September 8, 2016, NMFS divided the species into 14 distinct population segments (DPS), removed the current species-level listing, and in its place listed four DPSs as endangered and one DPS as threatened (81 FR 62260; September 8, 2016). The remaining nine DPSs were not listed. The West Indies DPS, which is not listed under the ESA, is the only DPS of humpback whales that is expected to occur in the project area.

Humpback whales utilize the mid-Atlantic as a migration pathway between calving/mating grounds to the south and feeding grounds in the north (Waring *et al.* 2007). A key question with regard to humpback whales off the Mid-Atlantic states is their stock identity. Using fluke photographs of living and dead whales observed in the region, Barco *et al.* (2002) reported that 43 percent of 21 live whales matched to the Gulf of Maine, 19 percent to Newfoundland, and 4.8 percent to the Gulf of St Lawrence, while 31.6 percent of 19 dead humpbacks were known Gulf of Maine whales. Although the population composition of the mid-Atlantic is apparently dominated by Gulf of Maine whales, lack of photographic effort in Newfoundland makes it likely that the observed match rates under-represent the true presence of Canadian whales in the region (Waring *et al.,* 2016). Barco *et al.* (2002) suggested that the mid-Atlantic region primarily represents a supplemental winter feeding ground used by humpback whales.

Since January 2016, elevated humpback whale mortalities have occurred along the Atlantic coast from Maine to Florida. As of June, 2020, partial or full necropsy examinations have been conducted on approximately half of the 126 known cases. Of the whales examined, about 50 percent had evidence of human interaction, either ship strike or entanglement. While a portion of the whales have shown evidence of pre-mortem vessel strike, this finding is not consistent across all humpback whales examined and more research is needed. NOAA is consulting with researchers that are conducting studies on the humpback whale populations, and these efforts may provide information on changes in whale distribution and habitat use that could provide additional insight into how these vessel interactions occurred. Three previous UMEs involving humpback whales have occurred since 2000, in 2003, 2005, and 2006. More information is available at: *www.fisheries.noaa.gov/national/marine-life-distress/2016-2019-humpback-whale-unusual-mortality-event-along-atlantic-coast.*

Fin Whale

Fin whales are common in waters of the U.S. Atlantic Exclusive Economic Zone (EEZ), principally from Cape Hatteras northward (Waring *et al.,* 2016). Fin whales are present north of 35-degree latitude in every season and are broadly distributed throughout the western North Atlantic for most of the year (Waring *et al.,* 2016). They are typically found in small groups of up to five individuals (Brueggeman *et al.,* 1987). The main threats to fin whales are fishery interactions and vessel collisions (Waring *et al.,* 2016).

Sei Whale

The Nova Scotia stock of sei whales can be found in deeper waters of the continental shelf edge waters of the northeastern U.S. and northeastward to south of Newfoundland. The southern portion of the stock's range during spring and summer includes the Gulf of Maine and Georges Bank. Spring is the period of greatest abundance in U.S. waters, with sightings concentrated along the eastern margin of Georges Bank and into the Northeast Channel area, and along the southwestern edge of Georges Bank in the area of Hydrographer Canyon (Waring *et al.,* 2015). Sei whales occur in shallower waters to feed. Sei whales are listed as endangered under the ESA, and the Nova Scotia stock is considered strategic and depleted under the MMPA. The main threats to this stock are

interactions with fisheries and vessel collisions.

Minke Whale

Minke whales can be found in temperate, tropical, and high-latitude waters. The Canadian East Coast stock can be found in the area from the western half of the Davis Strait (45° W) to the Gulf of Mexico (Waring *et al.,* 2016). This species generally occupies waters less than 100 m deep on the continental shelf. There appears to be a strong seasonal component to minke whale distribution in the survey areas, in which spring to fall are times of relatively widespread and common occurrence while during winter the species appears to be largely absent (Waring *et al.,* 2016). Since January 2017, elevated minke whale mortalities have occurred along the Atlantic coast from Maine through South Carolina. This event has been declared a UME. As of June, 2020 partial or full necropsy examinations have been conducted on more than 60 percent of the 88 known cases. Preliminary findings in several of the whales have shown evidence of human interactions or infectious disease, but these findings are not consistent across all of the whales examined, so more research is needed. More information is available at: *www.fisheries.noaa.gov/national/marine-life-distress/2017-2019-minke-whale-unusual-mortality-event-along-atlantic-coast.*

Sperm Whale

The distribution of the sperm whale in the U.S. EEZ occurs on the continental shelf edge, over the continental slope, and into mid-ocean regions (Waring *et al.,* 2014). The basic social unit of the sperm whale appears to be the mixed school of adult females plus their calves and some juveniles of both sexes, normally numbering 20–40 animals in all. There is evidence that some social bonds persist for many years (Christal *et al.,* 1998). This species forms stable social groups, site fidelity, and latitudinal range limitations in groups of females and juveniles (Whitehead, 2002). In summer, the distribution of sperm whales includes the area east and north of Georges Bank and into the Northeast Channel region, as well as the continental shelf (inshore of the 100-m isobath) south of New England. In the fall, sperm whale occurrence south of New England on the continental shelf is at its highest level, and there remains a continental shelf edge occurrence in the mid-Atlantic bight. In winter, sperm whales are concentrated east and northeast of Cape Hatteras.

Long-Finned Pilot Whale

Long-finned pilot whales prefer deep temperate to subpolar oceanic waters, but they have been known to occur in coastal waters in some areas. Larger groupings of animals have been documented on the continental edge and slope, depending on the season. In the Northern Hemisphere, their range includes the U.S. east coast, Gulf of St. Lawrence, the Azores, Madeira, North Africa, western Mediterranean Sea, North Sea, Greenland and the Barents Sea. In the winter and spring, they are more likely to occur in offshore oceanic waters or on the continental slope. In the summer and autumn, long-finned pilot whales generally follow their favorite foods farther inshore and on to the continental shelf. In U.S. Atlantic waters the species is distributed principally along the continental shelf edge off the northeastern U.S. coast in winter and early spring and in late spring, long-finned pilot whales move onto Georges Bank and into the Gulf of Maine and more northern waters and remain in these areas through late autumn (Waring *et al.,* 2016).

Atlantic White-Sided Dolphin

Atlantic white-sided dolphins are found in temperate and sub-polar waters of the North Atlantic, primarily in continental shelf waters to the 100-m depth contour from central West Greenland to North Carolina (Waring *et al.,* 2016). The Gulf of Maine stock is most common in continental shelf waters from Hudson Canyon to Georges Bank, and in the Gulf of Maine and lower Bay of Fundy. Sighting data indicate seasonal shifts in distribution (Northridge *et al.,* 1997). During January to May, low numbers of white-sided dolphins are found from Georges Bank to Jeffreys Ledge (off New Hampshire), with even lower numbers south of Georges Bank, as documented by a few strandings collected on beaches of Virginia to South Carolina. From June through September, large numbers of white-sided dolphins are found from Georges Bank to the lower Bay of Fundy. From October to December, white-sided dolphins occur at intermediate densities from southern Georges Bank to southern Gulf of Maine (Payne and Heinemann 1990). Sightings south of Georges Bank, particularly around Hudson Canyon, occur year round but at low densities.

Atlantic Spotted Dolphin

Atlantic spotted dolphins are found in tropical and warm temperate waters ranging from southern New England, south to Gulf of Mexico and the Caribbean to Venezuela (Waring *et al.,* 2014). This stock regularly occurs in continental shelf waters south of Cape Hatteras and in continental shelf edge and continental slope waters north of this region (Waring *et al.,* 2014). There are two forms of this species, with the larger ecotype inhabiting the continental shelf and is usually found inside or near the 200 m isobaths (Waring *et al.,* 2014).

Common Dolphin

Common dolphins prefer warm tropical to cool temperate waters that are primarily oceanic and offshore. They can be found along the continental slope in waters 650 to 6,500 feet deep. The abundance and distribution of common dolphins vary based on interannual changes, oceanographic conditions, and seasons. In the western North Atlantic, they are often associated with the Gulf Stream current, and are more common north of Cape Hatteras, North Carolina. From summer through autumn, large aggregations of dolphins can be found near Georges Bank (extending from Cape Cod, Massachusetts, to Nova Scotia, Canada), Newfoundland, and the Scotian Shelf. In the North Atlantic, common dolphins are commonly found over the continental shelf between the 100-m and 2,000-m isobaths and over prominent underwater topography and east to the mid-Atlantic Ridge (Waring *et al.,* 2016).

Bottlenose Dolphin

There are two distinct bottlenose dolphin morphotypes in the western North Atlantic: The coastal and offshore forms (Waring *et al.,* 2016). The offshore form is distributed primarily along the outer continental shelf and continental slope in the Northwest Atlantic Ocean from Georges Bank to the Florida Keys. The coastal morphotype is morphologically and genetically distinct from the larger, more robust morphotype that occupies habitats further offshore. Spatial distribution data, tag-telemetry studies, photo-ID studies and genetic studies demonstrate the existence of a distinct Northern Migratory stock of coastal bottlenose dolphins (Waring *et al.,* 2014). During summer months (July–August), this stock occupies coastal waters from the shoreline to approximately the 25 m isobath between the Chesapeake Bay mouth and Long Island, New York; during winter months (January–March), the stock occupies coastal waters from Cape Lookout, North Carolina, to the North Carolina/Virginia border (Waring *et al.,* 2014). The Western North Atlantic northern migratory coastal stock and the Western North Atlantic

offshore stock may be encountered by the proposed survey.

Harbor Porpoise

Harbor porpoises live in northern temperate and subarctic coastal and offshore waters. In the North Atlantic, they range from West Greenland to Cape Hatteras, North Carolina, and from the Barents Sea to West Africa. In the proposed survey areas, only the Gulf of Maine/Bay of Fundy stock may be present. This stock is found in U.S. and Canadian Atlantic waters and is concentrated in the northern Gulf of Maine and southern Bay of Fundy region, generally in waters less than 150 m deep (Waring *et al.,* 2016). They are seen from the coastline to deep waters (≤1800 m; Westgate *et al.* 1998), although the majority of the population is found over the continental shelf (Waring *et al.,* 2016). The main threat to the species is interactions with fisheries, with documented take in the U.S. northeast sink gillnet, mid-Atlantic gillnet, and northeast bottom trawl fisheries and in the Canadian herring weir fisheries (Waring *et al.,* 2016).

Harbor Seal

The harbor seal is found in all nearshore waters of the North Atlantic and North Pacific Oceans and adjoining seas above about 30° N (Burns, 2009). In the western North Atlantic, harbor seals are distributed from the eastern Canadian Arctic and Greenland south to southern New England and New York, and occasionally to the Carolinas (Waring *et al.,* 2016). Haul out and pupping sites are located off Manomet, MA and the Isles of Shoals, ME, but generally do not occur in areas in southern New England (Waring *et al.,* 2016).

Since July 2018, elevated numbers of harbor seal and gray seal mortalities have occurred across Maine, New Hampshire and Massachusetts. This event has been declared a UME. Additionally, stranded seals have shown clinical signs as far south as Virginia, although not in elevated numbers, therefore the UME investigation now encompasses all seal strandings from Maine to Virginia. Lastly, ice seals (harp and hooded seals) have also started stranding with clinical signs, again not in elevated numbers, and those two seal species have also been added to the UME investigation. As of u, 2020 a total of 3,152 reported strandings (of all species) had occurred. Full or partial necropsy examinations have been conducted on some of the seals and samples have been collected for testing. Based on tests conducted thus far, the main pathogen found in the seals is phocine distemper virus. NMFS is performing additional testing to identify any other factors that may be involved in this UME. Information on this UME is available online at: *www.fisheries.noaa.gov/new-england-mid-atlantic/marine-life-distress/2018-2019-pinniped-unusual-mortality-event-along.*

Gray Seal

There are three major populations of gray seals found in the world; eastern Canada (western North Atlantic stock), northwestern Europe and the Baltic Sea. Gray seals in the survey area belong to the western North Atlantic stock. The range for this stock is thought to be from New Jersey to Labrador. Current population trends show that gray seal abundance is likely increasing in the U.S. Atlantic EEZ (Waring *et al.,* 2016). Although the rate of increase is unknown, surveys conducted since their arrival in the 1980s indicate a steady increase in abundance in both Maine and Massachusetts (Waring *et al.,* 2016). It is believed that recolonization by Canadian gray seals is the source of the U.S. population (Waring *et al.,* 2016).

As described above, elevated seal mortalities, including gray seals, have occurred from Maine to Virginia since July 2018. This event has been declared a UME, with phocine distemper virus identified as the main pathogen found in the seals. NMFS is performing additional testing to identify any other factors that may be involved in this UME. Information on this UME is available online at: *www.fisheries.noaa.gov/new-england-mid-atlantic/marine-life-distress/2018-2019-pinniped-unusual-mortality-event-along.*

Harp Seal

The harp seal occurs throughout much of the North Atlantic and Arctic Oceans (Ronald and Healey 1981; Lavigne and Kovacs 1988). There are three harp seal stocks in the world; the only stock that may occur in the project area is the western North Atlantic stock which breeds off the coast of Newfoundland and Labrador and near the Magdalen Islands in the middle of the Gulf of St. Lawrence (Sergeant 1965; Lavigne and Kovacs 1988). Harp seals are highly migratory (Sergeant 1965; Stenson and Sjare 1997). Breeding occurs at different times for each stock between late-February and April. Adults then assemble on suitable pack ice to undergo the annual molt. The migration then continues north to Arctic summer feeding grounds. In late September, after a summer of feeding, nearly all adults and some of the immature animals of the western North Atlantic stock migrate southward along the Labrador coast, usually reaching the entrance to the Gulf of St. Lawrence by early winter. The southern limit of the harp seal's habitat extends into the U.S. Atlantic EEZ during winter and spring. Since the early 1990s, numbers of sightings and strandings have been increasing off the east coast of the United States from Maine to New Jersey (Katona *et al.* 1993; Rubinstein 1994; Stevick and Fernald 1998; McAlpine 1999; Lacoste and Stenson 2000; Soulen *et al.* 2013). These appearances usually occur in January-May (Harris *et al.* 2002), when the western North Atlantic stock of harp seals is at its most southern point of migration.

As described above, elevated seal mortalities, including harp seals, have occurred from Maine to Virginia since July 2018. This event has been declared a UME, with phocine distemper virus identified as the main pathogen found in the seals. NMFS is performing additional testing to identify any other factors that may be involved in this UME. Information on this UME is available online at: *www.fisheries.noaa.gov/new-england-mid-atlantic/marine-life-distress/2018-2019-pinniped-unusual-mortality-event-along.*

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Current data indicate that not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007) recommended that marine mammals be divided into functional hearing groups based on directly measured or estimated hearing ranges on the basis of available behavioral response data, audiograms derived using auditory evoked potential techniques, anatomical modeling, and other data. Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2016) described 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 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; and
- Pinnipeds in water; *Phocidae* (true seals): Generalized hearing is estimated to occur between approximately 50 Hz to 86 kH.

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth and Holt, 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information. Fourteen marine mammal species (twelve cetacean and two pinniped (both phocid species) have the reasonable potential to co-occur with the proposed survey activities (see Table 3). Of the cetacean species that may be present, five are classified as low-frequency cetaceans (*i.e.,* all mysticete species), six are classified as mid-frequency cetaceans (*i.e.,* all delphinid species and the sperm whale), and one is classified as a high-frequency cetacean (*i.e.,* harbor porpoise).

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section includes a summary and discussion of the ways that components of the specified activity may impact marine mammals and their habitat. The Estimated Take section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and how those impacts on individuals are likely to impact marine mammal species or stocks.

Background on Sound

Sound is a physical phenomenon consisting of minute vibrations that travel through a medium, such as air or water, and is generally characterized by several variables. Frequency describes the sound's pitch and is measured in Hz or kHz, while sound level describes the sound's intensity and is measured in dB. Sound level increases or decreases exponentially with each dB of change. The logarithmic nature of the scale means that each 10-dB increase is a 10-fold increase in acoustic power (and a 20-dB increase is then a 100-fold increase in power). A 10-fold increase in acoustic power does not mean that the sound is perceived as being 10 times louder, however. Sound levels are compared to a reference sound pressure (μPa) to identify the medium. For air and water, these reference pressures are ''re: 20 (μPa)'' and ''re: 1 μPa,'' respectively. Root mean square (RMS) is the quadratic mean sound pressure over the duration of an impulse. RMS is calculated by squaring all of the sound amplitudes, averaging the squares, and then taking the square root of the average (Urick 1975). RMS accounts for both positive and negative values; squaring the pressures makes all values positive so that they may be accounted for in the summation of pressure levels. This measurement is often used in the context of discussing behavioral effects, in part because behavioral effects, which often result from auditory cues, may be better expressed through averaged units rather than by peak pressures.

When sound travels (propagates) from its source, its loudness decreases as the distance traveled by the sound increases. Thus, the loudness of a sound at its source is higher than the loudness of that same sound one km away. Acousticians often refer to the loudness of a sound at its source (typically referenced to one meter from the source) as the source level and the loudness of sound elsewhere as the received level (*i.e.,* typically the receiver). For example, a humpback whale 3 km from a device that has a source level of 230 dB may only be exposed to sound that is 160 dB loud, depending on how the sound travels through water (*e.g.,* spherical spreading (6 dB reduction with doubling of distance) was used in this example). As a result, it is important to understand the difference between source levels and received levels when discussing the loudness of sound in the ocean or its impacts on the marine environment.

As sound travels from a source, its propagation in water is influenced by various physical characteristics, including water temperature, depth, salinity, and surface and bottom properties that cause refraction, reflection, absorption, and scattering of sound waves. Oceans are not homogeneous and the contribution of each of these individual factors is extremely complex and interrelated. The physical characteristics that determine the sound's speed through the water will change with depth, season, geographic location, and with time of day (as a result, in actual active sonar operations, crews will measure oceanic conditions, such as sea water temperature and depth, to calibrate models that determine the path the sonar signal will take as it travels through the ocean and how strong the sound signal will be at a given range along a particular transmission path). As sound travels through the ocean, the intensity associated with the wavefront diminishes, or attenuates. This decrease in intensity is referred to as propagation loss, also commonly called transmission loss.

Acoustic Impacts

Geophysical surveys may temporarily impact marine mammals in the area due to elevated in-water sound levels. Marine mammals are continually exposed to many sources of sound. Naturally occurring sounds such as lightning, rain, sub-sea earthquakes, and biological sounds (*e.g.,* snapping shrimp, whale songs) are widespread throughout the world's oceans. Marine mammals produce sounds in various contexts and use sound for various biological functions including, but not limited to: (1) Social interactions; (2) foraging; (3) orientation; and (4) predator detection. Interference with producing or receiving these sounds may result in adverse impacts. Audible distance, or received levels of sound depend on the nature of the sound source, ambient noise conditions, and the sensitivity of the receptor to the sound (Richardson *et al.,* 1995). Type and significance of marine mammal reactions to sound are likely dependent on a variety of factors including, but not limited to, (1) the behavioral state of the

animal (*e.g.,* feeding, traveling, *etc.*); (2) frequency of the sound; (3) distance between the animal and the source; and (4) the level of the sound relative to ambient conditions (Southall *et al.,* 2007).

When considering the influence of various kinds of sound on the marine environment, it is necessary to understand that different kinds of marine life are sensitive to different frequencies of sound. Current data indicate that not all marine mammal species have equal hearing capabilities (Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008).

Animals are less sensitive to sounds at the outer edges of their functional hearing range and are more sensitive to a range of frequencies within the middle of their functional hearing range.

Hearing Impairment

Marine mammals may experience temporary or permanent hearing impairment when exposed to loud sounds. Hearing impairment is classified by temporary threshold shift (TTS) and permanent threshold shift (PTS). PTS is considered auditory injury (Southall *et al.,* 2007) and occurs in a specific frequency range and amount. Irreparable damage to the inner or outer cochlear hair cells may cause PTS; however, other mechanisms are also involved, such as exceeding the elastic limits of certain tissues and membranes in the middle and inner ears and resultant changes in the chemical composition of the inner ear fluids (Southall *et al.,* 2007). There are no empirical data for onset of PTS in any marine mammal; therefore, PTS-onset must be estimated from TTS-onset measurements and from the rate of TTS growth with increasing exposure levels above the level eliciting TTS-onset. PTS is presumed to be likely if the hearing threshold is reduced by ≥ 40 dB (that is, 40 dB of TTS).

Temporary Threshold Shift (TTS)

TTS is the mildest form of hearing impairment that can occur during exposure to a loud sound (Kryter 1985). While experiencing TTS, the hearing threshold rises and a sound must be stronger in order to be heard. At least in terrestrial mammals, TTS can last from minutes or hours to (in cases of strong TTS) days, can be limited to a particular frequency range, and can occur to varying degrees (*i.e.,* a loss of a certain number of dBs of sensitivity). For sound exposures at or somewhat above the TTS threshold, hearing sensitivity in both terrestrial and marine mammals recovers rapidly after exposure to the noise ends.

Marine mammal hearing plays a critical role in communication with conspecifics and in interpretation of environmental cues for purposes such as predator avoidance and prey capture. Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious. For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animals is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during a time when communication is critical for successful mother/calf interactions could have more serious impacts if it were in the same frequency band as the necessary vocalizations and of a severity that it impeded communication. The fact that animals exposed to levels and durations of sound that would be expected to result in this physiological response would also be expected to have behavioral responses of a comparatively more severe or sustained nature is also notable and potentially of more importance than the simple existence of a TTS.

Currently, TTS data only exist for four species of cetaceans (bottlenose dolphin, beluga whale (*Delphinapterus leucas*), harbor porpoise, and Yangtze finless porpoise (*Neophocaena phocaenoides*)) and three species of pinnipeds (northern elephant seal (*Mirounga angustirostris*), harbor seal, and California sea lion (*Zalophus californianus*)) exposed to a limited number of sound sources (*i.e.,* mostly tones and octave-band noise) in laboratory settings (*e.g.,* Finneran *et al.,* 2002 and 2010; Nachtigall *et al.,* 2004; Kastak *et al.,* 2005; Lucke *et al.,* 2009; Mooney *et al.,* 2009; Popov *et al.,* 2011; Finneran and Schlundt, 2010). In general, harbor seals (Kastak *et al.,* 2005; Kastelein *et al.,* 2012a) and harbor porpoises (Lucke *et al.,* 2009; Kastelein *et al.,* 2012b) have a lower TTS onset than other measured pinniped or cetacean species. However, even for these animals, which are better able to hear higher frequencies and may be more sensitive to higher frequencies, exposures on the order of approximately 170 dB RMS or higher for brief transient signals are likely required for even temporary (recoverable) changes in hearing sensitivity that would likely not be categorized as physiologically damaging (Lucke *et al.,* 2009). Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species. There are no data available on noise-induced hearing loss for mysticetes. For summaries of data on TTS in marine mammals or for further discussion of TTS onset thresholds, please see Finneran (2015).

Scientific literature highlights the inherent complexity of predicting TTS onset in marine mammals, as well as the importance of considering exposure duration when assessing potential impacts (Mooney *et al.,* 2009a, 2009b; Kastak *et al.,* 2007). Generally, with sound exposures of equal energy, quieter sounds (lower sound pressure levels (SPL)) of longer duration were found to induce TTS onset more than louder sounds (higher SPL) of shorter duration (more similar to sub-bottom profilers). For intermittent sounds, less threshold shift will occur than from a continuous exposure with the same energy (some recovery will occur between intermittent exposures) (Kryter *et al.,* 1966; Ward 1997). For sound exposures at or somewhat above the TTS-onset threshold, hearing sensitivity recovers rapidly after exposure to the sound ends; intermittent exposures recover faster in comparison with continuous exposures of the same duration (Finneran *et al.,* 2010). NMFS considers TTS as a non-injurious effect that is mediated by physiological effects on the auditory system.

Animals in the survey areas during proposed surveys are unlikely to incur TTS hearing impairment due to the characteristics of the sound sources, which include low source levels (208 to 221 dB re 1 μPa-m) and generally very short pulses and duration of the sound. Even for high-frequency cetacean species (*e.g.,* harbor porpoises), which may have increased sensitivity to TTS (Lucke *et al.,* 2009; Kastelein *et al.,* 2012b), individuals would have to make a very close approach and also remain very close to vessels operating these sources in order to receive multiple exposures at relatively high levels, as would be necessary to cause TTS. Intermittent exposures—as would occur due to the brief, transient signals produced by these sources—require a higher cumulative SEL to induce TTS than would continuous exposures of the same duration (*i.e.,* intermittent exposure results in lower levels of TTS) (Mooney *et al.,* 2009a; Finneran *et al.,* 2010). Moreover, most marine mammals would more likely avoid a loud sound source rather than swim in such close proximity as to result in TTS. Kremser

et al. (2005) noted that the probability of a cetacean swimming through the area of exposure when a sub-bottom profiler emits a pulse is small—because if the animal was in the area, it would have to pass the transducer at close range in order to be subjected to sound levels that could cause TTS and would likely exhibit avoidance behavior to the area near the transducer rather than swim through at such a close range. Further, the restricted beam shape of the majority of the geophysical survey equipment planned for use (Table 2) makes it unlikely that an animal would be exposed more than briefly during the passage of the vessel.

Masking

Masking is the obscuring of sounds of interest to an animal by other sounds, typically at similar frequencies. Marine mammals are highly dependent on sound, and their ability to recognize sound signals amid other sound is important in communication and detection of both predators and prey (Tyack 2000). Background ambient sound may interfere with or mask the ability of an animal to detect a sound signal even when that signal is above its absolute hearing threshold. Even in the absence of anthropogenic sound, the marine environment is often loud. Natural ambient sound includes contributions from wind, waves, precipitation, other animals, and (at frequencies above 30 kHz) thermal sound resulting from molecular agitation (Richardson *et al.,* 1995).

Background sound may also include anthropogenic sound, and masking of natural sounds can result when human activities produce high levels of background sound. Conversely, if the background level of underwater sound is high (*e.g.,* on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked. Ambient sound is highly variable on continental shelves (Myrberg 1978; Desharnais *et al.,* 1999). This results in a high degree of variability in the range at which marine mammals can detect anthropogenic sounds.

Although masking is a phenomenon which may occur naturally, the introduction of loud anthropogenic sounds into the marine environment at frequencies important to marine mammals increases the severity and frequency of occurrence of masking. For example, if a baleen whale is exposed to continuous low-frequency sound from an industrial source, this would reduce the size of the area around that whale within which it can hear the calls of another whale. The components of background noise that are similar in frequency to the signal in question primarily determine the degree of masking of that signal. In general, little is known about the degree to which marine mammals rely upon detection of sounds from conspecifics, predators, prey, or other natural sources. In the absence of specific information about the importance of detecting these natural sounds, it is not possible to predict the impact of masking on marine mammals (Richardson *et al.,* 1995). In general, masking effects are expected to be less severe when sounds are transient than when they are continuous. Masking is typically of greater concern for those marine mammals that utilize low-frequency communications, such as baleen whales, because of how far low-frequency sounds propagate.

Marine mammal communications would not likely be masked appreciably by the sub-bottom profiler signals given the directionality of the signals (for most geophysical survey equipment types planned for use (Table 2)) and the brief period when an individual mammal is likely to be within its beam.

Non-Auditory Physical Effects (Stress)

Classic stress responses begin when an animal's central nervous system perceives a potential threat to its homeostasis. That perception triggers stress responses regardless of whether a stimulus actually threatens the animal; the mere perception of a threat is sufficient to trigger a stress response (Moberg 2000; Seyle 1950). Once an animal's central nervous system perceives a threat, it mounts a biological response or defense that consists of a combination of the four general biological defense responses: Behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses.

In the case of many stressors, an animal's first and sometimes most economical (in terms of biotic costs) response is behavioral avoidance of the potential stressor or avoidance of continued exposure to a stressor. An animal's second line of defense to stressors involves the sympathetic part of the autonomic nervous system and the classical ''fight or flight'' response which includes the cardiovascular system, the gastrointestinal system, the exocrine glands, and the adrenal medulla to produce changes in heart rate, blood pressure, and gastrointestinal activity that humans commonly associate with ''stress.'' These responses have a relatively short duration and may or may not have significant long-term effect on an animal's welfare.

An animal's third line of defense to stressors involves its neuroendocrine systems; the system that has received the most study has been the hypothalamus-pituitary-adrenal system (also known as the HPA axis in mammals). Unlike stress responses associated with the autonomic nervous system, virtually all neuro-endocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction (Moberg 1987; Rivier 1995), altered metabolism (Elasser *et al.,* 2000), reduced immune competence (Blecha 2000), and behavioral disturbance. Increases in the circulation of glucocorticosteroids (cortisol, corticosterone, and aldosterone in marine mammals; see Romano *et al.,* 2004) have been equated with stress for many years.

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and distress is the biotic cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose a risk to the animal's welfare. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other biotic function, which impairs those functions that experience the diversion. For example, when mounting a stress response diverts energy away from growth in young animals, those animals may experience stunted growth. When mounting a stress response diverts energy from a fetus, an animal's reproductive success and its fitness will suffer. In these cases, the animals will have entered a pre-pathological or pathological state which is called ''distress'' (Seyle 1950) or ''allostatic loading'' (McEwen and Wingfield 2003). This pathological state will last until the animal replenishes its biotic reserves sufficient to restore normal function. Note that these examples involved a long-term (days or weeks) stress response exposure to stimuli.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses have also been documented fairly well through controlled experiments; because this physiology exists in every vertebrate that has been

studied, it is not surprising that stress responses and their costs have been documented in both laboratory and free-living animals (for examples see, Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005; Reneerkens *et al.,* 2002; Thompson and Hamer, 2000). Information has also been collected on the physiological responses of marine mammals to exposure to anthropogenic sounds (Fair and Becker 2000; Romano *et al.,* 2002). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales.

Studies of other marine animals and terrestrial animals would also lead us to expect some marine mammals to experience physiological stress responses and, perhaps, physiological responses that would be classified as ''distress'' upon exposure to high frequency, mid-frequency and low-frequency sounds. For example, Jansen (1998) reported on the relationship between acoustic exposures and physiological responses that are indicative of stress responses in humans (for example, elevated respiration and increased heart rates). Jones (1998) reported on reductions in human performance when faced with acute, repetitive exposures to acoustic disturbance. Trimper *et al.* (1998) reported on the physiological stress responses of osprey to low-level aircraft noise while Krausman *et al.* (2004) reported on the auditory and physiology stress responses of endangered Sonoran pronghorn to military overflights. Smith *et al.* (2004a, 2004b), for example, identified noise-induced physiological transient stress responses in hearing-specialist fish (*i.e.,* goldfish) that accompanied short- and long-term hearing losses. Welch and Welch (1970) reported physiological and behavioral stress responses that accompanied damage to the inner ears of fish and several mammals.

Hearing is one of the primary senses marine mammals use to gather information about their environment and to communicate with conspecifics. Although empirical information on the relationship between sensory impairment (TTS, PTS, and acoustic masking) on marine mammals remains limited, it seems reasonable to assume that reducing an animal's ability to gather information about its environment and to communicate with other members of its species would be stressful for animals that use hearing as their primary sensory mechanism. Therefore, we assume that acoustic exposures sufficient to trigger onset PTS or TTS would be accompanied by physiological stress responses because terrestrial animals exhibit those responses under similar conditions (NRC 2003). More importantly, marine mammals might experience stress responses at received levels lower than those necessary to trigger onset TTS. Based on empirical studies of the time required to recover from stress responses (Moberg 2000), we also assume that stress responses are likely to persist beyond the time interval required for animals to recover from TTS and might result in pathological and pre-pathological states that would be as significant as behavioral responses to TTS.

In general, there is a small amount of data available on the potential for strong, anthropogenic underwater sounds to cause non-auditory physical effects in marine mammals. The available data do not allow identification of a specific exposure level above which non-auditory effects can be expected (Southall *et al.,* 2007). There is no definitive evidence that any of these effects occur even for marine mammals in close proximity to an anthropogenic sound source. In addition, marine mammals that show behavioral avoidance of survey vessels and related sound sources are unlikely to incur non-auditory impairment or other physical effects. NMFS does not expect that the generally short-term, intermittent, and transitory HRG and geotechnical activities would create conditions of long-term, continuous noise and chronic acoustic exposure leading to long-term physiological stress responses in marine mammals.

Behavioral Disturbance

Behavioral disturbance may include a variety of effects, including subtle changes in behavior (*e.g.,* minor or brief avoidance of an area or changes in vocalizations), more conspicuous changes in similar behavioral activities, and more sustained and/or potentially severe reactions, such as displacement from or abandonment of high-quality habitat. Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007; Weilgart, 2007; Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). Please see Appendices B–C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Habituation can occur when an animal's response to a stimulus wanes with repeated exposure, usually in the absence of unpleasant associated events (Wartzok *et al.,* 2003). Animals are most likely to habituate to sounds that are predictable and unvarying. It is important to note that habituation is appropriately considered as a ''progressive reduction in response to stimuli that are perceived as neither aversive nor beneficial,'' rather than as, more generally, moderation in response to human disturbance (Bejder *et al.,* 2009). The opposite process is sensitization, when an unpleasant experience leads to subsequent responses, often in the form of avoidance, at a lower level of exposure. As noted, behavioral state may affect the type of response. For example, animals that are resting may show greater behavioral change in response to disturbing sound levels than animals that are highly motivated to remain in an area for feeding (Richardson *et al.,* 1995; NRC 2003; Wartzok *et al.,* 2003). Controlled experiments with captive marine mammals have shown pronounced behavioral reactions, including avoidance of loud sound sources (Ridgway *et al.,* 1997; Finneran *et al.,* 2003). Observed responses of wild marine mammals to loud, pulsed sound sources (typically seismic airguns or acoustic harassment devices) have been varied but often consist of avoidance behavior or other behavioral changes suggesting discomfort (Morton and Symonds, 2002; see also Richardson *et al.,* 1995; Nowacek *et al.,* 2007).

Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and

Bejder, 2007; Weilgart 2007; NRC 2005). However, there are broad categories of potential response, which we describe in greater detail here, that include alteration of dive behavior, alteration of foraging behavior, effects to breathing, interference with or alteration of vocalization, avoidance, and flight.

Changes in dive behavior can vary widely and may consist of increased or decreased dive times and surface intervals as well as changes in the rates of ascent and descent during a dive (*e.g.,* Frankel and Clark 2000; Costa *et al.,* 2003; Ng and Leung 2003; Nowacek *et al.,* 2004; Goldbogen *et al.,* 2013a,b). Variations in dive behavior may reflect interruptions in biologically significant activities (*e.g.,* foraging) or they may be of little biological significance. The impact of an alteration to dive behavior resulting from an acoustic exposure depends on what the animal is doing at the time of the exposure and the type and magnitude of the response.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.;* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Variations in respiration naturally vary with different behaviors and alterations to breathing rate as a function of acoustic exposure can be expected to co-occur with other behavioral reactions, such as a flight response or an alteration in diving. However, respiration rates in and of themselves may be representative of annoyance or an acute stress response. Various studies have shown that respiration rates may either be unaffected or could increase, depending on the species and signal characteristics, again highlighting the importance in understanding species differences in the tolerance of underwater noise when determining the potential for impacts resulting from anthropogenic sound exposure (*e.g.,* Kastelein *et al.,* 2001, 2005b, 2006; Gailey *et al.,* 2007).

Marine mammals vocalize for different purposes and across multiple modes, such as whistling, echolocation click production, calling, and singing. Changes in vocalization behavior in response to anthropogenic noise can occur for any of these modes and may result from a need to compete with an increase in background noise or may reflect increased vigilance or a startle response. For example, in the presence of potentially masking signals, humpback whales and killer whales have been observed to increase the length of their songs (Miller *et al.,* 2000; Fristrup *et al.,* 2003; Foote *et al.,* 2004), while right whales have been observed to shift the frequency content of their calls upward while reducing the rate of calling in areas of increased anthropogenic noise (Parks *et al.,* 2007b). In some cases, animals may cease sound production during production of aversive signals (Bowles *et al.,* 1994).

Avoidance is the displacement of an individual from an area or migration path as a result of the presence of a sound or other stressors, and is one of the most obvious manifestations of disturbance in marine mammals (Richardson *et al.,* 1995). For example, gray whales are known to change direction—deflecting from customary migratory paths—in order to avoid noise from seismic surveys (Malme *et al.,* 1984). Avoidance may be short-term, with animals returning to the area once the noise has ceased (*e.g.,* Bowles *et al.,* 1994; Goold 1996; Stone *et al.,* 2000; Morton and Symonds, 2002; Gailey *et al.,* 2007). Longer-term displacement is possible, however, which may lead to changes in abundance or distribution patterns of the affected species in the affected region if habituation to the presence of the sound does not occur (*e.g.,* Blackwell *et al.,* 2004; Bejder *et al.,* 2006; Teilmann *et al.,* 2006).

A flight response is a dramatic change in normal movement to a directed and rapid movement away from the perceived location of a sound source. The flight response differs from other avoidance responses in the intensity of the response (*e.g.,* directed movement, rate of travel). Relatively little information on flight responses of marine mammals to anthropogenic signals exist, although observations of flight responses to the presence of predators have occurred (Connor and Heithaus, 1996). The result of a flight response could range from brief, temporary exertion and displacement from the area where the signal provokes flight to, in extreme cases, marine mammal strandings (Evans and England, 2001). However, it should be noted that response to a perceived predator does not necessarily invoke flight (Ford and Reeves, 2008) and whether individuals are solitary or in groups may influence the response.

Behavioral disturbance can also impact marine mammals in more subtle ways. Increased vigilance may result in costs related to diversion of focus and attention (*i.e.,* when a response consists of increased vigilance, it may come at the cost of decreased attention to other critical behaviors such as foraging or resting). These effects have generally not been demonstrated for marine mammals, but studies involving fish and terrestrial animals have shown that increased vigilance may substantially reduce feeding rates (*e.g.,* Beauchamp and Livoreil, 1997; Fritz *et al.,* 2002; Purser and Radford, 2011). In addition, chronic disturbance can cause population declines through reduction of fitness (*e.g.,* decline in body condition) and subsequent reduction in reproductive success, survival, or both (*e.g.,* Harrington and Veitch, 1992; Daan *et al.,* 1996; Bradshaw *et al.,* 1998). However, Ridgway *et al.* (2006) reported that increased vigilance in bottlenose dolphins exposed to sound over a five-day period did not cause any sleep deprivation or stress effects.

Many animals perform vital functions, such as feeding, resting, traveling, and socializing, on a diel cycle (24-hour cycle). Disruption of such functions resulting from reactions to stressors such as sound exposure are more likely to be significant if they last more than one diel cycle or recur on subsequent days (Southall *et al.,* 2007). Consequently, a behavioral response lasting less than one day and not recurring on subsequent days is not considered particularly severe unless it could directly affect reproduction or survival (Southall *et al.,* 2007). Note that there is a difference between multi-day substantive behavioral reactions and multi-day anthropogenic activities. For example, just because an activity lasts for multiple days does not necessarily mean that individual animals are either exposed to activity-related stressors for multiple days or, further, exposed in a manner resulting in sustained multi-day substantive behavioral responses.

Marine mammals are likely to avoid the HRG survey activity, especially the naturally shy harbor porpoise, while the harbor seals might be attracted to them out of curiosity. However, because the sub-bottom profilers and other HRG survey equipment operate from a moving vessel, and the maximum radius to the Level B harassment threshold is

relatively small, the area and time that this equipment would be affecting a given location is very small. Further, once an area has been surveyed, it is not likely that it will be surveyed again, thereby reducing the likelihood of repeated HRG-related impacts within the survey area.

We have also considered the potential for severe behavioral responses such as stranding and associated indirect injury or mortality from Equinor's use of HRG survey equipment, on the basis of a 2008 mass stranding of approximately 100 melon-headed whales in a Madagascar lagoon system. An investigation of the event indicated that use of a high-frequency mapping system (12-kHz multibeam echosounder) was the most plausible and likely initial behavioral trigger of the event, while providing the caveat that there is no unequivocal and easily identifiable single cause (Southall *et al.,* 2013). The investigatory panel's conclusion was based on (1) very close temporal and spatial association and directed movement of the survey with the stranding event; (2) the unusual nature of such an event coupled with previously documented apparent behavioral sensitivity of the species to other sound types (Southall *et al.,* 2006; Brownell *et al.,* 2009); and (3) the fact that all other possible factors considered were determined to be unlikely causes. Specifically, regarding survey patterns prior to the event and in relation to bathymetry, the vessel transited in a north-south direction on the shelf break parallel to the shore, ensonifying large areas of deep-water habitat prior to operating intermittently in a concentrated area offshore from the stranding site; this may have trapped the animals between the sound source and the shore, thus driving them towards the lagoon system. The investigatory panel systematically excluded or deemed highly unlikely nearly all potential reasons for these animals leaving their typical pelagic habitat for an area extremely atypical for the species (*i.e.,* a shallow lagoon system). Notably, this was the first time that such a system has been associated with a stranding event. The panel also noted several site- and situation-specific secondary factors that may have contributed to the avoidance responses that led to the eventual entrapment and mortality of the whales. Specifically, shoreward-directed surface currents and elevated chlorophyll levels in the area preceding the event may have played a role (Southall *et al.,* 2013). The report also notes that prior use of a similar system in the general area may have sensitized the animals and also concluded that, for odontocete cetaceans that hear well in higher frequency ranges where ambient noise is typically quite low, high-power active sonars operating in this range may be more easily audible and have potential effects over larger areas than low frequency systems that have more typically been considered in terms of anthropogenic noise impacts. It is, however, important to note that the relatively lower output frequency, higher output power, and complex nature of the system implicated in this event, in context of the other factors noted here, likely produced a fairly unusual set of circumstances that indicate that such events would likely remain rare and are not necessarily relevant to use of lower-power, higher-frequency systems more commonly used for HRG survey applications. The risk of similar events recurring may be very low, given the extensive use of active acoustic systems used for scientific and navigational purposes worldwide on a daily basis and the lack of direct evidence of such responses previously reported.

Tolerance

Numerous studies have shown that underwater sounds from industrial activities are often readily detectable by marine mammals in the water at distances of many km. However, other studies have shown that marine mammals at distances more than a few km away often show no apparent response to industrial activities of various types (Miller *et al.,* 2005). This is often true even in cases when the sounds must be readily audible to the animals based on measured received levels and the hearing sensitivity of that mammal group. Although various baleen whales, toothed whales, and (less frequently) pinnipeds have been shown to react behaviorally to underwater sound from sources such as airgun pulses or vessels under some conditions, at other times, mammals of all three types have shown no overt reactions (*e.g.,* Malme *et al.,* 1986; Richardson *et al.,* 1995; Madsen and Mohl 2000; Croll *et al.,* 2001; Jacobs and Terhune 2002; Madsen *et al.,* 2002; Miller *et al.,* 2005). In general, pinnipeds seem to be more tolerant of exposure to some types of underwater sound than are baleen whales. Richardson *et al.* (1995) found that vessel sound does not seem to affect pinnipeds that are already in the water.

Vessel Strike

Ship strikes of marine mammals can cause major wounds, which may lead to the death of the animal. An animal at the surface could be struck directly by a vessel, a surfacing animal could hit the bottom of a vessel, or a vessel's propeller could injure an animal just below the surface. The severity of injuries typically depends on the size and speed of the vessel (Knowlton and Kraus 2001; Laist *et al.,* 2001; Vanderlaan and Taggart 2007).

The most vulnerable marine mammals are those that spend extended periods of time at the surface in order to restore oxygen levels within their tissues after deep dives (*e.g.,* the sperm whale). In addition, some baleen whales, such as the North Atlantic right whale, seem generally unresponsive to vessel sound, making them more susceptible to vessel collisions (Nowacek *et al.,* 2004). These species are primarily large, slow moving whales. Smaller marine mammals (*e.g.,* bottlenose dolphin) move quickly through the water column and are often seen riding the bow wave of large ships. Marine mammal responses to vessels may include avoidance and changes in dive pattern (NRC 2003).

An examination of all known ship strikes from all shipping sources (civilian and military) indicates vessel speed is a principal factor in whether a vessel strike results in death (Knowlton and Kraus 2001; Laist *et al.,* 2001; Jensen and Silber 2003; Vanderlaan and Taggart 2007). In assessing records with known vessel speeds, Laist *et al.* (2001) found a direct relationship between the occurrence of a whale strike and the speed of the vessel involved in the collision. The authors concluded that most deaths occurred when a vessel was traveling in excess of 24.1 km/h (14.9 mph; 13 kn). Given the slow vessel speeds and predictable course necessary for data acquisition, ship strike is unlikely to occur during the geophysical and geotechnical surveys. Marine mammals would be able to easily avoid the survey vessel due to the slow vessel speed. Further, Equinor would implement measures (*e.g.,* protected species monitoring, vessel speed restrictions and separation distances; see Proposed Mitigation) set forth in the BOEM lease to reduce the risk of a vessel strike to marine mammal species in the survey area.

Marine Mammal Habitat

The HRG survey equipment will not contact the seafloor and does not represent a source of pollution. We are not aware of any available literature on impacts to marine mammal prey from sound produced by HRG survey equipment. However, as the HRG survey equipment introduces noise to the marine environment, there is the

potential for it to result in avoidance of the area around the HRG survey activities on the part of marine mammal prey. Any avoidance of the area on the part of marine mammal prey would be expected to be short term and temporary.

Because of the temporary nature of the disturbance, and the availability of similar habitat and resources (*e.g.,* prey species) in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations. Impacts on marine mammal habitat from the proposed activities will be temporary, insignificant, and discountable.

Estimated Take

This section provides an estimate of the number of incidental takes proposed for authorization through this IHA, which will inform both NMFS' consideration of ''small numbers'' and the negligible impact determination.

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

Authorized takes would be by Level B harassment only, in the form of disruption of behavioral patterns for individual marine mammals resulting from exposure to HRG sources. Based on the nature of the activity and the anticipated effectiveness of the mitigation measures (*i.e.,* exclusion zones and shutdown measures), discussed in detail below in Proposed Mitigation section, Level A harassment is neither anticipated nor proposed to be authorized.

As described previously, no mortality is anticipated or proposed to be authorized for this activity. Below we describe how the take is estimated.

Generally speaking, we estimate take by considering: (1) Acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and, (4) and the number of days of activities. We note that while these basic factors can contribute to a basic calculation to provide an initial prediction of takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimate.

Acoustic Thresholds

Using the best available science, NMFS has developed acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source (*e.g.,* frequency, predictability, duty cycle), the environment (*e.g.,* bathymetry), and the receiving animals (hearing, motivation, experience, demography, behavioral context) and can be difficult to predict (Southall *et al.,* 2007, Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a factor that is both predictable and measurable for most activities, NMFS uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS predicts that marine mammals are likely to be behaviorally harassed in a manner we consider Level B harassment when exposed to underwater anthropogenic noise above received levels of 160 dB re 1 μPa (rms) for impulsive and/or intermittent sources (*e.g.,* impact pile driving) and 120 dB rms for continuous sources (*e.g.,* vibratory driving). Equinor's proposed activity includes the use of intermittent sources (geophysical survey equipment) and therefore use of the 160 dB re 1 μPa (rms) threshold is applicable.

Level A harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). The components of Equinor's proposed activity that may result in the take of marine mammals include the use of impulsive and non-impulsive intermittent sources.

These thresholds are provided in Table 4 below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS 2018 Technical Guidance, which may be accessed at: *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 μPa, and cumulative sound exposure level (L_E) has a reference value of 1μPa^{2}s. In this Table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that will feed into identifying the area ensonified above the acoustic thresholds, which include source levels and transmission loss coefficient.

The proposed survey would entail the use of HRG equipment. The distance to the isopleth corresponding to the threshold for Level B harassment was calculated for all HRG equipment with the potential to result in harassment of marine mammals. NMFS has developed an interim methodology for determining the rms sound pressure level (SPL_{rms}) at the 160–dB isopleth for the purposes of estimating take by Level B harassment resulting from exposure to HRG survey equipment (NMFS, 2019). This methodology incorporates frequency and some directionality to refine estimated ensonified zones and is described below:

If only peak source sound pressure level (SPL_{pk}) is given, the SPL_{rms} can be roughly approximated by:

(1) $SPL_{rms} = SPL_{pk} + 10\log_{10}\tau$

where τ is the pulse duration in second. If the pulse duration varies, the longest duration should be used, unless there is certainty regarding the portion of time a shorter duration will be used, in which case the result can be calculated/parsed appropriately.

In order to account for the greater absorption of higher frequency sources, we recommend applying 20 log(r) with an absorption term α r/1000 to calculate transmission loss (*TL*), as described in Eq.s (2) and (3) below:

(2) $TL = 20\log_{10}(r) + \alpha \cdot r/1000$ (dB)

where *r* is the distance in meters, and α is absorption coefficient in dB/km.

While the calculation of absorption coefficient varies with frequency, temperature, salinity, and pH, the largest factor driving the absorption coefficient is frequency. A simple formula to approximate the absorption coefficient (neglecting temperature, salinity, and pH) is provided by Richardson et al. (1995):

(3) $\alpha \sim 0.036 f^{1.5}$ (dB/km)

where *f* is frequency in kHz. When a range of frequencies, is being used, the lower bound of the range should be used for this calculation, unless there is certainty regarding the portion of time a higher frequency will be used, in which case the result can be calculated/parsed appropriately.

Further, if the beamwidth is less than 180° and the angle of beam axis in respect to sea surface is known, the horizontal impact distance *R* should be calculated using

$$(4) \qquad R = r\cos\left(\varphi - \frac{\theta}{2}\right) \text{ (m)}$$

where *SL* is the SPL_{rms} at the source (1 m), φ is the beamwidth (in radian), and θ is the angle of beam axis in respect to sea surface (in radian).

Finally, if the beam is pointed at a normal downward direction, Eq. (4) can be simplified as:

$$(5) \qquad R = r\cos\left(\frac{\pi}{2} - \frac{\theta}{2}\right) = r\sin\frac{\theta}{2} \text{ (m)}$$

The interim methodology described above was used to estimate isopleth distances to the Level B harassment threshold for the proposed HRG survey. NMFS considers the data provided by Crocker and Fratantonio (2016) to represent the best available information on source levels associated with HRG equipment and therefore recommends that source levels provided by Crocker and Fratantonio (2016) be incorporated in the method described above to estimate isopleth distances to the Level B harassment threshold. In cases when the source level for a specific type of HRG equipment is not provided in Crocker and Fratantonio (2016), NMFS recommends that either the source levels provided by the manufacturer be used, or, in instances where source levels provided by the manufacturer are unavailable or unreliable, a proxy from Crocker and Fratantonio (2016) be used instead. Table 2 shows the HRG equipment types that may be used during the proposed vessel-based surveys that may result in take of marine mammals, and the sound levels associated with those HRG equipment types.

Results of modeling using the methodology described above indicated that, of the HRG survey equipment planned for use by Equinor that has the potential to result in harassment of marine mammals, sound produced by the GeoSource 800 J sparker would propagate furthest to the Level B harassment threshold (Table 5); therefore, for the purposes of the exposure analysis, it was assumed the GeoSource 800 J would be active during the entirety of the survey. Thus, the distance to the isopleth corresponding to the threshold for Level B harassment for the GeoSource 800 J (estimated at 141 m; Table 5) was used as the basis of the take calculation for all marine mammals. We note that this is a conservative assumption as there may be times during the proposed surveys when the GeoSource 800 J is not operated; if this were the case, the potential for the take of marine mammals by Level B harassment during these times would be much lower based on the modeled distance to the Level B harassment threshold associated with the USBL (Table 5).

TABLE 5—MODELED RADIAL DISTANCES FROM HRG SURVEY EQUIPMENT TO ISOPLETHS CORRESPONDING TO LEVEL A HARASSMENT AND LEVEL B HARASSMENT THRESHOLDS

Sound source	Radial distance to Level A harassment threshold (m)				Radial distance to Level B harassment threshold (m)
	Low frequency cetaceans (peak SPL/SEL_{cum})	Mid frequency cetaceans (peak SPL/SEL_{cum})	High frequency cetaceans (peak SPL/SEL_{cum})	Phocid pinnipeds (underwater) (peak SPL/SEL_{cum})	All marine mammals
Kongsberg HiPAP	0	0	0	0	4
501/502 USBL					
Geo-Source 400 Tip Sparker (800 J)	−/<1	−/0	3.5/<1	−/<1	141

Predicted distances to Level A harassment isopleths, which vary based on marine mammal functional hearing groups (Table 5), were also calculated. The updated acoustic thresholds for impulsive sounds (such as HRG survey equipment) contained in the Technical Guidance (NMFS, 2018) were presented as dual metric acoustic thresholds using both cumulative sound exposure level (SEL_{cum}) and peak sound pressure level metrics. As dual metrics, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the two metrics is exceeded (*i.e.,* the metric resulting in the largest isopleth). The SEL_{cum} metric considers both level and duration of exposure, as well as auditory weighting functions by marine mammal hearing group.

Modeled distances to isopleths corresponding to the Level A harassment thresholds are very small (< 4 m) for all marine mammal species and stocks that may be impacted by the proposed activities (Table 5). Based on the very small Level A harassment zones for all marine mammal species and stocks that may be impacted by the proposed activities, the potential for any marine mammals to be taken by Level A harassment is considered so low as to be discountable. As NMFS has determined that the likelihood of take in the form of Level A harassment of any marine mammals as a result of the proposed surveys is so low as to be discountable, we therefore do not propose to authorize the take by Level A harassment of any marine mammals.

Marine Mammal Occurrence

In this section we provide the information about the presence, density, or group dynamics of marine mammals that will inform the take calculations.

The habitat-based density models produced by the Duke University Marine Geospatial Ecology Laboratory (MGEL) (Roberts *et al.,* 2016, 2017, 2018) represent the best available information regarding marine mammal densities in the proposed survey area. The density data presented by the Duke University MGEL incorporates aerial and shipboard line-transect survey data from NMFS and other organizations and incorporates data from 8 physiographic and 16 dynamic oceanographic and biological covariates, and controls for the influence of sea state, group size, availability bias, and perception bias on the probability of making a sighting. These density models were originally developed for all cetacean taxa in the U.S. Atlantic (Roberts *et al.,* 2016). In subsequent years, certain models have been updated on the basis of additional data as well as certain methodological improvements. The updated models incorporate additional sighting data, including sightings from the NOAA Atlantic Marine Assessment Program for Protected Species (AMAPPS) surveys from 2010–2014 (NEFSC & SEFSC, 2011, 2012, 2014a, 2014b, 2015, 2016), and include updated density data for North Atlantic right whales, including in Cape Cod Bay (Roberts *et al.,* 2018). Our evaluation of the changes leads to a conclusion that these represent the best scientific evidence available. More information is available online at *seamap.env.duke.edu/models/Duke-EC-GOM-2015/.* Marine mammal density estimates in the project area (animals/km²) were obtained using these model results (Roberts *et al.,* 2016, 2017, 2018).

For the exposure analysis, density data from the Duke University MGEL (Roberts *et al.* (2016, 2017, 2018)) were mapped using a geographic information system (GIS). The density coverages that included any portion of the proposed project area were selected for all potential survey months. For each of the survey areas (*i.e.,* ECRA–1, ECRA–2, ECRA–3 and ECRA–4), the densities of each species as reported by the Duke University MGEL (Roberts *et al.* (2016, 2017, 2018)) were averaged by season; thus, a density was calculated for each species for spring, summer, fall and winter. To be conservative, the greatest seasonal density calculated for each species be carried forward in the exposure analysis. Estimated seasonal densities (animals per km²) of all marine mammal species that may be taken by the proposed surveys, for all seasons and all survey areas, are shown in Tables 6–2, 6–3, 6–4, 6–5 and 6–6 of the IHA application. The maximum seasonal density values used to estimate marine mammal exposure numbers are shown in Table 6 below. Note that Duke University MGEL density models do not differentiate by bottlenose dolphin stocks and instead provide estimates at the species level (Roberts *et al.* (2016, 2017, 2018)); the Western North Atlantic northern migratory coastal stock and the Western North Atlantic offshore stock of bottlenose dolphins may occur in the proposed survey areas (Hayes *et al.* 2018). Similarly, the Duke University MGEL produced density models for all seals and did not differentiate by seal species (Roberts *et al.* (2018)); harbor, gray and harp seals may occur in the proposed survey areas (Hayes *et al.* 2018).

TABLE 6—SEASONAL MARINE MAMMAL DENSITIES (NUMBER OF ANIMALS PER 100 KM²) IN ALL SURVEY AREAS USED IN EXPOSURE ESTIMATES

Species	ECRA–1	ECRA–2	ECRA–3	ECRA–4
North Atlantic right whale	0.0063398	0.00192015	0.0002612	0.0008549
Humpback whale	0.0054269	0.00147951	0.0003133	0.0007076
Fin whale	0.0048318	0.00392609	0.000154	0.0029756

TABLE 6—SEASONAL MARINE MAMMAL DENSITIES (NUMBER OF ANIMALS PER 100 KM^2) IN ALL SURVEY AREAS USED IN EXPOSURE ESTIMATES—Continued

Species	ECRA–1	ECRA–2	ECRA–3	ECRA–4
Sei whale	0.0003972	0.00028884	0.00002179	0.000146
Minke whale	0.0044061	0.0020292	0.00006959	0.0015375
Sperm Whale	0.0001033	0.00029419	0.00004323	0.0003508
Pilot whales	0.0014728	0.00011263	0.00002895	0.0058357
Bottlenose dolphins	0.0847306	0.02955662	0.0684936	0.0527685
Common dolphin	0.0224355	0.2121851	0.0043119	0.1539656
Atlantic white-sided dolphin	0.057509	0.05269613	0.0015548	0.0305044
Atlantic spotted dolphin	0.00005057	0.00212995	0.00008059	0.0020008
Risso's dolphin	0.00007374	0.00294218	0.00000215	0.000818
Harbor porpoise	0.05438	0.07252193	0.1348293	0.0671625
Seals (all species)	0.3330293	0.0717368	0.0506316	0.0539549

NOTE: All density values derived from Roberts *et al.* (2016, 2017, 2018). Densities shown represent the maximum seasonal density values calculated, except pilot whales for which seasonal densities were not available.

Take Calculation and Estimates

Here we describe how the information provided above is brought together to produce a quantitative take estimate.

In order to estimate the number of marine mammals predicted to be exposed to sound levels that would result in harassment, radial distances to predicted isopleths corresponding to harassment thresholds are calculated, as described above. Those distances are then used to calculate the area(s) around the HRG survey equipment predicted to be ensonified to sound levels that exceed harassment thresholds. The area estimated to be ensonified to relevant thresholds in a single day is then calculated, based on areas predicted to be ensonified around the HRG survey equipment and the estimated trackline distance traveled per day by the survey vessel.

Equinor estimates that proposed surveys will achieve a maximum daily track line distance of 177.6 km (110.3 mi) per day during proposed HRG surveys. We note that this is a conservative estimate as it accounts for the vessel traveling at approximately 4 knots and accounts for non-active survey periods (*i.e.,* it assumes HRG equipment would be active 24 hours per day during all survey days when in fact there are likely to be periods when the equipment is not active). Based on the maximum estimated distance to the Level B harassment threshold of 141 m (Table 5) and the maximum estimated daily track line distance of 177.6 km (110.3 mi), an area of 50.08 km^2 would be ensonified to the Level B harassment threshold per day during Equinor's proposed surveys. As stated above, this is a conservative assumption as there may be times during the proposed surveys when the GeoSource 800 J is not operated; if this were the case, the ensonified area would be much smaller, based on the modeled Level B harassment threshold associated with the USBL (Table 5).

The number of marine mammals expected to be incidentally taken per day is then calculated by estimating the number of each species predicted to occur within the daily ensonified area (animals/km^2), incorporating the estimated marine mammal densities as described above. Estimated numbers of each species taken per day are then multiplied by the total number of survey days. The product is then rounded, to generate an estimate of the total number of instances of harassment expected for each species over the duration of the survey. A summary of this method is illustrated in the following formula:

$$\text{Estimated Take} = D \times ZOI \times \#\text{ of days}$$

Where: D = average species density (per km^2) and ZOI = maximum daily ensonified area to relevant thresholds.

In this case, the methodology described above was used to estimate marine mammal exposures separately in the four ECRAs. Thus, exposures were calculated separately for each of the four individual ECRAs based on estimated survey duration in each ECRA (Table 2) and using the maximum seasonal density estimates for each respective ECRA (Table 6). Exposure estimates for the four survey areas were then combined for a total estimated number of exposures (Table 7).

Though takes by Level B harassment of North Atlantic right whales were calculated based on the modeling approach described above, Equinor determined that take of the species could be avoided due to mitigation and therefore did not request take authorization for the North Atlantic right whale. However, given the size of modeled Level B harassment zone, the duration of the proposed surveys, and the fact that surveys will occur 24 hours per day, NMFS is not confident that all takes of right whales could be avoided due to mitigation, and we therefore propose to authorize 50 percent of the total number of exposures above the Level B harassment threshold that were modeled. We expect the proposed mitigation measures, including a 500-m exclusion zone for right whales (which exceeds the Level B harassment zone by over 350-m), will be effective in reducing the potential for takes by Level B harassment, but there is still a risk that right whales may not be detected within the Level B harassment zone during periods of diminished visibility, particularly at night. The numbers of takes proposed for authorization are shown in Table 7.

TABLE 7—NUMBERS OF POTENTIAL INCIDENTAL TAKE OF MARINE MAMMALS PROPOSED FOR AUTHORIZATION AND PROPOSED TAKES AS A PERCENTAGE OF POPULATION

Species	Estimated takes by Level B harassment ECRA–1	Estimated takes by Level B harassment ECRA–2	Estimated takes by Level B harassment ECRA–3	Estimated takes by Level B harassment ECRA–4	Total takes by Level B harassment proposed for authorization	Total proposed instances of take as a percentage of population [1]
North Atlantic right whale	4	7	0	5	8	2.0

TABLE 7—NUMBERS OF POTENTIAL INCIDENTAL TAKE OF MARINE MAMMALS PROPOSED FOR AUTHORIZATION AND PROPOSED TAKES AS A PERCENTAGE OF POPULATION—Continued

Species	Estimated takes by Level B harassment ECRA–1	Estimated takes by Level B harassment ECRA–2	Estimated takes by Level B harassment ECRA–3	Estimated takes by Level B harassment ECRA–4	Total takes by Level B harassment proposed for authorization	Total proposed instances of take as a percentage of population [1]
Humpback whale	3	5	1	4	13	0.8
Fin whale	3	14	0	19	36	0.8
Sei whale	1	1	0	1	3	0.4
Minke whale	3	7	0	10	20	0.9
Sperm Whale	0	1	0	2	3	0.1
Long-finned Pilot Whale	1	1	0	37	39	0.2
Bottlenose dolphin [2]	48	104	39	331	522	7.9
Common dolphin	13	747	2	966	1,728	2.0
Atlantic white-sided dolphin	33	185	1	191	410	1.1
Atlantic spotted dolphin	0	8	0	13	21	0.0
Risso's dolphin	0	10	0	5	15	0.2
Harbor porpoise	31	255	76	421	783	1.7
Seals [3]	188	253	29	338	808	1.1

[1] Calculations of percentage of stock taken are based on the best available abundance estimate as shown in Table 3. In most cases the best available abundance estimate is provided by Roberts *et al.* (2016, 2017, 2018), when available, to maintain consistency with density estimates derived from Roberts *et al.* (2016, 2017, 2018). For North Atlantic right whales the best available abundance estimate is derived from the North Atlantic Right Whale Consortium 2019 Annual Report Card (Pettis *et al.,* 2019). For bottlenose dolphins and seals, Roberts *et al.* (2016, 2017, 2018) provides only a single abundance estimate and does not provide abundance estimates at the stock or species level (respectively), so abundance estimates used to estimate percentage of stock taken for bottlenose dolphins, gray, harbor and harp seals are derived from NMFS SARs (Hayes *et al.,* 2019).

[2] Either the Western North Atlantic coastal migratory stock or the Western North Atlantic offshore stock may be taken. Total proposed instances of take as a percentage of population shown for Western North Atlantic coastal migratory stock (based on all 522 proposed authorized takes accruing to that stock). The total proposed instances of take as a percentage of population for the Western North Atlantic offshore stock is 0.8 (based on all 522 proposed authorized takes accruing to that stock).

[3] Harbor, gray or harp seals may be taken. Total proposed instances of take as a percentage of population shown for harbor seals (based on all 808 proposed authorized takes accruing to that species). The total proposed instances of take as a percentage of population for gray seals and harp seals is 0.2 and 0.0, respectively (based on all 808 proposed authorized takes accruing to each species).

As described above, the Duke University MGEL produced density models that did not differentiate by seal species. The underlying data in the Duke University MGEL seal models came almost entirely from AMAPPS aerial surveys which were unable to differentiate by seal species, with the majority of seal sightings reported as ''unidentified seal'' (Roberts *et al.,* 2018). Given the fact that the in-water habitats of harbor seals and gray seals are not well described but likely overlap, and based on the few species identifications that were available, the Duke University MGEL did not attempt to classify the ambiguous ''unidentified seal'' sightings by species (Roberts *et al.,* 2018) and instead produced models for seals as a guild. The take calculation methodology described above resulted in an estimate of 808 total seal takes. Based on this estimate, Equinor requested 808 takes each of harbor, gray and harp seals, based on an assumption that the modeled takes could accrue to any of the respective species. We instead propose to authorize 808 total takes of seals by Level B harassment. Based on the occurrence of harbor, gray and harp seals in the survey areas, we expect the proposed authorized takes would accrue roughly equally to gray and harbor seals, with only a handful of takes of harp seals at most.

The density models produced by the Duke University MGEL also did not differentiate by bottlenose dolphin stocks (Roberts *et al.* (2016, 2017, 2018). The Western North Atlantic northern migratory coastal stock and the Western North Atlantic offshore stock occur in the proposed survey areas. The northern migratory coastal stock occurs in coastal waters from the shoreline to approximately the 20-m isobath while the offshore stock occurs at depths of 20-m and greater (Hayes *et al.* 2019). The take calculation methodology described above resulted in an estimate of 522 total bottlenose dolphin takes. Depths across the proposed survey areas range from very shallow waters near landfall locations to approximately 75-m in offshore survey locations. As proposed surveys would occur in areas where either the northern migratory coastal stock or the offshore stock may occur, we expect the proposed authorized takes would accrue roughly equally to both stocks.

Equinor requested 39 total takes of pilot whales (either long-finned or short-finned). However, the range of short-finned pilot whales does not extend north of Delaware (Hayes et al., 2019) and therefore short-finned pilot whales are not expected to occur in the proposed survey areas. As such, we propose to authorize takes of long-finned pilot whales only.

As described above, NMFS has determined that the likelihood of take of any marine mammals in the form of Level A harassment occurring as a result of the proposed surveys is so low as to be discountable; therefore, we do not propose to authorize take of any marine mammals by Level A harassment.

Proposed Mitigation

In order to issue an IHA under Section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to such activity, and other means of effecting the least practicable impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact upon the affected species or stocks and their habitat (50 CFR 216.104(a)(11)).

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

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned), and;

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, impact on operations, and, in the case of a military readiness activity, personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity.

Proposed Mitigation Measures

NMFS proposes the following mitigation measures be implemented during Equinor's proposed marine site characterization surveys.

Marine Mammal Exclusion Zones, Buffer Zone and Monitoring Zone

Marine mammal exclusion zones (EZ) would be established around the HRG survey equipment and monitored by protected species observers (PSO) during HRG surveys as follows:

- A 500-m EZ would be required for North Atlantic right whales; and
- A 100-m EZ would be required for all other marine mammal species.

If a marine mammal is detected approaching or entering the EZs during the proposed survey, the vessel operator would adhere to the shutdown procedures described below. In addition to the EZs described above, PSOs would visually monitor a 200 m Buffer Zone. During use of acoustic sources with the potential to result in marine mammal harassment (*i.e.,* anytime the acoustic source is active, including ramp-up), occurrences of marine mammals within the Buffer Zone (but outside the EZs) would be communicated to the vessel operator to prepare for potential shutdown of the acoustic source. The Buffer Zone is not applicable when the EZ is greater than 100 meters. PSOs would also be required to observe a 500-m Monitoring Zone and record the presence of all marine mammals within this zone. The zones described above would be based upon the radial distance from the active equipment (rather than being based on distance from the vessel itself).

Visual Monitoring

A minimum of one NMFS-approved PSO must be on duty and conducting visual observations at all times during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset). Visual monitoring would begin no less than 30 minutes prior to ramp-up of HRG equipment and would continue until 30 minutes after use of the acoustic source ceases or until 30 minutes past sunset. PSOs would establish and monitor the applicable EZs, Buffer Zone and Monitoring Zone as described above. Visual PSOs would coordinate to ensure 360° visual coverage around the vessel from the most appropriate observation posts, and would conduct visual observations using binoculars and the naked eye while free from distractions and in a consistent, systematic, and diligent manner. PSOs would estimate distances to observed marine mammals. It would be the responsibility of the Lead PSO on duty to communicate the presence of marine mammals as well as to communicate action(s) that are necessary to ensure mitigation and monitoring requirements are implemented as appropriate. Position data would be recorded using hand-held or vessel global positioning system (GPS) units for each confirmed marine mammal sighting.

Pre-Clearance of the Exclusion Zones

Prior to initiating HRG survey activities, Equinor would implement a 30-minute pre-clearance period. During pre-clearance monitoring (*i.e.,* before ramp-up of HRG equipment begins), the Buffer Zone would also act as an extension of the 100-m EZ in that observations of marine mammals within the 200-m Buffer Zone would also preclude HRG operations from beginning. During this period, PSOs would ensure that no marine mammals are observed within 200-m of the survey equipment (500-m in the case of North Atlantic right whales). HRG equipment would not start up until this 200-m zone (or, 500-m zone in the case of North Atlantic right whales) is clear of marine mammals for at least 30 minutes. The vessel operator would notify a designated PSO of the planned start of HRG survey equipment as agreed upon with the lead PSO; the notification time should not be less than 30 minutes prior to the planned initiation of HRG equipment order to allow the PSOs time to monitor the EZs and Buffer Zone for the 30 minutes of pre-clearance. A PSO conducting pre-clearance observations would be notified again immediately prior to initiating active HRG sources.

If a marine mammal were observed within the relevant EZs or Buffer Zone during the pre-clearance period, initiation of HRG survey equipment would not begin until the animal(s) has been observed exiting the respective EZ or Buffer Zone, or, until an additional time period has elapsed with no further sighting (*i.e.,* minimum 15 minutes for small odontocetes and seals, and 30 minutes for all other species). The pre-clearance requirement would include small delphinoids that approach the vessel (*e.g.,* bow ride). PSOs would also continue to monitor the zone for 30 minutes after survey equipment is shut down or survey activity has concluded. These requirements would be in effect only when the GeoSource 800 J sparker is being operated.

Ramp-Up of Survey Equipment

When technically feasible, a ramp-up procedure would be used for geophysical survey equipment capable of adjusting energy levels at the start or re-start of survey activities. The ramp-up procedure would be used at the beginning of HRG survey activities in order to provide additional protection to marine mammals near the survey area by allowing them to detect the presence of the survey and vacate the area prior to the commencement of survey equipment operation at full power. Ramp-up of the survey equipment would not begin until the relevant EZs and Buffer Zone has been cleared by the PSOs, as described above. HRG equipment would be initiated at their lowest power output and would be incrementally increased to full power. If any marine mammals are detected within the EZs or Buffer Zone prior to or during ramp-up, the HRG equipment would be shut down (as described below).

Shutdown Procedures

If an HRG source is active and a marine mammal is observed within or entering a relevant EZ (as described above) an immediate shutdown of the HRG survey equipment would be required. When shutdown is called for by a PSO, the acoustic source would be immediately deactivated and any dispute resolved only following deactivation. Any PSO on duty would have the authority to delay the start of survey operations or to call for shutdown of the acoustic source if a

marine mammal is detected within the applicable EZ. The vessel operator would establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the HRG source(s) to ensure that shutdown commands are conveyed swiftly while allowing PSOs to maintain watch. Subsequent restart of the HRG equipment would only occur after the marine mammal has either been observed exiting the relevant EZ, or, until an additional time period has elapsed with no further sighting of the animal within the relevant EZ (*i.e.,* 15 minutes for small odontocetes, pilot whales and seals, and 30 minutes for large whales).

Upon implementation of shutdown, the HRG source may be reactivated after the marine mammal that triggered the shutdown has been observed exiting the applicable EZ (*i.e.,* the animal is not required to fully exit the Buffer Zone where applicable), or, following a clearance period of 15 minutes for small odontocetes and seals and 30 minutes for all other species with no further observation of the marine mammal(s) within the relevant EZ. If the HRG equipment shuts down for brief periods (*i.e.,* less than 30 minutes) for reasons other than mitigation (*e.g.,* mechanical or electronic failure) the equipment may be re-activated as soon as is practicable at full operational level, without 30 minutes of pre-clearance, only if PSOs have maintained constant visual observation during the shutdown and no visual detections of marine mammals occurred within the applicable EZs and Buffer Zone during that time. For a shutdown of 30 minutes or longer, or if visual observation was not continued diligently during the pause, pre-clearance observation is required, as described above.

The shutdown requirement would be waived for certain genera of small delphinids (*i.e., Delphinus, Lagenorhynchus, Stenella,* and *Tursiops)* under certain circumstances. If a delphinid(s) from these genera is visually detected approaching the vessel (*i.e.,* to bow ride) or towed survey equipment, shutdown would not be required. If there is uncertainty regarding identification of a marine mammal species (*i.e.,* whether the observed marine mammal(s) belongs to one of the delphinid genera for which shutdown is waived), PSOs would use best professional judgment in making the decision to call for a shutdown.

If a species for which authorization has not been granted, or, a species for which authorization has been granted but the authorized number of takes have been met, approaches or is observed within the area encompassing the Level B harassment isopleth while the sparker is operating (141 m), shutdown would occur.

Seasonal Restrictions

To minimize the potential for impacts to North Atlantic right whales, vessel-based HRG survey activities would be prohibited in the Off Race Point SMA and Cape Cod Bay SMA from January through May and in the Great South Channel SMA from April through July.

Vessel Strike Avoidance

- Vessel strike avoidance measures would include, but would not be limited to, the following: Vessel operators and crews must maintain a vigilant watch for all protected species and slow down, stop their vessel, or alter course, as appropriate and regardless of vessel size, to avoid striking any protected species. A visual observer aboard the vessel must monitor a vessel strike avoidance zone around the vessel (distances stated below). Visual observers monitoring the vessel strike avoidance zone may be third-party observers (*i.e.,* PSOs) or crew members, but crew members responsible for these duties must be provided sufficient training to (1) distinguish protected species from other phenomena and (2) broadly to identify a marine mammal as a right whale, other whale (defined in this context as sperm whales or baleen whales other than right whales), or other marine mammal.
- All survey vessels, regardless of size, must observe a 10-knot speed restriction in specific areas designated by NMFS for the protection of North Atlantic right whales from vessel strikes: Any Dynamic Management Areas (DMAs) when in effect, and the Off Race Point SMA (in effect from January 1 through May 15), Cape Cod Bay SMA (in effect from March 1 through April 30), Great South Channel SMA (in effect from April 1 through July 31), Block Island Sound SMA (in effect from November 1 through April 30); and New York/New Jersey SMA (in effect from November 1 through April 30). See *www.fisheries.noaa.gov/national/endangered-species-conservation/reducing-ship-strikes-north-atlantic-right-whales* for specific detail regarding these areas.
- Vessel speeds must also be reduced to 10 knots or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near a vessel.
- All vessels must maintain a minimum separation distance of 500 m from right whales. If a whale is observed but cannot be confirmed as a species other than a right whale, the vessel operator must assume that it is a right whale and take appropriate action.
- All vessels must maintain a minimum separation distance of 100 m from sperm whales and all other baleen whales.
- All vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all other protected species, with an understanding that at times this may not be possible (*e.g.,* for animals that approach the vessel).
- When protected species are sighted while a vessel is underway, the vessel must take action as necessary to avoid violating the relevant separation distance (*e.g.,* attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the area). If protected species are sighted within the relevant separation distance, the vessel must reduce speed and shift the engine to neutral, not engaging the engines until animals are clear of the area. This does not apply to any vessel towing gear or any vessel that is navigationally constrained.

These requirements do not apply in any case where compliance would create an imminent and serious threat to a person or vessel or to the extent that a vessel is restricted in its ability to maneuver and, because of the restriction, cannot comply.

Seasonal Operating Requirements

As described above, the proposed survey area partially overlaps with a portion of five North Atlantic right whale SMAs: Off Race Point SMA (in effect from January 1 through May 15); Cape Cod Bay SMA (in effect from March 1 through April 30); Great South Channel SMA (in effect from April 1 through July 31); Block Island Sound SMA (in effect from November 1 through April 30); and New York/New Jersey SMA (in effect from November 1 through April 30). All Equinor survey vessels, regardless of length, would be required to adhere to vessel speed restrictions (<10 knots) when operating within the SMAs during times when the SMAs are in effect. In addition, between watch shifts, members of the monitoring team would consult NMFS's North Atlantic right whale reporting systems for the presence of North Atlantic right whales throughout survey operations. Members of the monitoring team would also monitor the NMFS North Atlantic right whale reporting systems for the establishment of DMA. If NMFS should establish a DMA in the survey area while surveys are underway, Equinor would be required to contact NMFS

within 24 hours of the establishment of the DMA to determine whether alteration or restriction of survey activities was warranted within the DMA to minimize impacts to right whales.

Also as described above, portions of the proposed survey areas overlap spatially with designated critical habitat for North Atlantic right whales, which was established due to the area's significance for right whale foraging (81 FR 4837, January 27, 2016). To minimize potential impacts to right whales during the seasons when they occur in high numbers in the Gulf of Maine/Georges Bank critical habitat, vessel-based HRG survey activities would be prohibited in the Off Race Point SMA and Cape Cod Bay SMA from January through May and in the Great South Channel SMA from April through July.

The proposed mitigation measures are designed to avoid the already low potential for injury in addition to some instances of Level B harassment, and to minimize the potential for vessel strikes. Further, we believe the proposed mitigation measures are practicable for the applicant to implement.

There are no known marine mammal rookeries or mating or calving grounds in the survey area that would otherwise potentially warrant increased mitigation measures for marine mammals or their habitat (or both). The proposed survey areas would overlap spatially with an area that has been identified as a biologically important area for migration for North Atlantic right whales. However, while the potential survey areas across the ECRAs are relatively large, the actual areas that will ultimately be surveyed are relatively small compared to the substantially larger spatial extent of the right whale migratory area. We have proposed mitigation measures, including seasonal restrictions and vessel speed restrictions as described above, to minimize potential impacts to right whale migration. Thus, the survey is not expected to appreciably reduce migratory habitat nor to negatively impact the migration of North Atlantic right whales. As described above, some portions of the proposed survey areas would overlap spatially with areas that are recognized as important for North Atlantic right whale foraging, including portions of areas that have been designated as critical habitat due to the significance of the area for right whale foraging. We have proposed mitigation measures, including seasonal restrictions and vessel speed restrictions as described above, to minimize potential impacts to right whale foraging. Thus, the survey is not expected to appreciably reduce foraging habitat nor to negatively impact North Atlantic right whales foraging.

Based on our evaluation of the applicant's proposed measures, as well as other measures considered by NMFS, NMFS has preliminarily determined that the proposed mitigation measures provide the means effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, Section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present in the proposed action area. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

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

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

Proposed Monitoring Measures

As described above, visual monitoring would be performed by qualified and NMFS-approved PSOs. Equinor would use independent, dedicated, trained PSOs, meaning that the PSOs must be employed by a third-party observer provider (with limited exceptions made only for inshore vessels), must have no tasks other than to conduct observational effort, collect data, and communicate with and instruct relevant vessel crew with regard to the presence of marine mammals and mitigation requirements (including brief alerts regarding maritime hazards), and must have successfully completed an approved PSO training course appropriate for their designated task. Equinor would provide resumes of all proposed PSOs (including alternates) to NMFS for review and approval prior to the start of survey operations.

During survey operations (*e.g.,* any day on which use of an HRG source is planned to occur), a minimum of one PSO must be on duty and conducting visual observations at all times on all active survey vessels during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset). Visual monitoring would begin no less than 30 minutes prior to initiation of HRG survey equipment and would continue until one hour after use of the acoustic source ceases or until 30 minutes past sunset. PSOs would coordinate to ensure 360 degree visual coverage around the vessel from the most appropriate observation posts, and would conduct visual observations using binoculars and the naked eye while free from distractions and in a consistent, systematic, and diligent manner. PSOs may be on watch for a maximum of four consecutive hours followed by a break of at least two hours between watches and may conduct a maximum of 12 hours of observation per 24-hour period. In cases where multiple vessels are surveying concurrently, any observations of marine mammals would be communicated to PSOs on all survey vessels.

PSOs would be equipped with binoculars and have the ability to estimate distances to observed marine mammals. Reticulated binoculars will be available to PSOs for use as appropriate based on conditions and visibility to support the monitoring of

marine mammals. Position data would be recorded using hand-held or vessel GPS units for each sighting. Observations would take place from the highest available vantage point on the survey vessel. General 360-degree scanning would occur during the monitoring periods, and target scanning by the PSO would occur when alerted of a marine mammal presence.

During good conditions (*e.g.,* daylight hours; Beaufort sea state (BSS) 3 or less), to the maximum extent practicable, PSOs would conduct observations when the acoustic source is not operating for comparison of sighting rates and behavior with and without use of the acoustic source and between acquisition periods. Any observations of marine mammals by crew members aboard any vessel associated with the survey would be relayed to the PSO team.

Data on all PSO observations would be recorded based on standard PSO collection requirements. This would include dates, times, and locations of survey operations; dates and times of observations, location and weather; details of marine mammal sightings (*e.g.,* species, numbers, behavior); and details of any observed marine mammal take that occurs (*e.g.,* noted behavioral disturbances).

Proposed Reporting Measures

Within 90 days after completion of survey activities, a final technical report will be provided to NMFS that fully documents the methods and monitoring protocols, summarizes the data recorded during monitoring, summarizes the number of marine mammals estimated to have been taken during survey activities (by species, when known), (*i.e.,* observations of marine mammals within the Level B harassment zone must be reported as potential takes by Level B harassment) summarizes the mitigation actions taken during surveys (including what type of mitigation and the species and number of animals that prompted the mitigation action, when known), and provides an interpretation of the results and effectiveness of all mitigation and monitoring. Any recommendations made by NMFS must be addressed in the final report prior to acceptance by NMFS.

In addition to the final technical report, Equinor will provide the reports described below as necessary during survey activities. In the event that personnel involved in the survey activities covered by the authorization discover an injured or dead marine mammal, Equinor must report the incident to the NOAA Fisheries Office of Protected Resources (OPR) (301–427–8401), and to the NOAA Fisheries New England/Mid-Atlantic Regional Stranding Coordinator (978–282–8478) 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.

In the event of a vessel strike of a marine mammal by any vessel involved in the activities covered by the authorization, the Equinor must report the incident to NOAA Fisheries OPR (301–427–8401) and to the NOAA Fisheries New England/Mid-Atlantic Regional Stranding Coordinator (978–282–8478) as soon as feasible. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Species identification (if known) or description of the animal(s) involved;
- Vessel's speed during and leading up to the incident;
- Vessel's course/heading and what operations were being conducted (if applicable);
- Status of all sound sources in use;
- Description of avoidance measures/requirements that were in place at the time of the strike and what additional measures were taken, if any, to avoid strike;
- Environmental conditions (*e.g.,* wind speed and direction, Beaufort sea state, cloud cover, visibility) immediately preceding the strike;
- Estimated size and length of animal that was struck;
- Description of the behavior of the marine mammal immediately preceding and following the strike;
- If available, description of the presence and behavior of any other marine mammals immediately preceding the strike;
- Estimated fate of the animal (*e.g.,* dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and
- To the extent practicable, photographs or video footage of the animal(s).

Negligible Impact Analysis and Determination

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

To avoid repetition, our analysis applies to all the species listed in Table 7, given that NMFS expects the anticipated effects of the proposed survey to be similar in nature. To be conservative, our analyses assume that a total of 808 exposures above the Level B harassment threshold could accrue to all of the potentially impacted seal species (*i.e.,* harbor, gray and harp seals), and that a total of 522 exposures above the Level B harassment threshold could accrue to both bottlenose dolphin stocks that may be present (*i.e.,* the Western North Atlantic offshore stock and the Western North Atlantic northern coastal migratory stock).

NMFS does not anticipate that serious injury or mortality would occur as a result of Equinor's proposed survey, even in the absence of proposed mitigation, thus the proposed authorization does not authorize any serious injury or mortality. As discussed in the Potential Effects of Specified Activities on Marine Mammals and their

Habitat section, non-auditory physical effects and vessel strike are not expected to occur. Additionally and as discussed previously, given the nature of activity and sounds sources used and especially in consideration of the required mitigation, Level A harassment is neither anticipated nor authorized. We expect that all potential takes would be in the form of short-term Level B behavioral harassment in the form of temporary avoidance of the area, reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007).

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 temporarily avoid the area where the survey is occurring. We expect that any avoidance of the survey area by marine mammals would be temporary in nature and that any marine mammals that avoid the survey area during the survey activities would not be permanently displaced. Even repeated Level B harassment of some small subset of an 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. Instances of more severe behavioral harassment are expected to be minimized by proposed mitigation and monitoring measures.

In addition to being temporary and short in overall duration, the acoustic footprint of the proposed survey is small relative to the overall distribution of the animals in the area and their use of the area. Feeding behavior is not likely to be significantly impacted. Prey species are mobile and are broadly distributed throughout the project area; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the temporary nature of the disturbance and the availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and the food sources that they utilize are not expected to cause significant or long-term consequences for individual marine mammals or their populations.

There are no rookeries, mating or calving grounds known to be biologically important to marine mammals within the proposed survey area. As described above, the proposed survey areas overlap spatially with a biologically important migratory area for North Atlantic right whales (effective March–April and November–December) that extends from Massachusetts to Florida (LaBrecque, *et al.,* 2015). Off the coasts of Massachusetts, Rhode Island, Connecticut, New York and New Jersey, this biologically important migratory area extends from the coast to beyond the shelf break. Due to the fact that that the proposed survey is temporary and the spatial extent of sound produced by the survey would be very small relative to the spatial extent of the available migratory habitat in the area, and due to proposed mitigation measures including seasonal restrictions, right whale migration is not expected to be impacted by the proposed survey. As described above, some portions of the proposed survey areas overlap spatially with areas that are recognized as important for North Atlantic right whale foraging, including portions of areas that have been designated as ESA critical habitat due to the significance of the area for right whale feeding. Due to the fact that that the proposed survey is temporary and the spatial extent of sound produced by the survey would very small relative to the spatial extent of the available foraging habitat in the area, as well as proposed mitigation measures including seasonal restrictions in areas and seasons when right whale foraging is predicted to occur, North Atlantic right whale foraging is not expected to be impacted by the proposed surveys.

As described above, North Atlantic right, humpback, and minke whales, and gray, harbor and harp seals are experiencing ongoing UMEs. For North Atlantic right whales, as described above, no injury as a result of the proposed project is expected or proposed for authorization, and Level B harassment takes of right whales are expected to be in the form of avoidance of the immediate area of the proposed survey. In addition, the number of takes proposed for authorization above the Level B harassment threshold are relatively low (*i.e.,* 8), and the take numbers proposed for authorization do not account for the proposed mitigation measures, which would require shutdown of all survey equipment upon observation of a right whale prior to their entering the zone that would be ensonified above the Level B harassment threshold. As no injury or mortality is expected or proposed for authorization, and Level B harassment of North Atlantic right whales will be reduced to the level of least practicable adverse impact through use of proposed mitigation measures, the proposed authorized takes of right whales would not exacerbate or compound the ongoing UME in any way.

Similarly, no injury or mortality is expected or proposed for authorization for any of the other species with UMEs, Level B harassment will be reduced to the level of least practicable adverse impact through use of proposed mitigation measures, and the proposed authorized takes would not exacerbate or compound the ongoing UMEs. For minke whales, although the ongoing UME is under investigation (as occurs for all UMEs), this event does not provide cause for concern regarding population level impacts, as the likely population abundance is greater than 20,000 whales and annual M/SI does not exceed the calculated PBR value for minke whales. With regard to humpback whales, the UME does not yet provide cause for concern regarding population-level impacts. Despite the UME, the relevant population of humpback whales (the West Indies breeding population, or DPS) remains healthy. The West Indies DPS, which consists of the whales whose breeding range includes the Atlantic margin of the Antilles from Cuba to northern Venezuela, and whose feeding range primarily includes the Gulf of Maine, eastern Canada, and western Greenland is not listed under the ESA. The status review identified harmful algal blooms, vessel collisions, and fishing gear entanglements as relevant threats for this DPS, but noted that all other threats are considered likely to have no or minor impact on population size or the growth rate of this DPS (Bettridge *et al.,* 2015). As described in Bettridge *et al.,* (2015), the West Indies DPS has a substantial population size (*i.e.,* approximately 10,000; Stevick *et al.,* 2003; Smith *et al.,* 1999; Bettridge *et al.,* 2015), and appears to be experiencing consistent growth. With regard to gray, harbor and harp seals, although the ongoing UME is under investigation, the UME does not yet provide cause for concern regarding population-level impacts to any of these stocks. For harbor seals, the population abundance is over 75,000 and annual M/SI (345) is well below PBR (2,006) (Hayes *et al.,* 2019). For gray seals, the population abundance in the United States is over 27,000, with an estimated abundance including seals in Canada of approximately 505,000, and abundance is likely increasing in the U.S. Atlantic EEZ as well as in Canada (Hayes *et al.,*

2019). For harp seals, while PBR is unknown, the minimum population estimate is 6.9 million and the population appears to be stable (Hayes *et al.,* 2019).

The proposed mitigation measures are expected to reduce the number and/or severity of takes by (1) giving animals the opportunity to move away from the sound source before HRG survey equipment reaches full energy; (2) preventing animals from being exposed to sound levels that may otherwise result in injury or more severe behavioral responses. Additional vessel strike avoidance requirements will further mitigate potential impacts to marine mammals during vessel transit to and within the survey area.

NMFS concludes that exposures to marine mammal species and stocks due to Equinor's proposed survey would result in only short-term (temporary and short in duration) effects to individuals exposed. Marine mammals may temporarily avoid the immediate area, but are not expected to permanently abandon the area. Major shifts in habitat use, distribution, or foraging success are not expected. NMFS does not anticipate the proposed take estimates to impact annual rates of recruitment or survival.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect the species or stock through effects on annual rates of recruitment or survival:

- No mortality, serious injury, or Level A harassment is anticipated or authorized;
- The anticipated impacts of the proposed activity on marine mammals would primarily be in the form of temporary behavioral changes due to avoidance of the area around the survey vessel;
- The availability of alternate areas of similar habitat value (for foraging and migration) for marine mammals that may temporarily vacate the survey areas during the proposed surveys to avoid exposure to sounds from the activity;
- The proposed project area does not contain known areas of significance for mating or calving;
- Effects on species that serve as prey species for marine mammals from the proposed survey would be minor and temporary and would not be expected to reduce the availability of prey or to affect marine mammal feeding;
- The proposed mitigation measures, including visual monitoring, exclusion zones, and shutdown measures, are expected to minimize potential impacts to marine mammals.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

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

We propose to authorize incidental take of 17 marine mammal stocks. The total amount of taking proposed for authorization is less than one third for all stocks (Table 7), which we preliminarily find are small numbers of marine mammals relative to the estimated overall population abundances for those stocks. To be conservative, our small numbers analysis assumes a total of 808 exposures above the Level B harassment threshold could accrue to any of the potentially impacted seal species (*i.e.,* harbor, gray or harp seals) and a total of 522 exposures above the Level B harassment threshold could accrue to both bottlenose dolphin stocks that may be present (*i.e.,* the Western North Atlantic offshore stock and the Western North Atlantic northern coastal migratory stock). Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals will be taken relative to the population size of all affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally, in this case with the NMFS Greater Atlantic Regional Fisheries Office (GARFO), whenever we propose to authorize take for endangered or threatened species.

The NMFS OPR is proposing to authorize the incidental take of four species of marine mammals which are listed under the ESA: The North Atlantic right, fin, sei, and sperm whale. The NMFS OPR has requested initiation of Section 7 consultation with NMFS GARFO for the issuance of this IHA. NMFS will conclude the ESA section 7 consultation prior to reaching a determination regarding the issuance of the authorization.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to Equinor for conducting marine site characterization activities offshore of Massachusetts, Rhode Island, Connecticut, New York and New Jersey for a period of one year, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at: *www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this Notice of Proposed IHA for Equinor's proposed activity. We also request at this time comment on the potential Renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to

help inform decisions on the request for this IHA or a subsequent Renewal IHA.

On a case-by-case basis, NMFS may issue a one time, one-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical, or nearly identical, activities as described in the Specified Activities section of this notice is planned or (2) the activities as described in the Specified Activities section of this notice would not be completed by the time the IHA expires and a Renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).

- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

- Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: June 16, 2020.

Donna Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–13605 Filed 6–23–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Processed Products Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before August 24, 2020.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.thomas@noaa.gov.* Please reference OMB Control Number 0648–0018 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Melissa Yencho, NOAA Fisheries Office of Science and Technology, (301) 427–8193 or *melissa.yencho@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a current information collection.

The National Oceanic and Atmospheric Administration (NOAA) National Marine Fisheries Service annually collects information from seafood and industrial fishing processing plants on the volume and value of their processed fishery products and their monthly employment figures. These data are required by the Secretary of Commerce in carrying out provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.* as amended). Each Fishery Management Plan (FMP) established under the Act must determine the estimated capacity by United States (U.S.) seafood processors for the managed fishery. Data from these surveys are used in economic analyses to estimate the capacity and extent to which U.S. fish processors, on an annual basis, will process that portion of the optimum yield harvested by domestic fishing vessels. Employment data are used in socioeconomic analyses for determining potential impacts on processing employment, due in part to management measures.

Federally permitted dealers of Atlantic mackerel, squid, butterfish, Atlantic sea scallop, Northeast multispecies, monkfish, summer flounder, scup, black sea bass, Atlantic bluefish, spiny dogfish, Atlantic herring, Atlantic hagfish, Atlantic deep-sea red crab, tilefish, skate, surf clam or ocean quahog in the National Marine Fisheries Service's (NOAA Fisheries) Northeast Region are required under 50 CFR 648.7 to complete and submit all sections of NOAA Form 88–13.

NOAA Form 88–13c is used to collect monthly production of fish meal and oil. These data are needed by the Department of Commerce to report market and supply conditions and are used by the industry to procure sufficient inputs to produce such products as animal feeds, paint, lubricants, and fertilizers (13 U.S.C. 61 et seq.).

NOAA Fisheries and Regional Council economists use the collected information to estimate processing capacity and to forecast and subsequently measure the economic impact of fishery management regulations on fish and shellfish supplies using the data on volume and value. The employment data are used to analyze the seasonality of a specific fishery. The data are also used for establishing negotiating positions on international trade by determining which seafood industries might be adversely affected by reducing or eliminating established tariffs.

Data from the annual survey are reported in Fisheries of the United States (NOAA Fisheries), Statistical Abstract of the United States (Census Bureau) and Agricultural Statistics (U.S Department of Agriculture (USDA)). As a member of the United Nations Food and Agriculture Organization and the Organization for Economic Cooperation and Development, NOAA Fisheries supplies aggregate data to these organizations.

In addition to the aforementioned publications, the information collected

through the 88–13 family of forms supports activities of other federal agencies. NOAA Fisheries supports the International Trade Commission (ITC) with their various trade investigations by supplying aggregate data on specific processed seafood items. The Office of Management and Budget (OMB) annually requests information on the processing of seafood. The U.S. Customs and Border Protection (CBP), Department of Homeland Security (DHS), establishes the annual tariff-rate quota for tuna fish described in item 1604.14.22 of the Harmonized Tariff Schedule of the United States based on the U.S. canned tuna production for the preceding calendar year (19 U.S.C. 3007). Failure to collect these data would prevent the Secretary of Commerce from meeting the statutory obligations under the Act. It would also prevent the CBP from establishing the annual tariff-rate quota on canned tuna.

In the current survey, NOAA Fisheries provides each processor with a pre-printed paper survey form that includes the products produced by that processor in the previous year. The processor only needs to fill in the quantity of product, value of product, monthly employment, and add any new products. New firms to the survey are provided blank forms.

II. Method of Collection

Responses are submitted by mail, via postage-paid envelopes provided by NOAA Fisheries. If preferred by the processor, an electronically fillable pdf can also be provided and transmitted via encrypted messaging.

III. Data

OMB Control Number: 0648–0018.

Form Number(s): NOAA Forms 88–13, 88–13C.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 650.

Estimated Time Per Response: 30 minutes.

Estimated Total Annual Burden Hours: 325.

Estimated Total Annual Cost to Public: $0.

Respondent's Obligation: Mandatory.

Legal Authority: Magnuson-Stevens Fishery Conservation and Management Act.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms 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 may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–13532 Filed 6–23–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Prohibited Species Donation (PSD) Program

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before August 24, 2020.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.thomas@noaa.gov.* Please reference OMB Control Number 0648–0316 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Megan Mackey (907) 586–7228.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Services (NMFS) Alaska Regional Office is requesting extension of a currently approved information collection for the Prohibited Species Donation Program (PSD Program).

The Prohibited Species Donation Program (PSD Program) began as a pilot project in 1994. The PSD Program applies only to salmon and halibut delivered by catcher vessels using trawl gear to shoreside processors and stationary floating processors.

The salmon and halibut resources are of value to many stakeholders, including but not limited to commercial, recreational, subsistence, and cultural user groups. The PSD Program was initiated to reduce the amount of edible protein discarded under prohibited species catch regulatory requirements (50 CFR 679.21). If a person is a participant in the PSD Program under § 679.26, the incidentally caught salmon and Pacific halibut may be donated to the PSD Program. The PSD Program allows permitted seafood processors to retain salmon and halibut bycatch for distribution to economically disadvantaged individuals through tax exempt hunger relief organizations.

A PSD permit authorizes tax-exempt organizations to distribute salmon and halibut to hunger relief agencies, food bank networks, or food bank distributors. Salmon and Pacific halibut are considered prohibited species for vessels fishing in the Bering Sea and Aleutian Islands management area and Gulf of Alaska groundfish fisheries. Unless you are a PSD permit holder, all prohibited species catch is to be avoided by vessels. If caught while fishing for groundfish, prohibited species must be

returned to the sea with a minimum of injury.

The NMFS Alaska Region Administrator (Regional Administrator) may select one or more tax-exempt organizations to be authorized distributors, as defined at § 679.2. An organization seeking to distribute salmon bycatch and halibut bycatch under the PSD Program must provide the Regional Administrator with the information listed at 50 CFR 679.26(b)(1).

NMFS uses the information provided by an applicant to determine the organization's nonprofit status. In addition, the application provides information about the ability of the organization to arrange for and distribute donated salmon and halibut as a high quality food product. A PSD permit is valid for a 3-year period after NMFS publishes the selection notice in the **Federal Register**.

II. Method of Collection

There is no form for this application. The application to become a PSD distributor, and any changes or updates to the application, are submitted to NMFS as an email attachment.

III. Data

OMB Control Number: 0648–0316.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 1.

Estimated Time per Response: Application to be a NMFS Authorized Distributor, 17 hours.

Estimated Total Annual Burden Hours: 17 hours.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

Respondent's Obligation: Required to Obtain or Retain Benefits.

Legal Authority: 16 U.S.C.1801 *et seq.*

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms 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 may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–13529 Filed 6–23–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; For-Hire Telephone Survey

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before August 24, 2020.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *PRAcomments@doc.gov.* Please reference OMB Control Number 0648–0709 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to John Foster, National Marine Fisheries Service, Office of Science and Technology, 1315 East-West Hwy./FST1, Silver Spring, MD 21910, Phone: (301) 427–8130 or *john.foster@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a currently approved information collection.

The For-Hire Survey (FHS) is conducted for NMFS to estimate fishing effort on for-hire vessels (*i.e.,* charter boats and head boats) in coastal states from Maine to Mississippi. These data are required to carry out provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), as amended, regarding conservation and management of fishery resources.

The FHS collects fishing effort information from for-hire vessel representatives by telephone interview. For-hire vessels are randomly selected for the FHS from a comprehensive sample frame developed and maintained by NMFS. A sample of 10% of the vessels on the FHS frame are selected for reporting each week. Each interview collects information about the vessel, the number and type of trips the vessel made during the reporting week, the number of anglers on each trip, and other trip-level information.

For-hire fishing effort is estimated in numbers of angler-trips per sub-region, state, two-month wave, vessel type, and fishing area (inshore, nearshore, offshore). To get a total for-hire effort estimate, weekly FHS effort estimates are summed to produce wave estimates that are adjusted to account for frame coverage and reporting error. The FHS estimates are then combined with for-hire catch-rate estimates derived from complementary Marine Recreational Information Program (MRIP) surveys, to estimate total, state-level fishing catch. These estimates are used in the development, implementation, and monitoring of fishery management programs by the NMFS, regional fishery management councils, interstate marine fisheries commissions, and state fishery agencies.

II. Method of Collection

Telephone interviews will be conducted using Computer Assisted Telephone Interviewing (CATI) methodology.

III. Data

OMB Control Number: 0648–0709.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Individuals or households; Business or other for-profit organizations.

Estimated Number of Respondents: 22,000.

Estimated Time per Response: 3½ minutes each for a telephone interview.

Estimated Total Annual Burden Hours: 1,283.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

Respondent's Obligation: Voluntary.

Legal Authority: Magnuson-Stevens Fishery Conservation and Management Act.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms 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 may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–13524 Filed 6–23–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Alaska Interagency Electronic Reporting System (IERS)

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Information Collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before August 24, 2020.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.thomas@noaa.gov.* Please reference OMB Control Number 0648–0515 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Gabrielle Aberle, 907–586–7228.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Services (NMFS), Alaska Regional Office, is requesting extension of a currently approved information collection for the Alaska Interagency Electronic Reporting System (IERS).

IERS is a fisheries data collection system that enables the management of commercial fisheries off Alaska and is supported through a partnership among the NMFS Alaska Regional Office, the Alaska Department of Fish and Game (ADF&G), and the International Pacific Halibut Commission (IPHC). IERS provides the Alaska fishing industry with a consolidated, electronic means of reporting commercial fish and shellfish information to multiple management agencies through a single reporting system. The recordkeeping and reporting requirements for IERS are located at 50 CFR 679.5.

Users enter information into IERS using three main components, depending on their internet access and transmission capability:

- eLandings provides web-based access for shoreside and stationary floating processors to submit landings and production information and also by some catcher/processors and motherships who have access to the internet to submit their data.
- seaLandings is a fishery harvest reporting software program that functions without constant internet connectivity and is installed on computer workstations. The seaLandings interface targets at-sea vessels with limited access to the web (typically for catcher/processors and motherships which report at sea). Landings, production, and eLog information can be sent from seaLandings via direct transmission (a report file is zipped up and sent over the internet and processed behind the scenes) or via email.
- tLandings is a USB-installed program that tender vessels with no web access can use to enter landings information.

Through IERS, NMFS collects information on landings, production, and effort for groundfish and crab species to support the agency's management responsibilities. IERS has four main information collections: Registration, landing reports, production reports, and electronic logbooks. Landing reports document the harvest of fish and shellfish that is sold, discarded, or retained by the fisherman. Production reports provide information on the amount of processed product that is generated by processors. Logbooks provide information about where and when fishing effort occurs. NMFS uses information collected in IERS for in-season and inter-season management decisions that affect the fishery resources and the fishing industry that uses those resources.

Information collected through the IERS promotes the goals and objectives of fishery management plans, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable laws. Collecting information from fishery participants is necessary for successful management of groundfish, crab, Pacific halibut, and salmon resources.

Compared with paper forms and conventional logbooks, IERS is a more convenient, accurate, and timely

method of fisheries reporting. Benefits of IERS include improved data quality, automated processing of data, improved process for correcting or updating information, availability of more timely data for fishery managers, and reduction of duplicative reporting of similar information to multiple agencies. Additionally, IERS provides continuous online access to individual accounts for participants.

This renewal will incorporate the change request associated with the rule for Amendment 121 to Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area and Amendment 110 to Fishery Management Plan for Groundfish of the Gulf of Alaska (RIN 0648–BJ49). The proposed rule published in the **Federal Register** on April 23, 2020 (85 FR 22703). Publication of the final rule is expected later this year prior to approval of the renewal of this information collection. The rule reclassifies sculpins as a non-target ecosystem component (EC) species and makes minor revisions to the information collection requirements to clarify the location of the species code for sculpins in the tables to 50 CFR part 679 to note that sculpins should be reported as non-target EC species rather than target species.

II. Method of Collection

The eLandings registration, landing reports, production reports, and electronic logbooks are submitted via the internet. For catcher/processors and motherships that do not have reliable internet service, seaLandings can be used to generate report files for submitting via email. Tender vessels that do not have access to email or the internet can enter the information electronically on a USB drive that is later uploaded to eLandings over the internet. eLandings registration and the out-of-state landing report may be submitted by fax.

III. Data

OMB Control Number: 0648–0515.

Form Number(s): None.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Individuals or households; Business or other for-profit organizations.

Estimated Number of Respondents: 206.

Estimated Time per Response: eLandings registration, 15 minutes; electronic logbooks, 15 minutes; shoreside processor production report, 10 minutes; at-sea processor production report, 20 minutes; mothership landing report, 10 minutes; out-of-state landing report, 20 minutes; shoreside processor and catcher processor, landing reports, 30 minutes each; registered buyer and registered crab receiver landing reports, 60 minutes each.

Estimated Total Annual Burden Hours: 22,850 hours.

Estimated Total Annual Cost to Public: $5,639 in recordkeeping/reporting costs.

Respondent's Obligation: Mandatory.

Legal Authority: 16 U.S.C. 1801 *et seq.*

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms 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 may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–13530 Filed 6–23–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Billfish Tagging Report

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before August 24, 2020.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.thomas@noaa.gov.* Please reference OMB Control Number 0648–0009 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Nicole Nasby-Lucas, Fisheries Biologist, NOAA Southwest Fisheries Science Center, 8901 La Jolla Shores Drive, La Jolla CA 92037, (858–334–2826), or *Nicole.nasby-lucas@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension of a currently approved information collection.

The National Oceanic and Atmospheric Administration's Southwest Fisheries Science Center operates a conventional mark-recapture billfish tagging program. The Billfish Tagging Program (Program) began in 1963 and is an integral part of the Billfish Research Program at the Southwest Fisheries Science Center (SWFSC). This Program is authorized under 16 U.S.C. 760(e), Study of

migratory game fish; waters; research; purpose.

The SWFSC provides tagging supplies to individuals electing to tag and release the billfish they catch (the Program is advertised by a newsletter and fishermen hear in this way and also by word of mouth from others catching billfish). Each Billfish Tagging Report Card is issued with an individual billfish tag and is imprinted with the number matching the accompanying tag. The Billfish Tagging Report Card is the primary mechanism by which these cooperating anglers and commercial fishers return the tag and release information concerning the billfish they have tagged. Individuals cooperating in the Program do so on a strictly voluntary basis.

Tagging supplies are provided to volunteer anglers. When anglers catch and release a tagged fish, they submit a brief report on the fish and the location of the tagging. The Program is conducted throughout the year to determine billfish habitat, mortality rates, migration patterns, feeding habits, and growth rates. Fishery biologists investigating the health of billfish resources throughout the Pacific utilize data from this Program. Results aid in ongoing research concerning billfish resources and are published annually in the Billfish Newsletter.

II. Method of Collection

Information is submitted by mail, via a paper form the size of a postcard.

III. Data

OMB Control Number: 0648–0009.

Form Number(s): NOAA 88–162.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: Individuals or households.

Estimated Number of Respondents: 1000.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 83.

Estimated Total Annual Cost to Public: $0.

Respondent's Obligation: Voluntary.

Legal Authority: This program is authorized under 16 U.S.C. 760(e), Study of migratory game fish; waters; research; purpose.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms 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 may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–13528 Filed 6–23–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; NMFS Alaska Region Vessel Monitoring System (VMS) Program

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before August 24, 2020.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.thomas@noaa.gov.* Please reference OMB Control Number 0648–0445 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Gabrielle Aberle, 907–586–7228.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Services (NMFS), Alaska Regional Office, is requesting extension of a currently approved information collection for the NMFS Alaska Region Vessel Monitoring System (VMS) Program. There are no proposed changes to this information collection.

NMFS requires the owners and operators of selected vessels participating in federally managed groundfish and crab fisheries off Alaska to obtain, install, and maintain an operational, NMFS-approved Vessel Monitoring System (VMS). VMS units automatically transmit the location of a vessel several times per hour using a Global Positioning System satellite. The VMS unit is passive and automatic, requiring no reporting effort by the vessel operator. A communications service provider receives the transmission and relays it to NMFS Office for Law Enforcement (OLE).

Tracking vessel location using VMS is required to monitor compliance with area-specific catch allocations, to monitor compliance with requirements to redeploy or remove fishing gear from commercial fishing grounds, and to monitor compliance with complicated time and area closures in the Gulf of Alaska (GOA) and Bering Sea and Aleutian Islands (BSAI) designed to protect Steller sea lion or essential fish habitat. The VMS requirements are found at 50 CFR parts 679 and 680.

VMS is an essential component of monitoring and management for complicated, geographically widespread fishing closures. Given the large size and remoteness of the area in which Alaska fisheries occur, and the limited enforcement infrastructure available, determining a vessel's location depends crucially on VMS reports. When a VMS track is examined, information can be

inferred about whether a vessel is actively fishing, the type of gear being used, and the fisheries that are open. NMFS uses information from VMS to identify where vessels are operating, to organize patrols so as to increase the number of fishing vessels visually examined, or to focus examination of vessels of greatest concern, and as evidence in prosecutions.

II. Method of Collection

Automatic GPS position reporting starts after VMS transceiver installation and power activation on board the vessel. The unit is pre-configured and tested for NMFS VMS operations. The VMS unit is passive and automatic, requiring no reporting effort by the vessel operator.

III. Data

OMB Control Number: 0648–0445.
Form Number(s): None.
Type of Review: Regular submission (extension of a current information collection).
Affected Public: Individuals or households; Business or other for-profit organizations.
Estimated Number of Respondents: 550.
Estimated Time per Response: VMS installation, maintenance, and troubleshooting, 12 hours.
Estimated Total Annual Burden Hours: 2,476 hours.
Estimated Total Annual Cost to Public: $812,668.
Respondent's Obligation: Required to Obtain or Retain Benefits.
Legal Authority: 16 U.S.C.1801 *et. seq.;* 16 U.S.C. 773–773k.

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms 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 may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–13527 Filed 6–23–20; 8:45 am]

BILLING CODE 3510–22–P

COMMODITY FUTURES TRADING COMMISSION

RIN 3038–0023; 3038–0072

Adoption of Revised Registration Form 8–R

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (the ''Commission'' or ''CFTC'') is revising its Form 8–R, the application form that individuals must use to register with the Commission as an associated person of a registrant, floor broker, or floor trader, or to be listed as a principal of a registrant (collectively, ''applicants''). These revisions, which are essentially technical and non-substantive in nature, have been adopted to assist the National Futures Association (''NFA'') in the performance of the registration functions authorized by the Commission, and in the implementation and operation of NFA's program to register and regulate directly the associated persons sponsored by members of NFA.

DATES: The new, revised version of Form 8–R shall come into effect (and the prior version shall cease to be in effect) when the NFA makes the new, revised version of the Form 8–R available on the NFA website for use by individual applicants.

FOR FURTHER INFORMATION CONTACT: Joshua Sterling, Director, (202) 418–6700, *jsterling@cftc.gov;* Amanda Olear, Deputy Director, (202) 418–5283, *aolear@cftc.gov;* or Christopher Cummings, Special Counsel, (202) 418–5445, *ccummings@cftc.gov,* Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

Form 8–R requests information about the applicant that can be used to assess the applicant's fitness to engage in business as a derivatives professional. Form 8–R is a Commission form administered and used by NFA. Individuals acting in certain capacities in the markets regulated by the Commission must file a completed Form 8–R with NFA.[1] These applicants include: associated persons of futures commission merchants, retail foreign exchange dealers, introducing brokers, commodity trading advisors, commodity pool operators, and leverage transaction merchants; floor brokers; and floor traders.[2] Additionally, any individual acting in the capacity as principal of a futures commission merchant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator, swap dealer, major swap participant, floor trader or leverage transaction merchant also must file a completed Form 8–R.[3] Lastly, individuals that enter orders for floor trader firms must file the Form 8–R as well.[4] Individual applicants have been required to use Form 8–R since 1977.[5]

NFA is currently the only registered futures association authorized by the Commission in accordance with Section 17 of the Commodity Exchange Act (''Act'').[6] Pursuant to Section 17(o) of the Act,[7] Regulation 3.2,[8] and a series of orders, the Commission delegated to NFA certain registration functions including, among other things, the processing of all Form 8–R filings.[9]

---

[1] 17 CFR 3.10(a)(2), 3.11(a), and 3.12(c).

[2] 17 CFR 3.11(a); 3.12(c).

[3] 17 CFR 3.1(a); 3.10(a)(2); 3.11(a)(1). While ''principal'' is not technically a registration class and principals do not apply for registration, for purposes of this Notice, the Form 8–R filings by principals will be referred to with the other Form 8–R filings as ''registration applications.''

[4] 17 CFR 3.11(a)(1).

[5] Revision of Registration Forms and Amendment of Related Rules, 42 FR 23988 (May 11, 1977) (Form 8–R replaced Forms 2–R, 4–R and 94).

[6] 7 U.S.C. 21 (2012).

[7] 7 U.S.C. 21(o) (2012).

[8] 17 CFR 3.2.

[9] *See, e.g.,* Introducing Brokers and Associated Persons of Introducing Brokers; Authorization of National Futures Association to Perform Commission Registration Functions, 48 FR 35158 (Aug. 3, 1983); Performance of Registration Functions by National Futures Association, 49 FR 39593 (Oct. 9, 1984) (futures commission merchants, commodity pool operators, commodity trading advisors, and associated persons thereof); Performance of Registration Functions by National Futures Association; Delegation of Authority, 51 FR 34490 (Sept. 29, 1986) (floor brokers); Performance of Registration Functions by National Futures Association with Respect to Floor Traders and Floor Brokers, 58 FR 19657 (Apr. 15, 1993); and Performance of Registration Functions by National

Since the first delegation to NFA in 1984, NFA has developed substantial expertise in registration matters, including reviewing and processing completed Forms 8–R. In 2002, with the approval of the Commission, NFA replaced its paper-based registration system with an online registration system that utilizes, among other things, an electronic version of Form 8–R.[10]

II. Revisions to Commission Form 8–R

NFA has requested that the Commission make several changes to Form 8–R.[11] Upon consideration, the Commission is making all of the changes requested by NFA and revising and updating Form 8–R accordingly. In addition, the Commission is updating the Form 8–R Privacy Act and Paperwork Reduction Act Statements. The Form 8–R revisions are described below.

In the ''Completing the Proficiency Requirements Section'' of the Form 8–R, the Commission is adding a paragraph that describes the obligation of an individual seeking approval as a swap associated person or as a sole-proprietor swap firm to satisfy the Swaps Proficiency Requirements, and what constitutes satisfaction of those requirements. In the application itself, the Commission is adding a question that asks whether the applicant has completed the Swaps Proficiency Requirements within the past two years.[12] The Commission is making these changes to conform Form 8–R to the Swaps Proficiency Requirements in NFA Bylaw 301 and Compliance Rule 2–24,[13] recently implemented by NFA pursuant to CEA section 17(j).[14] The Commission believes that this question is a necessary addition to the form, as Form 8–R is a screening instrument assessing fitness of a swaps associated person, so this question only effectuates this new requirement, ensuring that it has been met.[15]

The revised Form 8–R also replaces the Federal Bureau of Investigation (''FBI'')-mandated disclosure for persons whose fingerprints are taken for purposes other than criminal justice with an updated version of that disclosure. In 2018, the FBI updated its Privacy Rights notice [16] and Privacy Act disclosure; [17] therefore, the Commission is making conforming changes to Form 8–R.[18]

In the ''Definition of Terms'' section, the Commission is revising the definition of ''adversary action'' to conform the definition to the way the term is used in the form's ''Disciplinary Information Section.'' The Commission is revising this definition to make the use of the term ''adversary action'' in Form 8–R internally consistent.

Finally, the words ''entity'' and ''person'' are underlined where they occur in the text to indicate that they are terms that are defined in the ''Definition of Terms'' section.

A revised version of Form 8–R that incorporates the changes discussed above is attached as Appendix A to this Notice.

III. Related Matters

Paperwork Reduction Act. Recordkeeping or information collection requirements under the Paperwork Reduction Act (''PRA'') related to Form 8–R exist under current law. The titles for the existing information collections are ''Registration Under the Commodity Exchange Act,'' OMB control number 3038–0023, and ''Registration of Swap Dealers and Major Swap Participants,'' OMB control number 3038–0072. The preliminary view of the Commission is that the revisions to Form 8–R may modify the existing recordkeeping or information collection requirements under the PRA. To ensure compliance with the PRA, the Commission will publish in the **Federal Register** a separate notice and request for comment on the amended PRA burden associated with the revised Form 8–R.[19] The Commission also will submit to OMB an information collection request to amend the information collection, in accordance with 44 U.S.C. 3506(c)(2)(A) and 5 CFR 1320.8(d).

Issued by the Commission on June 18, 2020, in Washington, DC

Robert Sidman,

Deputy Secretary of the Commission.

Note: The following appendices will not appear in the Code of Federal Regulations.

Appendices to Adoption of Revised Registration Form 8–R—Form 8–R and Commission Voting Summary

BILLING CODE 6351–01–P

Futures Association with Respect to Swap Dealers and Major Swap Participants, 77 FR 2708 (Jan. 19, 2012).

[10] Registration of Intermediaries, 67 FR 38869 (June 6, 2002). The transition to an online registration system has permitted greater efficiencies, including allowing individuals to update their existing Forms 8–R instead of completing a separate Form 3–R. To that end, in 2012, the Commission eliminated the requirement that registrants and individuals use Form 3–R to update information in their existing Form 7–R or 8–R, and provided that an update to a registrant's online Form 7–R or 8–R would automatically create a record of changes equivalent to a completed Form 3–R. Registration of Intermediaries, 77 FR 51898 (Aug. 28, 2012); *see also,* Registration of Intermediaries, 76 FR 12888, 12891 (proposed Mar. 9, 2011).

[11] Request from NFA to CFTC, dated February 14, 2020, which is on file with the Commission.

[12] The Commission acknowledges that this requirement is not effective until January 31, 2021, so an applicant's response, before that date, would not have an effect on meeting their fitness requirements.

[13] Interpretive Notice 9075–NFA Bylaw 301 and Compliance Rule 2–24: Proficiency Requirements for Swap APs,'' effective January 31, 2020, available at *https://www.nfa.futures.org/rulebook/rules.aspx?Section=9&RuleID=9075. See generally* section 17(p)(1) of the Act, 7 U.S.C. 21(p), which requires a futures association to establish training standards and proficiency testing for persons involved in the solicitation of swaps and their supervisors.

[14] CEA section 17(j) (7 U.S.C. 21(j)) permits a registered futures association such as NFA to make rule changes effective ten days after receipt by the Commission of such changes, provided the Commission does not notify the registered futures association within that ten-day period that it intends to review the changes for approval. The Commission did not so notify NFA in this instance.

[15] The Commission expects those individuals that meet this standard to still retain documentation of proof.

[16] *See, https://www.fbi.gov/file-repository/compact-council-noncriminal-justice-applicants-privacy-rights.pdf/view.*

[17] 5 U.S.C. 552a.

[18] 28 CFR 16.30–34.

[19] The notice and request for comment on the amended PRA burden will also address reassigning from Form 3–R to Form 8–R the PRA burden associated with providing updated information on Form 8–R.

Individual Application (Form 8-R)

OMB Nos. 3038-0023 (exp. August 31, 2022) & 3038-0072 (exp. August. 31, 2022)

COMMODITY FUTURES TRADING COMMISSION
NATIONAL FUTURES ASSOCIATION

Instructions for Completing the Individual Application

READ THESE INSTRUCTIONS CAREFULLY BEFORE COMPLETING OR REVIEWING THE APPLICATION. THE FAILURE TO ANSWER ALL QUESTIONS COMPLETELY AND ACCURATELY OR THE OMISSION OF REQUIRED INFORMATION MAY RESULT IN THE DENIAL OR REVOCATION OF REGISTRATION.

THE FAILURE TO DISCLOSE A DISCIPLINARY MATTER EITHER IN AN APPLICATION OR AN UPDATE WILL RESULT IN THE IMPOSITION OF A LATE DISCLOSURE FEE IN ACCORDANCE WITH NFA REGISTRATION RULE 210(c).

Not every section applies to every applicant. Certain sections apply depending on the registration category or categories being applied for. The text above these sections explains who must complete the section.

DEFINED TERMS

Words that are underlined in this form are either defined terms and have the meanings contained in the Definition of Terms section or links to the text of Commodity Exchange Act provisions, CFTC Regulations or NFA Rules.

GENERAL

Read the Instructions and Questions Carefully

A question that is answered incorrectly because it was misread or misinterpreted can result in severe consequences, including denial or revocation of registration. Although this applies to all questions in the application, it is particularly important to the questions in the Disciplinary Information Section.

Rely Only on Advice from NFA Staff

A question that is answered incorrectly because of advice received from a lawyer, employer, a judge or anyone else (other than a member of NFA's Registration Investigations or Legal (RIL) staff) can result in severe consequences, including denial or revocation of registration. This also applies to all questions in the form, but is particularly important regarding the Disciplinary Information Section. If the language of a question in the Disciplinary Information Section requires disclosure of a matter, a "Yes" answer to the question is required no matter what other advice has been received from anyone other than NFA's RIL staff. Additionally, the applicant or registrant remains responsible for failures to disclose even if someone completes the form on the applicant's or registrant's behalf.

Update the Information on the Application

If information provided on the application changes or a matter that would have required disclosure on the application occurs after the application is filed, the new information must be promptly filed. APs and Principals should advise their Sponsors of the new information, and the Sponsor must file the update on their behalf. The failure to promptly update information can result in severe consequences, including denial or revocation of registration.

Compliance with Disclosure Requirements of Another Regulatory Body is not Sufficient

With some exceptions, which are described below in the Regulatory and Financial Disclosures sections, if any question requires the provision of information, that information must be provided. In particular, if a question in the Disciplinary Information Section requires disclosure of a matter, the question must be answered "Yes" and additional documents must be provided even if the matter has been disclosed to another regulatory body such as FINRA, an exchange or a state regulator. Similarly, disclosure is required even if another regulatory body does NOT require disclosure of the same matter.

Call NFA with Questions

If there is any question about whether particular information must be provided, whether a particular matter must be disclosed or whether a particular question requires a "Yes" answer, call the NFA Information Center at (800) 621-3570 or (312) 781-1410. Representatives are available from 8:00 a.m. to 5:00 p.m., Central Time, Monday through Friday. If the advice of NFA staff is sought, a written record containing the date of the conversation, the name of the NFA staff person giving the advice and a description of the advice should be made during the conversation and kept in the event an issue concerning disclosure of the matter arises later.

DISCIPLINARY INFORMATION SECTION

Criminal Disclosures

Some common mistakes in answering the criminal disclosure questions involve expungements, diversion programs and similar processes. The Commodity Futures Trading Commission requires a "Yes" answer even if the matter has been expunged or the records sealed, there was no adjudication or finding of guilt, the guilty plea was vacated or set aside or the matter was dismissed upon completion of the diversion program.

Another common error regarding criminal matters concerns matters that do not involve the derivatives industry. All criminal matters must be disclosed, even if a matter is unrelated to the derivatives industry, unless the case was decided in a juvenile court or under a Youth Offender law.

Regulatory Disclosures

Regulatory actions taken by the Commodity Futures Trading Commission, NFA or U.S. futures exchanges do not need to be disclosed since NFA is already aware of them once they are entered into NFA's BASIC system.

Financial Disclosures

It is not necessary to disclose arbitration awards or CFTC reparations matters unless the applicant or registrant has failed to pay an award related to a CFTC-related product or an order entered in a reparations matter.

Only adversary actions that a U.S. bankruptcy trustee files must be disclosed. Adversary actions that creditors file are not disclosable. A person named as a party to an adversary action in a bankruptcy proceeding must disclose the action, even if the person is not the bankrupt person.

ADDITIONAL DOCUMENTS

For each matter that caused a "Yes" answer, a Disclosure Matter Page (DMP), which is accessible using NFA's DMP Filing System, must be filed. In addition to the required DMP, other documents about the matter must be provided to NFA. If court documents are unavailable, a certified letter from the court verifying that must be sent to NFA. If documents other than court documents are unavailable, a written explanation for their unavailability must be provided. Electronic copies of the documents can be uploaded using NFA's DMP Filing System or documents may be sent to NFA by email to registration@nfa.futures.org, fax to (312) 559-3411 or mail to NFA Registration Department, 300 S. Riverside Plaza, Suite 1800, Chicago, IL 60606.

Providing all documents to NFA is important. Failure to do so will delay the registration process and may result in a denial of the application.

DEFINITION OF TERMS (The following terms are defined solely for the purpose of using NFA's Online Registration System.)
10% OR MORE INTEREST: direct or indirect ownership of 10% or more of an entity's stock; entitlement to vote or empowered to sell 10% or more of an entity's voting securities; contribution of 10% or more of an entity's capital; or entitlement to 10% or more of an entity's net profits.

ADJUDICATION: in a criminal case, a determination by the court that the defendant is guilty or not guilty.

ADVERSARY ACTION: a lawsuit arising in or related to a bankruptcy case commenced by a bankruptcy trustee by filing a complaint with a bankruptcy court or a district court.

ALIAS: another name utilized by an individual or previously used by an entity.

CHARGE: a formal complaint, information, indictment or equivalent instrument containing an accusation of a crime.

DBA: abbreviation for Doing Business As. The firm is doing its futures, retail off-exchange forex or swaps business by this name.

DESIGNATED SUPERVISOR: solely for the purpose of determining whether the Branch Manager Examination (Series 30) is required, Designated Supervisor means a person who is registered with
FINRA (formerly known as NASD) as a General Securities Representative and has been designated to act as the supervisor of an office that is not an Office of Supervisory Jurisdiction ("non-OSJ"), provided that:

- either the futures activity conducted in the non-OSJ that is subject to the Designated Supervisor's supervision is limited to activity not requiring the Series 3 Examination and both the Designated Supervisor and the Branch Manager of the Office of Supervisory Jurisdiction to which the non-OSJ reports have otherwise satisfied NFA's Proficiency Requirements appropriate to their supervisory activities; or

- the activity that is conducted in the non-OSJ that requires the Series 3 Examination is supervised by the Branch Manager of the Office of Supervisory Jurisdiction to which the non-OSJ reports and both the Designated Supervisor and Branch Office Manager have passed the Series 3 Examination.

ENJOINED: subject to an injunction.

ENTITY: any person other than an individual.

ENTITY FLOOR TRADER: an applicant that files or registrant that filed a Form 7-R to apply for registration as a floor trader.

FELONY: any crime classified as a felony and for states and countries that do not differentiate between a felony or misdemeanor, an offense that could result in imprisonment for any period of more than one year. The term also includes a general court martial.

FINANCIAL SERVICES INDUSTRY: the commodities, securities, accounting, banking, finance, insurance, law or real estate industries.

FLOOR TRADER ORDER ENTERER: an individual responsible for entry of orders from an Entity Floor Trader's own account

FOUND: subject to a determination that conduct or a rule violation has occurred. The term applies to dispositions of any type, including but not limited to consent decrees or settlements in which the findings are neither admitted nor denied or in which the findings are for settlement or record purposes only.

INDIRECT OWNER: an individual who through agreement, holding companies, nominees, trusts or otherwise:

- is the owner of 10% or more of the outstanding shares of any class of an entity's equity securities, other than non-voting securities;
- is entitled to vote 10% or more of the outstanding shares of any class of an entity's equity securities, other than non-voting securities;
- has the power to sell or direct the sale of 10% or more of the outstanding shares of any class of an entity's equity securities, other than non-voting securities;
- is entitled to receive 10% or more of an entity's net profits; or
- has the power to exercise a controlling influence over an entity's activities that are subject to regulation by the Commission.

INTERNAL REVENUE CODE:
Section 7203: Willful Failure to File Return, Supply Information or Pay Tax
Section 7204: Fraudulent Statement or Failure to Make Statement
Section 7205: Fraudulent Withholding Exemption Certificate or Failure to Supply Information
Section 7207: Fraudulent Returns, Statements or Other Documents

INVESTMENT RELATED STATUTES:

- The Commodity Exchange Act
- The Securities Act of 1933
- The Securities Exchange Act of 1934

- The Public Utility Holding Company Act of 1935
- The Trust Indenture Act of 1939
- The Investment Advisers Act of 1940
- The Investment Company Act of 1940
- The Securities Investors Protection Act of 1970
- The Foreign Corrupt Practices Act of 1977
- Chapter 96 of Title 18 of the United States Code
- Any similar statute of a State or foreign jurisdiction
- Any rule, regulation or order under any such statutes; and
- The rules of the Municipal Securities Rulemaking Board

MISDEMEANOR: any crime classified as a misdemeanor and for states and countries that do not differentiate between a felony or misdemeanor, an offense that could result in imprisonment for any period of at least six days but not more than one year. By way of example, an offense for which the maximum period of imprisonment is 60 days would be considered a misdemeanor. The term also includes a special court martial.

NON-U.S.NATURAL PERSON: an individual who has not resided in the U.S. since reaching the age of 18 years.

OTHER NAME: For firms, including sole proprietors, any other name that the firm uses or has used in the past but not the name of any other legal entity that the firm has an affiliation or association with (see DBA). For individuals, this is any name the person is or has been known by. For example, a maiden name, an alias name that you use or are known by, or a previous name if you have changed your legal name.

OUTSIDE DIRECTOR: an individual who is director of an applicant or registrant and who

- is not an officer or employee of the applicant or registrant;
- is not engaged in or have direct supervisory responsibility over persons engaged in the solicitation of
    - or acceptance of customers' orders or retail forex customers' orders;
    - funds, securities or property for participation in a commodity pool;
    - a client's or prospective client's discretionary account;
    - leverage customers' orders for leverage transactions;
    - or acceptance of a swap agreement; or
- does not regularly have access to the keeping, handling or processing of:
    - transactions involving "commodity Interests", as that term is defined in CFTC Regulation 1.3;
    - customer funds, retail forex customer funds, leverage customer funds, foreign futures or foreign options secured amount, or adjusted net capital.

PERSON: an individual, association, partnership, corporation, limited liability company, limited liability partnership, trust, or other form of business organization.

PRINCIPAL - means, with respect to an applicant, a registrant, or a person required to be registered under the Act:

(1) an individual who is:

- a sole proprietor of a sole proprietorship;
- a general partner of a partnership;
- a director, president, chief executive officer, chief operating officer, chief financial officer, or a person in charge of a business unit, division or function subject to regulation by the Commission of a corporation, limited liability company or limited liability partnership;
- a manager, managing member or a member vested with the management authority for a limited liability company or limited liability partnership; or
- a chief compliance officer; or

(2) an individual who directly or indirectly, through agreement, holding companies, nominees, trusts or otherwise:

- is the owner of 10% or more of the outstanding shares of any class of an applicant or registrant's equity securities, other than non-voting securities;
- is entitled to vote 10% or more of the outstanding shares of any class of an applicant or registrant's equity securities, other than non-voting securities;
- has the power to sell or direct the sale of 10% or more of the outstanding shares of any class of an applicant or registrant's equity securities, other than non-voting securities;
- is entitled to receive 10% or more of an applicant or registrant's net profits; or
- has the power to exercise a controlling influence over an applicant or registrant's activities that are subject to regulation by the Commission; or

(3) an entity that:

- is a general partner of a partnership; or
- is the direct owner of 10% or more of the outstanding shares of any class of an applicant or registrant's equity securities, other than non-voting securities; or

(4) an individual who or an entity that:

- has contributed 10% or more of an applicant or registrant's capital unless such capital contribution consists of subordinated debt contributed by:
  - an unaffiliated bank insured by the Federal Deposit Insurance Corporation;
  - an unaffiliated "foreign bank," as defined in 12 CFR 211.21(n) that currently operates an "office of a foreign bank," as defined in 12 CFR 211.21(t), which is licensed under 12 CFR 211.24(a);
  - such office of an unaffiliated, licensed foreign bank; or
  - an insurance company subject to regulation by any State,

provided such debt is not guaranteed by an individual who or entity that is not a principal of the applicant or registrant.

For the purpose of answering Questions A, B, C, D, E, F, G, I and K of the Disciplinary Information sections in the Form 8-R, PRINCIPAL also means an individual described in (1), (2) or (4) above with respect to any entity whether or not the entity is an applicant, registrant, or a person required to be registered under the Act.

SELF-REGULATORY ORGANIZATION (SRO): a private, non-governmental organization authorized to set and enforce standards of conduct for an industry. NFA, FINRA (formerly known as NASD) and the securities and futures exchanges in the U.S. are examples of domestic SROs.

UNITED STATES CRIMINAL CODE:

Section 152:	Concealment of assets, making false claims or bribery in connection with a bankruptcy
Section 1341, 1342 or 1343:	Mail fraud
Chapter 25:	Counterfeiting and forgery
Chapter 47:	Fraud or false statements in a matter within the jurisdiction of a United States department or agency
Chapter 95 or 96:	Racketeering and Racketeering Influence

Completing the Proficiency Requirements Section

Individuals who are applying for registration as an AP or who are principals of a sole proprietorship must satisfy proficiency requirements. Individuals who have already satisfied the proficiency requirements do not need to complete the Proficiency Requirements section. An individual will have satisfied the proficiency requirements if:

- NFA has evidence that the individual has taken and passed the National Commodity Futures Examination (Series 3) or the Limited Futures Examination-Regulations (Series 32):
  - within two years prior to the date the application is filed; or
  - more than two years prior to the date the application is filed and since that date there has not been a period of two consecutive years during which the individual was not registered as an AP or FB or an FCM, RFED, IB, CTA, CPO or LTM that was a Member of NFA; or
- The individual is registered as a Floor Broker on the date the application is filed.

Individuals who must complete the Proficiency Requirements section must indicate whether they intend to use the Series 3 examination or one or more alternative means to satisfying proficiency requirements. Some of the alternatives require that an individual limit the activities that he or she intends to engage in and to pass an alternative examination. Individuals who have already passed an alternative examination do not complete the questions related to alternative examinations if:

- NFA has evidence that the individual has taken and passed the examination that the individual intends to use to satisfy the alternative proficiency requirement:
  - within two years prior to the date the application is filed; or
  - more than two years prior to the date the application is filed and since that date there has not been a period of two consecutive years during which the individual was not registered as an AP or FB or an FCM, RFED, IB, CTA, CPO or LTM that was a Member of NFA.

Individuals seeking approval as a forex associated person or as a sole proprietor forex firm must satisfy proficiency requirements before engaging in off-exchange forex business with retail customers. Individuals who have already satisfied the proficiency requirements do not need to complete the Proficiency Requirements section. An individual will have satisfied the proficiency requirements if:

- NFA has evidence that the individual has passed the Series 3 or Series 32 exam requirement (as described above) and
  - NFA has received satisfactory evidence that the applicant has passed the Series 34 within two years of the date the application is filed or
  - since the date the applicant last passed the Series 34 there has not been a period of two consecutive years during which the applicant has not been either registered as an AP or FB or an FCM, RFED, IB, CTA, CPO or LTM that was a Member of NFA; or

- The individual was registered as an AP, FB or an approved sole proprietor principal on May 22, 2008, and there has not been a period of two consecutive years since that date

during which the applicant has not been either registered as an AP or FB or an FCM, RFED, IB, CTA, CPO or LTM that was a Member of NFA.

Individuals seeking approval as a swap associated person or as a sole proprietor swap firm must satisfy proficiency requirements before engaging in swaps activities. Individuals who have already satisfied the Swaps Proficiency Requirements do not need to complete the Proficiency Requirements section. An individual will have satisfied the Swaps Proficiency Requirements if:

- NFA has received satisfactory evidence that the individual has passed the Swaps Proficiency Requirements within two years of the date the application is filed or
- since the date the applicant last passed the Swaps Proficiency Requirements there has not been a period of two consecutive years during which the applicant has not been approved as a swap associated person of an FCM, IB, CTA, CPO, approved as a swap firm that was a Member of NFA or employed by an SD that was a Member of NFA (or its affiliated entity)

Individuals filing as Branch Office Managers must indicate whether they will satisfy the Branch Manager proficiency requirements using the Branch Manager Examination (Series 30) or an alternative. The individual does not complete the Branch Manager proficiency section if the individual has already satisfied the Branch Manager proficiency requirements. An individual will have already satisfied the Branch Manager proficiency requirements if NFA has evidence that the individual has taken and passed the Series 30 and since the date the individual last ceased acting as a branch office manager, there has not been a period of two consecutive years during which he or she has not been registered as an AP.

Additional Assistance

Additional information regarding registration requirements and specific topics can be found on the Registration page of NFA's web site at www.nfa.futures.org. NFA's Information Center, (800-621-3570 or 312-781-1410), is also available to provide assistance. Its normal hours are Monday through Friday, from 8:00 AM to 5:00 PM, CT.

Name

Enter all required information.

Enter the individual's full legal name. Do not use nicknames or abbreviations. For example, if the individual's name is Charles, enter Charles, not Chuck.

First & Middle Name*_____Last Name (Surname)*_____Suffix__
NFA ID#_____

Sponsor Information and Categories

Indicate sponsor and office where applicant is located and check category(ies).

Sponsor Information

Sponsor*_____
Main/Branch Office*_____

Categories*

- ☐ Associated Person
- ☐ Branch Office Manager
- ☐ Principal
- ☐ Floor Trader Order Enterer

Applicants whose sponsor is designated as a Forex Firm answer this question

Will your activities involve the solicitation of customers for managed accounts, pooled investment vehicles, or individual accounts or transactions in off-exchange foreign currency transactions as described in Sections 2(c)(2)(B) or 2(c)(2)(C) of the Act, or the supervision of persons involved in such solicitation activities?*

Yes ○ No ○

Applicants whose sponsor is designated as a Swap Firm answer these questions

Will your activities involve the solicitation of customers for swaps transactions subject to the jurisdiction of the Commodity Futures Trading Commission or the supervision of persons involved in such solicitation activities?*

Yes ○ No ○

Individual's activities involve:
- ○ Swaps transactions only
- ○ Swaps, futures and options on futures and/or retail off-exchange foreign currency transactions

*Required to file application

Associated Person applicants who are registered with other sponsors complete this section.

Current Sponsor Information

Our records indicate that the applicant is currently an Associated Person of the following sponsor(s). If the applicant is no longer an Associated Person of any sponsor(s) listed below, check all that apply.

- ☐ [Sponsor Name]
- ☐ [Sponsor Name]

*Required to file application

Floor broker and floor trader applicants complete this section

Registration Categories

Select category(ies)

Categories*

Floor Broker ☐
Floor Trader ☐

Are you requesting a change from floor broker to floor trader? ○ Yes ○ No

Are you requesting a change from floor trader to floor broker? ○ Yes ○ No

*Required to file application

Individuals filing as principals complete this section

Principal Information

Check all that apply.

Principal Title*

☐	SOLE PROPRIETOR	☐	CHIEF COMPLIANCE OFFICER
☐	GENERAL PARTNER	☐	HEAD OF A BUSINESS UNIT, DIVISION OR FUNCTION
☐	DIRECTOR	☐	MANAGER – LLC OR LLP
☐	PRESIDENT	☐	MANAGING MEMBER – LLC OR LLP
☐	CHIEF EXECUTIVE OFFICER	☐	VESTED WITH MANAGEMENT AUTHORITY – LLC OR LLP
☐	CHIEF OPERATING OFFICER	☐	OWNER
☐	CHIEF FINANCIAL OFFICER	☐	INDIRECT OWNER
		☐	NO LISTED TITLE

10% or more interest* ○ Yes ○ No

*Required to file application

Personal Information

Enter all required information.

Other Names

Enter any other name by which you are or have been known.

First and Middle Name_____Last Name (Surname) and Suffix_____

Birth Information

Enter information about applicant's date and location of birth

Date of Birth* (Month)_____(Date)_____Year (YYYY)_____

City**_____ State* (US Only)_____

Province_____ Country*_____

Residential Address
P.O. Box address is not acceptable.

Street Address 1*_____

Street Address 2_____

Street Address 3 _____

City**_____State* (US Only)_____

Province_____Zip/Postal Code**_____

Country*_____

U.S. Social Security #_____

*Required to file application
**Required to file application for United States address

Floor broker and floor trader applicants complete this section

Business Mailing Address

Street Address 1*_____

Street Address 2_____

Street Address 3_____

City**_____State* (US Only)_____

Province_____Zip/Postal Code**_____

Country*_____

E-mail _____

CRD ID_____

Fingerprint Card Information

○ The applicant's properly signed fingerprint cards will be sent to NFA.

○The applicant is a non-U.S. natural person and:

Pursuant to CFTC Regulation 3.21(e), the sponsor has caused a criminal history background check to be performed for the applicant and the criminal history background check:

A) Is of a type that would reveal all matters listed under Sections 8a(2)(D) or 8a(3)(D), (E) or (H) of the Act;
B) Does not reveal any matters that constitute a disqualification under Sections 8a(2) or 8a(3) of the Act, other than those disclosed to NFA; and
C) Was completed not more than one calendar year prior to the date this application is filed.

○The applicant is an outside director and the sponsor will file with NFA a notice pursuant to CFTC Regulation 3.21(c).

○The applicant's fingerprint card was sent to FINRA within the past 90 days.

*Required to file application
**Required to file application for United States address
Fingerprint Card Demographic Information

Individuals submitting a fingerprint card or who sent a fingerprint card to FINRA within the past 90 days complete this section.

The following information is used to conduct a criminal background check with the U.S. Federal Bureau of Investigations. The FBI requires this information to be submitted with your fingerprints to perform this check

Gender* _____ Race* _____
Eye Color* _____ Hair Color* _____
Height* _____feet _____inch(es) Weight* _____pounds
Country of Citizenship _____

Floor broker and floor trader applicants complete this section
Exchange Affiliation

Select the exchange(s) at which you have been granted membership or trading privileges or at which you have an application pending.

Chicago Board of Trade ☐
Commodity Exchange Inc ☐
CBOE Futures Exchange LLC ☐
Chicago Mercantile Exchange ☐
ICE Futures US Inc ☐
Minneapolis Grain Exchange ☐
NASDAQ Futures Inc ☐
New York Mercantile Exchange ☐

*Required to file application

Disciplinary Information – Criminal Disclosures

For additional assistance and information on completing this page refer to the Instructions and Definition of Terms at the beginning of this document.

THE QUESTIONS ON THIS PAGE MUST BE ANSWERED "YES" EVEN IF:

• ADJUDICATION OF GUILT WAS WITHHELD OR THERE WAS NO CONVICTION; OR

• THERE WAS A CONDITIONAL DISCHARGE OR POST-CONVICTION DISMISSAL AFTER SUCCESSFUL COMPLETION OF A SENTENCE; OR

• A STATE CERTIFICATE OF RELIEF FROM DISABILITIES OR SIMILAR DOCUMENT WAS ISSUED RELIEVING THE HOLDER OF FORFEITURES, DISABILITIES OR BARS RESULTING FROM A CONVICTION; OR

• THE RECORD WAS EXPUNGED OR SEALED; OR

• A PARDON WAS GRANTED.

THE QUESTIONS MAY BE ANSWERED "NO" IF THE CASE WAS DECIDED IN A JUVENILE COURT OR UNDER A YOUTH OFFENDER LAW.

For each matter that requires a "Yes" answer to Questions A, B or C below, a Criminal Disclosure Matter Page (DMP) must be filed using NFA's DMP Filing System that requests:

- who was involved;
- when it occurred;
- what the allegations were;
- what the final determination was, if any; and
- the date of the determination.

In addition, documents must be provided for each matter requiring a "Yes" answer that show:

- the charges;
- the classification of the offense, i.e., felony or misdemeanor;
- the plea, sentencing and probation information, as applicable;
- the final disposition; and
- a summary of the circumstances surrounding the criminal matter.

The documents may be provided electronically using the upload function in the DMP Filing System or by sending them to NFA (See Instructions).

Answer the following questions.

Question A.*

(1) Have you personally or

(2) has any entity of which you were a Principal at the time the activities occurred

ever pled guilty or nolo contendere ("no contest") to or been convicted or found guilty of any felony in any U.S., non-U.S. or military court?

○Yes ○ No

Question B.*

(1) Have you personally or

(2) has any entity of which you were a Principal at the time the activities occurred

ever pled guilty to or been convicted or found guilty of any misdemeanor in any U.S., non-U.S. or military court which involves:

- embezzlement, theft, extortion, fraud, fraudulent conversion, forgery, counterfeiting, false pretenses, bribery, gambling, racketeering or misappropriation of funds, securities or property; or
- violation of sections 7203, 7204, 7205 or 7207 of the Internal Revenue Code of 1986; or
- violation of sections 152, 1341, 1342, or 1343 or chapters 25, 47, 95 or 96 of the U.S. Criminal Code; or
- any transaction in or advice concerning futures, options, leverage transactions or securities?

○ Yes ○ No

Question C.*

Is there a charge pending against

(1) you personally or

(2) any entity of which you were a Principal at the time the activities occurred

the resolution of which could result in a "Yes" answer to the above questions?

○ Yes ○ No

Applicants with all "No" answers above answer this question

Even though you answered "No" to all of the above questions, would you like to provide a Criminal DMP?*

○ Yes ○ No

*Required to file application

Applicants with "Yes" answers above answer this question

Will you be filing a Criminal DMP with respect to a new matter?*

○ Yes ○ No

*Required to file application

Disciplinary Information - Regulatory Disclosures

For additional assistance and information on completing this page refer to the Instructions and Definition of Terms at the beginning of this document.

For each matter that requires a "Yes" answer to Questions D, E, F, G, H or I below, a Regulatory DMP must be filed using NFA's DMP Filing System that requests:

- who was involved;
- when it occurred;
- what the allegations were;
- what the final determination was, if any;
- the date of the determination; and
- a summary of the circumstances surrounding the regulatory matter.

In addition, documents must be provided for each matter requiring a "Yes" answer that show:

- the allegations; and
- the final disposition.

The documents may be provided electronically using the upload function in the DMP Filing System or by sending them to NFA (See Instructions).

Answer the following questions.

Question D.*

In any case brought by a U.S. or non-U.S. governmental body (other than the CFTC), has a court ever permanently or temporarily enjoined

(1) you personally or

(2) any entity of which you were a Principal at the time the activities occurred

after a hearing or default or as the result of a settlement, consent decree or other agreement, from engaging in or continuing any activity involving:

• any transaction in or advice concerning futures, options, leverage transactions or securities; or

• embezzlement, theft, extortion, fraud, fraudulent conversion, forgery, counterfeiting, false pretenses, bribery, gambling, racketeering or misappropriation of funds, securities or property?

○ Yes ○ No

*Required to file application

Question E.*

In any case brought by a U.S. or non-U.S. governmental body (other than the CFTC),

(1) have you personally or

(2) has any entity of which you were a Principal at the time the activities occurred

ever been found after a hearing or default or as the result of a settlement, consent decree or other agreement, to:

- have violated any provision of any investment-related statute or regulation thereunder; or
- have violated any statute, rule, regulation or order which involves embezzlement, theft, extortion, fraud, fraudulent conversion, forgery, counterfeiting, false pretenses, bribery, gambling, racketeering or misappropriation of funds, securities or property; or
- have willfully aided, abetted, counseled, commanded, induced or procured such violation by any other person; or
- have failed to supervise another person's activities under any investment-related statute or regulation thereunder?

○ Yes ○ No

Question F.*

(1) Have you personally or

(2) has any entity of which you were a Principal at the time the activities occurred

ever been debarred by any agency of the U. S. from contracting with the U. S.?

○ Yes ○ No

Question G.*

(1) Have you personally or

(2) has any entity of which you were a Principal at the time the activities occurred

ever been the subject of any order issued by or a party to any agreement with a U.S. or non-U.S. regulatory authority (other than the CFTC), including but not limited to a licensing authority, or self-regulatory organization (other than NFA or a U.S. futures exchange) that prevented or restricted your ability to engage in any business in the financial services industry?

○ Yes ○ No

*Required to file application

Question H.*

Are any of the orders or other agreements described in Question G currently in effect against you personally?

○ Yes ○ No

Question I.*

(1) Are you personally or

(2) is any entity of which you were a Principal at the time the activities occurred

a party to any action, the resolution of which could result in a “Yes” answer to the above questions?

○ Yes ○ No

Applicants with all "No" answers above answer this question

Even though you answered "No” to all of the above questions, would you like to provide a Regulatory DMP?*

○ Yes ○ No

Applicants with "Yes" answers above answer this question

Will you be filing a Regulatory DMP with respect to a new matter?*

○ Yes ○ No

*Required to file application

Disciplinary Information - Financial Disclosures

For additional assistance and information on completing this page refer to the Instructions and Definition of Terms at the beginning of this document.

For each matter that requires a "Yes" answer to Questions J and K below, a Financial DMP must be filed using NFA's DMP Filing System that requests:

- who was involved;
- when it occurred;
- what the allegations were;
- what the final determination was, if any;
- the date of the determination; and
- a summary of the circumstances surrounding the financial matter.

For actions filed with bodies other than NFA or the CFTC, documents must be provided for each matter requiring a "Yes" answer that show:

- the allegations; and
- the final disposition.

The documents may be provided electronically using the upload function in the DMP Filing System or by sending them to NFA (See Instructions).

Answer the following questions.

Question J.*

Have you failed to pay any arbitration awards involving CFTC-regulated products, CFTC civil monetary penalties, CFTC restitution amounts, CFTC disgorgement amounts, or CFTC reparation amounts?

○ Yes ○ No

Question K.*

(1) Have you personally or

(2) has any entity of which you were a Principal at the time the activities occurred

ever been the subject of an adversary action brought by a U.S. bankruptcy trustee?

○ Yes ○ No

*Required to file application

Applicants with all "No" answers above answer this question

Even though you answered "No" to all of the above questions, would you like to provide a Financial DMP?*

○ Yes ○ No

Applicants with "Yes" answers above answer this question

Will you be filing a Financial DMP with respect to a new matter?*

○ Yes ○ No

*Required to file application

Disciplinary Information - Employment Disclosures

For additional assistance and information on completing this page refer to the Instructions and Definition of Terms at the beginning of this document.

For each matter that requires a "Yes" answer to Question L below, an Employment DMP must be filed using NFA's DMP Filing System that requests:

- who was involved;
- when it occurred;
- what the allegations were;
- what the final determination was, if any;
- the date of the determination; and
- a summary of the circumstances surrounding the employment matter.

In addition, documents may be provided for each matter requiring a "Yes" answer that show:

- the allegations; and
- the final disposition.

The documents may be provided electronically using the upload function in the DMP Filing System or by sending them to NFA (See Instructions).

Answer the following question.

Question L.*

Have you ever been discharged or permitted to resign for cause as a result of allegations of:

• embezzlement, theft, extortion, fraud, fraudulent conversion, forgery, counterfeiting, false pretenses, bribery, gambling, racketeering or misappropriation of funds, securities or property; or

• failure to supervise another person's activities under any investment-related statute or regulation thereunder?

○ Yes ○ No

Applicants with a "No" answer above answer this question

Even though you answered "No" to the above question, would you like to provide an employment DMP?*

○ Yes ○ No

Applicants with a "Yes" answer above answer this question

Will you be filing an employment DMP with respect to a new matter?*

○ Yes ○ No

*Required to file application

Employment, Education and Residential History

Employment and Education History

The CFTC requires that the sponsor attempt to communicate with all of the applicant's previous employers and educational institutions for the past three years and to maintain documentation in their files that includes the names of the persons contacted and the dates of contact or, if no contact was made, the reason why.

Enter your employment and personal history, working back 10 years. All time must be accounted for, including self-employment, part-time employment, unemployment, military service and full-time education. If more spaces are needed, complete the information in another document and attach it to this document.

Month and Year Employment/School

From*: _____ Name*: _____
To: _____ Location: _____
(leave blank if current) (City, state or country)
Position Held and
Reason for Leaving: _____

Month and Year Employment/School

From*: _____ Name*: _____
To: _____ Location: _____
(leave blank if current) (City, state or country)
Position Held and
Reason for Leaving: _____

Month and Year Employment/School

From*: _____ Name*: _____
To: _____ Location: _____
(leave blank if current) (City, state or country)
Position Held and
Reason for Leaving: _____

Month and Year Employment/School

From*: _____ Name*: _____

To: _____ Location:_____
(leave blank if current) (City, state or country)
Position Held and
Reason for Leaving: _____

*Required to file application

Residential History

List your residential addresses, working back five (5) years. All time must be accounted for. Post office box address is not acceptable. If more spaces are needed, complete the information in another document and attach it to this document.

Month and Year _____ Residential Address _____

From:*_____ _____

To: _____

(leave blank if current)

Month and Year _____ Residential Address _____

From:*_____ _____

To: _____

(leave blank if current)

Month and Year _____ Residential Address _____

From:* _____ _____

To: _____

(leave blank if current)

Month and Year _____ Residential Address _____

From:* _____ _____

To: _____

(leave blank if current)

Month and Year _____ Residential Address _____

From:* _____ _____

To: _____

(leave blank if current)

*Required to file application
Associated Person applicants and principals of sole proprietors complete this section

Proficiency Requirements

Answer the following questions.

Have you passed the Series 3 Examination within the past two years?* ○ Yes ○ No

Only individuals intending to use an alternative(s) to satisfy the proficiency requirements complete this section.

Check one of the following, if applicable

If you are a registered General Securities Representative of the sponsor, and your futures activity will be limited to any of the two following activities, check each that applies:

□ You limit futures activities to those activities covered in the Futures Managed Funds Examination (Series 31): the solicitation of pool participants and/or the solicitation of discretionary accounts managed by a CTA, or the supervision of others engaged in such solicitations.

Have you passed the Series 31 Examination within the past two years?* ○ Yes ○ No

□ You limit your futures activity as provided in Registration Rule 401(b) to referring clients to another AP of the sponsor or to supervising others who make such referrals.

□ Check here if you have been registered or licensed to solicit futures business by a foreign regulatory authority located in Canada or the United Kingdom within the past two years and are therefore eligible to satisfy the proficiency requirements by passing the Limited Futures Examination – Regulations (Series 32).

Have you passed the Series 32 Examination within the past two years?* ○ Yes ○ No

□ Check here if your sponsor is a CPO that trades swaps subject to the jurisdiction of the CFTC in a commodity pool that but for the trading of such swaps would be eligible for the exclusion under CFTC Regulation 4.5(c)(2)(iii)(A) or (B) or the exemption under CFTC Regulations 4.13(a)(3) and the sponsor has been granted or is seeking a waiver from the Series 3 for its APs pursuant to NFA Registration Rule 401(e)(2)(ii) or if your sponsor is a CTA that provides advice on behalf of the sponsor to a commodity pool as described above.

□ Check here if your sponsor is a CPO that operates pools primarily engaged in securities transactions or a CTA that provides futures trading advice solely incidental to its securities advisory services and your sponsor has been granted or is seeking a waiver from the Series 3 for its APs pursuant to the Interpretive Notices to Registration Rule 402.

*Required to file application

Only individuals filing as a forex associated person complete this section.

Have you passed the Series 34 Examination within the past two years?* ○ Yes ○ No

Only individuals filing as a swap associated person complete this section.

Have you passed the Swaps Proficiency Requirements within the past two years?* ○ Yes ○ No

Only individuals filing as a branch office manager complete this section

Have you passed the Series 30 Examination within the past two years?* ○ Yes ○ No

Are you eligible to be a Branch Office Manager or Designated Supervisor under FINRA rules?* ○ Yes ○ No

Paperwork Reduction Act Notice

OMB Numbers 3038-0023 and 3038-0072

You are not required to provide the information requested on a form subject to the Paperwork Reduction Act unless the form displays a valid OMB Control Number.

The time needed to complete and file Form 7-R, Form 7-W, Form 8-R and Form 8-T may vary depending upon individual circumstances. The estimated average times are:

Form 7-					
FCM	0.6 hours	IB	0.5 hours	Form 7-W	0.1 hours
SD	1.1 hour	CPO	0.5 hours	Form 8-R	1.0 hour
MSP	1.1 hour	CTA	0.5 hours	Form 8-T	0.2 hours
RFED	0.6 hours	FT	0.6 hours		

Privacy Act Notice

The information in Forms 7-R, 7-W, 8-R and 8-T and on the fingerprint card is being collected pursuant to authority granted in Sections 2(c), 4f, 4k, 4n, 4s, 8a and 19 of the Commodity Exchange Act, 7 U.S.C. §§ 2(c), 6f, 6k, 6n, 6s, 12a and 23. Under Section 2(c), it is unlawful for anyone to engage in off-exchange foreign currency futures transactions or off-exchange foreign currency leveraged, margined or financed transactions with persons who are not eligible contract participants without registration, or exemption from registration, as a retail foreign exchange dealer, futures commission merchant, introducing broker, commodity pool operator or commodity trading advisor, as appropriate. Under Section 4d of the Commodity Exchange Act, 7 U.S.C. §6d, it is unlawful for anyone to act as a futures commission merchant or introducing broker without being registered in that capacity under the Act. Under Section 4m of the Commodity Exchange Act, 7 U.S.C. §6m, it is unlawful for a commodity trading advisor or commodity pool operator to make use of the mails or any means or instrumentality

of interstate commerce in connection with his business as a commodity trading advisor or commodity pool operator without being registered in the appropriate capacity under the Act, except that a commodity trading advisor who, during the course of the preceding 12 months, has not furnished commodity trading advice to more than 15 persons and does not hold himself out generally to the public as a commodity trading advisor, need not register. Under Section 4s of the Commodity Exchange Act, 7 U.S.C. §6s, it is unlawful for anyone to act as a swap dealer or major swap participant without being registered in that capacity under the Act. Under Section 19 of the Commodity Exchange Act, 7 U.S.C. §23, and Section 31.5 of the CFTC's regulations, it is unlawful for anyone to act as a leverage transaction merchant without being registered in that capacity under the Act.

The information requested in Form 7-R is designed to assist NFA and the CFTC, as appropriate, in determining whether the application for registration should be granted or denied and to maintain the accuracy of registration files. The information in Form 7-W is designed to assist NFA and the CFTC in determining whether it would be contrary to the requirements of the Commodity Exchange Act, or any rule, regulation or order thereunder, or the public interest to permit withdrawal from registration.

The information requested in Form 8-R and on the fingerprint card will be used by the CFTC or NFA, as appropriate, as a basis for conducting an inquiry into the individual's fitness to be an associated person, floor broker or floor trader or to be a principal of a futures commission merchant, swap dealer, major swap participant, retail foreign exchange dealer, introducing broker, commodity trading advisor, commodity pool operator, leverage transaction merchant or non-natural person floor trader.

Portions of the information requested in Form 8-R will be used by the CFTC and, in appropriate cases, by NFA, to confirm the registration of certain associated persons. The information requested in Form 8-T will be used by the CFTC, and, in appropriate cases, by NFA, to record the registration status of the individual and, in appropriate cases, as a basis for further inquiry into the individual's fitness to remain in business subject to the CFTC's jurisdiction.

With the exception of the social security number and Federal employer identification number, all information in Forms 8-R and 8-T must be furnished. Disclosure of the social security number and Federal employer identification number is voluntary. The social security number and the Federal employer identification number are sought pursuant to the Debt Collection Improvement Act of 1996, which allows the CFTC to use the social security number or taxpayer identifying number furnished to the CFTC as part of the registration process for purposes of collecting and reporting on any debt owed to the U.S. Government, including civil monetary penalties. Although voluntary, the furnishing of a social security number or Federal employer identification number assists the CFTC and NFA in identifying individuals and firms, and therefore expedites the processing of those forms.

The failure by an applicant, registrant or principal to timely file a properly completed Form 7-R and all other related required filings may result in the denial of an application for registration or withdrawal thereof or, in the case of an annual records maintenance fee, treating the registrant as having petitioned for withdrawal. Failure by an applicant, registrant or principal to timely file or cause to be filed a properly completed Form 8-R or 8-T, any other required related filings, or a fingerprint card may result in the lapse, denial, suspension or revocation of registration, withdrawal of the application or other enforcement or disciplinary action by the CFTC or NFA.

NFA makes available to the public on NFA website(s), including the Background Affiliation Status Information Center (BASIC), firm directories, business addresses, telephone numbers, registration categories, effective dates of registration, registration status, and disciplinary action taken concerning futures commission merchants, introducing brokers, commodity pool operators, commodity trading advisors, swap dealers, major swap participants and retail foreign exchange dealers and their associated persons and principals; non-natural person floor traders and their principals; and floor trader order enterers.

Additional information on Forms 7-R, 7-W, 8-R and 8-T is publicly available, and may be accessed by contacting the National Futures Association, Registration Department, Suite 1800, 300 S. Riverside Plaza, Chicago, IL 60606-6615, except for the following information, which is generally not available for public release unless required under the Freedom of Information Act (FOIA) :

- The fingerprint card, including its demographic information;
- social security number;
- date of birth;
- location of birth;
- current residential address; and
- any supplementary information filed in response to the Form 8-R "Personal Information," "Disciplinary Information," "Matter Information," or "Disclosure Matter" sections, Form 8-T "Withdrawal Reasons," "Disciplinary Information," or "Matter Information" sections, and Form 7-W, "Additional Customer Information" sections.

The CFTC, or NFA acting in accordance with rules approved by the CFTC, may disclose to third parties any information provided on Forms 7-R, 7-W, 8-R and 8-T pursuant to the Commodity Exchange Act, 7 U.S.C. § 1 et. seq., Privacy Act of 1974, 5 U.S.C. § 552a (Privacy Act), and the Commission's Privacy Act routine uses published in the Federal Register, which may include, but is not limited to, disclosure to Federal, state, local, or foreign law enforcement or regulatory authorities acting within the scope of their jurisdiction or for their use in meeting responsibilities assigned to them by law. The information will be maintained and disclosures will be made in accordance with CFTC Privacy Act System of Records Notice CFTC-12, National Futures Association (NFA) Applications Suite System (Exempted), CFTC-10, Investigatory Records (Exempted), or another relevant System of Records Notice, available from the CFTC "Privacy Program" page, http://www.cftc.gov/Transparency/PrivacyOffice.

If an individual believes that information on the forms is confidential, the individual may petition the CFTC, pursuant to 17 CFR 145.9, to treat such information as confidential in response to requests under FOIA. 5 U.S.C. §552. The filing of a petition for confidential treatment, however, does not guarantee that the information will be treated confidentially in response to a FOIA request. The CFTC will make no determination as to confidential treatment of information submitted unless and until the information is the subject of an FOIA request.

This notice is provided in accordance with the requirements of the Privacy Act, 5 U.S.C. §552a(e)(3), and summarizes some of an individual's rights under the Privacy Act, 5 U.S.C. §552a. Individuals desiring further information should consult the CFTC's regulations under the Privacy Act, 17 CFR Part 146, and under the Freedom of Information Act, 17 CFR Part 145, and the CFTC's published System of Records Notices, which describe the existence and

character of each system of records maintained by the CFTC, available at the CFTC "Privacy Program" page.

Forms which have not been prepared and executed in compliance with applicable requirements may not be acceptable for filing. Acceptance of this form shall not constitute any finding that the information is true, current or complete. Misstatements or omissions of fact may constitute federal criminal violations [7 U.S.C. §13 and 18 U.S.C. §1001] or grounds for disqualification from registration.

FBI PRIVACY ACT STATEMENT

Authority: The FBI's acquisition, preservation, and exchange of fingerprints and associated information is generally authorized under 28 U.S.C. 534. Depending on the nature of your application, supplemental authorities include Federal statutes, State statutes pursuant to Pub. L. 92-544, Presidential Executive Orders, and federal regulations. Providing your fingerprints and associated information is voluntary; however, failure to do so may affect completion or approval of your application.

Principal Purpose: Certain determinations, such as employment, licensing, and security clearances, may be predicated on fingerprint-based background checks. Your fingerprints and associated information/biometrics may be provided to the employing, investigating, or otherwise responsible agency, and/or the FBI for the purpose of comparing your fingerprints to other fingerprints in the FBI's Next Generation Identification (NGI) system or its successor systems (including civil, criminal, and latent fingerprint repositories) or other available records of the employing, investigating, or otherwise responsible agency. The FBI may retain your fingerprints and associated information/biometrics in NGI after the completion of this application and, while retained, your fingerprints may continue to be compared against other fingerprints submitted to or retained by NGI.

Routine Uses: During the processing of this application and for as long thereafter as your fingerprints and associated information/biometrics are retained in NGI, your information may be disclosed pursuant to your consent, and may be disclosed without your consent as permitted by the Privacy Act of 1974 and all applicable Routine Uses as may be published at any time in the Federal Register, including the Routine Uses for the NGI system and the FBI's Blanket Routine Uses. Routine uses include, but are not limited to, disclosures to: employing, governmental or authorized non-governmental agencies responsible for employment, contracting, licensing, security clearances, and other suitability determinations; local, state, tribal, or federal law enforcement agencies; criminal justice agencies; and agencies responsible for national security or public safety.

NONCRIMINAL JUSTICE APPLICANT'S PRIVACY RIGHTS

As an applicant who is the subject of a national fingerprint-based criminal history record check for a noncriminal justice purpose (such as an application for employment or a license, an immigration or naturalization matter, security clearance, or adoption), you have certain rights which are discussed below. All notices must be provided to you in writing. These obligations are pursuant to the Privacy Act of 1974, Title 5, United States Code (U.S.C.) Section 552a, and Title 28 Code of Federal Regulations (CFR), 50.12, among other authorities.

- You must be provided an adequate written FBI Privacy Act Statement (dated 2013 or later) when you submit your fingerprints and associated personal information. This Privacy Act Statement must explain the authority for collecting your fingerprints and associated information and whether your fingerprints and associated information will be searched, shared, or retained.

• You must be advised in writing of the procedures for obtaining a change, correction, or update of your FBI criminal history record as set forth at 28 CFR 16.34.

• You must be provided the opportunity to complete or challenge the accuracy of the information in your FBI criminal history record (if you have such a record).

• If you have a criminal history record, you should be afforded a reasonable amount of time to correct or complete the record (or decline to do so) before the officials deny you the employment, license, or other benefit based on information in the FBI criminal history record.

• If agency policy permits, the officials may provide you with a copy of your FBI criminal history record for review and possible challenge. If agency policy does not permit it to provide you a copy of the record, you may obtain a copy of the record by submitting fingerprints and a fee to the FBI. Information regarding this process may be obtained at

https://www.fbi.gov/services/cjis/identity-history-summary-checks and https://www.edo.cjis.gov.

• If you decide to challenge the accuracy or completeness of your FBI criminal history record, you should send your challenge to the agency that contributed the questioned information to the FBI. Alternatively, you may send your challenge directly to the FBI by submitting a request via https://www.edo.cjis.gov. The FBI will then forward your challenge to the agency that contributed the questioned information and request the agency to verify or correct the challenged entry. Upon receipt of an official communication from that agency, the FBI will make any necessary changes/corrections to your record in accordance with the information supplied by that agency. (See 28 CFR 16.30 through 16.34.)

• You have the right to expect that officials receiving the results of the criminal history record check will use it only for authorized purposes and will not retain or disseminate it in violation of federal statute, regulation or executive order, or rule, procedure or standard established by the National Crime Prevention and Privacy Compact Council.

Sponsor Agreement

Sponsor certifies that:

the Form 8-R is, to the best of the Sponsor's knowledge, information and belief, true, complete and accurate and that in light of the circumstances under which the Sponsor has given them, the answers and statements in the Form 8-R are not misleading in any material respect;

the AP applicant, Forex AP applicant, Swap AP applicant, principal or Floor Trader Order Enterer has authorized the Sponsor to electronically file the Form 8-R on the AP applicant's, Forex AP applicant's or Swap AP applicant's behalf, the principal's behalf or the Floor Trader Order Enterer's behalf and that the Sponsor has authorized the person who files the application to file the Form 8-R and to make the certifications and acknowledgements contained in this Sponsor Agreement;

the Sponsor has communicated or has attempted to communicate with all of the applicant's previous employers and educational institutions for the past three years and has documentation on file with the names of the persons contacted and the dates of contact or, if no contact was made, the reason therefor;

the applicant has been hired or is employed by the Sponsor or that it is the intention of the Sponsor to hire or otherwise employ the applicant as an AP, Forex AP or Swap AP within 30 days after receipt of notification that the applicant has received a temporary license or has been registered;

the applicant will not be permitted to act as an AP until the applicant has received a temporary license or has been registered as an AP, to act as a Forex AP until the applicant has been approved as a Forex AP or to act as a Swap AP until the applicant has been approved as a Swap AP;

if the Sponsor is a new sponsor filing an application for registration of the applicant as an AP pursuant to the provisions of NFA Registration Rule 207(a), that the Sponsor has verified that the applicant is not subject to a disqualification from registration under Section 8a(2) of the Commodity Exchange Act, 7 U.S.C. §12(a)(2), and that the Sponsor meets the requirements set forth in NFA Registration Rule 509(b)(5);

if the applicant is applying for a temporary license pursuant to NFA Registration Rule 301(a)(2), that the Sponsor has reviewed the information concerning the applicant in NFA's BASIC system and has received a copy of the notice of the institution of any proceeding in the BASIC system that is pending and was brought against the applicant under Sections 6(c), 6(d), 6c, 6d, 8a or 9 of the Commodity Exchange Act, 7 U.S.C. §§ 9, 13b, 13a-1, 13a-2, 12a, and 13, CFTC regulations 3.55 or 3.60 or NFA or exchange rules or that was instituted in accordance with the procedures provided in CFTC regulation 3.51 or Part 500 of the NFA Registration Rules and, within the prior 12 months, resulted in the Commission or NFA permitting the withdrawal of such person's application for registration in any capacity;

if the applicant is subject to any current NFA or Commission order imposing conditions on the registration of the applicant, that the Sponsor meets the requirements set forth in NFA Registration Rule 509(b)(5) to sponsor a conditioned registrant, that it has reviewed the conditions contained in any current NFA or Commission order imposing conditions on the registration of the applicant and that the Sponsor will supervise the applicant in accordance with the conditions contained in the order; and

the Sponsor has taken, and will take, such measures as are necessary to prevent the unwarranted dissemination of any of the information contained in the Form 8-R and the records and documents retained in support of the Form 8-R.

Sponsor acknowledges that:

the Sponsor is subject to the imposition of criminal penalties under Section 9(a) of the

Commodity Exchange Act, 7 U.S.C. §13(a), and 18 U.S.C. §1001 for any false statements or omissions Sponsor made in the Form 8-R;

while the individual is an AP, forex AP or Swap AP sponsored by or a principal of the Sponsor or is responsible for entering orders on behalf of the Floor Trader's own account, the Sponsor is responsible for maintaining the information in the Form 8-R in a complete, accurate and current manner by electronically filing updates to the information contained therein;

it is the duty and obligation of the Sponsor not to employ an individual as an AP with a statutory disqualification under Section 8a(2) of the Commodity Exchange Act, 7 U.S.C. §§12(a)(2),to notify the Commission when any individual associated with the Sponsor is subject to a statutory disqualification under Section 8a(2) of the Act and to supervise any individual for whom the Sponsor files a Form 8-R, once the Sponsor employs him or her, with a view toward preventing him or her from committing violations of the Commodity Exchange Act and the rules, regulations and orders thereunder; and

the information contained in the Form 8-R has been supplied to the Sponsor for the sole purpose of allowing it to verify the information contained in the Form 8-R.

Individual Agreement

The applicant, principal or Floor Trader Order Enterer verifies that:

the answers and statements in the application or Form 8-R are true, complete and accurate and that in light of the circumstances under which the applicant, principal or Floor Trader Order Enterer has given them, the answers and statements in the Form 8-R are not misleading in any material respect.

The applicant certifies that

if applying for a temporary license pursuant to the provisions of NFA Registration Rule 301(a)(2), that the applicant has advised the Sponsor of and has provided the Sponsor with a copy of the notice of the institution of any pending adjudicatory proceeding that was brought against the applicant under Sections 6(c), 6(d), 6c, 6d, 8a or 9 of the Commodity Exchange Act, 7 U.S.C. §§ 9, 13b, 13a-1, 13a-2, 12a, and 13, CFTC regulations 3.55 or 3.60 or NFA or exchange rules or any proceeding that was brought against the applicant under CFTC regulation 3.51 or Part 500 of the NFA Registration Rules and, within the prior 12 months, resulted in the Commission or NFA permitting the withdrawal of such person's application for registration in any capacity.

The applicant, principal or Floor Trader Order Enterer acknowledges that:

the applicant, principal or Floor Trader Order Enterer is subject to the imposition of criminal penalties under Section 9(a) of the Commodity Exchange Act, 7 U.S.C. §13(a), and 18 U.S.C. §1001 for any false statements or omissions made in the Form 8-R;

the applicant, principal or Floor Trader Order Enterer is responsible at all times for maintaining the information in the Form 8-R in a complete, accurate and current manner by promptly notifying the Sponsor whenever any of the information on the Form 8-R is no longer complete, accurate or current and authorizing the Sponsor to electronically file updates to correct the information;

the residential address provided on the Form 8-R may be deemed to be the address for delivery to the applicant, principal or Floor Trader Order Enterer of any written communications from the Commission and NFA, including any notice of intent to deny, revoke or otherwise affect the applicant's registration or individual's status as principal; any summons, complaint, reparations claim, arbitration claim, order or subpoena; request for information; or any other written communication unless the applicant, principal or Floor Trader Order Enterer specifies another address for this purpose;

the applicant or principal must keep current the residential address provided on the Form 8-R while registered as an AP or affiliated as a principal and for two years after termination of registration or affiliation; and

the applicant is not registered and may not act as an AP until a notice has been issued that registration or a TL has been granted; if applicable, the applicant is not approved as a Forex AP and may not act as a Forex AP until approval has been granted; and, if applicable, the applicant is not approved as a Swap AP and may not act as a Swap AP until approval has been granted.

The applicant, principal or Floor Trader Order Enterer authorizes that:

NFA, and any contract market of which the applicant's or principal's Sponsor or any current or future guarantor (under CFTC regulation 1.10(j)) of the applicant's or principal's Sponsor is or may become a member, may conduct an investigation to determine the applicant's or principal's fitness for registration, and if applicable, for Associate status and NFA may conduct a background investigation of the Floor Trader Order Enterer;

and requests that any person, including but not limited to contract markets, or non-U.S. regulatory or law enforcement agencies, furnish upon request to NFA or any agent acting on behalf of NFA any information requested by NFA in connection with any investigation conducted by NFA to determine the applicant's fitness for registration or fitness of the principal or any background investigation of the Floor Trader Order Enterer;

The applicant, principal or Floor Trader Order Enterer agrees that:

the applicant, principal or Floor Trader Order Enterer will cooperate promptly and fully, consistent with applicable Federal law, in any investigation in connection with the applicant's or principal's fitness for registration or Associate status or any background investigation of the Floor Trader Order Enterer, which may include contacting non-U.S. regulatory and law enforcement authorities, including the submission of documents and information to NFA that NFA, in its discretion, may require in connection with the applicant's or principal's fitness for

registration or Associate status or the background investigation of the Floor Trader Order Enterer;

the applicant or principal submits to the jurisdiction of any contract market, of which the applicant's or principal's Sponsor or any current or future guarantor (under CFTC regulation 1.10(j)) of the applicant's or principal's Sponsor is or may become a member, which has or may adopt rules which apply to the applicant as an associated person or principal, and the applicant or principal shall abide by all such rules and to comply with, be subject to, and abide by all requirements, rulings, orders, directives and decisions of and any penalties, prohibitions and limitations imposed by any such contract market;

any person furnishing information to NFA or any agent acting on behalf of NFA in connection with the investigation so authorized is released from any and all liability of whatever nature by reason of furnishing such information to NFA or any agent acting on behalf of NFA;

if the applicant is applying to obtain registration as an associated person, the applicant is also applying for registration with NFA as an Associate if the applicant's Sponsor is or becomes a Member of NFA; and

if the applicant is granted registration as an Associate of a Member of NFA, the applicant shall become and remain bound by all applicable NFA requirements, including without limitation all applicable NFA Bylaws, Compliance Rules, Financial Requirements, Registration Rules, Code of Arbitration and Member Arbitration Rules, as then and thereafter in effect, and that this agreement shall apply each time that the applicant is granted registration as an Associate.

Floor Broker/Floor Trader Agreement

The applicant certifies that:

the answers and statements in the Form 8-R are true, complete and accurate and that in light of the circumstances under which the applicant has given them, the answers and statements in the Form 8-R are not misleading in any material respect.

The applicant acknowledges that:

the applicant is subject to the imposition of criminal penalties under Section 9(a) of the Act and 18 U.S.C. §1001 for any false statements or omissions made in the Form 8-R;

the applicant is responsible at all times for maintaining the information in the Form 8-R in a complete, accurate and current manner by electronically filing updates to the information contained therein;

the business address provided on the Form 8-R may be deemed to be the address for delivery to the applicant of any written communications from the Commission and NFA, including any notice of intent to deny, revoke or otherwise affect the applicant's registration; any summons, complaint, reparations claim, arbitration claim, order or subpoena; request for

information; or any other written communication unless the applicant specifies another address for this purpose;

the applicant must keep current the business address provided on the Form 8-R while registered and for two years after termination of registration; and

the applicant is not registered and may not act as an FB or FT until a notice has been issued that registration or a temporary license has been granted.

The applicant authorizes that:

NFA may conduct an investigation to determine the applicant's fitness for registration; and

and requests that any person, including but not limited to contract markets or non U.S. regulatory or law enforcement agencies, furnish upon request to NFA or any agent acting on behalf of NFA any information requested by NFA in connection with any investigation conducted by NFA to determine the applicant's fitness for registration;

The applicant agrees that:

the applicant will cooperate promptly and fully, consistent with applicable Federal law, in any investigation in connection with the applicant's application for registration, which investigation may include contacting non-U.S. regulatory and law enforcement authorities, including the submission of documents and information to NFA that NFA, in its discretion, may require in connection with the applicant's application for registration;

any person furnishing information to NFA or any agent acting on behalf of NFA in connection with the investigation so authorized is released from any and all liability of whatever nature by reason of furnishing such information to NFA or any agent acting on behalf of NFA; and

if the applicant ever applies for and is granted registration as an Associate of a Member of NFA, the applicant shall become and remain bound by all applicable NFA requirements, including without limitation all applicable NFA Bylaws, Compliance Rules, Financial Requirements, Registration Rules, Code of Arbitration and Member Arbitration Rules, as then and thereafter in effect, and that this agreement shall apply each time the applicant is granted registration as an Associate.

THE APPLICANT, PRINCIPAL OR FLOOR TRADER ORDER ENTERER ALSO AGREES TO THE PRIVACY ACT NOTICE ABOVE, AND THE COLLECTION, PROCESSING, DISCLOSURE, AND USE OF HIS OR HER PERSONAL INFORMATION BY NFA, THE CFTC, AND THIRD PARTIES AS STATED IN THE NOTICE.

Agree	Cancel

Appendix 1—Commission Voting Summary

On this matter, Chairman Tarbert and Commissioners Quintenz, Behnam, Stump, and Berkovitz voted in the affirmative. No Commissioner voted in the negative.

[FR Doc. 2020–13465 Filed 6–23–20; 8:45 am]

BILLING CODE 6351–01–C

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Revise Collections, Comment Request: Adoption of Revised Registration Form 8–R

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or the ''Commission'') is announcing an opportunity for public comment on the proposed revision to the collection of certain information by the Commission. Under the Paperwork Reduction Act (''PRA''), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information and to allow 60 days for public comment. The Commission revised its Form 8–R, the application form that individuals use to register with the Commission or to be listed as a principal. This notice solicits comments on the PRA implications of the revisions to Form 8–R, including comments that address the burdens associated with the modified information collection requirements of the revised Form 8–R.

DATES: Comments must be submitted on or before August 24, 2020.

ADDRESSES: You may submit comments, identified by ''OMB control numbers 3038–0023 and 3038–0072; Adoption of Revised Registration Form 8–R,'' by any of the following methods:

- The Commission's website, via its Comments Online process at *http://comments.cftc.gov/.* Follow the instructions for submitting comments through the website.
- *Mail:* Christopher J. Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in Regulation 145.9.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the information collection request will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Joshua Sterling, Director, (202) 418–6700, *jsterling@cftc.gov;* Amanda Olear, Deputy Director, (202) 418–5283, *aolear@cftc.gov;* or Christopher Cummings, Special Counsel, (202) 418–5445, *ccummings@cftc.gov,* Division of Swap Dealer and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581.

SUPPLEMENTARY INFORMATION: Under the PRA, 44 U.S.C. 3501 *et seq.,* Federal agencies must obtain approval from the Office of Management and Budget (''OMB'') for each collection of information they conduct or sponsor. ''Collection of Information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed revision to the collections of information listed below. 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 number.

Titles: Registration Under the Commodity Exchange Act (OMB control number 3038–0023); Registration of Swap Dealers and Major Swap Participants (OMB control number 3038–0072). This is a request for extension and revision of these currently approved information collections.

Abstract: The Commission recently revised its Form 8–R, the application form that individuals must use to register with the Commission as an associated person, floor broker, or floor trader, or to be listed as a principal. The collections of information related to Form 8–R were previously approved by OMB in accordance with the PRA and assigned OMB control numbers 3038–0023 and 3038–0072.

Form 8–R Revision

The revised Form 8–R contains several changes that increase the existing information collection burden, currently 1 hour, associated with Form 8–R. The Commission estimates that the changes, which are discussed below, when considered together in aggregate add a total of 0.1 burden hours to the information collection burdens associated with Form 8–R.

First, in the ''Completing the Proficiency Requirements Section,'' a new paragraph is added describing the obligation of an individual seeking approval as a swap associated person or as a sole-proprietor swap firm to satisfy the Swaps Proficiency Requirements (recently implemented by NFA with the Commission's approval[2]), and what constitutes satisfaction of those requirements. Second, in the application itself, a new question is added asking whether the applicant has completed the Swaps Proficiency Requirements within the past two years.

The revised Form 8–R also contains several changes that do not alter the information collection burdens associated with Form 8–R. First, the revised form replaces the FBI-mandated disclosure, for persons whose fingerprints are taken for purposes other than criminal justice, with an updated version of that disclosure. Second, in the ''Definition of Terms'' section, the definition of ''adversary action'' is revised to conform the definition to the way the term is used in the form's ''Disciplinary Information Section.'' Finally, the words ''entity'' and ''person'' are underlined where they occur in the text to indicate that these

[1] 17 CFR 145.9.

[2] *See,* NFA Interpretive Notice entitled ''NFA Bylaw 301 And Compliance Rule 2–24: Proficiency Requirements for Swap APs,'' effective January 31, 2020.

are terms that are defined in the ''Definition of Terms'' section.

Invitation To Comment

With respect to the information collections discussed above, the CFTC invites comments on:

• Whether the proposed revision to the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

1. The accuracy of the Commission's estimate of the burden of the proposed revision to the collection of information, including the validity of the methodology and assumptions used;

2. Ways to enhance the quality, usefulness, and clarity of the information to be collected; and

3. Ways to minimize the burden of collection of information on those who are to respond, including through the further use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.,* permitting electronic submission of responses.

Burden Statement: As explained above, the Commission believes that the revisions to Form 8–R increase the information collection burdens associated with that Form under OMB control numbers 3038–0023 and 3038–0072.

OMB Control Number 3038–0023

The Commission estimates that as a result of the revisions to Form 8–R, the burden of the collection of information under OMB control number 3038–0023 will be:

Respondents/Affected Entities: (1) Users of Form 8R, specifically futures commission merchants, retail foreign exchange dealers, introducing brokers, commodity trading advisors, commodity pool operators, floor trader firms, and leverage transaction merchants; and (2) users of Form 8–R, specifically (i) associated persons of futures commission merchants, retail foreign exchange dealers, introducing brokers, commodity trading advisors, commodity pool operators, and leverage transaction merchants; floor brokers; (ii) principals of futures commission merchants, retail foreign exchange dealers, introducing brokers, commodity trading advisors, commodity pool operators, floor trader firms, or leverage transaction merchants; (iii) floor brokers; (iv) floor traders; and (v) floor trader order enterers.

Estimated number of respondents: 78,055.

Estimated total annual burden on respondents: 7,856 hours.

Frequency of collection: Periodically.

There are no capital costs or operating and maintenance costs associated with this collection.

OMB Control Number 3038–0072

The Commission further estimates that as a result of the revisions to Form 8–R, the burden of the collection of information under OMB control number 3038–0072 will be:

Respondents/Affected Entities: (1) Users of Form 8–R, specifically swap dealers and major swap participants; and (2) users of Form 8–R, specifically principals of swap dealers and of major swap participants.

Estimated number of respondents: 772.

Estimated total annual burden on respondents: 683 hours.

Frequency of collection: Periodically.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: June 18, 2020.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2020–13466 Filed 6–23–20; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Innovation Board; Notice of Cancellation of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Research & Engineering, Department of Defense (DoD).

ACTION: Notice of cancellation of Federal Advisory Committee meeting.

SUMMARY: On June 9, 2020, the DoD published a notice announcing the next meeting of the Defense Innovation Board (''the Board'') on June 23, 2020, from 2:00 p.m. to 4:00 p.m. Eastern Standard Time (EST). The DoD is publishing this notice to announce that this Federal advisory committee meeting has been cancelled, due to ongoing challenges created by the COVID–19 pandemic.

DATES: Tuesday, June 23, 2020, from 2:00 p.m. to 4:00 p.m. Eastern Standard Time (EST)—*CANCELLED.*

FOR FURTHER INFORMATION CONTACT: Ms. Colleen Laughlin, (571) 372–0933 (Voice), *colleen.r.laughlin.civ@mail.mil* or *osd.innovation@mail.mil* (Email).

SUPPLEMENTARY INFORMATION: On June 9, 2020 (85 FR 35293–35294), the DoD published a notice announcing the next meeting of the Board on June 23, 2020, from 2:00 p.m. to 4:00 p.m. Eastern Standard Time (EST). DoD is publishing this notice to announce that this federal advisory committee meeting has been cancelled at this time and will be re-scheduled at a later date. The rescheduled meeting will be announced in the **Federal Register**.

Due to circumstances beyond the control of the Department of Defense and the Designated Federal Officer, the Defense Innovation Board was unable to provide public notification required by 41 CFR 102–3.150(a) concerning the cancellation of its previously noticed meeting on June 23, 2020. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Dated: June 19, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2020–13644 Filed 6–23–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Application for New Awards Deadline Date; Higher Education Emergency Relief Fund (HEERF), Sections 18004(a)(1), 18004(a)(2), and 18004(a)(3); Coronavirus Aid, Relief, and Economic Security (CARES) Act

AGENCY: Office of Postsecondary Education, U.S. Department of Education.

ACTION: Notice.

SUMMARY: This notice establishes the deadline date for institutions of higher education (IHEs) that did not initially apply to receive allocations to transmit their applications for funds from the Higher Education Emergency Relief Fund under sections 18004(a)(1), 18004(a)(2), and 18004(a)(3) of the CARES Act as August 1, 2020.

This notice applies to applications under the following Catalog of Federal Domestic Assistance (CFDA) numbers:

- 84.425E—Student Aid portion of 18004(a)(1)
- 84.425F—Institutional portion of 18004(a)(1)
- 84.425J—Historically Black College and Universities under section 18004(a)(2)
- 84.425K—Tribally Control Colleges and Universities under section 18004(a)(2)
- 84.425L—Minority Serving Institutions under section 18004(a)(2)

- 84.425M—Strengthening Institutions Program under section 18004(a)(2)
- 84.425N—Fund for the Improvement of Postsecondary Education (FIPSE) under section 18004(a)(3)

This notice relates to the approved information collections under OMB control numbers 1801–0005, 1840–0842, and 1840–0843.

DATES: *Deadline for Transmittal of Applications:* August 1, 2020.

FOR FURTHER INFORMATION CONTACT: Lauren Kennedy, U.S. Department of Education, 400 Maryland Avenue SW, Room 278–24, Washington, DC 20202–4260. Telephone: (202) 453–7957. Email: *Lauren.Kennedy@ed.gov* or *HEERF@ed.gov*.

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: In order for the Department to expeditiously calculate and redistribute any reserved or unclaimed funds from the HEERF under sections 18004(a)(1), 18004(a)(2), and 18004(a)(3) of the CARES Act, this notice establishes the deadline date for transmittal of applications for such funds as August 1, 2020. This notice applies to applications under CFDA numbers 84.425E and 84.425F under section 18004(a)(1), 84.425J, 84.425K, 84.425L, 84.425M under 18004(a)(2), and 84.425N under section 18004(a)(3). Applicants should refer to the procedures outlined on the Department's CARES Act: Higher Education Emergency Relief Fund website for additional information on the procedures for applying for these funds, at *https://www2.ed.gov/about/offices/list/ope/caresact.html*.

Program Authority: Sections 18004(a)(1), 18004(a)(2), and 18004(a)(3) of Title VIII of Division B of the CARES Act, Pubblic Law 116–36 (enacted March 27, 2020).

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Robert L. King,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2020–13645 Filed 6–23–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0097]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and approval; Comment Request; Application for the Language Resource Centers (LRC) Program

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 July 24, 2020.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Carolyn Collins, 202–453–7854.

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: Application for the Language Resource Centers (LRC) Program.

OMB Control Number: 1840–0808.

Type of Review: An extension of an existing information collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 27.

Total Estimated Number of Annual Burden Hours: 2,700.

Abstract: This collection contains the application forms and instructions for the Language Resource Centers (LRC) Program. It is used by applicants to apply for funding under the LRC program. Applicants' submissions are used by peer reviewers during the grant competition to evaluate and score the proposed projects.

Dated: June 19, 2020.

Kate Mullan,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer.

[FR Doc. 2020–13588 Filed 6–23–20; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Meetings

AGENCY: U.S. Election Assistance Commission.

ACTION: Sunshine Act notice; notice of public hearing agenda.

SUMMARY: Public Hearing: U.S. Election Assistance Commission: Lessons Learned from the 2020 Primary Election.

DATES: Wednesday, July 8, 2020 1:30 p.m.–3:30 p.m. Eastern.

ADDRESSES: Virtual via Zoom.

The hearing is open to the public and will be livestreamed on the U.S. Election Assistance Commission YouTube Channel: *https://www.youtube.com/channel/UCpN6i0g2rlF4ITWhwvBwwZw.*

FOR FURTHER INFORMATION CONTACT: Kristen Muthig, Telephone: (202) 897–9285, Email: *kmuthig@eac.gov.*

SUPPLEMENTARY INFORMATION: *Purpose:*

In accordance with the Government in the Sunshine Act (Sunshine Act), Public Law 94–409, as amended (5 U.S.C. 552b), the U.S. Election Assistance Commission (EAC) will conduct a virtual hearing to address the lessons learned by state and local election officials during the 2020 elections in preparation for the remaining primaries and general election.

Agenda

The U.S. Election Assistance Commission (EAC) Commissioners will oversee a virtual hearing including testimony from state and local election officials. Panelists will discuss the challenges they faced during the 2020 primary elections, how they met those challenges, and how they plan to manage the general elections during the COVID–19 pandemic. Topics include poll worker recruitment and training; absentee and mail voting management; in-person voting location management; and result recording, accuracy, and setting expectations. The agenda includes remarks from panel participants and a question and answer portion from the Commissioners.

Background

The EAC hosted a hearing ''Election Response to COVID–19: Administering Elections During the Coronavirus Crisis'' on April 20, 2020. EAC Commissioners heard panelists present on major considerations for expanding vote by mail options for the remaining primaries and the general election and considerations for in-person voting. Panelists included state and local election officials and other representatives from the elections administration field. Other considerations such as accessibility for voters with disabilities and ensuring secure elections were also discussed. The hearing on July 8 will build off the information shared during that hearing, and the COVID–19 resources for election officials the EAC has compiled as part of their clearinghouse function at *eac.gov*.

The full agenda will be posted in advance on the EAC website: *https://www.eac.gov.*

Status

This hearing will be open to the public.

Amanda Joiner,

Associate Counsel, U.S. Election Assistance Commission.

[FR Doc. 2020–13720 Filed 6–22–20; 4:15 pm]

BILLING CODE P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–2069–000]

Wheatridge Wind Energy, 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 Wheatridge Wind Energy, 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 July 8, 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 may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: June 18, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–13630 Filed 6–23–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14227–003]

Nevada Hydro, Inc.; Notice of Intent To Prepare an Environmental Impact Statement and Soliciting Scoping Comments

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission (FERC or Commission) and is available for public inspection. Commission staff has determined that this project qualifies as a Major Infrastructure Project pursuant to the Memorandum of Understanding Implementing One Federal Decision under Executive Order 13807, effective April 10, 2018. Major Infrastructure Projects are defined as projects for which multiple authorizations by federal agencies will be required and the lead federal agency has determined that it will prepare an Environmental Impact Statement (EIS) under the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*

a. *Type of Application:* Major Unconstructed Project.

b. *Project No.:* P–14227–003.

c. *Date filed:* October 2, 2017.

d. *Applicant:* Nevada Hydro, Inc.

e. *Name of Project:* Lake Elsinore Advanced Pumped Storage (LEAPS) Project.

f. *Location:* On Lake Elsinore and San Juan Creek near the city of Lake Elsinore in Riverside and San Diego Counties, California. The project would occupy about 845 acres of federal land administered by the U.S. Forest Service.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Rexford Wait, Nevada Hydro Company, Inc., 2416 Cades Way Vista, California (760) 599–1815.

i. *FERC Contact:* Kyle Olcott at (202) 502–8963; email—*kyle.olcott@ferc.gov.*

j. *U.S. Forest Service Contact:* Scott Tangenberg at (858) 674–2983; email—*scott.tangenberg@usda.gov.*

k. With this notice, we are soliciting comments on Commission staff's Scoping Document 1 (SD1), issued June 18, 2020. Deadline for filing scoping comments: August 17, 2020.

The Commission strongly encourages electronic filing. Please file scoping comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, please send a paper copy to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. The first page of any filing should include docket number P–14227–003.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. This application is not ready for environmental analysis at this time.

m. The proposed project would consist of the following: (1) A new upper reservoir (Decker Canyon) having a 200-foot-high main dam and a gross storage volume of 5,750 acre-feet, at a normal reservoir surface elevation of 2,792 feet above mean sea level (msl); (2) a powerhouse with two reversible pump-turbine units with a total installed capacity of 500 megawatts; (3) the existing Lake Elsinore to be used as a lower reservoir; (4) about 32 miles of 500-kilovolt transmission line connecting the project to an existing transmission line owned by Southern California Edison located north of the proposed project and to an existing San Diego Gas & Electric Company transmission line located to the south.

n. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC Online Support.

o. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. Scoping Process

Commission staff intends to prepare an EIS on the project in accordance with the National Environmental Policy Act. The EIS will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed action. Due to restrictions on mass gatherings related to COVID–19, Commission staff is unable to conduct any on-site scoping meetings. Instead, we are soliciting written comments, recommendations, and information on SD1.

Copies of SD1 outlining the subject areas to be addressed in the EIS were distributed to the parties on the Commission's mailing list. Copies of SD1 may be viewed on the web at *http://www.ferc.gov* using the eLibrary link (see item n above). For assistance, call (866) 208–3676 or for TTY, (202) 502–8659.

Objectives

Commission staff requests written comments to assist us with our environmental analysis of the proposed project. These purpose of these written comments is to: (1) Obtain all available information, especially quantifiable data, on the resources at issue; (2) encourage statements from experts and the public on issues that should be analyzed in the EIS, including viewpoints in opposition to, or in support of, the staff's preliminary views; (3) determine the resource issues to be addressed in the EIS; and (4) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to submit written comments and to assist the staff in defining and clarifying the issues to be addressed in the EIS.

Following issuance of the final EIS, the cooperating agencies will issue subsequent decisions, determinations, permits, or authorizations for the project in accordance with each individual agency's regulatory requirements. As a cooperating agency under One Federal Decision,[1] the U.S. Department of Agriculture (USDA), Forest Service will adopt and use FERC's EIS to comply with the National Environmental Policy Act and consider: (1) The issuance of Special Use Authorizations; and (2) potential amendments to the 2005 Cleveland National Forest Land Management Plan (LMP). The responsible official for forest plan amendments is the Cleveland National Forest Supervisor. Accordingly, this notice also serves to provide information on the Forest Service's requirements and processes for the two actions listed above, including opportunities for public comment.

USDA Forest Service Requirements for Plan Amendments To Address Deviations From Plan Standards

When a proposed project is inconsistent with the applicable LMP components, the responsible official shall take one of the following steps, subject to valid existing rights: (1) Modify the proposed project or activity to make it consistent with the applicable plan components; (2) Reject the proposal or terminate the project or activity; (3) Amend the plan so that the project or activity will be consistent with the plan as amended; or (4) Amend the plan contemporaneously with the approval of the project or activity so that

[1] In accordance with Executive Order 13807 (*Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects*), the project EIS should include an adequate level of detail to inform agency decisions pursuant to their specific statutory authority and requirements and allow the Forest Service to issue project authorizations in a timely manner (Section 5(b)(iii)). The Forest Service will be a cooperating agency with FERC on the EIS.

the project or activity will be consistent with the plan as amended. This amendment may be limited to apply only to the project or activity.

Based on the information provided in the project proposal, the Cleveland National Forest anticipates that one or more project-specific plan amendments will be needed to ensure consistency with the LMP. An overview of the Forest Service's requirements for amending LMPs as well as additional information regarding the proposed project-specific amendments follow.

- There is a requirement for public input at various stages, starting with this notice initiating scoping. Specifically, the Forest Service is seeking public input on issues and planning rule requirements related to possible amendments to the Cleveland National Forest LMP.
- Project-specific amendment(s) are subject to the Forest Service's pre-decisional administrative review process (36 CFR part 218, subparts A and B [2]).
- The standard 45-day public comment period for project-specific amendment(s) (36 CFR 219.16 (a)(2)) would be combined with the Notice of Availability for the draft EIS—a minimum 45-day comment period is required on a draft EIS per the National Environmental Policy Act (40 CFR 1506.10 (c)). Forest Service regulations allow the combining of public notices (36 CFR 219.13(b)(2)).

Potential USDA Forest Service Project-Specific Plan Amendments

Due to uncertainties regarding the project design and potential environmental effects, the Forest Service is providing its best estimate of the potential plan components that would need to be amended. The responsible official is also required to include information about which substantive requirements of 36 CFR 219.8 through 219.11 are likely to be directly related to the amendment(s). Although the exact project-specific amendment(s) cannot yet be determined, Table 1 outlines the Forest Service's preliminary assessment of applicable LMP standards (that may need project-specific amendments) and the substantive requirements that may apply.

TABLE 1—FOREST SERVICE'S PRELIMINARY REVIEW OF APPLICABLE CLEVELAND LMP STANDARDS & POTENTIAL PROJECT-SPECIFIC AMENDMENTS

LMP standard	Substantive requirements 36 CFR 219.8 to 219.11 that may apply
Forest-Specific Design Criteria	
Cleveland National Forest Standard 5—Consolidate major transportation and utility corridors by co-locating facilities and/or expanding existing corridors.	36 CFR 219.10 (a)(2); 36 CFR 219.10(a)(3).
Aesthetic Management Standards and Recreation	
S9: Design management activities to meet the Scenic Integrity Objectives (SIOs) shown on the Scenic Integrity Objectives Map. *S10:* Scenic Integrity Objectives will be met with the following exceptions: Minor adjustments not to exceed a drop of one SIO level is allowable with the Forest Supervisor's approval; Temporary drops of more than one SIO level may be made during and immediately following project implementation providing they do not exceed three years in duration.	36 CFR 219.10(b)(1)(i).
Fish and Wildlife Standards	
S11: When occupied or suitable habitat for a threatened, endangered, proposed, candidate or sensitive (TEPCS) species is present on an ongoing or proposed project site, consider species guidance documents (see Appendix H) to develop project-specific or activity-specific design criteria. This guidance is intended to provide a range of possible conservation measures that may be selectively applied during site-specific planning to avoid, minimize or mitigate negative long-term effects on threatened, endangered, proposed, candidate or sensitive species and habitat. Involve appropriate resource specialists in the identification of relevant design criteria. Include review of species guidance documents in fire suppression or other emergency actions when and to the extent practicable. *S12:* When implementing new projects in areas that provide for threatened, endangered, proposed, and candidate species, use design criteria and conservation practices (see Appendix H) so that discretionary uses and facilities promote the conservation and recovery of these species and their habitats. Accept short-term impacts where long-term effects would provide a net benefit for the species and its habitat where needed to achieve multiple-use objectives. *S22:* Except where it may adversely affect threatened and endangered species, linear structures such as fences, major highways, utility corridors, bridge upgrades or replacements, and canals will be designed and built to allow for fish and wildlife movement. *S42:* Include provisions for raptor safety when issuing permits for new power lines and communication sites (see guidelines in Appendix G). Also implement these guidelines for existing permits within one year in identified high-use flyways of the California condor, and within five years in other high-use raptor flyways. Coordinate with California Department of Fish and Game, U.S. Fish & Wildlife Service, and power agencies to identify the high-use flyways.	36 CFR 219.9(a)(1); 36 CFR 219.9(a)(2).
Soil, Water, and Riparian Standards	
S45: All construction, reconstruction, operation and maintenance of tunnels on National Forest System lands shall use practices that minimize adverse effects on groundwater aquifers and their surface expressions.	36 CFR 219.8(a)(2)(ii–iv) and (a)(3)(i)(B, D, and E).

[2] 36 CFR 219.59(b) (Use of other administrative review processes).

TABLE 1—FOREST SERVICE'S PRELIMINARY REVIEW OF APPLICABLE CLEVELAND LMP STANDARDS & POTENTIAL PROJECT-SPECIFIC AMENDMENTS—Continued

LMP standard	Substantive requirements 36 CFR 219.8 to 219.11 that may apply
S47: When designing new projects in riparian areas, apply the Five-Step Project Screening Process for Riparian Conservation Areas as described in Appendix E—Five-Step Project Screening Process for Riparian Conservation Areas. *S49:* Require fish passage instream flows associated with dams and impoundments where fish passage will enhance or restore native or selected nonnative fish distribution and not cause adverse effects to other native species. *S58:* Evaluate geologic hazards and develop mitigations where risks to life, property or resources are identified when planning and implementing management activities.	36 CFR 219.9(a)(1); 36 CFR 219.9(a)(2); 36 CFR 219.10(a)(3).
Wild and Scenic River Standards	
S59: Manage eligible wild and scenic river segments to perpetuate their free-flowing condition and proposed classifications and protect and enhance their outstandingly remarkable values and water quality through the suitability study period and until designated or released from consideration. When management activities are proposed that may compromise the outstandingly remarkable value(s), potential classification, or free-flowing character of an eligible wild and scenic river segment, a suitability study will be completed for that eligible river segment prior to initiating activities.	36 CFR 219.10(b)(v).
Heritage, Cultural and Historic Standards	
S60: Until proper evaluation occurs, known heritage resource sites shall be afforded the same consideration and protection as those properties evaluated as eligible to the National Register of Historic Places. *S62:* Protect the access to and the use of sensitive traditional tribal use areas	36 CFR 219.10(a)(1); 36 CFR 219.10(b)(ii); 36 CFR 219.10(b)(iii).

USDA Forest Service Issuance of Special Use Authorizations

The issuance of any special use authorization(s) for this project would likely occur after FERC issues its final EIS. The issuance of a special use authorization is not subject to any additional administrative review process such as the Forest Service's post-decisional appeal process explained in 36 CFR part 214. This is because applicants do not hold any right to use National Forest System lands prior to being issued an authorization. The Forest Service retains the authority to deny authorizations based on violations of law or inconsistency with the Cleveland National Forest LMP (see generally 36 CFR part 219 Subpart B). The Forest Service cannot authorize a project that is inconsistent with the LMP as this would be a violation of the National Forest Management Act. Issuance of a special use authorization would be subject to the project complying with all applicable legal requirements and ensuring consistency with the Cleveland National Forest LMP.

Dated: June 18, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–13625 Filed 6–23–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–2060–000]

MPH Rock Away Speakers, 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 MPH Rock away Speakers, 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 July 8, 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 intervener 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 may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Corona virus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call

toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: June 18, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–13622 Filed 6–23–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–2027–000]

Cedar Springs Transmission, 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 Cedar Springs Transmission, 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 July 8, 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 may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: June 18, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–13617 Filed 6–23–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 8005–007]

Columbia Mills Hydroelectric Lp; Green River Renewables LLC; Notice of Transfer of Exemption

1. On May 6, 2020, Columbia Mills Hydroelectric Limited Partnership (a subsidiary of Gravity Renewables, Inc), exemptee for the Moomaws Dam Hydroelectric Project No. 8005, filed a letter notifying the Commission that the project was transferred from Gravity Renewables, Inc. to Green River Renewables LLC. The exemption from licensing was originally issued on June 21, 1984.[1] The project is located on the Maury River in Rockbridge County, Virginia. The transfer of an exemption does not require Commission approval.

2. Green River Renewables LLC is now the exemptee of the Moomaws Dam Hydroelectric Project No. 8005. All correspondence must be forwarded to: Mike Rickly P.E., Columbia Mills Hydroelectric, LLC, c/o Green River Renewables, LLC, 1700 Joyce Avenue, Columbus, OH 43219, Phone: (614) 299–9278, Email: *mike@rickly.com.*

[1] *Rockfish Corporation, Inc.,* 27 FERC ¶ 62,331 (1984). The project was transferred to Moomaws Dam Hydroelectric Corporation on April 29, 2010, and subsequently to Columbia Mills Hydroelectric Limited Partnership, a subsidiary of Gravity Renewables, Inc., on June 1, 2017.

Dated: June 17, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–13560 Filed 6–23–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–2070–000]

Wheatridge 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 Wheatridge 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 July 8, 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 may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to

view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: June 18, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–13619 Filed 6–23–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD20–14–000]

Carbon Pricing in Organized Wholesale Electricity Markets; Notice of Technical Conference

Take notice that the Federal Energy Regulatory Commission (Commission) will convene a Commissioner-led technical conference in the above-referenced proceeding on Wednesday, September 30, 2020 from approximately 9:00 a.m. to 5:00 p.m. Eastern time. The conference will be held either in-person—at the Commission's headquarters at 888 First Street NE, Washington, DC 20426 in the Commission Meeting Room (with a WebEx option available)—or electronically.

The purpose of this conference is to discuss considerations related to state adoption of mechanisms to price carbon dioxide emissions, commonly referred to as carbon pricing, in regions with Commission-jurisdictional organized wholesale electricity markets.

The conference will be open for the public to attend, and there is no fee for attendance. Supplemental notices will be issued prior to the conference with further details regarding the agenda, how to register to participate, and the format (including whether the technical conference will be held in-person or electronically). Information on this technical conference will also be posted on the Calendar of Events on the Commission's website, *www.ferc.gov,* prior to the event.

The conference will be transcribed. Transcripts will be available for a fee from Ace Reporting, (202) 347–3700.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov,* call toll-free (866) 208–3372 (voice) or (202) 208–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

For more information about this technical conference, please contact John Miller at *john.miller@ferc.gov.* For information related to logistics, please contact Sarah McKinley at *sarah.mckinley@ferc.gov* or (202) 502–8368.

Dated: June 17, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–13557 Filed 6–23–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–2064–000]

High Majestic Wind I, 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 High Majestic Wind I, 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 July 8, 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 may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: June 18, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–13626 Filed 6–23–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–478–000]

Eastern Shore Natural Gas Company; Notice of Request Under Blanket Authorization

Take notice that on June 10, 2020, Eastern Shore Natural Gas Company (Eastern Shore), 500 Energy Lane, Suite 200, Dover, Delaware 19901, filed in the above referenced docket a prior notice request pursuant to sections 157.205, 157.208, 157.210, and 157.216 of the Commission's regulations under the Natural Gas Act (NGA) and its blanket

certificate issued in Docket No. CP96–128–000. Eastern Shore requests authorization to abandon, relocate, construct, own, operate, and maintain an approximate 1.6-mile segment of two separate pipelines and appurtenances due to a Delaware Department of Transportation public road improvement project in New Castle County, Delaware (State Route 72 Relocate Project). Eastern Shore proposes to replace the existing 6- and 10-inch-diameter pipelines with two 16-inch-diameter pipelines to provide an additional 3,500 dekatherms per day of firm transportation service to Delaware City Refining Company, LLC. Eastern Shore estimates the cost of the project to be $12,551,652, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Any questions regarding this application should be directed to Richard Welsh, Manager, Engineering & Compliance, Eastern Shore Natural Gas Company, 500 Energy Lane, Suite 200, Dover, Delaware 19901, by telephone at (302) 363–7997, by fax at (302) 734–6745, or by email at *rwelsh@esng.com.*

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list and will be notified of any meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Dated: June 18, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–13615 Filed 6–23–20; 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 exempt wholesale generator filings:

Docket Numbers: EG20–192–000.
Applicants: SR Snipesville, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of SR Snipesville, LLC.
Filed Date: 6/18/20.
Accession Number: 20200618–5069.
Comments Due: 5 p.m. ET 7/9/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1437–011.
Applicants: Tampa Electric Company.
Description: Updated Market Power Analysis for the Southeast Region of Tampa Electric Company.
Filed Date: 6/18/20.
Accession Number: 20200618–5143.
Comments Due: 5 p.m. ET 8/17/20.

Docket Numbers: ER20–1833–001.
Applicants: GenOn Mid-Atlantic, LLC.
Description: Tariff Amendment: Change in Proposed Effective Date of Reactive Service Rate Schedule Revision to be effective 8/13/2020.
Filed Date: 6/17/20.
Accession Number: 20200617–5162.
Comments Due: 5 p.m. ET 7/8/20.

Docket Numbers: ER20–2082–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to ISA SA No. 3175; Queue No. AB2–001 RE: GSRP II (consent) to be effective 11/15/2016.
Filed Date: 6/17/20.
Accession Number: 20200617–5148.
Comments Due: 5 p.m. ET 7/8/20.

Docket Numbers: ER20–2083–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to WMPA No. 3203, W3–079, RE: GSRP I to GSRP II (consent) to be effective 4/7/2017.
Filed Date: 6/17/20.
Accession Number: 20200617–5155.
Comments Due: 5 p.m. ET 7/8/20.

Docket Numbers: ER20–2084–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to WMPAs SA No. 3257, Queue No. W4–057 RE: GSRP to GSRP II (consent) to be effective 10/28/2014.
Filed Date: 6/17/20.
Accession Number: 20200617–5158.

Comments Due: 5 p.m. ET 7/8/20.

Docket Numbers: ER20–2085–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to WMPAs No. 3276, Queue No. X1–012 RE: GSRP I to GSRP II (consent) to be effective 1/24/2017.

Filed Date: 6/17/20.

Accession Number: 20200617–5160.

Comments Due: 5 p.m. ET 7/8/20.

Docket Numbers: ER20–2086–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to WMPA, SA No. 3503; Queue No. X4–031 RE: GSRP I to GSRP II (consent) to be effective 8/25/2014.

Filed Date: 6/17/20.

Accession Number: 20200617–5161.

Comments Due: 5 p.m. ET 7/8/20.

Docket Numbers: ER20–2087–000.

Applicants: Gichi Noodin Wind Farm, LLC.

Description: Baseline eTariff Filing: Gichi Noodin Wind Farm LLC MBR Application Filing to be effective 8/1/2020.

Filed Date: 6/17/20.

Accession Number: 20200617–5163.

Comments Due: 5 p.m. ET 7/8/20.

Docket Numbers: ER20–2088–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: Amended LGIA Daggett Solar Power 3 LLC SA No. 225 to be effective 6/19/2020.

Filed Date: 6/18/20.

Accession Number: 20200618–5001.

Comments Due: 5 p.m. ET 7/9/20.

Docket Numbers: ER20–2089–000.

Applicants: Southwestern Public Service Company.

Description: § 205(d) Rate Filing: 2020–06–18_SPS–GSEC–DSEC–IA-Sub 26–718–SPS–0.0.0 to be effective 8/17/2020.

Filed Date: 6/18/20.

Accession Number: 20200618–5042.

Comments Due: 5 p.m. ET 7/9/20.

Docket Numbers: ER20–2090–000.

Applicants: New York Independent System Operator, Inc., Consolidated Edison Company of New York, Inc.

Description: § 205(d) Rate Filing: LGIA (SA2535) re: NYISO, Consolidated Edison, & NRG Berrians East Development to be effective 6/4/2020.

Filed Date: 6/18/20.

Accession Number: 20200618–5049.

Comments Due: 5 p.m. ET 7/9/20.

Docket Numbers: ER20–2091–000.

Applicants: Alabama Power Company.

Description: § 205(d) Rate Filing: CED Solar Development (Timberland Solar) Amended and Restated LGIA Filing to be effective 6/5/2020.

Filed Date: 6/18/20.

Accession Number: 20200618–5055.

Comments Due: 5 p.m. ET 7/9/20.

Docket Numbers: ER20–2092–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3672 City of Independence, MO/Evergy Metro Int Agr to be effective 8/17/2020.

Filed Date: 6/18/20.

Accession Number: 20200618–5065.

Comments Due: 5 p.m. ET 7/9/20.

Docket Numbers: ER20–2093–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3673 OPPD & Evergy Kansas Central Interconnection Agreement to be effective 8/17/2020.

Filed Date: 6/18/20.

Accession Number: 20200618–5070.

Comments Due: 5 p.m. ET 7/9/20.

Docket Numbers: ER20–2094–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3199R1 Evergy MO West/City of Liberal MO Interconnection Ag to be effective 8/17/2020.

Filed Date: 6/18/20.

Accession Number: 20200618–5073.

Comments Due: 5 p.m. ET 7/9/20.

Docket Numbers: ER20–2095–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to WMPA, SA No. 3202; Queue No. W3–077 (amend) to be effective 4/30/2014.

Filed Date: 6/18/20.

Accession Number: 20200618–5074.

Comments Due: 5 p.m. ET 7/9/20

Docket Numbers: ER20–2096–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3218R1 Evergy Metro & Evergy Missouri West Inter Agr to be effective 8/17/2020.

Filed Date: 6/18/20.

Accession Number: 20200618–5077.

Comments Due: 5 p.m. ET 7/9/20.

Docket Numbers: ER20–2097–000.

Applicants: American Transmission Systems, Incorporated, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: ATSI submits ECSA No. 5644 to be effective 8/17/2020.

Filed Date: 6/18/20.

Accession Number: 20200618–5096.

Comments Due: 5 p.m. ET 7/9/20.

Docket Numbers: ER20–2098–000.

Applicants: Titan Solar 1, LLC.

Description: Baseline eTariff Filing: baseline new to be effective 8/17/2020.

Filed Date: 6/18/20.

Accession Number: 20200618–5110.

Comments Due: 5 p.m. ET 7/9/20.

Docket Numbers: ER20–2099–000.

Applicants: American Transmission Systems, Incorporated, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: ATSI submits ECSA No. 5583 to be effective 8/17/2020.

Filed Date: 6/18/20.

Accession Number: 20200618–5112.

Comments Due: 5 p.m. ET 7/9/20.

Docket Numbers: ER20–2100–000.

Applicants: The Dayton Power and Light Company, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: DP&L submits Supplemental Filing to Application filed in ER20–1068–000 to be effective 5/3/2020.

Filed Date: 6/18/20.

Accession Number: 20200618–5132.

Comments Due: 5 p.m. ET 7/9/20.

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: June 18, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–13621 Filed 6–23–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM20–12–000]

Potential Enhancements to the Critical Infrastructure Protection Reliability Standards

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Inquiry.

SUMMARY: The Federal Energy Regulatory Commission (Commission)

seeks comment on certain potential enhancements to the currently-effective Critical Infrastructure Protection (CIP) Reliability Standards. In particular, the Commission seeks comment on whether the CIP Reliability Standards adequately address the following topics: (i) Cybersecurity risks pertaining to data security, (ii) detection of anomalies and events, and (iii) mitigation of cybersecurity events. In addition, the Commission seeks comment on the potential risk of a coordinated cyberattack on geographically distributed targets and whether Commission action including potential modifications to the CIP Reliability Standards would be appropriate to address such risk.

DATES: Initial Comments are due August 24, 2020, and Reply Comments are due September 22, 2020.

ADDRESSES: Comments, identified by docket number, may be filed in the following ways:

- Electronic Filing through *http://www.ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.
- *Mail/Hand Delivery:* Those unable to file electronically may mail or hand-deliver comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.
- *Instructions:* For detailed instructions on submitting comments, see the Comment Procedures Section of this document.

FOR FURTHER INFORMATION CONTACT:

Vincent Le (Technical Information), Office of Electric Reliability, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6204, *Vincent.Le@ferc.gov.*

Kevin Ryan (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–6840, *Kevin.Ryan@ferc.gov.*

SUPPLEMENTARY INFORMATION:

1. In this Notice of Inquiry (NOI), the Commission seeks comment on whether the currently-effective Critical Infrastructure Protection (CIP) Reliability Standards adequately address the following topics: (i) Cybersecurity risks pertaining to data security, (ii) detection of anomalies and events, and (iii) mitigation of cybersecurity events. In addition, the Commission seeks comment on the potential risk of a coordinated cyberattack on geographically distributed targets and whether Commission action, including potential modifications to the CIP Reliability Standards, would be appropriate to address such risk.

2. The Commission-approved CIP Reliability Standards are intended to provide a risk-based, defense in depth (*i.e.,* multiple, redundant ''defensive'' measures) approach to cybersecurity of the bulk electric system. Since the approval of the first mandatory CIP Reliability Standards in 2008, these standards have been modified on multiple occasions to address emerging issues and to improve the cybersecurity posture of the bulk electric system.[1] Yet, new cyber threats continue to evolve, and the Reliability Standards should keep pace to maintain a robust, defense in depth approach to electric grid cybersecurity.

3. With this in mind, Commission staff undertook a review of the National Institute of Standards and Technology (NIST) Cyber Security Framework (NIST Framework), which sets forth a comprehensive, repeatable structure to guide cybersecurity activities and to consider cybersecurity risks as part of an organization's risk management processes of its critical infrastructure.[2] Commission staff compared the content of the NIST Framework with the substance of the CIP Reliability Standards, and identified certain topics addressed in the NIST Framework that may not be adequately addressed in the CIP Reliability Standards. Commission staff further analyzed whether the identified topics are within the scope of the CIP Reliability Standards.[3] Commission staff then studied whether the potential ''gaps'' that are within the scope of the CIP Reliability Standards presented a significant risk to bulk electric system reliability. Based on this analysis, Commission staff identified the three NIST Framework categories that are the subject of this NOI: (i) Cybersecurity risks pertaining to data security, (ii) detection of anomalies and events, and (iii) mitigation of cybersecurity events.

4. In addition, the Commission seeks comment on the risk of a coordinated cyberattack on the bulk electric system and potential Commission action to address such risk. In general, bulk electric system planning is based on the ability to withstand a system's single largest contingency, known as an N–1 event. The Commission has questioned whether greater defense in depth is warranted to better protect the bulk electric system from a coordinated attack on multiple BES Cyber Assets.[4] The risk of such a coordinated attack may be exacerbated by the recent shift from larger, centralized generation resources to smaller, more geographically distributed generation resources. The Commission seeks comment on the need to address the risk of a coordinated cyberattack on the bulk electric system, as well as potential approaches to address the matter, such as voluntary or mandatory participation in grid exercises, other types of training to prepare for a coordinated attack, and modifications to the current applicability thresholds in Reliability Standard CIP–002–5.1a that would subject additional facilities to the CIP controls that apply to medium and/or high impact BES Cyber Assets.[5]

[1] *See, e.g., Version 5 Critical Infrastructure Protection Reliability Standards,* Order No. 791, 78 FR 72,755 (Dec. 3, 2013), 145 FERC ¶ 61,160 (2013), *order on clarification and reh'g,* Order No. 791–A, 146 FERC ¶ 61,188 (2014); *Revised Critical Infrastructure Protection Reliability Standards,* Order No. 822, 154 FERC ¶ 61,037, *reh'g denied,* Order No. 822–A, 156 FERC ¶ 61,052 (2016); *Revised Critical Infrastructure Protection Reliability Standard CIP–003–7—Cyber Security—Security Management Controls,* Order No. 843, 163 FERC ¶ 61,032 (2018).

[2] NIST, Framework for Improving Critical Infrastructure Cybersecurity Version 1.1, Executive Summary at v, *https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.04162018.pdf.*

[3] The NIST Framework provisions that pertain to business organization activity were not considered appropriate to address in the CIP Reliability Standards. For example, the NIST Framework provisions that pertain to the Governance Category (ID.GV) were not considered appropriate to be addressed in the CIP Reliability Standards since they address the policies, procedures, and processes to manage and monitor the organization's regulatory, legal, risk, environmental, and operational requirements that inform the management of cybersecurity risk.

[4] *Mandatory Reliability Standards for Critical Infrastructure Protection,* Order No. 706, 122 FERC ¶ 61,040, at P 256, *order on reh'g,* Order No. 706–A, 123 FERC ¶ 61,174 (2008), *order on clarification,* Order No, 706–B, 126 FERC ¶ 61,229, *order on clarification,* Order No. 706–C, 127 FERC ¶ 61,273 (2009). NERC defines BES Cyber Asset as a ''Cyber Asset that if rendered unavailable, degraded, or misused would, within 15 minutes of its required operation, misoperation, or non-operation, adversely impact one or more Facilities, systems, or equipment, which, if destroyed, degraded, or otherwise rendered unavailable when needed, would affect the reliable operation of the Bulk Electric System.'' Glossary of Terms Used in NERC Reliability Standards, *http://www.nerc.com/files/glossary_of_terms.pdf.*

[5] Reliability Standard CIP–002–5.1a (Bulk Electric System Cyber System Categorization) requires a registered entity to categorize its cyber systems in terms of low, medium, and high impact to the grid. These impact ratings determine which requirements in NERC Reliability Standards CIP–004 though CIP–013 apply to BES Cyber Systems. Attachment 1 of the Reliability Standards, ''Impact Rating Criteria,'' identifies the criteria for identifying cyber systems as low, medium or high impact. For example, a control center used to perform the functions of a balancing authority for generation equal to or greater than an aggregate of 3,000 megawatts (MW) in a single interconnection is designated a high impact asset. A control center that performs the operations of a generator operator for an aggregate highest rated net real power equal to or exceeding

Continued

I. Background

A. CIP Reliability Standards

5. In January 2008, the Commission issued Order No. 706, which approved the first set of mandatory CIP Reliability Standards addressing cybersecurity. In Order No. 706, the Commission stated *inter alia* that NERC should look to NIST as a source for improving the CIP Reliability Standards. The Commission also indicated that it may address the appropriateness of adopting NIST cybersecurity standards in the CIP Reliability Standards in a future proceeding:

> The Commission continues to believe—and is further persuaded by the comments—that NERC should monitor the development and implementation of the NIST standards to determine if they contain provisions that will protect the Bulk-Power System better than the CIP Reliability Standards. . . . Consistent with the CIP NOPR, any provisions that will better protect the Bulk-Power System should be addressed in NERC's Reliability Standards development process. The Commission may revisit this issue in future proceedings as part of an evaluation of existing Reliability Standards or the need for new CIP Reliability Standards, ...[6]

Moreover, although Order No. 706 did not directly address the issue of a potential coordinated attack on cyber assets, the Commission did express concern that focus on the N–1 planning principle may not be appropriate in the context of a cybersecurity because an attacker may simultaneously attack multiple assets. In particular, the Commission observed:

> While the N minus 1 criterion may be appropriate in transmission planning, use of an N minus 1 criterion for the risk-based assessment in CIP–002–1 would result in the nonsensical result that no substations or generating plants need to be protected from cyber events. A cyber attack can strike multiple assets simultaneously, and a cyber attack can cause damage to an asset for such a time period that other asset outages may occur before the damaged asset can be returned to service. Thus, the fact that the system was developed to withstand the loss of any single asset should not be the basis for not protecting that asset.[7]

6. NIST has continued to serve as an important source for the improvement of the CIP Reliability Standards. For example, in 2013, the Commission issued Order No. 791, which approved the CIP Version 5 Standards.[8] The CIP Version 5 Standards adapted a new approach to identifying BES Cyber Assets subject to the CIP Standards, categorizing such assets as of low, medium and high impact. NERC explained that it developed this tiered approach based on a review of NIST cyber security standards.[9]

B. The NIST Framework

7. The NIST Framework was developed in response to Executive Order 13,636 ''Improving Critical Infrastructure Cybersecurity,'' issued on February 12, 2013.[10] The NIST Framework version 1.0 was released in February 2014 and revised version 1.1 was released in April 2018. Executive Order 13,636 stated that the NIST Framework was designed to ''reduce cyber risks to critical infrastructure[,] . . . [and] shall include a set of standards, methodologies, procedures, and processes that align policy, business, and technological approaches to address cyber risks[,] . . . [and] incorporate voluntary consensus standards and industry best practices to the fullest extent possible.'' [11]

8. The NIST Framework consists of five Functions that each provide a high-level, strategic view of one part of an organization's cybersecurity risk management. The five Functions are:

- Identify—Develop the organizational understanding to manage cybersecurity risk to systems, assets, data, and capabilities;
- Protect—Develop and implement appropriate safeguards to ensure delivery of critical services;
- Detect—Develop and implement appropriate activities to identify the occurrence of a cybersecurity event;
- Respond—Develop and implement the appropriate activities to take action regarding a detected cybersecurity event; and
- Recover—Develop and implement appropriate activities to maintain plans for resilience and to restore any capabilities or services that were impaired due to a cybersecurity event.

9. Each of the five Functions is composed of Categories and Subcategories, with the five Functions having a total of 23 Categories and 108 Subcategories. Categories are defined as cybersecurity outcomes closely tied to programmatic needs and activities. The 23 Categories that are organized within the five Functions, are as follows: (1) Identify Function (Asset Management, Business Environment, Governance, Risk Assessment, Risk Management Strategy, and Supply Chain Risk Management); (2) Protect Function (Identity Management and Access Control, Awareness and Training, Data Security, Information Protection Process and Procedures, Maintenance, and Protective Technology); (3) Detect Function (Anomalies and Events, Security Continuous Monitoring, and Detection Process); (4) Respond Function (Response Planning, Communications, Analysis, Mitigation, and Improvements); and (5) Recover Function (Recovery Planning, Improvements, and Communications).

II. Discussion

A. The NIST Framework

1. Analysis

10. Based on a comparison of the NIST Framework and CIP Reliability Standards, Commission staff identified three NIST Framework Categories that may not be adequately addressed in the CIP Reliability Standards, and thus could reflect potential reliability gaps: (i) Cybersecurity risks pertaining to data security, (ii) detection of anomalies and events, and (iii) mitigation of cybersecurity events.

a. Data Security Category

11. The NIST Framework Data Security Category (PR.DS) specifies activities to manage information and records (*i.e.,* data) consistent with an organization's risk strategy to protect the confidentiality, integrity, and availability of information and data. The Data Security Category identifies internal controls in eight Subcategories to require that: (1) Data at rest is protected (PR.DS–1); (2) data in transit is protected (PR.DS–2); (3) assets are formally managed throughout removal, transfer, and disposition (PR.DS–3); (4) adequate capacity to ensure availability is maintained (PR.DS–4); (5) protections against data leaks are implemented (PR.DS–5); (6) integrity checking mechanisms are used to verify software, firmware, and information integrity (PR.DS–6); (7) the development and testing environment(s) are separate from the production environment (PR.DS–7); and (8) integrity checking mechanisms

1,500 MW in a single interconnection is designated as a medium impact asset.

[6] Order No. 706, 122 FERC ¶ 61,040 at P 233.

[7] *Id.* P 256.

[8] *Version 5 Critical Infrastructure Protection Reliability Standards,* Order No. 791, 145 FERC ¶ 61,160 (2013), *order on clarification and reh'g,* Order No. 791–A, 146 FERC ¶ 61,188 (2014).

[9] *See* Order No. 791, 145 FERC ¶ 61,160 at P 14. On August 26, 2019, the U.S. Government Accountability Office (GAO) submitted a report to Congress that addressed the completeness of the CIP Reliability Standards in comparison to the subject matter addressed in the NIST Framework as well as the risks to the electric grid from a coordinated cyberattack. GAO, *Critical Infrastructure Protection: Actions Needed to Address Significant Cybersecurity Risks Facing the Electric Grid* (Aug. 2019), *https://www.gao.gov/assets/710/701079.pdf.*

[10] Exec. Order No. 13,636, 78 FR 11737 (Feb. 19, 2013).

[11] *Id.* at 11741.

are used to verify hardware integrity (PR.DS–8).[12]

12. Commission staff analysis indicates that two NIST Data Security Subcategories may not be adequately addressed in the CIP Reliability Standards. First, the Subcategory requiring adequate capacity to ensure availability is maintained (PR.DS–4) does not appear to be addressed in Reliability Standard CIP–011–2 (Information Protection) or Reliability Standard CIP–012–1 (Communications between Control Centers), which addresses real-time assessment and real-time monitoring data while being transmitted between any applicable control center. Reliability Standard CIP–011–2 addresses the confidentiality and integrity of medium and high impact BES Cyber System information, but it does not address availability of information and does not apply to low impact BES Cyber Systems. Reliability Standard CIP–012–1, which has not yet gone into effect, augments the data protection controls in the CIP Reliability Standard, but it is limited to real-time assessment and monitoring data transmitted between control centers.[13] The loss of BES Cyber System information availability could result in a loss of the ability to accurately maintain or restore the bulk electric system, which could affect reliability.

13. In addition, while integrity checking mechanisms to verify software, firmware, and information integrity (PR.DS–6) are partially addressed by Reliability Standard CIP–013–1 (Supply Chain Risk Management), the requirements do not apply to low impact BES Cyber Systems, nor do they apply to information, such as a digital manual provided with a software tool, for low, medium, or high impact BES Cyber Systems. Not verifying software, firmware, and information integrity may allow a malicious actor to bypass existing security controls without detection.

14. In sum, the absence of CIP Reliability Standard requirements corresponding to Subcategories PR.DS–4 and PR–DS–6 in the NIST Framework could represent a potential gap in the CIP Reliability Standards.

b. Anomalies and Events Category

15. The NIST Framework Anomalies and Events Category (DE.AE) identifies security controls to detect anomalous activity and understand the potential impact of events. Specifically, the Anomalies and Events Category identifies internal controls in five Subcategories to require that: (1) A baseline of network operations and expected data flows for users and systems is established and managed (DE.AE–1); (2) detected events are analyzed to understand attack targets and methods (DE.AE–2); (3) event data are aggregated and correlated from multiple sources and sensors (DE.AE–3); (4) the impact of events is determined (DE.AE–4); and (5) incident alert thresholds are established (DE.AE–5).[14]

16. Reliability Standard CIP–008–5 (Incident Reporting and Response Planning) specifies incident response requirements to mitigate the risk to the reliable operation of the bulk electric system resulting from a cyber security incident.[15] This includes a requirement that applicable entities have a process to ''identify, classify, and respond to Cyber Security Incidents,'' which corresponds to Subcategories DE.AE–2 and DE.AE–4.[16] However, Reliability Standard CIP–008–5 is only applicable to medium and high impact BES Cyber Systems. Accordingly, there is no requirement, similar to Subcategories DE.AE–2 and DE.AE–4, for low impact BES Cyber Systems. If a low impact BES Cyber System is compromised and an analysis is not performed, the compromised low impact BES Cyber System can potentially be used to gain access to other BES Cyber Systems, including medium and high impact BES Cyber Systems.

c. Mitigation Category

17. The NIST Framework Mitigation Category (RS.MI) specifies activities to prevent the expansion of a cybersecurity event, mitigate any effects and resolve the incident. The Mitigation Category identifies internal controls in three Subcategories to require that: (1) Incidents are contained (RS.MI–1); (2) incidents are mitigated (RS.MI–2); and (3) newly identified vulnerabilities are mitigated or documented as accepted risks (RS.MI–3).[17]

18. Reliability Standard CIP–008–5 requires responsible entities to document their cybersecurity incident response plans and provide evidence of incident response processes or procedures that address incident handling. However, Reliability Standard CIP–008–5 does not specifically require incident containment or mitigation as discussed in Subcategories RS.MI–1 and RS.MI–2.[18] In addition, Reliability Standard CIP–008–5 does not apply to low impact BES Cyber Systems. Similarly, while Reliability Standard CIP–010–2 (Configuration Management and Vulnerability Assessments) addresses the need to mitigate newly identified vulnerabilities for medium and high impact BES Cyber Systems consistent with Subcategory RS.MI–3, it does not apply to low impact BES Cyber Systems. As noted above, without proper containment and mitigation, the compromise of a low impact BES Cyber System can potentially be used as a launching point to gain access to other BES Cyber Systems, including medium and high impact BES Cyber Systems.

2. Request for Comments

19. The Commission seeks comment on whether the currently effective CIP Reliability Standards adequately address aspects of the NIST Framework that support bulk electric system reliability and associated operational technology (*i.e.,* industrial control systems), as well as current and projected cybersecurity risks. As discussed above, there may be subcategories in the NIST Framework that are not adequately addressed in the CIP Reliability Standards, or addressed only with regard to medium and high impact BES Cyber Assets but not low impact BES Cyber Assets. While differences between the CIP Reliability Standards and the NIST Framework are to be expected, the Commission seeks comment on whether the differences identified herein reflect potential reliability gaps in the CIP Reliability Standards that should be addressed.

20. Below, we pose questions that commenters should address in their submissions. However, commenters need not address every topic or answer every question identified below.

A1. The security controls in the Data Security Category require the management of information and records (*i.e.,* data) consistent with an organization's risk strategy to protect the confidentiality, integrity, and availability of information and data. The Commission seeks comment on whether the CIP Reliability Standards adequately address

[12] *See* NIST Cybersecurity Framework at 32–33.

[13] In Order No. 866, the Commission approved Reliability Standard CIP–012–1 and also directed NERC to modify the Reliability Standard to require protections regarding the availability of links and data communicated between control centers. *Critical Infrastructure Protection Reliability Standard CIP–012–1—Cyber Security—Communications Between Control Centers,* Order No. 866, 170 FERC ¶ 61,031 (2020).

[14] *See* NIST Cybersecurity Framework at 37–38.

[15] Reliability Standard CIP–008–6, which becomes effective on January 1, 2021, expands the current version's scope to include Electronic Access Control or Monitoring Systems and suspicious activity, but it does not include low impact BES Cyber Systems.

[16] Reliability Standard CIP–008–5, Requirement R1.1.

[17] *See* NIST Cybersecurity Framework at 42–43.

[18] Reliability Standard CIP–008–6 also does not specifically address incident containment or mitigation.

each data security subcategory as outlined in the NIST Framework and, if not, what are possible solutions, and in particular:

• Do the CIP Reliability Standards adequately address Data Security Subcategories PR.DS–4 and PR.DS–6 for medium and high impact BES Cyber Systems, and if so how?

• Do the CIP Reliability Standards adequately address the same Subcategories for low impact BES Cyber Systems, and if so how?

• If the CIP Reliability Standards do not adequately address these Subcategories, or any other Data Security Subcategories, for either low, medium or high impact BES Cyber Systems, explain whether this poses a risk to the reliable operation of the Bulk-Power System today and the Bulk-Power System of the near future.

A2. The security controls in the Anomalies and Events Category require that anomalous activity is detected and the potential impact of events is understood. Furthermore, it requires that detected events are analyzed to understand attack targets and methods. The Commission seeks comment on whether the CIP Reliability Standards adequately address the detection and mitigation of anomalous activity as outlined in the NIST Framework and, if not, what are possible solutions, and in particular:

• Should low impact BES Cyber Systems be covered by Anomalies and Events Subcategories DE.AE–2 and DE.AE–4?

• Do the CIP Reliability Standards adequately address Anomalies and Events Subcategories DE.AE–2 and DE.AE–4 for low impact BES Cyber Systems, and if so how?

• If the CIP Reliability Standards do not adequately address these Subcategories for low impact BES Cyber Systems, explain whether this poses a risk to the reliable operation of the Bulk-Power System today and the Bulk-Power System of the near future.

• If the CIP Reliability Standards do not adequately address any other Anomalies and Events Subcategories, for either low, medium or high impact BES Cyber Systems, explain whether this poses a risk to the reliable operation of the Bulk-Power System today and the Bulk-Power System of the near future.

A3. The security controls in the Mitigation Category require that newly identified vulnerabilities are mitigated or, alternatively, documented as accepted risks. Response activities are performed to prevent expansion of an event, mitigate its effects, and resolve the incident. The Commission seeks comment on whether the CIP Reliability Standards adequately address the mitigation of newly identified vulnerabilities as outlined in the NIST Framework and, if not, what are possible solutions, and in particular:

• Do the CIP Reliability Standards adequately address Mitigation Subcategories RS.MI–1 and RS.MI–2 for low, medium and high impact BES Cyber Systems, and if so how?

• Do the CIP Reliability Standards adequately address Mitigation Subcategory RS.MI–3 for low impact BES Cyber Systems, and if so how?

• If the CIP Reliability Standards do not adequately address these Subcategories for low, medium or high impact BES Cyber Systems, explain whether this poses a risk to the reliable operation of the Bulk-Power System today and the Bulk-Power System of the near future.

B. Coordinated Cyberattack Assessment

1. Analysis

21. As discussed below, this NOI seeks comment on the risk of a coordinated cyberattack on the bulk electric system and the potential need for Commission action to address such risk.

22. Since the Commission approved the first mandatory CIP Reliability Standards in 2008, the generation resource mix has shifted away from larger, centralized generation resources to the expanding integration of smaller, geographically distributed generation resources. Accordingly, an increasing number of generation resources are categorized as low impact BES Cyber Systems, because they do not meet the thresholds in Reliability Standard CIP–002–5.1a for medium or high impact BES Cyber Systems, and therefore are not required to comply with the full suite of CIP Reliability Standards.[19]

23. In 2008, when the CIP Reliability Standards first became effective, it might have been more effective to focus cybersecurity protections on larger generation plants than smaller plants. However, given the shift to smaller generation resources, it is worth examining whether a sophisticated threat actor could initiate a coordinated cyberattack targeting geographically distributed generation resources, posing an unacceptable risk to bulk electric system reliability. Such a coordinated cyberattack would present itself as a ''common mode failure,'' which could be similar in risk to a wide-scale disruption to fuel supplies, such as an attack on a natural gas pipeline.

24. Recent publicly available studies and reports have assessed the potential reliability impacts of a coordinated cyberattack on geographically distributed targets. These sources evaluated the impact to the power grid from simultaneous or near simultaneous loss of geographically distributed electrical facilities that could result in widespread loss of electrical services, including long-duration, large-scale disturbances. The following three reports highlight the potential risks to Bulk-Power System reliability.

25. First, the NERC's 2019 Supply Chain Risk Assessment, based on information obtained through a mandatory data request to industry, concludes that a coordinated cyberattack ''could greatly affect [bulk electric system] reliability beyond the local area.'' [20] The Supply Chain Risk Assessment examined the nature and complexity of cybersecurity supply chain risks, including those associated with low impact assets, and it found that:

> While [low impact] locations represent a small percentage of all transmission stations and substation locations, the combined effect of a coordinated cyberattack on multiple locations could affect BES reliability beyond the local area. The analysis of third-party electronic access to generation resource locations is even more concerning. More than 50% of all low impact locations of generation resources allow third-party electronic access. As with transmission stations and substations, the combined effect of a coordinated cyberattack could greatly affect BES reliability beyond the local area.

Based on this assessment, NERC staff recommended that the Supply Chain Reliability Standards should be modified to include low impact BES Cyber Systems with remote electronic access connectivity.[21]

26. Second, on September 4, 2019, NERC published a Lessons Learned document regarding a denial-of-service attack against multiple remote generation sites whose BES Cyber Systems are categorized as low impact. The document explained that a known vulnerability in the web interface of a vendor's firewall was exploited, allowing an unauthenticated attacker to cause unexpected reboots of the devices. The reboots resulted in a denial of service condition at a low impact control center and multiple remote low impact generation sites. This resulted in brief communications outages (*i.e.,* less than five minutes) between field devices at the generation sites, as well as between the generation sites and the control center. Although the cyberattack did not cause a disturbance, it met the definition of a coordinated cyberattack,

[19] Reliability Standard CIP–002–5.1a (Cyber Security—BES Cyber System Categorization), Attachment 1 (Impact Rating Criteria).

[20] *See* NERC, Supply Chain Risk Assessment: Analysis of Data Collected under the NERC Rules of Procedure Section 1600 Data Request, at vi (Dec. 9, 2019) *https://www.nerc.com/pa/comp/SupplyChainRiskMitigationProgramDL/SupplyChainRiskAssesmentReport.pdf.*

[21] *Id.* The NERC Board of Trustees adopted an alternative proposal to initiate a project to modify Reliability Standard CIP–003–8 to include policies for low impact BES Cyber Systems for malicious communications and vendor remote access, while continuing to evaluate the effectiveness and sufficiency of the supply chain risk management Reliability Standards. NERC, Resolution for Agenda Item 8.d: Supply Chain Recommendations (February 6, 2020), *https://www.nerc.com/gov/bot/Agenda%20highlights%20and%20Mintues%202013/Approved_Resolution_%20Supply%20Chain%20Follow%20Up%20(2-6-2020).pdf.*

and it is possible that this was the first coordinated cyberattack on the Bulk-Power System. The document recommended that ''[e]ven in cases involving low-Impact BES assets, an entity should strive for good cyber security policies and procedures'' by considering adopting security controls for low impact BES Cyber Assets above those required under the CIP Reliability Standards.[22]

27. Finally, on January 29, 2019, the United States Office of the Director of National Intelligence (ODNI) reported to the United States Senate Select Committee on Intelligence concerning potential nation state risks.[23] Specifically, the ODNI reported that:

Russia has the ability to execute cyber attacks in the United States that generate localized, temporary disruptive effects on critical infrastructure—such as disrupting an electrical distribution network for at least a few hours—similar to those demonstrated in Ukraine in 2015 and 2016. Moscow is mapping our critical infrastructure with the long-term goal of being able to cause substantial damage.[24]

28. In addition, ODNI reported that, ''China has the ability to launch cyber attacks that cause localized, temporary disruptive effects on critical infrastructure—such as disruption of a natural gas pipeline for days to weeks—in the United States.'' [25] ODNI concluded that our nation state adversaries and strategic competitors will increasingly use cyber capabilities to, among other things, disrupt critical infrastructure.

29. The loss of power supply to an Interconnection can and has caused instability, uncontrolled separation, and cascading failures. Unreliable operations can be caused by either near simultaneous or sequential loss of facilities, which cause thermal, voltage, and/or stability limits to be violated. Simultaneous or near simultaneous loss of multiple facilities under 1,500 MW can cause these effects, which has been demonstrated historically [26] and through simulations.[27] The loss of even a single facility can cause thermal overloads on parallel facilities. Combined or sequential losses can trigger safety systems such as underfrequency load shedding relays to operate across the Interconnection which, in turn, could lead to instability and cascading outages. Based on the review of publicly available information discussed above, it is possible that such incidents could be caused by a coordinated cyberattack on geographically distributed targets.

2. Request for Comments

30. The Commission seeks comment on the potential risk of a coordinated cyberattack on geographically distributed targets and whether modifications to the CIP Reliability Standards, including potential modifications to the current MW thresholds, would be appropriate to address such risks. In particular, the Commission seeks comment regarding the procedures and security controls that are currently employed to protect against the potential risk of a geographically distributed coordinated cyberattack and whether modifications to the CIP Reliability Standards would be appropriate to address such risks.

B1. Are there operating processes and procedures that can be used to evaluate, mitigate, protect against, and recover from potential geographically distributed coordinated cyberattacks? Describe generally the efficiency and effectiveness of these operating processes and procedures, including response to and recovery from a potential geographically distributed coordinated cyberattack.

B2. Are there security controls that can be used to evaluate, mitigate, and protect against potential geographically distributed coordinated cyberattacks? Describe generally the efficiency and effectiveness of these security controls in mitigating the risk of a potential geographically distributed coordinated cyberattack.

B3. Which, if any, of these processes, procedures, or security controls could enhance the currently approved CIP Reliability Standards to better address the risk of a geographically distributed coordinated cyberattack?

B4. What future changes to the bulk electric system design could affect the potential risks of geographically distributed coordinated cyberattacks?

B5. Are current regional drill exercises and operator training effective in preparing to mitigate and recover from a geographically distributed coordinated cyberattack?

- Does current initial system operator training, or refresher training, either in class or in EMS simulation, include training to recognize and respond to a coordinated cyberattack, and should that training be required?
- Do system operators and their leadership participate, and if so, how often, in regional drills and training exercises that simulate coordinated cyberattacks on the Bulk Electric System, and should participation in such exercises be required?
- Do system operators and their leadership participate, and if so, how often, in regional drills and training exercises that simulate coordinated cyberattacks on other critical infrastructure in addition to the bulk electric system (*i.e.,* communication systems, pipelines, water systems, etc.), and should participation in such exercises be mandatory?
- Discuss whether any aspects of drill exercises or operating training pertaining to mitigation and recover from a geographically distributed coordinated cyberattack should be incorporated into the Reliability Standards. In particular, while some entities may voluntarily engage in drill exercises or training, should this be required of all entities, or specific functional categories? Should participation of specific personnel categories or leadership be required?

B6. Describe the effectiveness of industry information sharing at mitigating potential geographically distributed coordinated cyberattacks?

B7. Discuss whether the thresholds established in Reliability Standard CIP–002–5.1a, Attachment 1, Section 2 are appropriate to address the risk of a geographically distributed coordinated cyberattack.

- If not, what would be appropriate method or approach to identify thresholds to address the risk.
- Alternatively, what additional security controls, if implemented, would be appropriate to address the risk?

III. Comment Procedures

31. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due August 24, 2020, and Reply Comments are due September 22, 2020. Comments must refer to Docket No. RM20–12–000, and must include the commenter's name, the organization they represent, if applicable, and their address.

32. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's website at *http://www.ferc.gov.* The Commission accepts most standard word-processing formats. Documents created electronically using word-processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

33. Commenters that are not able to file comments electronically must send an original of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

34. All comments will be placed in the Commission's public files and may

[22] NERC, Lesson Learned Risks Posed by Firewall Firmware Vulnerabilities, at 2–3 (Sept. 4, 2019).

[23] ODNI, Worldwide Threat Assessment of the US Intelligence Community (Jan. 29, 2019), *https://www.dni.gov/files/ODNI/documents/2019-ATA-SFR-SSCI.pdf.*

[24] *Id.* at 5.

[25] *Id.* at 6.

[26] *See generally* U.S.-Canada Power System Outage Task Force, Final Report on the August 14 Blackout in the United States and Canada: Causes and Recommendations (April 2004), *http://www.ferc.gov/cust-protect/moi/blackout.asp.*

[27] *See, e.g.,* NERC, Frequency Response Initiative Report: The Reliability Impact of Frequency Response (October 30, 2012).

be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

IV. Document Availability

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

36. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

37. User assistance is available for eLibrary and the Commission's website during normal business hours from the Commission's Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

By direction of the Commission.

Issued: June 18, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–13618 Filed 6–23–20; 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: PR20–65–000.

Applicants: American Midstream (SIGCO Intrastate), LLC.

Description: Tariff filing per 284.123(e)+(g)/: American Midstream (SIGCO Intrastate), LLC Cancellation of SOC to be effective 6/17/2020.

Filed Date: 6/17/2020.

Accession Number: 202006175090.

Comments Due: 5 p.m. ET 7/8/2020.

284.123(g) Protests Due: 5 p.m. ET 8/17/2020.

Docket Number: PR20–66–000.

Applicants: Pacific Gas and Electric Company.

Description: Tariff filing per 284.123(b),(e)+(g): Revisions to Appendix A of Statement of Operating Conditions 2020 to be effective 10/1/2019.

Filed Date: 6/17/2020.

Accession Number: 202006175123.

Comments Due: 5 p.m. ET 7/8/2020.

284.123(g) Protests Due: 5 p.m. ET 8/17/2020.

Docket Number: PR20–58–001.

Applicants: Black Hills/Kansas Gas Utility Company, LLC.

Description: Tariff filing per 284.123(b), (e)/: Substitute Statement of Operating Conditions to be effective 4/16/2020.

Filed Date: 6/17/2020.

Accession Number: 202006175034.

Comments/Protests Due: 5 p.m. ET 7/1/2020.

Docket Number: PR20–32–000.

Applicants: Columbia Gas of Ohio, Inc.

Description: Pre-Arranged/Pre-Agreed (Stipulation and Agreement) Filing of Columbia Gas of Ohio, Inc. under PR20–32.

Filed Date: 6/12/2020.

Accession Number: 202006125260.

Comments/Protests Due: 5 p.m. ET 6/26/2020.

Docket Numbers: RP20–957–000.

Applicants: Golden Pass LNG Terminal LLC.

Description: Petition for Limited Waiver of Golden Pass LNG Terminal LLC under RP20–957.

Filed Date: 6/17/20.

Accession Number: 20200617–5060.

Comments Due: 5 p.m. ET 6/29/20.

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: June 18, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–13629 Filed 6–23–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–480–000]

Dominion Energy Transmission, Inc.; Notice of Request Under Blanket Authorization

Take notice that on June 12, 2020, Dominion Energy Transmission, Inc. (DETI), 120 Tredgar Street, Richmond, Virginia 23219, filed a prior notice application pursuant to sections 157.205, 157.208(c), and 157.210 of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act (NGA), and DETI's blanket certificate issued in Docket No. CP82–537–000. DETI proposes to provide an additional 10,000 dekatherms per day of firm transportation capacity on its system from primary receipt at the Leidy Interconnection located in Clinton County, Pennsylvania to primary delivery at the interconnection with Iroquois Gas Transmission System, LP at Canajoharie in Montgomery, New York. DETI states that lowering the ambient temperatures during winter months utilized in its hydraulic flow model will enable DETI to offer additional available capacity utilizing existing horsepower at four existing compressor stations, all as more fully set forth in the application, which is open to the public for inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should be directed to Matthew R. Bley, Director, Gas Transmission Certificates, Dominion Energy Services, Inc, 707 East Main Street—20th Floor, Richmond, Virginia 23219, or phone (866) 319–3382, or by email *Matthew.R.Bley@DominionEnergy.com.*

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR

385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenter will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Dated: June 18, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–13627 Filed 6–23–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP15–554–000; CP15–554–001; CP15–555–000]

Atlantic Coast Pipeline, LLC; Dominion Energy Transmission, Inc.; Notice of Request for Extension of Time

Take notice that on June 16, 2020, Atlantic Coast Pipeline, LLC (Atlantic) and Dominion Energy Transmission, Inc.(DETI) (collectively, applicants) requested that the Federal Energy Regulatory Commission (Commission) grant an extension of time, until October 13, 2022, to construct and place into service the facilities that comprise Atlantic's Atlantic Coast Pipeline and DETI's Supply Header Project as described in the original certificate authorization issued on October 13, 2017 (Certificate Order). The Certificate Order required Atlantic and DETI to construct and place the facilities in service by October 13, 2020.

Applicants assert that due to unforeseen delays in permitting, additional time is needed to complete construction of the authorized facilities. Applicants state that they have encountered delays resulting from decisions of the United States Court of Appeals for the Fourth Circuit related to U.S. Forest Service Record of Decision and Special Use Permit, including the crossing of the Appalachian National Scenic Trail, its U.S. Fish and Wildlife Service Biological Opinion and Incidental Take Statement, and the air permit for the compressor station in Buckingham, Virginia. Applicants state they have been working diligently and in good faith to re-obtain all approvals required for the construction of Atlantic Coast Pipeline and Supply Header Project as soon as possible. Applicants project that the necessary approvals for the Atlantic Coast Pipeline and Supply Header Project are anticipated by year-end. Accordingly, applicants request an extension of time until October 13, 2022 to complete construction of the Atlantic Coast Pipeline and Supply Header Project facilities.

This notice establishes a 15-calendar day intervention and comment period deadline. Any person wishing to comment on Atlantic's and DETI's request for an extension of time may do so. No reply comments or answers will be considered. If you wish to obtain legal status by becoming a party to the proceedings for this request, you should, on or before the comment date stated below, file a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10).[1]

As a matter of practice, the Commission itself generally acts on requests for extensions of time to complete construction for Natural Gas Act facilities when such requests are contested before order issuance. For those extension requests that are contested,[2] the Commission will aim to issue an order acting on the request within 45 days.[3] The Commission will address all arguments relating to whether the applicant has demonstrated there is good cause to grant the extension.[4] The Commission will not consider arguments that re-litigate the issuance of the certificate order, including whether the Commission

[1] Only motions to intervene from entities that were party to the underlying proceeding will be accepted. *Algonquin Gas Transmission, LLC,* 170 FERC 61,144, at P 39 (2020).

[2] Contested proceedings are those where an intervenor disputes any material issue of the filing. 18 CFR 385.2201(c)(1) (2019).

[3] *Algonquin Gas Transmission, LLC,* 170 FERC 61,144, at P 40 (2020).

[4] *Id.* at P 40.

properly found the project to be in the public convenience and necessity and whether the Commission's environmental analysis for the certificate complied with the National Environmental Policy Act.[5] At the time a pipeline requests an extension of time, orders on certificates of public convenience and necessity are final and the Commission will not re-litigate their issuance.[6] The OEP Director, or his or her designee, will act on all of those extension requests that are uncontested.

In addition to publishing the full text of this document in the **Federal Register**, The Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the eFiling link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and three copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426.

Comment Date: 5:00 p.m. Eastern Time on July 2, 2020.

Dated: June 17, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–13559 Filed 6–23–20; 8:45 am]

BILLING CODE 6717–01–P

[5] Similarly, the Commission will not re-litigate the issuance of an NGA section 3 authorization, including whether a proposed project is not inconsistent with the public interest and whether the Commission's environmental analysis for the permit order complied with NEPA.

[6] *Algonquin Gas Transmission, LLC,* 170 FERC 61,144, at P 40 (2020).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12611–014]

Verdant Power, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 12611–014.

c. *Date filed:* December 30, 2019.

d. *Applicant:* Verdant Power, LLC.

e. *Name of Project:* Roosevelt Island Tidal Energy Project.

f. *Location:* On the East River in New York County, New York. The project does not occupy federal land.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Ronald F. Smith, President and Chief Operating Officer, Verdant Power, LLC, P.O. Box 282, Roosevelt Island, New York, New York 10044. Phone: (703) 328–6842. Email: *rsmith@verdantpower.com.*

i. *FERC Contact:* Andy Bernick at (202) 502–8660 or *andrew.bernick@ferc.gov.*

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

The Commission strongly encourages electronic filing. Please file motions to intervene and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing but is not ready for environmental analysis.

l. The existing pilot project license authorizes the following project facilities: (a) Thirty 35-kilowatt, 5-meter-diameter axial flow turbine-generator units; (b) ten triframe mounts, each supporting three turbine-generator units; (c) 480-volt underwater cables from each triframe mount to five shoreline switchgear vaults that interconnect to a control room and interconnection points; and (d) appurtenant facilities for navigation safety and operation.

Under the current pilot project license, which expires on December 31, 2021, Verdant installed, tested, and then removed a total of five turbine-generator units. Verdant also proposes to install three turbine-generator units attached to one triframe mount in late 2020 (*i.e.,* Install B–1), under the existing pilot project license.

The proposed project would be constructed in three phases: Install B–1 (under the existing pilot license, as noted above), Install B–2 (three triframe mounts with a total of nine turbine-generator units), and Install C (one triframe mount with three turbine-generator units). The project would consist of a maximum of fifteen 35-kilowatt, 5-meter-diameter axial flow turbine-generator units with a total installed capacity of 0.525 megawatt. Each of the five triframe mounts would be connected via underwater cables to an existing control room and a proposed shoreline switchgear vault, and via an overhead transmission line (for the first two triframe mounts) and an underground transmission line (for the remaining three triframe mounts) to a point of interconnection.

The project would operate using the natural tidal currents of the East River, during both ebb and flood tidal periods. As the direction of tidal flow changes, each turbine-generator unit would rotate (or yaw) to align the rotor to the direction of flow, through a passive system caused by hydrodynamic forces on the turbine-generator unit. The annual generation is expected to be from 840 to 1,200 megawatt-hours.

m. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested individuals an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*www.ferc.gov*) using the eLibrary link. At this time, the Commission has suspended access to the Commission's Public Access Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/*

esubscription.asp to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title PROTEST or MOTION TO INTERVENE, (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

o. *Procedural schedule:* The application will be processed according to the following schedule. Revisions to the schedule will be made as appropriate.

Milestone	Target date
Issue Scoping Document 1 for comments.	August 2020.
Issue Scoping Document 2 (if necessary).	October 2020.
Issue notice of ready for environmental analysis.	October 2020.
Issue Single EA	April 2021.
Comments on EA	May 2021.

Dated: June 17, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–13558 Filed 6–23–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–2049–000]

Cedar Springs Wind III, 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 Cedar Springs Wind III, 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 July 8, 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 may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: June 18, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–13624 Filed 6–23–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–2087–000]

Gichi Noodin Wind Farm, 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 Gichi Noodin Wind Farm, 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 July 8, 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 may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: June 18, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–13628 Filed 6–23–20; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–ORD–2015–0765; FRL–10011–20–ORD]

Board of Scientific Counselors (BOSC) Executive Committee Meeting–July 2020

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: The Environmental Protection Agency (EPA), Office of Research and Development (ORD), gives notice of a meeting of the Board of Scientific Counselors (BOSC) Executive Committee (EC) to review the Chemical Safety and Sustainability and Health and Environmental Risk Assessment (CSS–HERA) Subcommittee's report on the Strategic Research Action Plan (StRAP) of ORD's HERA research program. The committee will also receive a briefing on ORD research on SARS–COV–2 and EPA's new approach methods (NAMs) work plan to reduce animal testing.

DATES: The videoconference meeting will be held on Tuesday, July 7, 2020, from 11:00 a.m. to 5:15 p.m. (EDT). Meeting times are subject to change. This meeting is open to the public. Those who wish to attend must register by July 6, 2020. Comments must be received by July 6, 2020, to be considered by the subcommittee. Requests for the draft agenda or making a presentation at the meeting will be accepted until July 3, 2020.

ADDRESSES: Instructions on how to connect to the videoconference will be provided upon registration at *https://epa-bosc-executive-committee.eventbrite.com.* Attendees should register no later than July 6, 2020.

Submit your comments to Docket ID No. EPA–HQ–ORD–2015–0765 by one of the following methods:

- *www.regulations.gov:* Follow the online instructions for submitting comments.
- *Note:* comments submitted to the *www.regulations.gov* website are anonymous unless identifying information is included in the body of the comment.
- *Email:* Send comments by electronic mail (email) to: *ORD.Docket@epa.gov,* Attention Docket ID No. EPA–HQ–ORD–2015–0765.
- *Note:* comments submitted via email are not anonymous. The sender's email will be included in the body of the comment and placed in the public docket which is made available on the internet.

Instructions: All comments received, including any personal information provided, will be included in the public docket without change and may be made available online at *www.regulations.gov.* Information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute will not be included in the public docket, and should not be submitted through *www.regulations.gov* or email. For additional information about the EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/dockets/.*

Public Docket: Publicly available docket materials may be accessed *Online* at *www.regulations.gov.* Copyrighted materials in the docket are only available via hard copy. The telephone number for the ORD Docket Center is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Officer (DFO), Tom Tracy, via phone/voice mail at: (202) 564–6518; or via email at: *tracy.tom@epa.gov.* Any member of the public interested in receiving a draft agenda, attending the meeting, or making a presentation at the meeting should contact Tom Tracy.

SUPPLEMENTARY INFORMATION: The Board of Scientific Counselors (BOSC) is a federal advisory committee that provides advice and recommendations to EPA's Office of Research and Development on technical and management issues of its research programs. Meeting agenda and materials will be posted to *https://www.epa.gov/bosc.* Proposed agenda items for the meeting include but are not limited to the following: Review of the CSS–HERA report, ORD research on SARS–COV–2, and EPA's NAMs work plan.

Information on Services Available: For information on translation services, access, or services for individuals with disabilities, please contact Tom Tracy at (202) 564–6518 or *tracy.tom@epa.gov.* To request accommodation of a disability, please contact Tom Tracy at least ten days prior to the meeting to give the EPA adequate time to process your request.

Authority: Pub. L. 92–463, 1, Oct. 6, 1972, 86 Stat. 770.

Dated: June 19, 2020.

Mary Ross,

Director, Office of Science Advisor, Policy, and Engagement.

[FR Doc. 2020–13620 Filed 6–23–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2019–0437; FRL–10011–16]

Methylene Chloride (MC); Final Toxic Substances Control Act (TSCA) Risk Evaluation; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the availability of the final Toxic Substances Control Act (TSCA) risk evaluation of methylene chloride (MC). The purpose of conducting risk evaluations under TSCA is to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment under the conditions of use, including an unreasonable risk to a relevant potentially exposed or susceptible subpopulation. EPA has determined that specific conditions of use of methylene

chloride present an unreasonable risk of injury to health. For those conditions of use for which EPA has found an unreasonable risk, EPA must move to address that unreasonable risk through risk management measures enumerated in TSCA. EPA has also determined that specific conditions of use do not present unreasonable risk of injury to health or the environment. For those conditions of use for which EPA has found no unreasonable risk to health or the environment, the Agency's determination is a final Agency action and is issued via order in the risk evaluation.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2019–0437, is available online at *http://www.regulations.gov* or in-person at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave., NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

Please note that due to the public health emergency the EPA Docket Center (EPA/DC) and Reading Room was closed to public visitors on March 31, 2020. Our EPA/DC staff will continue to provide customer service via email, phone, and webform. For further information on EPA/DC services, docket contact information and the current status of the EPA/DC and Reading Room, please visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Dr. Stan Barone, Office of Pollution Prevention and Toxics (7403M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 564–1169; email address: *barone.stan@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?

This action is directed to the public in general. This action may be of interest to persons who are or may be interested in risk evaluations of chemical substances under TSCA, 15 U.S.C. 2601 *et seq.* Since other entities may also be interested in this final risk evaluation, the EPA has not attempted to describe all the specific entities that may be affected by this action.

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

TSCA section 6, 15 U.S.C. 2605, requires EPA to conduct risk evaluations to ''determine whether a chemical substance presents an unreasonable risk of injury to health or the environment, without consideration of costs or other nonrisk factors, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant to the risk evaluation by the Administrator, under the conditions of use.'' 15 U.S.C. 2605(b)(4)(A). TSCA sections 6(b)(4)(A) through (H) enumerate the deadlines and minimum requirements applicable to this process, including provisions that provide instruction on chemical substances that must undergo evaluation, the minimum components of a TSCA risk evaluation, and the timelines for public comment and completion of the risk evaluation. TSCA also requires that EPA operate in a manner that is consistent with the best available science, make decisions based on the weight of the scientific evidence and consider reasonably available information. 15 U.S.C. 2625(h), (i), and (k). TSCA section 6(i) directs that a determination of ''no unreasonable risk'' shall be issued by order and considered to be a final Agency action, while a determination of ''unreasonable risk'' is not considered to be a final Agency action. 15 U.S.C. 2605(i).

The statute identifies the minimum components for all chemical substance risk evaluations. For each risk evaluation, EPA must publish a document that outlines the scope of the risk evaluation to be conducted, which includes the hazards, exposures, conditions of use, and the potentially exposed or susceptible subpopulations that EPA expects to consider. 15 U.S.C. 2605(b)(4)(D). The statute further provides that each risk evaluation must also: (1) Integrate and assess available information on hazards and exposures for the conditions of use of the chemical substance, including information that is relevant to specific risks of injury to health or the environment and information on relevant potentially exposed or susceptible subpopulations; (2) describe whether aggregate or sentinel exposures were considered and the basis for that consideration; (3) take into account, where relevant, the likely duration, intensity, frequency, and number of exposures under the conditions of use; and (4) describe the weight of the scientific evidence for the identified hazards and exposures. 15 U.S.C. 2605(b)(4)(F)(i)–(ii) and (iv)–(v). Each risk evaluation must not consider costs or other nonrisk factors. 15 U.S.C. 2605(b)(4)(F)(iii).

The statute requires that the risk evaluation process be completed within a specified timeframe and provide an opportunity for public comment on a draft risk evaluation prior to publishing a final risk evaluation. 15 U.S.C. 2605(b)(4).

In conducting risk evaluations, ''EPA will determine whether the chemical substance presents an unreasonable risk of injury to health or the environment under each condition of use within the scope of the risk evaluation . . .'' 40 CFR 702.47. Pursuant to TSCA section 6(i)(1), a determination of ''no unreasonable risk'' shall be issued by order and considered to be final Agency action. Under EPA's implementing regulations, ''[a] determination by EPA that the chemical substance, under one or more of the conditions of use within the scope of the risk evaluation, does not present an unreasonable risk of injury to health or the environment will be issued by order and considered to be a final Agency action, effective on the date of issuance of the order.'' 40 CFR 702.49(d). Subsection 5.4.1 of the final risk evaluation for MC constitutes the order required under TSCA section 6(i)(1), and the ''no unreasonable risk'' determinations in that subsection are considered to be a final Agency action effective on the date of issuance of the order.

C. What action is EPA taking?

EPA is announcing the availability of the risk evaluation of the chemical substance identified in Unit II. In this risk evaluation EPA has made unreasonable risk determinations on all the conditions of use within the scope of the risk evaluation for this chemical. For those conditions of use for which EPA has found an unreasonable risk of injury to health or the environment, EPA must move to address those risks through risk management measures enumerated in 15 U.S.C. 2605(a). For those conditions of use for which EPA has found no unreasonable risk of injury to health or the environment, the Agency's determination is a final

Agency action and is issued via order, per 15 U.S.C. 2605(i)(1), in the risk evaluation, subsection 5.4.1.

EPA is also announcing the availability of the information required to be provided publicly with each risk evaluation. 40 CFR 702.51. Specifically, EPA has provided:

- The scope document and problem formulation (in Docket EPA–HQ–OPPT–2016–0742);
- Draft risk evaluation, and final risk evaluation (in Docket EPA–HQ–OPPT–2019–0437);
- All notices, determinations, findings, consent agreements, and orders (in Docket EPA–HQ–OPPT–2019–0437);
- Any information required to be provided to the Agency under 15 U.S.C. 2603 (in Docket EPA–HQ–OPPT–2016–0742 and Docket EPA–HQ–OPPT–2019–0437);
- A nontechnical summary of the risk evaluation (in Docket EPA–HQ–OPPT–2019–0437);
- A list of the studies, with the results of the studies, considered in carrying out each risk evaluation (Risk Evaluation for Methylene Chloride (Dichloromethane, DCM) in Docket EPA–HQ–OPPT–2019–0437);
- The final peer review report, including the response to peer review and public comments received during peer review (in Docket EPA–HQ–OPPT–2019–0437); and
- Response to public comments received on the draft scope and the draft risk evaluation (in Docket EPA–HQ–OPPT–2019–0437).

II. TSCA Risk Evaluation

A. What is EPA's risk evaluation process for existing chemicals under TSCA?

The risk evaluation process is the second step in EPA's existing chemical process under TSCA, following prioritization and before risk management. As this chemical is one of the first ten chemical substances undergoing risk evaluation, the chemical substance was not required to go through prioritization (81 FR 91927, December 19, 2016) (FRL–9956–47). The purpose of conducting risk evaluations is to determine whether a chemical substance presents an unreasonable risk of injury to health or the environment under the conditions of use, including an unreasonable risk to a relevant potentially exposed or susceptible subpopulation. As part of this process, EPA must evaluate both hazard and exposure, not consider costs or other nonrisk factors, use reasonably available information and approaches in a manner that is consistent with the requirements in TSCA for the use of the best available science, and ensure decisions are based on the weight of scientific evidence.

The specific risk evaluation process that EPA has established by rule to implement the statutory process is set out in 40 CFR part 702 and summarized on EPA's website at *http://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-evaluations-existing-chemicals-under-tsca.* As explained in the preamble to EPA's final rule on procedures for risk evaluation (82 FR 33726, July 20, 2017) (FRL–9964–38), the specific regulatory process set out in 40 CFR part 702, subpart B is being followed for the first ten chemical substances undergoing risk evaluation to the maximum extent practicable.

Prior to the publication of this final risk evaluation, a draft risk evaluation was subject to peer review and public comment. EPA reviewed the report from the peer review committee and public comments and has amended the risk evaluation in response to these comments as appropriate. The public comments, peer review report, and EPA's response to comments is in Docket EPA–HQ–OPPT–2019–0437. Prior to the publication of the draft risk evaluation, EPA made available the scope and problem formulation, and solicited public input on uses and exposure. EPA's documents and the public comments are in Docket EPA–HQ–OPPT–2016–0732. Additionally, information about the scope, problem formulation, and draft risk evaluation phases of the TSCA risk evaluation for this chemical is at *http://www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-evaluation-methylene-chloride-0.*

B. What is methylene chloride?

Methylene chloride (MC), also known as dichloromethane and DCM, is a volatile chemical used as a solvent in a wide range of industrial, commercial and consumer applications. The primary uses for methylene chloride are for paint removal, adhesives, metal cleaning, aerosol solvents, chemical processing and flexible polyurethane foam manufacturing. Information from the 2016 Chemical Data Reporting (CDR) for MC indicates the reported production volume is more than 260 million lbs per year (manufacture and import).

Authority: 15 U.S.C. 2601 *et seq.*

Dated: June 17, 2020.

Andrew Wheeler,

Administrator.

[FR Doc. 2020–13581 Filed 6–23–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10010–92–Region 5]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Riverview Energy Corporation; Petition for Objection to State Operating Permit for ESSROC Cement Corporation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final orders on petitions for objection to two Clean Air Act title V operating permits.

SUMMARY: The Environmental Protection Agency (EPA) Administrator signed an Order dated March 26, 2020, denying a Petition dated August 6, 2019 from Southwestern Indiana Citizens for Quality of Life, Inc. and Valley Watch, Inc. The Petition requested that EPA object to a Clean Air Act (CAA) title V operating permit issued by the Indiana Department of Environmental Management (IDEM) to Riverview Energy Corporation for its direct coal hydrogenation facility located in Dale, Spencer County, Indiana. The EPA Administrator also signed an Order dated April 1, 2020, denying a Petition dated January 4, 2017 from Vicki L. Whittinghill. The Petition requested that EPA object to a CAA title V operating permit issued by IDEM to ESSROC Cement Corporation for its Portland cement manufacturing plant located in Clark County, Indiana.

ADDRESSES: The final Orders, the Petitions, and other supporting information are available for public inspection during normal business hours at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID–19. We recommend that you telephone Michael Langman, Environmental Scientist, at (312) 886–6867 before visiting the Region 5 office. Additionally, the final Orders and Petitions are available electronically at: *https://www.epa.gov/title-v-operating-permits/title-v-petition-database.*

FOR FURTHER INFORMATION CONTACT: Michael Langman, Environmental Scientist, Air Permits Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6867, *langman.michael@epa.gov.*

SUPPLEMENTARY INFORMATION: The CAA affords EPA a 45-day period to review and object to, as appropriate, operating permits proposed by state permitting authorities under title V of the CAA. Section 505(b)(2) of the CAA authorizes any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of EPA's 45-day review period if EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or unless the grounds for the issues arose after this period.

Riverview Energy Corporation

EPA received the Petition from Southwestern Citizens for Quality of Life, Inc. and Valley Watch, Inc., dated August 6, 2019, requesting that EPA object to the issuance of operating permit no. 147–39554–00065 issued by IDEM to Riverview Energy Corporation in Dale, Spencer County, Indiana. The Petition alleged that the permit does not correct issues identified in EPA Region 5's comments on the draft permit, that IDEM issued the permit without sufficient information to evaluate the source's air pollution consequences, that the permit is based on deficient and incorrect emissions calculations that preclude accurate modeling results, that the permit's air quality modeling is deficient and inaccurate, that the permit does not require best available control technology for certain regulated pollutants, that flaring monitoring and reporting requirements do not comply with title V requirements, and that the permit violated public participation requirements.

On March 26, 2020, the EPA Administrator issued an Order denying the Petition. The Order explains the basis for EPA's decision.

ESSROC Cement Corporation

EPA received the Petition from Vicki L. Whittinghill dated January 4, 2017, requesting that EPA object to the issuance of operating permit no. 019–35535–00008, issued by IDEM to ESSROC Cement Corporation in Clark County, Indiana. The Petition presented concerns regarding the use of liquid waste derived fuel in the combustion zone of the facility's cement kiln.

On April 1, 2020, the EPA Administrator issued an Order denying the Petition. The Order explains the basis for EPA's decision.

Sections 307(b) and 505(b)(2) of the CAA provide that a petitioner may request judicial review of those portions of an order that deny issues in a petition. Any petition for review shall be filed in the United States Court of Appeals for the appropriate circuit no later than August 24, 2020.

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

Dated: June 18, 2020.

Kurt Thiede,

Regional Administrator, Region 5.

[FR Doc. 2020–13634 Filed 6–23–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1085; FRS 16879]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before August 24, 2020. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

OMB Control Number: 3060–1085.

Title: Section 9.11, Interconnected Voice Over internet Protocol (VoIP) E911 Compliance; Section 9.12, Implementation of the NET 911 Improvement Act of 2008: Location Information from Owners and Controllers of 911 and E911 Capabilities.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or Households; Business or other for-profit entities; Not-for-profit institutions; State, Local or Tribal government.

Number of Respondents and Responses: 72 respondents; 16,200,496 responses.

Estimated Time per Response: 0.09 hours (five minutes).

Frequency of Response: One-time, on occasion, third party disclosure requirement, and recordkeeping requirement.

Obligation to Respond: Statutory authority for this information collection is contained in 47 U.S.C. 151, 151–154, 152(a), 155(c), 157, 160, 201, 202, 208, 210, 214, 218, 219, 222, 225, 251(e), 255, 301, 302, 303, 307, 308, 309, 310, 316, 319, 332, 403, 405, 605, 610, 615, 615 note, 615a, 615b, 615c, 615a-1, 616, 620, 621, 623, 623 note, 721, and 1471.

Total Annual Burden: 1,481,249 hours.

Total Annual Cost: $238,890,000.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The Commission is obligated by statute to promote ''safety of life and property'' and to ''encourage and facilitate the prompt deployment throughout the United States of a seamless, ubiquitous, and reliable end-

to-end infrastructure'' for public safety. Congress has established 911 as the national emergency number to enable all citizens to reach emergency services directly and efficiently, irrespective of whether a citizen uses wireline or wireless technology when calling for help by dialing 911. Efforts by federal, state and local government, along with the significant efforts of wireline and wireless service providers, have resulted in the nearly ubiquitous deployment of this life-saving service.

The Order the Commission adopted on May 19, 2005, sets forth rules requiring providers of VoIP services that interconnect with the nation's existing public switched telephone network (interconnected VoIP services) to supply E911 capabilities to their customers.

To ensure E911 functionality for customers of VoIP service providers the Commission requires the following information collections:

A. *Location Registration.* Requires providers to interconnected VoIP services to obtain location information from their customers for use in the routing of 911 calls and the provision of location information to emergency answering points.

B. *Provision of Automatic Location Information (ALI).* Interconnected VoIP service providers will place the location information for their customers into, or make that information available through, specialized databases maintained by local exchange carriers (and, in at least one case, a state government) across the country.

C. *Customer Notification.* Requires that all providers of interconnected VoIP are aware of their interconnected VoIP service's actual E911 capabilities. That all providers of interconnected VoIP service specifically advise every subscriber, both new and existing, prominently and in plain language, the circumstances under which E911 service may not be available through the interconnected VoIP service or may be in some way limited by comparison to traditional E911 service.

D. *Record of Customer Notification.* Requires VoIP providers to obtain and keep a record of affirmative acknowledgement by every subscriber, both new and existing, of having received and understood this advisory.

E. *User Notification.* In addition, in order to ensure to the extent possible that the advisory is available to all potential users of an interconnected VoIP service, interconnected VoIP service providers must distribute to all subscribers, both new and existing, warning stickers or other appropriate labels warning subscribers if E911 service may be limited or not available and instructing the subscriber to place them on or near the customer premises equipment used in conjunction with the interconnected VoIP service.

Section 506 of RAY BAUM'S Act

Section 506 of RAY BAUM'S Act, which requires the Commission to ''consider adopting rules to ensure that the dispatchable location is conveyed with a 9–1–1 call, regardless of the technological platform used and including with calls from multi-line telephone system.'' RAY BAUM'S Act also states that, ''[i]n conducting the proceeding . . . the Commission may consider information and conclusions from other Commission proceedings regarding the accuracy of the dispatchable location for a 9–1–1 call . . . .'' RAY BAUM'S Act defines a ''9–1–1 call'' as a voice call that is placed, or a message that is sent by other means of communication, to a PSAP for the purpose of requesting emergency services.

As part of implementing Section 506 of RAY BAUM'S Act, on August 1, 2019, the Commission adopted a *Report and Order* (*2019 Order*) amending, among other things, its 911 Registered Location and customer notification requirements applicable to VoIP service providers.

The Commission's *2019 Order* changed the wording of section 9.11's Registered Location requirements to facilitate the provision of automated dispatchable location in fixed and non-fixed environments. For non-fixed environments, the rule requires automated dispatchable location, if technically feasible. If not technically feasible, VoIP service providers may fall back to registered location, alternative location information for 911 calls, or a national emergency call center. Regarding customer notification requirements, the Commission afforded service providers flexibility to use any conspicuous means to notify end users of limitations in 911 service. In sum, the requirements adopted in the *2019 Order* leverage technology advancements since the 2005 *Order,* build upon the existing Registered Location requirement, expand options for collecting and supplying end-user location information with 911 calls, are flexible and technologically neutral from a compliance standpoint and serve a vital public safety interest.

NET 911 Act

The NET 911 Act explicitly imposes on each interconnected voice over internet Protocol (VoIP) provider the obligation to provide 911 and E911 service in accordance with the Commission's existing requirements. In addition, the NET 911 Act directs the Commission to issue regulations by no later than October 21, 2008 that ensure that interconnected VoIP providers have access to any and all capabilities they need to satisfy that requirement.

On October 21, 2008, the Commission released a *Report and Order* (*2008 Order*), FCC 08–249, WC Docket No. 08–171, that implements certain key provisions of the NET 911 Act. As relevant here under the Paperwork Reduction Act (PRA), the Commission requires an owner or controller of a capability that can be used for 911 or E911 service to make that capability available to a requesting interconnected VoIP provider under certain circumstances. In particular, an owner or controller of such capability must make it available to a requesting interconnected VoIP provider if that owner or controller either offers that capability to any commercial mobile radio service (CMRS) provider or if that capability is necessary to enable the interconnected VoIP provider to provide 911 or E911 service in compliance with the Commission's rules. The information collection requirements contained in this collection guarantee continued cooperation between interconnected VoIP service providers and Public Safety Answering Points (PSAPs) in complying with the Commission's E911 requirements.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer, Office of the Secretary.

[FR Doc. 2020–13631 Filed 6–23–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for

immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than July 9, 2020.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Katz Acquisition Corporation, LLC, Tampa, Florida;* to become a bank holding company by acquiring 100 percent of the voting shares of Camp Grove Bancorp, Inc., and thereby indirectly acquire Camp Grove State Bank, both of Camp Grove, Illinois.

Board of Governors of the Federal Reserve System, June 19, 2020.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2020–13633 Filed 6–23–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''*Patient-Centered Outcomes Research Clinical Decision Support: Current State and Future Directions.*'' This proposed information collection was previously published in the **Federal Register** on March 25, 2020. AHRQ received no comments from members of the public. The purpose of this notice is to allow an additional 30 days for public comment.

DATES: Comments on this notice must be received by 30 days after date of publication of this notice.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

''*Patient-Centered Outcomes Research Clinical Decision Support: Current State and Future Directions*''

Research has shown that health care quality in the U.S. varies significantly and only half of adults receive evidence-based, recommended care. Individuals with multiple chronic conditions (42% of adults) and older adults are at particular risk for negative health outcomes. Current evidence shows that clinical decision support (CDS) systems improve adherence to evidence-based practices by analyzing patient data and making appropriate information available to the physician at the time they need it. CDS systems are usually electronic health record (EHR)-based, encompassing tools like alerts, clinical guidelines, patient reports and dashboards, diagnostic support, and workflow tools. These tools help reduce clinical errors and allow for customization to patient needs, improving quality of care and patient outcomes.

The AHRQ Patient-Centered (PC) CDS Learning Network (PC CDS LN) defines PC CDS as: ''CDS that supports *individual* patients and their approved care givers and/or care teams in health-related decisions and actions by leveraging information from PCOR findings and/or patient-specific information (*e.g.,* patient-generated health data).'' Through PC CDS, AHRQ seeks to accelerate the movement of patient-centered outcomes research (PCOR) evidence into practice and to make CDS more shareable, standards-based, and publicly available.

Traditionally, CDS initiatives have focused on provider-directed guidelines and increasing the shareability of CDS artifacts; however, PC CDS targets both patients (and/or caregivers) and providers.

AHRQ's effort to support PC CDS has included efforts such as the PC CDS LN, CDS Connect, and other related grants and contracts. In this project, AHRQ seeks to conduct a comprehensive evaluation to assess the impact of AHRQ's PCOR CDS Initiative (the Initiative) on understanding of the current state of PC CDS and to identify gaps to guide AHRQ's future research.

This research has the following goal:

To assess the accomplishments and opportunities for the Initiative as a whole, and each of its four individual components: The PC CDS Learning Network, CDS Connect, Quantifying Efficiencies, and the U18 CDS Resource Grants.

This study is being conducted by AHRQ through its contractor, NORC at the University of Chicago, pursuant to AHRQ's statutory authority to disseminate government-funded research relevant to comparative clinical effectiveness research. 42 U.S.C. 299b-37(a)–(c).

Method of Collection

To achieve these goals, the evaluation team will use key informant interviews and a web-based survey to gather information about the programs from stakeholders, contributors, and users of the CDS Initiative programs.

Key Informant Interviews: The evaluation team will conduct semi-structured interviews with people involved in the Initiative's components, including representatives from academia, industry, health systems, and government. Key informants will include the following groups:

Leaders: Includes AHRQ project officers, contractor's senior staff, and senior consultants to Initiative components. Leaders are expected to have set the direction of the components or activities and to be familiar with the activities, the processes of implementation, and their outputs in their entirety.

Contributors: Includes lead authors or content developers for a product or output of a component, and may overlap with leaders. Examples of contributors from the PC CDS LN include lead authors of the Trust Framework, Opioid Action Plan, or Patient Blogs; examples from the CDS Connect include individuals who contributed CDS artifacts to the repository.

Participants: Includes individuals who participated in workgroups of either the PC CDS LN or CDS Connect, or participated in the development of one of the products.

Consumers: Includes individuals who have used a product developed by the Initiative, including artifacts found on

the CDS Connect repository and the CDS Connect Authoring Tool in particular. Individuals will be identified from interviews with leaders, contributors, and participants, and through literature review for authors making references to Initiative products (*i.e.,* reports or artifacts).

AHRQ and the evaluation contractor will create a list of eligible key informants that reflect the appropriate mix of roles and depth of experience to ensure comprehensive evaluation. Key informants will receive invitational emails that explain the scope and allow candidates to ask questions before declining or accepting the invitation. We will include clinical staff in our sample of participants in the Quantifying Efficiencies grant program, the U18 grants and the two opioid-related CDS projects. Involving staff at clinical sites will also be critical to understanding the value of PC CDS in the context of provider workflows and burdens.

Web Survey: The purpose of the web survey is to understand more about who the users of CDS Connect resources are, their reasons for using the resources, how they use these resources, and their perceptions about their value. The CDS Connect resources of interest include the CDS Authoring Tool, artifacts in the CDS Connect Repository and open-source CDS Connect resources available on Github, a platform for developing and sharing software. Respondents will be identified through a chain-referral methodology. The first set of survey invitations will be sent to a list of email addresses of known contributors or users of CDS Connect as well as a group of potential users of CDS Connect. At the end of the survey, each respondent will be asked to provide names and email addresses for up to four other users of CDS Connect resources. After the list of names from all referrals is deduplicated, a survey invitation will be sent to these referrals.

The survey instrument includes multiple choice questions that capture important data points about use of CDS Connect resources, specifically the CDS Authoring tool, GitHub resources, and artifacts from the CDS Repository. Respondents will only be presented with more detailed questions about CDS Connect resource usage based on their responses to initial screening questions. The survey will take ten minutes on average to complete based on in-house testing.

This mixed methods evaluation seeks to answer the following research questions about the Initiative as a whole:

1. To what extent has the Initiative promoted the dissemination and implementation of PCOR findings through sharable, standards-based, and publicly available CDS and how?
2. What activities carried out through each component (*e.g.,* webinars, workgroups, in-person meetings, repositories, CDS artifacts and development tools, final reports or plans) were found to be most successful in furthering the various goals of the Initiative?
3. What do stakeholders perceive to be the impacts of the Initiative to date, including reflection on their own involvement in it, and current or potential achievements, such as the development of a common definition of PC CDS and growth of interest in and capacity for developing these types of CDS among stakeholders?
4. How does the Initiative address federal policies for the dissemination and implementation of evidence-based research funded by the PCOR Trust Fund, and how do they interact with other federal policy initiatives designed to promote widespread use, interoperability and patient access to information from EHRs with advanced CDS.
5. What can AHRQ learn from the Initiative that is relevant to other initiatives aimed at disseminating and implementing clinical evidence and evidence-based practices? How can the lessons learned here inform future research, implementation, and dissemination initiatives?

Information collected by the study will inform strategies to promote the adoption of PCOR evidence into practice through CDS developed by AHRQ and other Department of Health and Human Services agencies, including the Centers for Medicare & Medicaid Services (CMS) and the Office of the National Coordinator for Health IT, as well as state and local governments and private health care organizations. Findings from the evaluation can help identify and shape strategies to promote more effective implementation of PCOR CDS in order to accelerate the movement of evidence into clinical practice and support patient-centered decision making by clinicians with their patients.

Estimated Annual Respondent Burden

Key Informant Interviews. Key informant interviews will be conducted with up to 147 key informants across a variety of organizations involved in each component of the Initiative. NORC will use one of 14 interview protocols based on the component the key informant is involved in and their role in that component. As shown in Exhibit 1, the interview form names include the type of role of the key informant in the project. All interviews are expected to last one hour. Some key informants may serve multiple roles or work on multiple projects. In these cases, the relevant protocols will be combined and streamlined so that the informant only completes one interview. Some of the key informant interviews for the sites or Opioid-related grants may be conducted during the course of site visits at the implementation sites, either with individuals or small groups of respondents.

Web Survey. For the web survey, it is estimated that 453 CDS Connect users will respond to the 10-minute survey. The total annual burden hours for the key informant interviews and surveys is estimated to be 224 hours as shown in Exhibit 1.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Hours per response	Total burden hours
PC CDS Learning Network—Leader	7	1	7
PC CDS Learning Network—Governance/Non-Executive Steering Committee	3	1	3
PC CDS Learning Network—Contributor	8	1	8
CDS Connect—Leader	5	1	5
CDS Connect—Contributor	20	1	20
CDS Connect—Consumer/Patient	25	1	25
CDS Connect—Participant	10	1	10
Quantifying Efficiencies—Leader	5	1	5
Quantifying Efficiencies—Informaticist	4	1	4
Quantifying Efficiencies—Clinician	8	1	8

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Form name	Number of respondents	Hours per response	Total burden hours
PC CDS Projects—Site Leader	18	1	18
PC CDS Projects—Informaticist	10	1	10
PC CDS Projects—Clinician	20	1	20
PC CDS Projects—Patient	4	1	4
Web Survey of CDS Connect Users	453	.17	77
Total	600		224

Exhibit 2 shows the estimated annual cost burden associated with the respondents' time to participate in this information collection, which comes to $14,371.85.

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of interviews*	Total burden hours	Average hourly wage rate**	Total cost burden
PC CDS Learning Network—Leader	7	7	[1] $59.54	$416.78
PC CDS Learning Network—Governance/Non-Executive Steering Committee	3	3	[1] 59.54	178.62
PC CDS Learning Network—Contributor	8	8	[1] 59.54	476.33
CDS Connect—Leader	5	5	[1] 59.54	297.71
CDS Connect—Contributor	20	20	[1] 59.54	1,190.82
CDS Connect—Consumer	25	25	[1] 59.54	1,488.53
CDS Connect—Participant	10	10	[1] 59.54	595.41
Quantifying Efficiencies—Leader	5	5	[1] 59.54	297.71
Quantifying Efficiencies—Informaticist	4	4	[1] 59.54	238.16
Quantifying Efficiencies—Clinician	8	8	[2] 101.43	811.46
PC CDS Projects—Site Leader	18	18	[1] 59.54	1,071.74
PC CDS Projects—Informaticist	10	10	[1] 59.54	595.40
PC CDS Projects—Clinician	20	20	[2] 101.43	2,028.60
PC CDS Projects—Patient	4	4	[3] 24.98	99.93
Web Survey of CDS Connect Users	453	77	[1] 59.54	4,584.66
Total	600	224		14,371.85

** Wage rates were calculated using the mean hourly wage from the U.S. Department of Labor, Bureau of Labor Statistics, May 2018 National Occupational Employment and Wage Estimates for the United States, *https://www.bls.gov/oes/current/oes_nat.htm.*

[1] Average rate for Computer Information and Research Scientists

[2] Average rate for Physicians and Surgeons

[3] Average rate for All Occupations

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ's health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) 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 upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: June 18, 2020.

Virginia L. Mackay-Smith,

Associate Director.

[FR Doc. 2020–13574 Filed 6–23–20; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Submission for OMB Review; Public Comment Request; National Beneficiary Survey of State Health Insurance Assistance Program (SHIP) OMB# 0985–0057

AGENCY: Administration for Community Living, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) is announcing that the proposed collection of information listed above has been submitted to the Office of Management and Budget (OMB) for review and clearance as required under the

Paperwork Reduction Act of 1995. This 30-Day notice collects comments on the information collection requirements related to the Proposed Revision and solicits comments on the information collection requirements related to the National Beneficiary Survey of State Health Insurance Assistance Program (SHIP) OMB# 0985–0057.

DATES: Submit written comments on the collection of information by July 24, 2020.

ADDRESSES: Submit electronic comments on the collection of information by:

(a) Email to: *OIRA_submission@omb.eop.gov,* Attn: OMB Desk Officer for ACL;

(b) fax to 202.395.5806, Attn: OMB Desk Officer for ACL; or

(c) by mail to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW, Rm. 10235, Washington, DC 20503, Attn: OMB Desk Officer for ACL.

FOR FURTHER INFORMATION CONTACT: Sara Vogler, Administration for Community Living, Washington, DC 20201, 202–795–7461, *Sara.Vogler@acl.hhs.gov*.

SUPPLEMENTARY INFORMATION: In compliance with the Paperwork Reduction Act, ACL has submitted the following proposed information collection to OMB for review and clearance. The SHIP–SMP Survey of One-on-One Assistance is a survey of individuals who meet with team members from the State Health Insurance Assistance Program (SHIP) or the Senior Medicare Patrol (SMP). These services help Medicare beneficiaries understand their Medicare benefits and options. These services also increase the ability of beneficiaries to identify and report fraud, waste, and abuse within health care programs generally, and Medicare/Medicaid specifically.

The State Health Insurance Assistance Program (SHIP) was created under the Omnibus Budget Reconciliation Act of 1990. This section of the law authorized the Department of Health and Human Services (HHS) to make grants to states to establish and maintain health insurance advisory service programs for Medicare beneficiaries. Grant funds were made available to support information, counseling, and assistance activities related to Medicare, Medicaid, and other health insurance options. SHIP grantees provide free, in-depth, unbiased, one-on-one health insurance counseling and assistance to Medicare beneficiaries, their families, and caregivers. The Senior Medicare Patrol (SMP) program was authorized in 1997 under Titles II and IV of the Older Americans Act, the Omnibus Consolidated Appropriation Act of 1997 and the Health Insurance Portability and Accountability Act of 1996. The SMP mission is to empower and assist Medicare beneficiaries, their families, and caregivers, to prevent, detect, and report suspected healthcare fraud, errors, and abuse through outreach, counseling, and education.

SMP grantees support ACL's goals of promoting increased choice and greater independence among older adults and individuals with disabilities. SMP activities also serve to enhance the financial, emotional, physical, and mental well-being of older adults, thereby increasing their capacity to maintain security in retirement and make better financial and healthcare choices.

SMP team members provide one-on-one assistance, and when needed, serve as consumer advocates to resolve billing disputes/issues.

The SHIP–SMP Survey of One-on-One Assistance will gauge individuals' satisfaction with the services provided by SHIP and SMP team members.

This survey is a renewal of the existing ''National Beneficiary Survey of State Health Insurance Assistance Program (SHIP)'', which received clearance on August 28, 2017, with ICR Reference Number 201702–0985–002 and OMB Control Number 0985–0057. That survey was conducted over a three-year period beginning on October 1, 2017, and concluded on March 30, 2020. To date, this survey has generated over 2500 responses, all of which were submitted voluntarily.

ACL requests renewal of the survey to continue the collection performed in Fiscal Years 2018, 2019, and 2020. Reports developed for FY18 and FY19 participants have provided an overall measure of satisfaction with SHIP's one-on-one assistance services and have provided insight into the relationship between inputs (information provided, time between initial contact and services received) and overall satisfaction. The renewed collection will survey recipients of both SHIP and SMP one-on-one assistance but will not increase the number of surveys collected.

The renewed survey will provide an annual collection at the national level, with an estimated collection of 800 responses per year. To generate a sample with a 95% confidence level at the national level 400 responses will be required from each program (n=2,000,000 SHIP one-on-one assistance sessions in 2018; n=275,000 SMP one-on-one assistance sessions in 2018).

ACL will draw a representative sample of customers who received assistance from each program by focusing only on non-redundant individuals (*i.e.,* a random sample without replacement of individuals who receive SHIP and/or SMP one-on-one assistance).

The proposed data collection tools may be found on the ACL website for review at *https://www.acl.gov/about-acl/public-input*.

Estimated Program Burden: ACL estimates the burden associated with this collection of information as follows:

Respondent/data collection activity	Number of respondents	Responses per respondent	Hours per response	Annual burden hours
Survey, Stratified Random Sample	800	1	6/60	80
Total:	800	1	6/60	80

Dated: June 17, 2020.

Mary Lazare,

Principal Deputy Administrator.

[FR Doc. 2020–13578 Filed 6–23–20; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Submission for OMB Review; Public Comment Request; SHIP–SMP Survey of Group Outreach and Education Events, Formerly the "Senior Medicare Program National Beneficiary Survey", OMB #0985–0056

AGENCY: Administration for Community Living, HHS.

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) is announcing that the proposed collection of information listed above has been submitted to the Office of Management and Budget (OMB) for review and clearance as required under the Paperwork Reduction Act of 1995. This 30-Day notice collects comments on the information collection requirements related to the Proposed Revision and solicits comments on the information collection requirements related to the ''National SHIP–SMP Beneficiary Survey of Group Outreach and Education Events''.

DATES: Submit written comments on the collection of information by July 24, 2020.

ADDRESSES: Submit electronic comments on the collection of information by:

(a) Email to: *OIRA_submission@omb.eop.gov,* Attn: OMB Desk Officer for ACL;

(b) fax to 202.395.5806, Attn: OMB Desk Officer for ACL; or

(c) by mail to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW, Rm. 10235, Washington, DC 20503, Attn: OMB Desk Officer for ACL.

FOR FURTHER INFORMATION CONTACT: Sara Vogler, Administration for Community Living, Washington, DC 20201, 202–795–7461, *Sara.Vogler@acl.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with the Paperwork Reduction Act, ACL has submitted the following proposed information collection to OMB for review and clearance.

The SHIP–SMP Survey of Group Outreach and Education Events is a survey of individuals who attend outreach and education events provided by the State Health Insurance Assistance Program (SHIP) or Senior Medicare Patrol (SMP). These events help Medicare beneficiaries understand their Medicare benefits and options. These events also increase the ability of beneficiaries to identify fraud, waste, and abuse within health care programs generally, and Medicare/Medicaid specifically.

The State Health Insurance Assistance Program (SHIP) was created under the Omnibus Budget Reconciliation Act of 1990. This section of the law authorized the Department of Health and Human Services (HHS) to make grants to states to establish and maintain health insurance advisory service programs for Medicare beneficiaries. Grant funds were made available to support information, counseling, and assistance activities related to Medicare, Medicaid, and other health insurance options.

The Senior Medicare Patrol (SMP) program was authorized in 1997 under Titles II and IV of the Older Americans Act, the Omnibus Consolidated Appropriation Act of 1997 and the Health Insurance Portability and Accountability Act of 1996. The SMP mission is to empower and assist Medicare beneficiaries, their families, and caregivers, to prevent, detect, and report suspected healthcare fraud, errors, and abuse through outreach, counseling, and education.

SMP grantees support ACL's goals of promoting increased choice and greater independence among older adults and individuals with disabilities. SMP activities enhance the financial, emotional, physical, and mental well-being of older adults, thereby increasing their capacity to maintain security in retirement and make better financial and healthcare choices.

SHIP–SMP grantees provide group outreach and education through presentation events, and this collection will survey the attendees of those events. The SHIP–SMP Survey of Group Outreach and Education Events will focus on group outreach and education events and the individuals who attend them, to determine if the target audience is satisfied with the information they are receiving. This is a renewal of the existing Senior Medicare Program National Beneficiary Survey, which received clearance on August 28, 2017, with ICR Reference Number 201702–0985–003 and OMB Control Number 0985–0056. That survey was conducted over a three-year period beginning on October 1, 2017, and will conclude on March 30, 2020.

To date, the Senior Medicare Program National Beneficiary Survey has generated over 5000 responses, all of which were submitted anonymously and voluntarily.

ACL requests renewal of the survey to continue the collection performed in Fiscal Years 2018, 2019, and 2020. Reports developed for FY18 and FY19 participants have provided an overall measure of presentation attendee satisfaction and have provided insight into the relationship between presentation inputs (information provided, access to presentations) and overall satisfaction. The renewed survey will include both SHIP and SMP presentations and will survey every participating state and territory at least once each year.

To generate a sample with a 95% confidence level at the national level 400 responses will be required, which is based on over 500,000 group outreach and education event attendees in 2018. ACL will draw a representative sample of event attendees by surveying each of the 54 participating states and territories at least once. An average event surveyed in FY18 or FY19 generated 11 completed surveys, resulting in an estimated minimal collection of 600 responses.

In the first three years of the existing survey states and territories had the opportunity to exceed the minimum requirements, in order to collect a larger overall dataset for their state or territory. This opportunity will continue with the renewed survey. Assuming that an average state or territory collects 100 surveys per year, the maximum burden estimate is 5400 responses per year.

The proposed data collection tools may be found on the ACL website for review at *https://www.acl.gov/about-acl/public-input.*

Estimated Program Burden

ACL estimates the burden associated with this collection of information as follows:

Respondent/data collection activity	Number of respondents (minimum)	Responses per respondent	Hours per response	Annual burden hours
Survey, Stratified Random Sample	600	1	5/60	50
Total	600	1	5/60	50

Respondent/data collection activity	Number of respondents (maximum)	Responses per respondent	Hours per response	Annual burden hours
Survey, Stratified Random Sample	5,400	1	5/60	450
Total	5,400	1	5/60	450

Dated: June 17, 2020.

Mary Lazare,

Principal Deputy Administrator.

[FR Doc. 2020–13576 Filed 6–23–20; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Agency Information Collection Activities; Proposed Collection; Comment Request; Evaluation of Participants of an Annual SMP/SHIP National Training Conference Hosted by the Office of Healthcare Information and Counseling [OMB #0985–New]

AGENCY: Administration for Community Living, HHS.

ACTION: Notice

SUMMARY: The Administration for Community Living (ACL) is announcing that the proposed collection of information listed above has been submitted to the Office of Management and Budget (OMB) for review and clearance as required under section 506(c)(2)(A) of the Paperwork Reduction Act of 1995. This 30-Day notice collects comments on the information collection requirements related to Proposed new information collection requirements related to Evaluation of participants of an Annual SMP/SHIP National Training Conference hosted by the Office of Healthcare Information and Counseling.

DATES: Submit written comments on the collection of information by July 24, 2020.

ADDRESSES: Submit electronic comments on the collection of information by:

(a) Email to: *OIRA_submission@omb.eop.gov,* Attn: OMB Desk Officer for ACL;

(b) fax to 202.395.5806, Attn: OMB Desk Officer for ACL; or

(c) by mail to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW, Rm. 10235, Washington, DC 20503, Attn: OMB Desk Officer for ACL.

FOR FURTHER INFORMATION CONTACT: Marissa Whitehouse, Administration for Community Living, Washington, DC 20201, *Marissa.Whitehouse@acl.hhs.gov* or 202–795–7425.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, ACL has submitted the following proposed collection of information to OMB for review and clearance. The Office of Healthcare Information and Counseling (OHIC) hosts an annual national training conference for the federally funded programs that it administers. The audience for this training conference includes attendees from State Health Insurance Assistance Program (SHIP) and Senior Medicare Patrol (SMP) programs, which are two nationally recognized programs that provide Medicare information and counseling to Medicare beneficiaries and help, fight Medicare fraud through prevention and education. Grantee leadership is required to attend this training annually to ensure they receive critical information and technical assistance needed to help them successfully meet the requirements of their grant awards.

Grantees are encouraged to bring up to three (3) people from each program. Programs operate in each of the 50 states, the District of Columbia, Guam, Puerto Rico, and the US Virgin Islands. The information collected in this survey is necessary to ensure that ACL is meeting the technical assistance needs of the attendees and to capture valuable feedback to be used for future training meetings. By gathering feedback on the quality of the training and content provided, we can ensure attendee satisfaction and gather information for future planning. ACL administers a contract to develop and provide the training conference evaluation tool for ACL's approval. They also disseminate a tool to all participants following each training conference to evaluate attendee satisfaction. This training conference survey is introduced and explained during the program specific meetings and during the general session on the first day of the training conference. The survey is not mandatory, but is reinforced as a way for ACL to provide useful, engaging sessions that assist the attendees in successfully meeting the requirements of their grant awards. This evaluation tool will gather feedback on the quality of the training and content provided and the experience of the attendees to be used for future planning.

Comments in Response to the 60-Day Federal Register Notice

A 60-Day Notice s published in the **Federal Register** on February 7, 2020 Vol. 85 pages 7309–7310. ACL received one public comment during the 60-day public comment period; the public comment related to the current COVID–19 pandemic requesting the 2020 event be held virtually. Though it is essential for this event to be held in-person and to bring together national partners from across the country each year, this year's COVID–19 pandemic has halted all in-person event capability. ACL intends to hold the 2020 conference virtually.

For review and comment on this proposed information collection request, please visit the ACL website *https://www.acl.gov/about-acl/public-input.*

Estimated Program Burden

ACL estimates the burden associated with this collection of information as follows:

Respondent/data collection activity	Number of respondents	Responses per respondent	Hours per response	Annual burden hours
Conference Evaluation	364	1	15 minutes	91

Dated: June 17, 2020.

Mary Lazare,

Principal Deputy Administrator.

[FR Doc. 2020–13575 Filed 6–23–20; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–P–0813]

Determination That TENEX (Guanfacine Hydrochloride) Tablets, 1 Milligram, 2 Milligrams, and 3 Milligrams, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) has determined that TENEX (guanfacine hydrochloride) tablets, 1 milligram (mg), 2 mg, and 3 mg, was not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to this drug product, and it will allow FDA to continue to approve ANDAs that refer to the product as long as they meet relevant legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT: Jessica Tierney, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6213, Silver Spring, MD 20993–0002, 301–796–9120, *Jessica.Tierney@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

TENEX (guanfacine hydrochloride) tablets, 1 mg, 2 mg, and 3 mg, is the subject of NDA 019032, held by Promius Pharma LLC, and initially approved on October 27, 1996. TENEX is indicated in the management of hypertension.

TENEX (guanfacine hydrochloride) tablets, 1 mg, 2 mg, and 3 mg, is currently listed in the ''Discontinued Drug Product List'' section of the Orange Book. Unichem Pharmaceuticals (USA), Inc. submitted a citizen petition dated February 13, 2020 (Docket No. FDA–2020–P–0813), under 21 CFR 10.30, requesting that the Agency determine whether TENEX (guanfacine hydrochloride) tablets, 1 mg and 2 mg, was withdrawn from sale for reasons of safety or effectiveness. Although the citizen petition did not address the 3 mg strength, that strength has also been discontinued. On our own initiative, we have also determined whether that strength was withdrawn for safety or effectiveness reasons.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that TENEX (guanfacine hydrochloride) tablets, 1 mg, 2 mg, and 3 mg, was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that TENEX (guanfacine hydrochloride) tablets, 1 mg, 2 mg, and 3 mg, was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of TENEX (guanfacine hydrochloride) tablets, 1 mg, 2 mg, and 3 mg, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have found no information that would indicate that this drug product was withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list TENEX (guanfacine hydrochloride) tablets, 1 mg, 2 mg, and 3 mg, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. FDA will not begin procedures to withdraw approval of approved ANDAs that refer to this drug product. Additional ANDAs for this drug product may also be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: June 18, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–13594 Filed 6–23–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–P–0678]

Determination That DEXTROSE IN PLASTIC CONTAINER (Dextrose) Injectable, 30 Grams/100 Milliliters, 40 Grams/100 Milliliters, 60 Grams/100 Milliliters, and 70 Grams/100 Milliliters, Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) has determined that DEXTROSE IN PLASTIC CONTAINER (dextrose) injectable, 30 grams (g)/100 milliliters (mL), 40 g/100 mL, 60 g/100 mL, and 70 g/100 mL, were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for dextrose injectable, 30 g/100 mL, 40 g/100 mL, 60 g/100 mL, and 70 g/100 mL, if all other legal and regulatory requirements are met.

FOR FURTHER INFORMATION CONTACT: David Faranda, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6258, Silver Spring, MD 20993–0002, 301–796–8767, *David.Faranda@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the ''listed drug,'' which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the ''Approved Drug Products With Therapeutic Equivalence Evaluations,'' which is known generally as the ''Orange Book.'' Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

DEXTROSE IN PLASTIC CONTAINER (dextrose) injectable, 30 g/100 mL, 40 g/100 mL, 60 g/100 mL, and 70 g/100 mL, are the subject of NDA 017521, held by Baxter Healthcare Corporation, and initially approved on August 28, 1979. DEXTROSE IN PLASTIC CONTAINER is indicated as a source of calories for patients requiring parenteral nutrition when oral or enteral nutrition is not possible, insufficient or contraindicated. DEXTROSE IN PLASTIC CONTAINER (dextrose) injectable, 30 g/100 mL, 40 g/100 mL, 60 g/100 mL, and 70 g/100 mL, are currently listed in the ''Discontinued Drug Product List'' section of the Orange Book.

Fresenius Kabi USA, LLC, submitted a citizen petition dated February 6, 2020 (Docket No. FDA–2020–P–0678), under 21 CFR 10.30, requesting that the Agency determine whether DEXTROSE 70% IN PLASTIC CONTAINER (dextrose) injectable, 70 g/100 mL, was withdrawn from sale for reasons of safety or effectiveness. Although the citizen petition did not address the 30 g/100 mL, 40 g/100 mL, or 60 g/100 mL strengths, those strengths have also been discontinued. On our own initiative, we have also determined whether those strengths were withdrawn for safety or effectiveness reasons.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that DEXTROSE IN PLASTIC CONTAINER (dextrose) injectable, 30 g/100 mL, 40 g/100 mL, 60 g/100 mL, and 70 g/100 mL, were not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that DEXTROSE IN PLASTIC CONTAINER (dextrose) injectable, 30 g/100 mL, 40 g/100 mL, 60 g/100 mL, and 70 g/100 mL, were withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of DEXTROSE IN PLASTIC CONTAINER (dextrose) injectable, 30 g/100 mL, 40 g/100 mL, 60 g/100 mL, and 70 g/100 mL, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have found no information that would indicate that this drug product was withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list DEXTROSE IN PLASTIC CONTAINER (dextrose) injectable, 30 g/100 mL, 40 g/100 mL, 60 g/100 mL, and 70 g/100 mL, in the ''Discontinued Drug Product List'' section of the Orange Book. The ''Discontinued Drug Product List'' delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to DEXTROSE IN PLASTIC CONTAINER (dextrose) injectable, 30 g/100 mL, 40 g/100 mL, 60 g/100 mL, and 70 g/100 mL, may be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: June 18, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–13593 Filed 6–23–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; ADD HEALTH.

Date: July 13, 2020.

Time: 12:30 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Video Meeting).

Contact Person: Kimberly Firth, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, Suite 2W200, Bethesda, MD 20892, (301) 402–7702, *firthkm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: June 18, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–13551 Filed 6–23–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Population Sciences and Epidemiology.

Date: July 22–23, 2020.

Time: 9:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Steven Michael Frenk, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3141, MSC 7770, Bethesda, MD 20892, (301) 480–8665, *frenksm@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Topics in Bacterial Pathogenesis and Host Interactions.

Date: July 22, 2020.

Time: 9:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Soheyla Saadi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3211, MSC 7808, Bethesda, MD 20892, (301) 435–0903, *saadisoh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: AIDS and AIDS Related Research.

Date: July 22, 2020.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Shalanda A. Bynum, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, MSC 7848, Bethesda, MD 20892, (301) 755–4355, *bynumsa@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group; HIV Immunopathogenesis and Vaccine Development Study Section.

Date: July 22, 2020.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Shiv A Prasad, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5220, MSC 7852, Bethesda, MD 20892, 301–443–5779, *prasads@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Endocrinology, Metabolism, Nutrition and Reproductive Science.

Date: July 22, 2020.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Antonello Pileggi, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892–7892, (301) 402–6297, *pileggia@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Medical Imaging Investigations.

Date: July 22, 2020.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Guo Feng Xu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5122, MSC 7854, Bethesda, MD 20892, (301) 237–9870, *xuguofen@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 18, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–13549 Filed 6–23–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Pulmonary Hypertension and Sleep Apnea.

Date: July 20–21, 2020.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: George M Barnas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4220, MSC 7818, Bethesda, MD 20892, 301–435–0696, *barnasg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Small Business: Hematology.

Date: July 20–21, 2020.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Bukhtiar H Shah, DVM, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7802, Bethesda, MD 20892, (301) 806–7314, *shahb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–RM–19–012: Pilot Projects Enhancing Utility and Usage of Common Fund Data Sets.

Date: July 21, 2020.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Robert C Elliott, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3130, MSC 7850, Bethesda, MD 20892, 301–435–3009, *elliotro@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Cancer Immunology and Immunotherapy.

Date: July 21–22, 2020.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Sarita Kandula Sastry, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm 4144, MSC 7850, Bethesda, MD 20782, (301) 402–4788, *sarita.sastry@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Neurological Bioengineering and Technology.

Date: July 21–22, 2020.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Joseph G Rudolph, Ph.D., Chief and Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7844, Bethesda, MD 20892, 301–408–9098, *josephru@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Topics in Gastroenterology.

Date: July 21–22, 2020.

Time: 9:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Alexander D Politis, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3210, MSC 7808, Bethesda, MD 20892, (301) 435–1150, *politisa@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Psycho/Neuropathology Lifespan Development, STEM Education.

Date: July 21–22, 2020.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Elia K Ortenberg, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3108, MSC 7816, Bethesda, MD 20892, (301) 827–7189, *femiaee@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Infectious Diseases, Reproductive Health, Cancer and Aging.

Date: July 21, 2020.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Karen Nieves Lugo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm. 3148, MSC 7770, Bethesda, MD 20892, (301) 594–9088, *karen.nieveslugo@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Interdisciplinary Molecular Sciences and Training.

Date: July 21, 2020.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Alexander Gubin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6046B, MSC 7892, Bethesda, MD 20892, 301–408–9655, *gubina@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Behavioral Medicine: Cancer and Diabetes Prevention Therapy.

Date: July 21, 2020.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Lee S Mann, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, 301–435–0677, *mannl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR–19–222: Small Grants for New Investigators to Promote Diversity in Health-Related Research (R21 Clinical Trial Optional).

Date: July 21, 2020.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Jianxin Hu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2156, MSC 7818, Bethesda, MD 20892, (301) 827–4417, *jianxinh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Skin, Inflammation and Auto-Immunity.

Date: July 21, 2020.

Time: 12:30 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Richard Ingraham, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7814, Bethesda, MD 20892, 301–496–8551, *ingrahamrh@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 18, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–13546 Filed 6–23–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, Fellowships: Immunology, July 16, 2020, 08:00 a.m. to July 17, 2020, 05:00 p.m., National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on June 17, 2020, 85 FR 36606.

This notice is being amended to change the meeting time from 08:00 a.m. to 05:00 p.m. to 09:00 a.m. to 05:00 p.m. Meeting Date and Location remain the same. The meeting is closed to the public.

Dated: June 18, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–13547 Filed 6–23–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; To review Support of Competitive Research (SCORE) Program Applications.

Date: July 15, 2020.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Lisa A. Dunbar, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12, Bethesda, MD 20892, (301) 594–2849, *dunbarl@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: June 18, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–13553 Filed 6–23–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; T1D NIDDK Review.

Date: July 23, 2020.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Elena Sanovich, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7351, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8886, *sanoviche@mail.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Clinical Trials.

Date: July 30, 2020.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Elena Sanovich, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7351, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–8886, *sanoviche@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 18, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–13552 Filed 6–23–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, Member Conflict: Myocardial Ischemia and Metabolism, July 15, 2020, 01:00 p.m. to July 15, 2020, 04:00 p.m., National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on June 15, 2020, 85 FR 36223.

This notice is being amended to change the meeting from Center for Scientific Review Special Emphasis Panel; Member Conflict: Myocardial Ischemia and Metabolism to Center for Scientific Review Special Emphasis Panel; Member Conflict: Cardiovascular Sciences. Meeting dates, time, and location remain the same. The meeting is closed to the public.

Dated: June 18, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–13545 Filed 6–23–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Pathway to Independence in Blood Science (K99).

Date: July 30, 2020.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 1, 6705 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Susan Wohler Sunnarborg, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National, Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 208–Z, Bethesda, MD 20892, (301) 827–7987, *susan.sunnarborg@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: June 18, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–13550 Filed 6–23–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, July 17, 2020, 8:00 a.m. to July 17, 2020, 5:00 p.m., National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on June 17, 2020, 85 FR 36605.

This notice is being amended to change the meeting time from 8:00 a.m.–5:00 p.m. to 12:00 p.m.–5:00 p.m. The meeting date and location remain the same. The meeting is closed to the public.

Dated: June 18, 2020.

Ronald J. Livingston, Jr.,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–13548 Filed 6–23–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2020–0001]

Public Meeting and Extension of Comment Period on Request for Information: Air Cargo Security Options To Mitigate Costs of Compliance With International Security Requirements

AGENCY: Transportation Security Administration, DHS.

ACTION: Notice of public meeting and extension of comment period.

SUMMARY: On April 10, 2020, TSA published a request for information (RFI) specifically requesting information from the air cargo industry (including manufacturers, shippers, suppliers, warehouses, e-commerce fulfillment centers, third-party logistics providers, and air carriers) relating to compliance with international security standards for the transport of air cargo by commercial aircraft operators (85 FR 20234). In advance of the closing date for comments submitted in response to the RFI, TSA will hold a public meeting on July 29, 2020, to answer questions regarding the international standards discussed in the RFI and to provide an additional forum for comments by stakeholders and other interested persons regarding the issues identified in the RFI. In light of the current COVID–19 public health crisis, the public meeting will be virtual. TSA is also extending the comment period for the RFI to provide an additional period for comments to be submitted after the public meeting.

DATES:

Virtual public meeting: The virtual public meeting will be on July 29, 2020, via telecom, beginning at 10:00 a.m. (EDT).

Comments on request for information: The comment period on the RFI is extended from July 9, 2020, to August 27, 2020.

ADDRESSES: To access the public meeting, interested persons should contact the individual in the **FOR FURTHER INFORMATION CONTACT** section to receive the telephone number and participant code. Participants should call 2–7 minutes in advance to avoid overloading the phone servers. Persons unable to join public meeting may submit comments to the RFI published on April 10, 2020 (85 FR 20234).

FOR FURTHER INFORMATION CONTACT: Thomas Friedman, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6028; telephone (571) 227–3555 OR (202) 236–3786; email *Thomas.Friedman@tsa.dhs.gov* OR Air Cargo Branch, TSA at the above address.

SUPPLEMENTARY INFORMATION:

Availability of Committee Documents

You may obtain an electronic copy of the record for the public meeting or other submissions related to this action by using the internet through one of the following methods—

(1) Search the electronic Federal Docket Management System (FDMS) web page at *http://www.regulations.gov;* or

(2) Access the Government Publishing Office's web page at *http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR* to view the daily published **Federal Register** edition; or accessing the ''Search the **Federal Register** by Citation'' in the ''Related Resources'' column on the left, if you need to do a Simple or Advanced search for information, such as a type of document that crosses multiple agencies or dates.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this action.

Comments Invited

TSA invites interested persons to participate in this public meeting by participating in the telecom, as listed above. Individuals unable to participate in the public meeting may submit written comments, data, or views by August 27, 2020, following instructions provided in the RFI published on April 10, 2020. *See* 85 FR 20234.

Handling of Confidential or Proprietary Information and Sensitive Security Information (SSI) Submitted in Public Comments

Whether participating in the public meeting or submitting comments to the docket, do not submit comments or provide information that includes trade secrets, confidential commercial or financial information, or SSI. Please submit such comments separately from other comments on the action. Comments containing this type of information should be appropriately marked as containing such information and submitted by mail to the address listed in **FOR FURTHER INFORMATION CONTACT** section.

TSA will not place comments containing SSI in the public docket and will handle them in accordance with applicable safeguards and restrictions on access. TSA will hold documents

containing SSI, confidential business information, or trade secrets in a separate file to which the public does not have access, and place a note in the public docket explaining that commenters have submitted such documents. TSA may include a redacted version of the comment in the public docket. If an individual requests to examine or copy information that is not in the public docket, TSA will treat it as any other request under the Freedom of Information Act (FOIA) (5 U.S.C. 552) and the Department of Homeland Security's (DHS') FOIA regulation found in 6 CFR part 5.

Reviewing Comments in the Docket

Please be aware that anyone is able to search the electronic form of all comments in any of our dockets and a summary of the meeting by the name of the individual who submitted the comment, participated in the public meeting, or signed the comment (if an association, business, labor union, etc., submitted the comment). You may review the applicable Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477) and modified on January 17, 2008 (73 FR 3316).

You may review TSA's electronic public docket on the internet at *http://www.regulations.gov.* In addition, DOT's Docket Management Facility provides a physical facility, staff, equipment, and assistance to the public. To obtain assistance or to review comments in TSA's public docket, you may visit this facility between 9:00 a.m. and 5:00 p.m., Monday through Friday, excluding legal holidays, or call (202) 366–9826. This docket operations facility is located in the West Building Ground Floor, Room W12–140 at 1200 New Jersey Avenue SE, Washington, DC 20590.

Background

On April 10, 2020, TSA published a Request for Information: Air Cargo Security Options to Mitigate Costs of Compliance with International Security Requirements. *See* 85 FR 20234. The RFI requests information from the public, specifically the air cargo industry, relating to compliance with international security standards for the transport of air cargo by commercial aircraft operators. Effective June 30, 2021, international standards require that all international air cargo carried by commercial aircraft operators (passenger and all-cargo) be either screened or be received from another TSA-regulated entity that has applied security controls and/or screened the cargo. TSA is seeking information regarding options to reduce the burden on U.S. and foreign all-cargo aircraft operators in complying with the international standard, such as security controls implemented throughout the supply chain that provide a level of security commensurate with the screening of cargo before transport. Because TSA does not expect these standards to require changes to current procedures for cargo transported on passenger aircraft, this RFI is focused only on all-cargo operations.

Specific Issues for Discussion

There are several areas in particular in which TSA seeks information and comment from the industry at the public meeting; these specific issues are identified in the RFI. *See* 85 FR at 20237–20238. These key issues are intended to help focus public comments on subjects that TSA must explore in order to complete its review of potential frameworks. The comments at the meeting need not be limited to these issues.

Participation at the Meeting

The meeting is expected to begin at 10:00 a.m. and end by 12:00 p.m. (EDT). Following an introduction by TSA, members of the public will be invited to ask clarifying questions or present their views.

Individuals may address statements, questions, comments during the virtual meeting's specified ''open floor'' times, in the order they present themselves to the moderator. To accommodate as many questions as possible, the amount of time allocated to each speaker may be limited by TSA.

Public Meeting Procedures

TSA will use the following procedures to facilitate the meeting:

(1) There will be no admission fee or other charge to attend or to participate in the meeting. The meeting may adjourn early if scheduled speakers complete their statements or questions in less time than is scheduled for the meeting and there are no remaining questions from meeting participants.

(2) An individual, whether speaking in a personal or a representative capacity on behalf of an organization, will be limited to a 5-minute statement and scheduled on a first-come, first-served basis.

(3) Any speaker prevented by time constraints from speaking will be encouraged to submit written remarks to the docket, which will be made part of the record.

(4) For information on services for individuals with disabilities or to request assistance at the meeting, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above before July 20, 2020.

(5) Representatives of TSA will preside over the meeting.

(6) The meeting will be recorded by a court reporter. TSA will provide a summary of the meeting and list of participants in the docket for this action. Any person who is interested in purchasing a copy of the transcript should contact the court reporter directly.

(7) Statements made by TSA representatives are intended to facilitate discussion of the issues or to clarify issues. Any statement made during the meeting by a TSA representative is not intended to be, and should not be construed as, TSA's official position.

(8) The meeting is designed to invite public views and gather additional information. No individual will be subject to cross-examination by any other participant; however, TSA representatives may ask questions to clarify a statement.

Stacey Fitzmaurice,

Executive Assistant Administrator, Operations Support, Transportation Security Administration.

[FR Doc. 2020–13580 Filed 6–23–20; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NER–DEWA–29185; PS.SDEWA0040.001]

Boundary Adjustment at Delaware Water Gap National Recreation Area

AGENCY: National Park Service, Interior.

ACTION: Notification of boundary adjustment.

SUMMARY: The boundary of Delaware Water Gap National Recreation Area is adjusted to include two parcels of land totaling 45.22 acres of land, more or less. The fee simple interest in 44.11 acres will be donated to the United States by The Conservation Fund and the fee simple interest in 1.11 acres is already owned by the United States. These properties are located in Pike County and Monroe County, Pennsylvania, respectively.

DATES: The effective date of this boundary adjustment is June 24, 2020.

ADDRESSES: The map depicting this boundary adjustment is available for inspection at the following locations: National Park Service, Land Resources Program Center, Interior Region 1, 1234 Market Street, 20th Floor, Philadelphia, Pennsylvania 19107, and National Park

Service, Department of the Interior, 1849 C Street NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Realty Officer Jennifer Cherry, National Park Service, Land Resources Program Center, Interior Region 1 at 115 John Street, 5th Floor, Lowell, Massachusetts 01852; telephone (978) 970–5260; email *jennifer_cherry@nps.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 16 U.S.C. 460o-2(b), the boundary of Delaware Water Gap National Recreation Area is adjusted to include two properties totaling 45.22 acres of land in Pennsylvania: 44.11 acres are identified as Parcel No. 183.00–01–29.003—in Lehman Township, Pike County; and 1.11 acres that are a portion of the undeveloped roadways located south of Huckleberry Drive in Middle Smithfield Township, Monroe County. This boundary adjustment is depicted on Map No. 620/165,341 dated October, 2019.

Specifically, 16 U.S.C. 460o–2(b) states that the Secretary of the Interior may make adjustments to the boundary of Delaware Water Gap National Recreation Area by publication of the amended description thereof in the **Federal Register**: Provided, that the area encompassed by such revised boundary shall not exceed the acreage included within the detailed boundary first described in the **Federal Register** on June 7, 1977 (42 FR 29071–29103). This boundary adjustment does not exceed the acreage of the detailed boundary so described. The Conservation Fund owns the property in Pike County and will convey it to the United States without cost to help mitigate the effects of the upgrade and expansion of the Susquehanna-Roseland electric transmission line across approximately 4.3 miles of the National Recreation Area. The property in Monroe County is already owned by the United States pursuant to a prior conveyance from The Conservation Fund for the same purpose.

Gay Vietzke,

Regional Director, Interior Region 1.

[FR Doc. 2020–13650 Filed 6–23–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0038]

Rigging Equipment for Material Handling; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to extend the OMB approval of the information collection requirements contained in the Standard on Rigging Equipment for Material Handling. The Standard requires affixing identification tags or markings on rigging equipment, developing and maintaining inspection records, and retaining proof-testing certificates.

DATES: Comments must be submitted (postmarked, sent, or received) by August 24, 2020.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, OSHA Docket No. OSHA–2010–0038, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3653, 200 Constitution Avenue NW, Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Docket Office's normal business hours, 10:00 a.m. to 3:00 p.m., ET.

Instructions: All submissions must include the agency name and OSHA docket number (OSHA–2010–0038) for the Information Collection Request (ICR). All comments, including any personal information you provide, such as social security numbers and date of birth, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the above address. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download from the website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the below address to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Seleda Perryman, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of the continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act, or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires OSHA to obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

Paragraph (b)(1) of the Standard 29 CFR 1926.251 requires that alloy steel chains have permanently affixed, durable identification tags stating size, grade, rated capacity, and sling manufacturer. Paragraph (b)(6)(i)

requires the employer to make a thorough periodic inspection of alloy steel chain slings in use on a regular basis, but at least once a year. Paragraph (b)(6)(ii) requires the employer to make and maintain a record of the most recent month in which each alloy steel chain was inspected and make the record available for examination.

Paragraph (c)(15)(ii) requires that all welded end attachments of wire rope slings be proof tested by the manufacturer at twice their rated capacity prior to initial use, and that the employer retain a certificate of the proof test and make it available for examination.

Paragraphs (e)(1)(i), (ii), and (iii) require that synthetic web slings be marked or coded to show the manufacturer's name or trademark, the rated capacity for the type of hitch, and the type of synthetic webbing material.

Paragraph (f)(2) requires that all hooks for which no applicable manufacturer's recommendations are available be tested twice before they are put into use. The employer shall maintain a record of the dates and results of the tests.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must-comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

There is an adjustment decrease of 3,269 burden hours (from 52,428 hours to 49,159 hours). This decrease is a result of new data indicating a decrease in the number of cranes and derricks from 122,091 to 115,829.

Type of Review: Extension of a currently approved collection.

Title: Rigging Equipment for Material Handling (29 CFR 1926.251).

OMB Control Number: 1218–0233.

Affected Public: Business or other for-profits.

Number of Respondents: 115,829.

Total Responses: 306,729.

Frequency of Responses: On occasion.

Average Time per Response: Average of 3 minutes (3/60 hour) for an employer to maintain and disclose a certificate to 30 minutes (30/60 hour) for an employer to acquire information and make a tag for a sling.

Estimated Total Burden Hours: 49,159.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other material must identify the agency name and the OSHA docket number for the ICR (OSHA Docket No. 2010–0038). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information, such as social security numbers and dates of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download through this website. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC, on June 18, 2020.

Loren Sweatt,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2020–13520 Filed 6–23–20; 8:45 am]

BILLING CODE 4510–26–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2020–9]

Sovereign Immunity Study: Notice and Request for Public Comment

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Notice of Inquiry; extension of comment period.

SUMMARY: The U.S. Copyright Office is extending the deadline for the submission of written comments in response to its June 3, 2020, notice of inquiry regarding its state sovereign immunity policy study. In addition, the Office is providing for a second round of written comments.

DATES: Initial written comments in response to the notice of inquiry published June 3, 2020, at 85 FR 34252, must be received no later than 11:59 p.m. Eastern Time on September 2, 2020. Written reply comments and empirical research studies must be received no later than 11:59 p.m. Eastern Time on October 2, 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://www.copyright.gov/docs/sovereignimmunitystudy.* 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: Kevin Amer, Deputy General Counsel,

kamer@copyright.gov; Mark T. Gray, Attorney-Advisor, *mgray@copyright.gov;* or Jalyce E. Mangum, Attorney-Advisor, *jmang@copyright.gov.* They can be reached by telephone at 202–707–3000.

SUPPLEMENTARY INFORMATION: On June 3, 2020, the U.S. Copyright Office issued a notice of inquiry (''NOI'') commencing a policy study on state sovereign immunity from copyright infringement suits.[1] Congress has requested that the Office ''research this issue to determine whether there is sufficient basis for federal legislation abrogating State sovereign immunity when States infringe copyrights.'' [2] To assist Congress in making that assessment, the Office solicited public comment on several issues concerning the degree to which copyright owners face infringement from state actors today, whether such infringement is based on intentional or reckless conduct, and what remedies, if any, are available to copyright owners under state law.

To ensure that members of the public have sufficient time to comment, and to ensure that the Office has the benefit of a complete record, the Office is extending the deadline for the submission of comments to 11:59 p.m. Eastern Time on September 2, 2020.

The Office has also determined that interested parties should be given an opportunity to address any comments submitted in response to the NOI. In addition, as noted in the NOI,[3] the Office is seeking to provide sufficient time for parties engaged in empirical research in this area to complete and submit their findings. Accordingly, the Office is providing for a second round of written comments. Additional comments must be submitted no later than October 2, 2020. In general, these comments should be limited to issues or concerns presented in the initial comments. The Office will, however, consider any empirical research submitted by the October 2 deadline as part of the record in this proceeding.

Dated: June 22, 2020.

Regan A. Smith,

General Counsel and Associate Register of Copyrights.

[FR Doc. 2020–13725 Filed 6–23–20; 8:45 am]

BILLING CODE 1410–30–P

[1] 85 FR 34252 (June 3, 2020).

[2] Letter from Sens. Thom Tillis & Patrick Leahy to Maria Strong, Acting Register of Copyrights, U.S. Copyright Office at 1 (Apr. 28, 2020), *https://www.copyright.gov/rulemaking/statesovereign-immunity/letter.pdf.*

[3] *See* 85 FR at 34255.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[NOTICE: (20–053)]

Name of Information Collection: COVID 19 Census of NASA Grantees

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection—Renewal with change of an Existing Information Collection.

SUMMARY: The National Aeronautics and Space Administration, 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.

DATES: Comments are due by August 24, 2020.

ADDRESSES: All comments should be addressed to Claire Little, National Aeronautics and Space Administration, 300 E Street SW, Washington, DC 20546–0001 or call 202–358–2375.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to R. Travis Kantz, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546; 281–792–7885 or email *R.Travis.Kantz@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

NASA is requesting an extension with change to this existing collection in order to continue to gather information consistent with OMB and NASA COVID guidance. This data will help inform NASA about the status and ongoing implementation issues surrounding COVID mitigation for NASA grantees and will improve the quality and responsiveness of NASA in responding to grantee issues which impact scientific research funded by NASA.

This information may be disclosed as necessary to NASA personnel, contractors, and partners to administer NASA Education programs. It also may be disclosed to NASA administrators and managers, Office of Management and Budget (OMB) officials, and members of Congress for the purposes of accountability and tracking of program and project efficiency and effectiveness.

II. Methods of Collection

Interview.

III. Data

Title: COVID 19 Census of NASA Grantees.

OMB Number: 2700–0177.

Type of review: Renewal with Change.

Affected Public: Educational institutions from k-12, universities, community and tribal colleges, museums.

Estimated Annual Number of Activities: 12.

Estimated Number of Respondents per Activity: 156.

Annual Responses: 12.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 22464.

Estimated Total Annual Cost: $10,953,446.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) 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 automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Roger Kantz,

NASA PRA Clearance Officer.

[FR Doc. 2020–13538 Filed 6–23–20; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 20–058]

NASA Advisory Council; Aeronautics Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Aeronautics Committee of the NASA Advisory Council (NAC). This meeting will be held for soliciting, from the aeronautics community and other persons, research and technical information relevant to program planning.

DATES: Wednesday, July 8, 2020, 10:00 a.m.–6:00 p.m., Eastern Time.

ADDRESSES: Virtual meeting via dial-in teleconference and WebEx only.

FOR FURTHER INFORMATION CONTACT: Ms. Irma Rodriguez, Designated Federal Officer, Aeronautics Research Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 527–4826, or *irma.c.rodriguez@nasa.gov*.

SUPPLEMENTARY INFORMATION: As noted above, this meeting will be available telephonically and by WebEx only. You must use a touch-tone phone to participate in this meeting. Any interested person may dial the toll-free access number 1–888–769–8716 and then the numeric participant passcode: 6813159 to participate in the meeting. NOTE: Please ''mute'' your phone. The WebEx link is *https://nasaenterprise.webex.com,* the meeting number is 908 912 695, and the password is gJkZYZu$239 (case sensitive). The agenda for the meeting includes the following topics:

—COVID–19 Impacts and Industry Response
—Future Flight Demos
—Urban Air Mobility (UAM) Plans

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2020–13613 Filed 6–23–20; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 am, Tuesday, July 14, 2020.

PLACE: Virtual.

STATUS: The one item may be viewed by the public through webcast only.

MATTERS TO BE CONSIDERED: 65227 Aircraft Accident Report: Rapid Descent and Crash into Water, Atlas Air Inc. Flight 3591, Boeing 767–375BCF, N1217A, Trinity Bay, Texas, February 23, 2019.

CONTACT PERSON FOR MORE INFORMATION: Candi Bing at (202) 590–8384 or by email at *bingc@ntsb.gov.*

Media Information Contact: Keith Holloway by email at *keith.hollow@ntsb.gov* or at (202) 314–6100.

This meeting will take place virtually. The public may view it through a live or archived webcast by accessing a link under ''Webcast of Events'' on the NTSB home page at *www.ntsb.gov.*

There may be changes to this event due to the evolving situation concerning the novel coronavirus (COVID–19). Schedule updates, including weather-related cancellations, are also available at *www.ntsb.gov.*

The National Transportation Safety Board is holding this meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b).

Dated: Monday, June 22, 2020.

LaSean R McCray,

Alternate Federal Register Liaison Officer.

[FR Doc. 2020–13747 Filed 6–22–20; 4:15 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0145]

Format Options for Requesting and Documenting Evaluation of Alternatives

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of format for certain relief requests from licensees.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is notifying the public of an online submission option and format for documenting the NRC's evaluation of a request for an alternative to the regulatory requirements.

DATES: The format described in this document will take effect on June 19, 2020.

ADDRESSES: Please refer to Docket ID NRC–2020–0145 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov/* and search for Docket ID NRC–2020–0145. Address questions about NRC docket IDs to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.*
- *NRC's Public Website:* The online form is available in the NRC's public website at *https://www.nrc.gov/about-nrc/covid-19/reactors/.*

FOR FURTHER INFORMATION CONTACT: James G. Danna, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–7422, email: *James.Danna@nrc.gov.*

SUPPLEMENTARY INFORMATION: On January 31, 2020, the U.S. Department of Health and Human Services declared a public health emergency (PHE) for the United States to aid the nation's healthcare community in responding to the Coronavirus Disease 2019 (COVID–19). On March 11, 2020, the COVID–19 outbreak was characterized as a pandemic by the World Health Organization.

As discussed during a public meeting held on March 20, 2020, with nuclear industry representatives and members of the public, this is an unprecedented time for our country, the NRC, and its regulated entities. The NRC is committed to following the NRC's Principles of Good Regulation (independence, openness, efficiency, clarity, and reliability) while performing our mission. In keeping with these principles, the NRC is providing additional flexibility by creating an online submission form licensees may use to request relief in the form of alternatives under Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.55a(z), ''Alternatives to codes and standards requirements,'' from certain NRC regulatory requirements in 10 CFR 50.55a(b) through (h).

The regulations in 10 CFR 50.55a(z), ''Alternatives to codes and standards requirements,'' state:

Alternatives to the requirements of paragraphs (b) through (h) of this section or portions thereof may be used when authorized by the Director, Office of Nuclear Reactor Regulation. A proposed alternative must be submitted and authorized prior to implementation. The applicant or licensee must demonstrate that:

(1) Acceptable level of quality and safety. The proposed alternative would provide an acceptable level of quality and safety; or

(2) Hardship without a compensating increase in quality and safety. Compliance with the specified requirements of this section would result in hardship or unusual difficulty without a compensating increase in the level of quality and safety.

In response to the COVID–19 PHE and the anticipated requests by licensees for

alternatives to certain regulatory requirements in 10 CFR 50.55a, ''Codes and standards,'' the NRC's Office of Nuclear Reactor Regulation is providing a Web-based online form that licensees may use to submit their requests. The online form may only be used for requests to use alternatives submitted under 10 CFR 50.55a(z). The form may be used regardless of whether the request is related to COVID–19. Any licensee wishing to request an alternative under 10 CFR 50.55a(z) may use the form. Use of the online form by licensees is optional. Whether a licensee chooses to use a traditional method to submit a request or opts to use the online submission form, the licensee must adhere to the requirements of 10 CFR 50.4, ''Written Communications,'' and submit all information necessary for the NRC to conduct a technical evaluation of the request. The licensee's submittal will be captured as an official agency record in ADAMS. The public and stakeholders will have access through ADAMS to the licensee's request and the supporting information provided by the licensee.

Additionally, the NRC will use a streamlined format for documenting its regulatory and technical evaluation and issuing an approval of a licensee's request for an alternative under 10 CFR 50.55a(z). This format is different from the expedited processing the NRC has used on some COVID-related matters. It will not affect the way in which the NRC reviews the requests for alternatives, it will just streamline format in which that review is documented. This streamlined format will still consist of a safety evaluation that documents the rationale for the NRC's decision. The NRC expects that the streamlined format will reduce the amount of information repeated from other sources, such as the licensee's application. For example, safety evaluations will no longer extensively quote from the application in a ''Licensee's Proposed Alternative'' section. That information will, however, still be available to the public in the application, which the safety evaluation will cite, along with an ADAMS accession number. The format will still provide the same level of detail for the NRC's regulatory and technical evaluation of the licensee's request. The public will continue to have the same level of access to the information documenting the NRC staff's decision in response to the licensee's request. The online form is available in the NRC's public website at *https://www.nrc.gov/about-nrc/covid-19/reactors/.*

Dated: June 19, 2020.

For the Nuclear Regulatory Commission.

James G. Danna,

Chief, Plant Licensing Branch 1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2020–13646 Filed 6–23–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–1051; NRC–2018–0052]

Holtec International HI–STORE Consolidated Interim Storage Facility Project

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft environmental impact statement; extension of comment period; public meeting.

SUMMARY: On March 20, 2020, the U.S. Nuclear Regulatory Commission (NRC) issued for public comment a draft Environmental Impact Statement (EIS) for Holtec International's (Holtec's) application to construct and operate a consolidated interim storage facility (CISF) for spent nuclear fuel (SNF) and Greater-Than Class C (GTCC) waste, along with a small quantity of mixed oxide fuel. The public comment period was originally scheduled to close on May 22, 2020. On April 27, 2020 the public comment period was extended to July 22, 2020. However, given recent events associated with the COVID–19 public health emergency, the NRC has decided to extend the public comment period to allow more time for members of the public to develop and submit their comments.

DATES: The due date of comments requested in the document published on March 20, 2020 (85 FR 16150), which was extended on April 27, 2020 (85 FR 23382), is further extended. Comments should be filed no later than September 22, 2020. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

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

- *Federal Rulemaking website:* Go to *https://www.regulations.gov/* and search for Docket ID NRC–2018–0052. Address questions about NRC Docket IDs to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, ATTN: Program Management, Announcements and Editing Staff, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Email comments to: Holtec-CISFEIS@nrc.gov.*

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

FOR FURTHER INFORMATION CONTACT: Jill Caverly, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7674; email: *Jill.Caverly@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2018–0052 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this action by the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2018–0052.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The draft EIS for the Holtec International HI–STORE CISF project is available in ADAMS under Accession No. ML20069G420.
- *Project Web Page:* Information related to the Holtec HI–STORE CISF project can be accessed on the NRC's Holtec HI–STORE CISF web page at *https://www.nrc.gov/waste/spent-fuel-storage/cis/holtec-international.html.*
- *Public Libraries:* A copy of the draft EIS can be accessed at the following public libraries (library access and hours are determined by local policy):
- Carlsbad Public Library, 101 S. Halagueno Street, Carlsbad, NM 88220
- Hobbs Public Library, 509 N Shipp St., Hobbs, NM 88240
- Roswell Public Library, 301 N. Pennsylvania, Roswell, NM 88201

B. Submitting Comments

Please include Docket ID NRC–2018–0052 in your comment submission.

Written comments may be submitted during the draft EIS comment period as described in the **ADDRESSES** section of the document.

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

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

II. Discussion

On March 20, 2020 (85 FR 16150), the NRC issued for public comment a draft EIS for Holtec's application to construct and operate a CISF for SNF and GTCC waste. The draft EIS for Holtec's license application includes the preliminary analysis that evaluates the environmental impacts of the proposed action and alternatives to the proposed action. After comparing the impacts of the proposed action (Phase 1) to the No-Action alternative, the NRC staff, in accordance with the requirements in part 51 of title 10 of the *Codes of Federal Regulations,* recommends the proposed action (Phase 1), which is the issuance of an NRC license for 40 years to Holtec to construct and operate a CISF for SNF at the proposed location. In addition, the Bureau of Land Management (BLM) staff recommends the issuance of a permit to construct and operate the rail spur. This recommendation is based on (i) the license application, which includes an environmental report and supplemental documents, and Holtec's responses to the NRC staff's requests for additional information; (ii) consultation with Federal, State, Tribal, local agencies, and input from other stakeholders; (iii) independent NRC and BLM staff review; and (iv) the assessments provided in the EIS.

The public comment period was originally scheduled to close on May 22, 2020. The NRC has decided to extend the public comment until September 22, 2020 to allow more time for members of the public to submit their comments. Comments of Federal, State, and local agencies, Indian Tribes or other interested persons will be made available for public inspection when received.

III. Meeting Information

The NRC staff will hold a public webinar on July 9, 2020 to receive comments on the draft EIS for Holtec's application to construct and operate a CISF. The webinar will be held online and will offer a telephone line for members of the public to submit comments. A court reporter will be recording all comments received during the webinar. The dates and times for the public webinar are as follow:

Date	Time	Location
7/09/2020	5:00 p.m. to 9:00 p.m. (EDT) or 3:00 p.m. to 7:00 p.m. (MDT)	WEBINAR INFORMATION: Webinar address: https://usnrc.webex.com/. Event Number: 199 943 8370. Password: HOLTEC. TELEPHONE ACCESS: Telephone number: 800–475–0220. Telephone passcode: 9575497.

Persons interested in attending this meeting should monitor the NRC's Public Meeting Schedule website at *https://www.nrc.gov/pmns/mtg* for additional information, agenda for the meeting, information on how to provide verbal comments, and access information for the meeting. Participants should register in advance of the meeting by visiting the website (*https://usnrc.webex.com*) and using the event number provided above. A confirmation email will be generated providing additional details and a link to the meeting. Those wishing to make verbal comments at the meeting should follow instructions listed on the NRC's Public Meeting Schedule website.

Dated: June 18, 2020.

For the Nuclear Regulatory Commission.

Diana B. Diaz Toro,

Acting Chief, Environmental Review Materials Branch, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety, and Safeguards.

[FR Doc. 2020–13590 Filed 6–23–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–254 and 50–265; NRC–2020–0143]

Exelon Generation Company, LLC and MidAmerican Energy Company Quad Cities Nuclear Power Station, Units 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued an exemption in response to a July 22, 2019, request from Exelon Generation Company, LLC, from certain regulatory requirements in order to permit exclusion of main steam isolation valve (MSIV) leakage from the overall integrated leak rate Type A test measurement and MSIV pathway leakage contributions from the combined leakage rate of all penetrations and valves subject to Type B and Type C tests.

DATES: The exemption was issued on June 18, 2020.

ADDRESSES: Please refer to Docket ID NRC–2020–0143 when contacting the NRC about the availability of information regarding this document. You may obtain publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0143. Address questions about NRC docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email:

Jennifer.Borges@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly-available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

FOR FURTHER INFORMATION CONTACT: Robert F. Kuntz, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3733, email: *Robert.Kuntz@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the exemption is attached.

Dated: June 19, 2020.

For the Nuclear Regulatory Commission.

Russell S. Haskell,

Project Manager, Plant Licensing Branch III, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

Attachment—Exemption

NUCLEAR REGULATORY COMMISSION

Docket Nos. 50–254 and 50–265

Exelon Generation Company, LLC and MidAmerican Energy Company Quad Cities Nuclear Power Station, Units 1 and 2

Exemption

I. Background

Exelon Generation Company, LLC (EGC, the licensee) and MidAmerican Energy Company are the holders of Facility Operating License Nos. DPR–29 and DPR–30, which authorize operation of the Quad Cities Nuclear Power Station (QCNPS), Units 1 and 2. The licenses provide, among other things, that the facilities are subject to the rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect. The facilities each consist of a boiling, light-water reactor located in Rock Island County, Illinois.

II. Request/Action

In its letter dated March 5, 2019 (Agencywide Documents and Access Management System (ADAMS) Accession No. ML19064B369), as supplemented by letters dated May 23, 2019 (ADAMS Accession No. ML19143A347), July 22, 2019 (ADAMS Accession No. ML19203A176), February 24, 2020 (ADAMS Accession No. ML20055E826), and March 31, 2020 (ADAMS Accession No., ML20091H576) EGC requested a permanent exemption from the Part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR), Appendix J, Option B, Section III.A requirements in order to permit exclusion of main steam isolation valve (MSIV) leakage from the overall integrated leak rate Type A test measurement, and from Option B, Section III.B, requirements in order to permit exclusion of the MSIV pathway leakage contributions from the combined leakage rate of all penetrations and valves subject to Type B and Type C tests. The letters also requested license amendments to revise Technical Specification (TS) 3.6.1.3, ''Primary Containment Isolation Valves (PCIVs),'' Surveillance Requirement (SR) 3.6.1.3.10 that would increase the single and combined MSIV leakage rate limits; add a new TS 3.6.2.6, ''Residual Heat Removal (RHR) Drywell Spray,'' to reflect the crediting of drywell spray for fission product removal; and revise TS 3.6.4.1, ''Secondary Containment,'' SR 3.6.4.1.1 to address short-duration conditions during which the secondary containment pressure may not meet the SR pressure requirement at QCNPS, Units 1 and 2. The license amendment requests are addressed separately.

Under Part 50 of 10 CFR, paragraph 50.54(o), primary reactor containments for water-cooled power reactors are subject to the requirements of Appendix J to 10 CFR part 50. Appendix J specifies the leakage rate test requirements, schedules, and acceptance criteria for tests of the leak-tight integrity of the reactor containment, and systems and components that penetrate the containment. Option B of 10 CFR 50, Appendix J, ''Performance-Based Requirements,'' paragraph III.A, ''Type A Test,'' requires, among other things, that the overall integrated leakage rate must not exceed the allowable leakage rate (L_a) with margin, as specified in the TSs. The overall integrated leakage rate is defined in 10 CFR part 50, Appendix J, as ''the total leakage rate through all tested leakage paths, including containment welds, valves, fittings, and components that penetrate the containment system.'' This includes the contribution through the four main steam (MS) lines where each line contains two MSIVs in series. Paragraph III.B, ''Type B and C Tests,'' requires, among other things, that the sum of the leakage rates of Type B and Type C local leakage rate tests be less than the performance criterion (L_a) with margin as specified in the TSs. The allowable leakage rates set in the TSs ensure that the required dose limits, such as in 10 CFR 50.67, ''Accident source term,'' will not be exceeded.

This requested exemption concerns the MS system, which penetrates containment. The licensee requested this exemption because the MS pathway leakage is treated separately from the remainder of the assumed leakage from primary containment in the design basis loss of coolant accident (LOCA) analysis. The radiological consequences of MSIV leakage are modeled as a separate primary containment release path to the environment that bypasses secondary containment, and therefore, it is not filtered through the standby gas treatment system like other containment leakage. The design basis LOCA dose calculation assumes all MSIV leakage migrates to the turbine building and then to the environment. By currently including the MS pathway leakage with the rest of the primary containment leakage test results, it is being accounted for twice—once as part of the actual containment leakage and again as part of the MSIV leakage used in the LOCA dose calculations.

III. Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances as described in 10 CFR 50.12(a)(2)(i)–(vi) are present. The licensee asserted that special circumstances are present under 10 CFR 50.12(a)(2)(ii) (stating that the application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule).

The licensee's exemption request was submitted with license amendments request to increase the allowable MSIV leakage rate. The exemption and amendments together will permit an increase in allowable MSIV leakage rate that is excluded from the overall integrated leak rate Type A test measurement and excluded from the combined Type B and Type C test total. The licensee described its view on the special circumstances associated with the MSIV leakage path testing in its application dated July 22, 2019.

A. The Exemption Is Authorized by Law

This exemption permits exclusion of the MSIV pathway leakage contribution from the overall integrated leakage rate Type A test measurement and from the combined leakage rate of all penetrations and valves subject to Type B and Type C tests. As stated above, 10 CFR 50.12 allows the NRC to grant exemptions from the requirements of 10 CFR part 50. The NRC staff has determined that granting of the licensee's proposed exemption will not result in a violation of the Atomic Energy Act of 1954, as amended, or the Commission's regulations. Therefore, the exemption is authorized by law.

B. The Exemption Presents No Undue Risk to Public Health and Safety

Type A tests to measure the containment system overall integrated leakage rate must be conducted under conditions representing design basis LOCA containment peak pressure. Type B pneumatic tests to detect and measure local leakage rates across pressure retaining, leakage-limiting boundaries, and Type C pneumatic tests to measure containment isolation valve leakage rates, must be conducted to ensure the integrity of the overall containment system as a barrier to fission product release to reduce the risk from reactor accidents.

In license Amendment Nos. 233 and Amendment 229 (ADAMS Accession No. ML062070290), the NRC approved the use of the alternative source term (AST) (as

prescribed in 10 CFR 50.67) in the calculations of the radiological dose consequences of design basis accidents (DBAs), including the design basis LOCA, for QCNPS, Units 1 and 2. The NRC staff safety evaluation accompanying these amendments acknowledged that once fission products are dispersed in the primary containment, their release to the environment is assumed to occur through three pathways: (1) The leakage of primary containment atmosphere; (2) the leakage of primary containment atmosphere through MSIVs; and (3) the leakage from emergency core cooling systems that recirculate suppression pool water outside of the primary containment. As noted above, however, leakage through the MSIVs is considered a separate pathway and is calculated as a separate contributor to the dose consequence analysis. As such, the inclusion of MSIV leakage as part of Type A and as part of Type B and C test results is not necessary to ensure the actual radiological consequences of DBAs remain below the regulatory limit.

The proposed exemption does not create any new accident precursors. Therefore, the probability of postulated accidents is not increased. Also, the consequences of postulated accidents are not significantly changed from the previously evaluated consequences associated with the design basis LOCA as described in the AST amendments. Therefore, there is no undue risk to public health and safety.

C. The Exemption Is Consistent With the Common Defense and Security

The proposed exemption excludes the MSIV pathway leakage contribution from the overall integrated leakage rate Type A test measurement and from the combined leakage rate of all penetrations and valves subject to Type B and Type C tests. This change to accounting for leakage rate measurement has no relation to security issues. Therefore, the exemption is consistent with the common defense and security.

D. Special Circumstances

Under 10 CFR 50.12(a)(2)(ii) special circumstances include when, ''[a]pplication of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.''

The test requirements in Appendix J to 10 CFR part 50 ensure that leakage through containments or systems and components penetrating containments does not exceed allowable leakage rates specified in the technical specifications, and integrity of the containment structure is maintained during its service life. Option B of Appendix J identifies the performance-based requirements and criteria for preoperational and subsequent periodic leakage-rate testing.

The licensee has analyzed the MS pathway leakage separately from the overall containment integrated leakage; the local leakage across pressure-containing or leakage-limiting boundaries; and the containment isolation valve leakage in its dose consequence analyses. The dose consequences were found to be within the applicable acceptance criteria in 10 CFR 50.67, ''Accident source term,'' and the guidance of NRC Regulatory Guide 1.183, ''Alternative Radiological Source Terms for Evaluating Design Basis Accidents [DBAs] at Nuclear Power Reactors,'' dated July 2000 (ADAMS Accession No. ML003716792). The staff has reviewed the licensee's analysis and determined that the dose consequences of implementing the proposed change are below the applicable acceptance criteria and the containment leaks will continue to be limited by the QCNPS, Units 1 and 2, TSs.

Therefore, because the underlying purposes of 10 CFR part 50, Appendix J, is still achieved, the special circumstances required by 10 CFR 50.12(a)(2)(ii) for the granting of an exemption from 10 CFR part 50, Appendix J, Option B, Sections lII.A and III.B, exist.

E. Environmental Considerations

The NRC staff determined that the issuance of the requested exemption meets the provisions of categorical exclusion 10 CFR 51.22(c)(25) because: (i) No significant hazards consideration; (ii) no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought involve *e.g.,* inspection or surveillance requirements. Therefore, in accordance with 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the NRC's issuance of this exemption. The basis for the NRC staff's determination is provided in the following evaluation of the requirements in 10 CFR 51.22(c)(25)(i)–(vi).

Requirements in 10 CFR 51.22(c)(25)(i)

To qualify for a categorical exclusion under 10 CFR 51.22(c)(25)(i), the exemption must involve ''no significant hazards consideration.'' The NRC staff evaluated whether the exemption involves no significant hazards consideration by using the standards in 10 CFR 50.92(c), as presented below:

1. Does the requested exemption involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed exemption would permit exclusion of the MSIV pathway leakage contribution from the overall integrated leakage rate Type A test measurement and from the sum of the leakage rates from Type B and Type C tests. The leakage of primary containment atmosphere through MSIVs is accounted for as a separate contributor to the design basis LOCA dose consequence analysis. This exemption will allow the leakage testing to be performed in a manner consistent with the way MSIV leakage is modeled in the revised radiological consequence analysis included as part of the related license amendment requests (LARs) submitted in the letter dated March 5, 2019 as supplemented by the letters dated March 23, 2019, February 24, 2020, and March 31, 2020. This change to the leakage rate measurement does not increase the probability or consequences of an accident previously evaluated.

Therefore, the exemption does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the requested exemption create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed exemption does not involve a physical modification to the plant (*i.e.,* no new or different type of equipment will be installed and there are no physical modifications to existing equipment associated with the proposed change). Similarly, it does not physically change any structures, systems, or components involved in the mitigation of any accidents.

Therefore, the exemption does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the requested exemption involve a significant reduction in a margin of safety?

Response: No.

The proposed exemption does not alter a design basis or safety limit nor cause a limit to be exceeded. The proposed exemption allows the results of the TS required MSIV leakage pathway tests to no longer be accounted for as part of the overall integrated leakage rate Type A test measurement and as part of the sum of the local leakage rates from Type B and Type C tests. This change only affects which leakage rates are included in the Types A, B, and C results. This exemption will allow the leakage testing to be performed in a manner consistent with the way MSIV leakage is modeled in the revised radiological consequence analysis submitted as part of the related LAR.

Therefore, the exemption does not involve a significant reduction in a margin of safety.

Based on the evaluation above, the NRC staff has determined that the proposed exemption involves no significant hazards consideration. Therefore, the requirements of 10 CFR 51.22(c)(25)(i) are met.

Requirements in 10 CFR 51.22(c)(9)(ii)

To qualify for a categorical exclusion under 10 CFR 51.22(c)(25)(ii), the exemption must result in ''no significant change in the types or significant increase in the amounts of any effluents that may be released offsite.'' The proposed exemption allows the results of the TS-required MSIV leakage pathway tests to be accounted for only as part of the design basis LOCA

consequence analysis. This change only affects the total in which the leakage rates are included and does not change the frequency or pressure at which the testing must be performed. The underlying purpose of 10 CFR part 50, Appendix J, is to demonstrate by periodic testing and visual inspection that the primary reactor containment will be able to perform its function of providing an essentially leak-tight barrier against uncontrolled release of radioactivity to the environment. The inclusion of the MSIV leakage testing results in the design basis LOCA serves the same purpose as the inclusion in the rate Type A test measurement and the sum of the leakage rates from Type B and Type C tests required by Appendix J, Option B, paragraphs III.A and III.B. Therefore, the proposed exemption will not significantly change the types of effluents that may be released offsite, or significantly increase the amount of effluents that may be released offsite. Therefore, the requirements of 10 CFR 51.22(c)(25)(ii) are met.

Requirements in 10 CFR 51.22(c)(9)(iii)

To qualify for a categorical exclusion under 10 CFR 51.22(c)(25)(iii), the exemption must result in ''no significant increase in individual or cumulative public or occupational radiation exposure.'' The proposed exemption permits the exclusion of the MSIV leakage pathway results from the Type A test measurement and the sum of the leakage rates from Type B and Type C tests required by Appendix J, Option B, paragraphs III.A and III.B, and has no impact on, or change to, fuel or core design. Additionally, the TSs still require that the MSIV leakage rates be tested and maintained below set limits. As such, the calculated public and occupational doses will remain essentially the same. Therefore, the proposed exemption will not significantly increase individual or cumulative public or occupational radiation exposure. Therefore, the requirements of 10 CFR 51.22(c)(25)(iii) are met.

Requirement in 10 CFR 51.22(c)(25)(iv)

To qualify for a categorical exclusion under 10 CFR 51.22(c)(25)(iv), the exemption must result in ''no significant construction impact.'' The exemption does not propose any changes to the site, alter the site, or change the operation of the site. Therefore, there is no significant construction impact. Therefore, the requirements of 10 CFR 51.22(c)(25)(iv) are met.

Requirement in 10 CFR 51.22(c)(25)(v)

To qualify for a categorical exclusion under 10 CFR 51.22(c)(25)(v), the exemption must involve ''no significant increase in the potential for or consequences from radiological accidents.'' The proposed exemption does not remove the requirement to perform leakage rate testing of the MSIVs. This exemption will allow the leakage testing to be performed in a manner consistent with the way MSIV leakage is modeled in the revised radiological consequence analysis submitted as part of the related LAR. Therefore, this change to the leakage rate measurement does not result in a significant increase in the potential for or consequences from radiological accidents. Therefore, the requirements of 10 CFR 51.22(c)(25)(v) are met.

Requirement in 10 CFR 51.22(c)(25)(vi)

To qualify for a categorical exclusion under 10 CFR 51.22(c)(25)(vi)(C), the exemption must involve inspection or surveillance requirements. The exemption seeks to permit exclusion of the MSIV leakage from the overall integrated leak rate Type A test measurement and the combined leakage rate of all penetrations and valves subject to Type B and Type C tests required by Appendix J to 10 CFR part 50. Appendix J specifies the leakage rate test requirements, schedules, and acceptance criteria for tests of the leak-tight integrity of the reactor containment, and systems and components that penetrate the containment. Therefore, the exemption involves a surveillance requirement. Therefore, the requirements of 10 CFR 51.22(c)(25)(vi) are met.

Conclusion

Based on the above, the NRC staff concludes that the proposed exemption meets the eligibility criteria for the categorical exclusion set forth in 10 CFR 51.22(c)(25). Therefore, in accordance with 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the NRC's issuance of this exemption.

IV. Conclusions

Accordingly, the NRC has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the NRC hereby grants EGC a permanent exemption (1) from the requirements of 10 CFR part 50, Appendix J, Option B, Section III.A, to allow exclusion of the MSIV pathway leakage from the overall integrated leakage rate measured when performing a Type A test; and (2) from the requirements of 10 CFR part 50, Appendix J, Option B, Section III.B, to allow exclusion of the MSIV pathway leakage from the combined leakage rate of all penetrations and valves subject to Types B and C tests for QCNPS, Units 1 and 2.

This exemption is effective upon issuance.

Dated: 18th day of June 2020.

For the Nuclear Regulatory Commission

Craig G. Erlanger,
Director, Division of Operating Reactor Licensing Office of Nuclear Reactor Regulation.

[FR Doc. 2020–13651 Filed 6–23–20; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2020–179 and CP2020–203; MC2020–180 and CP2020–204]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 25, 2020.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or

the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2020–179 and CP2020–203; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 150 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* June 17, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* June 25, 2020.

2. *Docket No(s).:* MC2020–180 and CP2020–204; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 151 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* June 17, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Curtis E. Kidd; *Comments Due:* June 25, 2020.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2020–13521 Filed 6–23–20; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2020–181 and CP2020–205]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning negotiated service agreements. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 26, 2020.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2020–181 and CP2020–205; *Filing Title:* USPS Request to Add Priority Mail Contract 628 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* June 18, 2020; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Curtis E. Kidd; *Comments Due:* June 26, 2020.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2020–13607 Filed 6–23–20; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89091; File No. SR–FINRA–2020–007]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, to FINRA's Suitability, Non-Cash Compensation and Capital Acquisition Broker (CAB) Rules in Response to Regulation Best Interest

June 18, 2020.

I. Introduction

On March 12, 2020, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend FINRA Rules 2111 (Suitability), 2310 (Direct Participation Programs), 2320 (Variable Contracts of an Insurance Company), 2341 (Investment Company Securities), and 5110 (Corporate Financing Rule—Underwriting Terms and Arrangements) and Capital Acquisition Broker (CAB) Rule 211 (Suitability). The proposed rule change would: (1) Amend the FINRA and CAB suitability rules to state that the rules do not apply to recommendations subject to Regulation Best Interest (''Reg BI''),[3] and to remove the element of control from the quantitative suitability obligation; and (2) conform the rules governing non-cash compensation to Reg BI's limitations on sales contests, sales quotas, bonuses and non-cash compensation.

The proposed rule change was published for comment in the **Federal Register** on March 25, 2020.[4] The public comment period closed on April 15, 2020.[5] On April 28, 2020, FINRA consented to an extension of the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to June 23, 2020.[6]

On May 14, 2020, FINRA responded to the comment letters received in response to the Notice and filed an amendment to the proposed rule change (''Amendment No. 1'').[7] The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons, and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposed Rule Change

Background

On June 5, 2019, the Commission adopted Reg BI, a new rule under the Exchange Act, which establishes a standard of conduct for broker-dealers and natural persons who are associated persons of a broker-dealer (unless otherwise indicated, together referred to as ''broker-dealer'') when they make a recommendation of any securities transaction or investment strategy involving securities to a retail customer.[8]

As stated in the Reg BI Release, Reg BI enhances the broker-dealer standard of conduct beyond existing suitability obligations, and aligns the standard of conduct with retail customers' reasonable expectations by requiring broker-dealers, among other things, to: Act in the best interest of the retail customer at the time the recommendation is made, without placing the financial or other interest of the broker-dealer ahead of the interests of the retail customer; and address conflicts of interest by establishing, maintaining, and enforcing policies and procedures reasonably designed to identify and fully and fairly disclose material facts about conflicts of interest, and in instances where we have determined that disclosure is insufficient to reasonably address the conflict, to mitigate or, in certain instances, eliminate the conflict.[9] The date by which broker-dealers must comply with Reg BI is June 30, 2020.[10] FINRA proposed to amend its suitability and non-cash compensation rules to address inconsistencies between the FINRA rules and Reg BI, and to make clear how these rules will intersect. The effective date of FINRA's proposed rule change will be the compliance date of Reg BI.

Original Proposal

Suitability

As FINRA stated in its Notice, FINRA Rule 2111 requires that a broker-dealer ''have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer, based on the information obtained through the reasonable diligence of the member or associated person to ascertain the customer's investment profile.'' [11] Rule 2111 further explains that a ''customer's investment profile includes, but is not limited to, the customer's age, other investments, financial situation and needs, tax status, investment objectives, investment experience, investment time horizon, liquidity needs, risk tolerance, and any other information the customer may disclose to the member or associated person in connection with such recommendation.'' [12]

Rule 2111 imposes three main suitability obligations: Reasonable basis suitability, customer-specific suitability and quantitative suitability.[13] Reasonable basis suitability requires a member or associated person to have a reasonable basis to believe, based on reasonable diligence, that the recommendation is suitable for at least some investors.[14] Customer-specific suitability requires that a member or associated person have a reasonable basis to believe that the recommendation is suitable for a particular customer based on that customer's investment profile.[15] Quantitative suitability requires a member or associated person who has actual or *de facto* control over a customer account to have a reasonable basis for believing that a series of recommended transactions, even if suitable when viewed in isolation, are not excessive and unsuitable for the customer when taken together in light of the customer's investment profile.[16]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.15*l*–1.

[4] *See* Exchange Act Release No. 88422 (Mar. 19, 2020), 85 FR 16974 (Mar. 25, 2020) (File No. SR–FINRA–2020–007 (''Notice'')).

[5] All comment letters received on the proposed rule change are available on the Commission's website at *https://www.sec.gov.*

[6] *See* Letter from Joseph Savage, Vice President and Counsel, Office of General Counsel, FINRA, to Daniel Fisher, Branch Chief, Division of Trading and Markets, U.S. Securities and Exchange Commission, dated April 28, 2020.

[7] *See* Letter from Joseph Savage, Vice President and Counsel, Office of General Counsel, FINRA, to Vanessa Countryman, Secretary, U.S. Securities and Exchange Commission, dated May 13, 2020 (''FINRA Letter''). The FINRA Letter and the text of Amendment No. 1 are available at the Commission's website at *https://www.sec.gov/comments/sr-finra-2020-007/srfinra2020007.htm.*

[8] *See* Securities Exchange Act Release No. 86031 (Jun. 5, 2019), 84 FR 33318 (Jul. 12, 2019) (''Reg BI Release'').

[9] *See* Reg BI Release at 33318.

[10] *Id.*

[11] *See* Notice at 16975.

[12] *See id.*

[13] *See id.*

[14] *See id.*

[15] *See id.*

[16] *Id.*

Rule 2111(b) provides an exemption to customer-specific suitability for recommendations to institutional customers under specified circumstances. FINRA rule 2111 sets forth three criteria that must be satisfied in order for this exemption to apply. First, the account must meet the definition of institutional account as defined in FINRA Rule 4512(c).[17] Second, the broker-dealer must have a reasonable basis to believe that the institutional customer is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies involving a security or securities.[18] Third, the institutional customer must affirmatively indicate that it is exercising independent judgment in evaluating the member's or associated person's recommendations. Where an institutional customer has delegated decision making authority to an agent, such as an investment adviser or a bank trust department, these factors are applied to the agent.[19]

Reg BI requires firms to satisfy four component obligations: Disclosure, Care, Conflict of Interest, and Compliance.[20] Consistent with the Commission's statements, FINRA stated that Reg BI's Care Obligation incorporates and enhances principles that are also found in Rule 2111.[21] FINRA stated that two key enhancements are that Reg BI explicitly imposes a best interest standard and requires a consideration of costs. In addition, FINRA stated in its Notice that as compared to suitability, Reg BI: (i) Places greater emphasis than the suitability rule on consideration of reasonably available alternatives; [22] (ii) explicitly applies to recommendations of types of accounts (*e.g.,* broker-dealer or investment adviser, or among broker-dealer accounts, including recommendations of IRA rollovers); and (iii) eliminates the ''control'' element of the quantitative suitability obligation.[23]

FINRA stated that in light of these enhancements included in Reg BI and to provide clarity on the intersection between Reg BI and the FINRA rules, it proposed to amend its suitability rule to provide that it will not apply to recommendations subject to Reg BI.[24] FINRA stated that it did not propose to eliminate the suitability rule because it applies broadly to all recommendations to customers whereas Reg BI applies only to recommendations to ''retail customers,'' which Reg BI defines as a natural person, or the legal representative of such natural person, who receives a recommendation of any securities transaction or investment strategy involving securities from a broker-dealer and uses the recommendation primarily for personal, family, or household purposes.[25] Thus, FINRA believed its suitability rule is still needed for entities and institutions (*e.g.,* pension funds), and natural persons who will not use recommendations primarily for personal, family, or household purposes (*e.g.,* small business owners and charitable trusts).[26]

In addition, the proposed rule change modified the quantitative suitability obligation under FINRA Rule 2111.05(c) to remove the element of control that currently must be proved to demonstrate a violation of that rule.[27] FINRA stated that this change is consistent with Reg BI, which eliminates the control element from the third component of its Care Obligation.

Finally, the proposed rule change amended CAB Rule 211 to state that it will not apply to recommendations subject to Reg BI.[28]

Non-Cash Compensation

FINRA Rules 2310 (Direct Participation Programs), 2320 (Variable Contracts of an Insurance Company), 2341 (Investment Company Securities), and 5110 (Corporate Financing Rule—Underwriting Terms and Arrangements) each include provisions restricting the payment and receipt of non-cash compensation in connection with the sale and distribution of securities governed by those rules.[29] FINRA stated that, as a general matter, these rules limit non-cash compensation arrangements to:

- Gifts that do not exceed $100 in value and that are not preconditioned on the achievement of a sales target;
- An occasional meal, a ticket to a sporting event or the theater, or other comparable entertainment that does not raise any question of propriety and is not preconditioned on the achievement of a sales target;
- Payment or receipt by ''offerors'' (generally product sponsors and their affiliates) in connection with training or education meetings, subject to specified conditions, including that the payment of such compensation is not conditioned on achieving a sales target; and
- Internal non-cash compensation arrangements between a member and its associated persons, subject to specified conditions. If the internal non-cash compensation arrangement is in the form of a sales contest, the contest must be based on the total production of associated persons with respect to all securities within the rule's product category, and credit for those sales must be equally weighted.[30]

Reg BI's Conflict of Interest Obligation requires, among other things, that broker-dealers establish, maintain, and enforce written policies and procedures reasonably designed to identify and eliminate any sales contests, sales quotas, bonuses, and non-cash compensation that are based on the sales of specific securities or specific types of securities within a limited time period.[31] FINRA stated that its current non-cash compensation rules permit internal firm sales contests that may not meet this standard, since they permit contests based on sales of specific types of securities (such as mutual funds or variable annuities).[32]

FINRA proposed to modify its rules governing non-cash compensation arrangements to specify that any non-cash compensation arrangement permitted by those rules must be consistent with the requirements of Reg BI. FINRA also proposed to eliminate provisions in Rules 2320, 2341, and 5110 that require internal non-cash compensation arrangements to be based on total production and equal weighting of securities sales.[33] FINRA stated that firms generally would no longer have been permitted to sponsor or maintain internal sales contests based on sales of securities within a product category within a limited time, even if they were based on total production and equal weighting and that this requirement also would have applied to the non-cash compensation provisions governing gifts, business entertainment and training or education meetings.[34] Further, FINRA stated that these forms of non-cash compensation may not be preconditioned on achievement of a sales target.[35] Nevertheless, FINRA

[17] *Id.*

[18] *Id.*

[19] *See id.*

[20] *See id. See also* Reg BI Release.

[21] *See* Notice at 16975.

[22] *See id. See also* Reg BI Release at 33381.

[23] *See* Notice at 16975.

[24] *See* proposed FINRA Rule 2111.08.

[25] *See* 17 CFR 240.15*l*–1(b)(1).

[26] *See* Notice at 16975.

[27] *See* proposed FINRA Rule 2111.05(c).

[28] *See* proposed CAB Rule 211.03.

[29] *See* Notice at 16975.

[30] *See* FINRA Rules 2310(c), 2320(g), 2341(l)(5), and 5110(h).

[31] *See* 17 CFR 240.15*l*–1(a)(2)(iii)(D).

[32] *See* Notice at 16976.

[33] *See* proposed amendments to FINRA Rules 2310(c), 2320(g), 2341(l)(5), and 5110(h).

[34] *See* Notice at 16976.

[35] *Id.*

believed that it must make clear that these provisions do not permit arrangements that conflict with Reg BI.

Proposed Rule Change as Modified by Amendment No. 1

In response to comments [36] (discussed below), FINRA is modifying its proposed rule change by not deleting rule text in FINRA Rules 2320(g)(4)(D) and 2341(l)(5)(D) that require non-cash compensation arrangements between a member and its associated persons, or between a non-member company and its sales personnel who are associated persons of an affiliated member, for the sale of variable insurance products (under Rule 2320) or investment company securities (under Rule 2341) to be based on the total production and equal weighting of sales of those products.[37] FINRA also is not deleting rule text in FINRA Rules 2310(c)(2)(C), 2320(g)(4)(C), 2341(l)(5)(C) and 5110(h)(2)(C) that reference Rules 2310(c)(2)(D), 2320(g)(4)(D), 2341(l)(5)(D), and 5110(h)(2)(D), respectively.[38] In its Amendment No. 1, FINRA also cautions members not to conclude that any sales contest that awards non-cash compensation for sales of securities within particular product categories is *per se* permissible under Reg BI.[39] FINRA's Proposed Amendment No. 1 does not alter the proposed suitability changes to FINRA Rule 2111 and CAB Rule 211.

III. Discussion and Commission Findings

After careful review of the proposed rule change, as modified by Amendment No. 1, the comment letters, and FINRA's response to the comments, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder that are applicable to a national securities association.[40] Specifically, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Exchange Act,[41] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

Proposed Suitability Rule Changes

Most commenters supported the changes to FINRA Rule 2111 (Suitability) and CAB Rule 211 (Suitability),[42] and none objected.[43] For example, one commenter commended FINRA for the proposed changes and encouraged the SEC to approve the proposed rule change because ''it brings important clarity and consistency to the standards governing broker-dealers' relationships with retail customers.'' [44] However, one commenter that supported the proposed rule change stated that ''Reg BI should have gone further.'' [45] No commenters suggested amendments to the proposed rule text amending Rule 2111 and CAB Rule 211.

Taking into consideration the comments, the Commission believes that the proposed suitability rule changes are consistent with the Exchange Act. As the Commission stated in the Reg BI Release, the Care Obligation of Reg BI incorporates and enhances existing suitability requirements.[46] In light of the overlap, the Commission believes that it would be redundant and unnecessary for FINRA's suitability rule to apply to recommendations that are subject to Reg BI.

As stated by FINRA, without these changes, a broker-dealer would be required to comply with both Reg BI and FINRA's suitability rules when making recommendations to retail customers, and in such circumstances, compliance with Reg BI would result in compliance with FINRA's suitability rules.[47] The Commission agrees with FINRA and believes that the proposed rule change will help protect investors and the public interest by avoiding potential confusion surrounding whether Reg BI or FINRA's suitability obligations apply, which in turn will facilitate compliance with applicable regulations. In addition, the changes will provide continued protections of FINRA's suitability rules for customers that are not retail customers for purposes of Reg BI.

The Commission further believes that the removal of the element of control from the quantitative suitability obligation will align FINRA's suitability rule with the Care Obligation of Reg BI, which the Commission believes will enhance investor protection for customers that are not retail customers for purposes of Reg BI by requiring a broker-dealer to always form a reasonable basis as to the recommended frequency of trading in a retail customer's account—irrespective of whether the broker-dealer ''controls'' or exercises ''*de facto* control'' over the retail customer's account.[48]

For these reasons, the Commission finds that the proposed rule change to the suitability rules is appropriate and designed to protect investors and the public interest, consistent with Section 15A(b)(6) of the Exchange Act and the rules and regulations thereunder.

Proposed Changes to Non-Cash Compensation Rules

Most commenters supported the changes to the non-cash compensation provisions in FINRA Rules 2310, 2320, 2341, and 5110.[49] These commenters generally supported FINRA's goal of aligning its non-cash compensation rules consistent with Reg BI.[50]

However, a few commenters expressed concerns with FINRA's statements suggesting that contests based on sales of securities within particular product categories, such as mutual funds or variable annuities, would no longer be permitted under Reg BI.[51] One commenter stated ''what seems more consistent with what the SEC had in mind with respect to variable contracts and mutual funds would be to apply the limited period sales contest prohibition to specific types of variable annuities or funds within those general product categories.'' [52] The commenter also said that ''FINRA has effectively converted the language restricting limited period sales contests for 'specific types of securities' under Reg BI to a restriction on limited period sales contests that are for a 'product category''' and that FINRA's conclusion that variable contracts be viewed as constituting a specific type of security under Reg BI is

[36] *See* letter from Clifford Kirsch and Eric Arnolds, Eversheds Sutherland (US) LLP, for the Committee of Annuity Insurers, dated April 15, 2020 (''CAI Letter'') and letter from Robin M. Traxler, Financial Services Institute, April 15, 2020 (''FSI Letter'').

[37] *See* FINRA Letter.

[38] *Id.*

[39] *Id.*

[40] In approving the proposed rule change, the Commission has considered the rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[41] 15 U.S.C. 78o–3(b)(6).

[42] *See* letter from Christopher A. Iacovella, American Securities Association, dated April 20, 2020 (''ASA Letter''); letter from Kristen Malinconico, Center for Capital Markets Competitiveness, U.S. Chamber of Commerce, dated April 15, 2020 (''CCMC Letter''); letter from Emily Micale, Insured Retirement Institute, dated April 15, 2020 (''IRI Letter''); letter from Samuel B. Edwards, Public Investors Advocate Bar Association, dated April 15, 2020 (''PIABA Letter''); and FSI Letter.

[43] One commenter did not address the proposed changes to the Suitability Rules. *See* CAI Letter.

[44] *See* CCMC Letter.

[45] *See* PIABA Letter.

[46] Reg BI Release at 33327.

[47] *See* Notice at 16974.

[48] *See* Reg BI Release at 33374.

[49] *See* PIABA Letter, CCMC Letter, ASA Letter, and IRI Letter.

[50] *See id.*

[51] *See* FSI Letter and CAI Letter.

[52] *See* CAI Letter.

''fundamentally inconsistent with how the SEC describes and interprets that phrase under the Reg BI Adopting Release.'' [53] The other commenter expressed similar concerns and suggested that FINRA clarify that its non-cash compensation rules are meant to align with Reg BI in all respects, including what constitutes sales of specific types of securities.[54]

In response, FINRA stated it was not its intent to propose changes to its non-cash compensation rules that would prohibit sales contests, sales quotas, bonuses or non-cash compensation that are permissible under Reg BI.[55] Accordingly, as noted above, FINRA modified its proposed rule change by not deleting rule text in FINRA Rules 2320 and 2341 that require non-cash compensation arrangements between a member and its associated persons, or between a non-member company and its sales personnel who are associated persons of an affiliated member, for the sale of variable insurance products or investment company securities to be based on the total production and equal weighting of sales of those products.[56] FINRA also modified its proposed rule change by not deleting rule text in FINRA Rules 2310, 2320, 2341, and 5110.[57] Finally, FINRA cautioned members not to conclude that any sales contest that awards non-cash compensation for sales of securities within particular product categories is per se permissible under Reg BI.[58]

Taking into consideration the comments, the FINRA Letter, and Amendment No. 1, the Commission believes that the proposed rule change to FINRA's non-cash compensation rules, as amended, is consistent with the Exchange Act. The Commission recognizes that some commenters raised concerns about the proposed changes to the non-cash compensation rules on the basis that FINRA suggested that contests based on sales of securities within particular product categories would no longer be permitted under Reg BI.[59] The Commission further recognizes FINRA's response and Amendment No. 1, and believes that the Amendment No. 1 appropriately addresses commenters' concerns by clarifying that the proposed changes to its non-cash compensation rules are to be read consistent with Reg BI.[60]

The Commission believes that FINRA's proposed rule change, as amended by Amendment No. 1, facilitates consistency between FINRA's non-cash compensation rules and Reg BI. In particular, the relevant FINRA rules as amended will be consistent with the applicable requirements under Reg BI. As described above, commenters raised concerns that FINRA's proposed rule change would prohibit certain sales contests that may be permitted under Reg BI. In response, FINRA amended its proposal to be consistent with Reg BI, but cautioned members not to conclude that any sales contest that awards non-cash compensation for sales of securities within particular product categories is *per se* permissible under Reg BI.[61] Similarly, the Commission reiterates that, while certain practices will not be *per se* prohibited by Reg BI, such practices are not *per se* consistent with Reg BI or other obligations under the federal securities laws.[62]

The Commission believes that the approach proposed by FINRA with respect to its non-cash compensation rules is appropriate and designed to protect investors and the public interest, consistent with Section 15A(b)(6) of the Exchange Act. In particular, the Commission believes that the proposed rule change, as amended by Amendment No.1, will help protect investors and the public interest by clarifying that the incentives broker-dealers may offer pursuant to non-cash compensation arrangements under the relevant FINRA rules as amended are consistent with the applicable requirements under Reg BI. For these reasons, the Commission finds that the proposed rule change to the non-cash compensation rules is consistent with the Exchange Act and the rules and regulations thereunder.

IV. Solicitation of Comments on Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 1, is consistent with the Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2020–007 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–FINRA–2020–007. 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 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2020–007 and should be submitted on or before July 15, 2020.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the amended proposal in the **Federal Register**.

As discussed above, the revisions made to the proposed rule change in Amendment No. 1 clarify that it was not FINRA's intent to propose changes to its non-cash compensation rules that would prohibit sales contests, sales quotas, bonuses or non-cash compensation that are permissible under Reg BI.[63] Specifically, FINRA modified its proposal by not deleting rule text in FINRA Rules 2320 and 2341 that requires non-cash compensation

[53] *See id.*
[54] *See* FSI Letter.
[55] *See* FINRA Letter.
[56] *See id.*
[57] *See id.*
[58] *See id.*
[59] *See* FSI Letter and IRI Letter.
[60] *See* FINRA Letter.
[61] *See* FINRA Letter.
[62] *See* Reg BI Release at footnote 148.
[63] *See* FINRA Letter.

arrangements between a member and its associated persons, or between a non-member company and its sales personnel who are associated persons of an affiliated member, for the sale of variable insurance products or investment company securities to be based on the total production and equal weighting of sales of those products.[64] FINRA also modified its proposal by not deleting rule text in FINRA Rules 2310, 2320, 2341, and 5110.[65]

The Commission believes that this modification responds to the primary concerns raised by commenters on the proposal and clarifies that the proposal was intended to be read consistent with Reg BI.[66] As stated earlier, the Commission believes that the proposed rule change, as amended by Amendment No. 1, will help protect investors and the public interest by clarifying that the incentives broker-dealers may offer pursuant to non-cash compensation arrangements under the relevant FINRA rules are consistent with the applicable requirements under Reg BI, thereby ensuring a consistent approach with respect to conflicts of interest. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,[67] to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

VII. Conclusion

It is therefore ordered pursuant to Section 19(b)(2) of the Exchange Act[68] that the proposed rule change (SR–FINRA–2020–007), as modified by Amendment No. 1, be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[69]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–13539 Filed 6–23–20; 8:45 am]

BILLING CODE 8011–01–P

[64] *See id.*

[65] *See id.*

[66] *See* CAI Letter and FSI Letter. *See also* FINRA Letter.

[67] 15 U.S.C. 78s(b)(2).

[68] *Id.*

[69] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89092; File No. SR–MSRB–2020–04]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of a Proposed Rule Change Consisting of Amendments to MSRB Rules A–3 and A–6 That Are Designed To Improve Board Governance

June 18, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 5, 2020, the Municipal Securities Rulemaking Board (''MSRB'' or ''Board'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the MSRB. 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 MSRB filed with the Commission a proposed rule change consisting of amendments to MSRB Rules A–3 and A–6 (the ''proposed rule change'') that are designed to improve Board governance. As described below, the draft amendments would:

- Extend to five years the length of time that an individual must have been separated from employment or other association with any regulated entity to serve as a public representative to the Board;
- Reduce the Board's size from 21 to 15 members through a transition plan that includes an interim year in which the Board will have 17 members;
- Replace the requirement that at least one and not less than 30% of regulated members on the 21-member Board be municipal advisors with a requirement that the 15-member Board include at least two municipal advisors;
- Impose a six-year limit on Board service;
- Remove overly prescriptive detail from the description of the Board's nominations process while preserving in the rule the key substantive requirements;
- Require that any Board committee with responsibilities for nominations, governance, or audit be chaired by a public representative; and
- Make certain other reorganizational and technical changes.

The effective date for the proposed rule change will be October 1, 2020. The current versions of MSRB Rules A–3 and A–6 would remain applicable in the interim period between SEC approval and the effective date.

The Board previously issued a Request for Comment on potential changes to MSRB Rule A–3 (the ''RFC'').[3] The proposed rule change reflects the Board's consideration of the comments it received, which are discussed below, along with the Board's responses.

The text of the proposed rule change is available on the MSRB's website at *www.msrb.org/Rules-and-Interpretations/SEC-Filings/2020-Filings.aspx,* at the MSRB's principal office, 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 MSRB 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 MSRB 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

Background

The Exchange Act establishes basic requirements for the Board's size and composition and requires the Board to adopt rules that establish ''fair procedures for the nomination and election of members of the Board and assure fair representation in such nominations and elections.''[4] As amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] MSRB Notice 2020–02 (Jan. 28, 2020), available at *http://www.msrb.org/–/media/Files/Regulatory-Notices/RFCs/2020-02.ashx??n=1.* Comments on the RFC are available on the Board's website at *http://www.msrb.org/Rules-and-Interpretations/Regulatory-Notices/2020/2020-02.aspx?c=1.* The proposed rule change includes certain reorganizational and technical changes that were not included in the RFC, as described herein.

[4] Exchange Act Section 15B(b)(2)(B), 15 U.S.C. 78*o*–4(b)(2)(B).

2010 (the ''Dodd-Frank Act''), the Exchange Act categorizes Board members in two broad groups: Individuals who must be independent of any dealer [5] or municipal advisor (''public representatives'') and individuals who must be associated with a dealer or municipal advisor (''regulated representatives'').[6] The Exchange Act requires the Board to establish by rule requirements regarding the independence of public representatives and provides that all Board members—whether public or regulated representatives—must be ''knowledgeable of matters related to the municipal securities markets.'' [7]

Within the public representative category, at least one Board member must be representative of institutional or retail investors in municipal securities, at least one must be representative of municipal entities, and at least one must be a member of the public with knowledge of or experience in the municipal industry. Within the regulated representative category, at least one Board member must be associated with a dealer that is a bank, at least one must be associated with a dealer that is not a bank, and at least one must be associated with a municipal advisor.[8]

The Exchange Act, as amended by the Dodd-Frank Act, recognizes the benefits that a Board composed of both public and regulated representatives brings to regulation of the municipal securities market in the public interest and the protection of investors, municipal entities, and obligated persons. Although regulated representatives may bring specialized expertise to the regulation of a market with features and functions that are markedly different from those of other financial markets, public representatives may bring a broader perspective of the public interest and the protection of investors, municipal entities, and obligated persons. Striking the balance between the two perspectives—public and regulated—in the Dodd-Frank Act, Congress specified that the Board at all times must be majority public but that it also must be as evenly divided between public and regulated representatives as possible.[9]

Since the enactment of the Dodd-Frank Act, the Board has elected public representatives with a range of backgrounds and experience. In addition to the statutorily specified municipal entity and investor representatives, they have included individuals with prior municipal securities regulated industry experience, academics and individuals with rating agency experience. In most years, municipal entity representation on the Board has exceeded the statutory minimum. The Board has also required, either by rule or by policy, that committees responsible for nominations, governance and audit be chaired by a public representative.

The Exchange Act sets the number of Board members at 15 but provides that the rules of the Board ''may increase the number of members which shall constitute the whole Board, provided that such number is an odd number.'' [10] In response to the enactment of the Dodd-Frank Act, which established a new registration requirement and regulatory framework for municipal advisors, the Board increased the size of the Board to 21 members (11 public and 10 regulated) in October 2010. At the same time, the Board also provided for municipal advisor membership on the Board that was greater than the statutory minimum, requiring that at least 30% of the regulated representatives be associated with municipal advisors.[11] These changes were designed to ensure the Board could achieve appropriately balanced representation and would have sufficient knowledge and expertise to implement the new municipal advisor regulatory framework without detracting from its ability to continue fulfilling its existing rulemaking responsibilities with respect to dealer activity.[12]

Although its expanded duties with regard to the protection of municipal entities and obligated persons and the regulation of municipal advisors are ongoing, the Board has completed the rulemaking activity associated with implementation of the Dodd-Frank Act, including establishment of the core municipal advisor regulatory regime. In recent years, the Board has been conducting a retrospective review of its existing rules and related interpretations designed to ensure that they continue to serve their intended purposes and reflect the current state of the municipal securities market.[13]

In September 2019, the Board announced the formation of a special committee to examine all aspects of the Board's governance.[14] In January 2020, the Board published the RFC to solicit comment on changes to MSRB Rule A–3,[15] and the proposed rule change reflects the Board's consideration of the comments it received. These comments are discussed in the Board's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others (''Statement on Comments Received'') below, along with the Board's responses.

Independence Standard

As noted above, the Exchange Act requires the Board to establish by rule ''requirements regarding the independence of public representatives.'' [16] In 2010, the Board amended MSRB Rule A–3 to define the term ''independent of any municipal securities broker, municipal securities dealer, or municipal advisor'' to mean that an individual has ''no material business relationship with'' such an entity. The Board defined the term ''no material business relationship'' to mean, at a minimum, that:

- The individual is not, and within the last two years was not, associated with a dealer or municipal advisor; [17] and
- The individual does not have a relationship with any dealer or municipal advisor, compensatory or otherwise, that reasonably could affect the individual's independent judgment or decision making.

The proposed rule change includes an amendment to MSRB Rule A–3 that would increase the two-year separation period in the definition of ''no material business relationship'' to five years.

[5] As used herein, the term ''dealer'' refers to a broker, dealer, or municipal securities dealer.

[6] Exchange Act Section 15B(b)(1), 15 U.S.C. 78*o*–4(b)(1).

[7] Exchange Act Section 15B(b)(1), 15 U.S.C. 78*o*–4(b)(1); Exchange Act Section 15B(b)(2)(B)(iv), 15 U.S.C. 78*o*–4(b)(2)(B)(iv).

[8] Exchange Act Section 15B(b)(1), 15 U.S.C. 78*o*–4(b)(1).

[9] *See* Exchange Act Section 15B(b)(2)(B)(i), 15 U.S.C. 78*o*–4(b)(2)(B)(i).

[10] Exchange Act Section 15B(b)(1), 15 U.S.C. 78*o*–4(b)(1); Exchange Act Section 15B(b)(2)(B)(iii), 15 U.S.C. 78*o*–4(b)(2)(B)(iii).

[11] MSRB Rule A–3 provides that these municipal advisors may not be associated with dealers.

[12] *See* Exchange Act Release No. 65158 (Aug. 18, 2011), 76 FR 61407, 61408 (Oct. 4, 2011); Exchange Act Release No. 63025 (Sept. 30, 2010), 75 FR 61806, 61809 (Oct. 6, 2010).

[13] *See, e.g.,* MSRB Notice 2019–04 (Feb. 5, 2019).

[14] MSRB, ''MSRB to Begin FY 2020 With a Focus on Governance'' (Sept. 23, 2019), available at *http://www.msrb.org/News-and-Events/Press-Releases/2019/MSRB-to-Begin-FY-2020-with-Focus-on-Governance.aspx.*

[15] After the Board issued the RFC, the special committee focused on, among other things, reorganizational and technical changes to the Board's administrative rules that would improve interested persons' ability to locate and understand MSRB requirements. These reorganizational and technical amendments are included in the proposed rule change, as described herein.

[16] Exchange Act Section 15B(b)(2)(B)(iv), 15 U.S.C. 78*o*–4(b)(2)(B)(iv).

[17] The Board further provided, in a policy revision in fiscal year 2019, that an individual who has been employed by a regulated entity within the prior three years does not qualify as a public representative due to a ''material business relationship.'' Once the amendment to MSRB Rule A–3 extending the separation period to five years is effective, this policy will be eliminated.

This amendment is intended to enhance the independence of public representatives who have prior regulated entity associations and better avoid any appearance of a conflict of interest on the part of a public representative.

The Board continues to believe, as it noted in the RFC, that the Board's public representatives have acted with the independence required by the Exchange Act, MSRB rules and their duties as public representatives, notwithstanding any prior affiliation with a regulated entity. At the same time, as discussed more fully in the Statement on Comments Received, after considering comments on the RFC, the Board believes that a five-year separation period would further enhance not only independence in fact but also the appearance of independence, which should, in turn, provide additional assurance that the Board's decisions are made in furtherance of its mission to protect investors, municipal entities, obligated persons and the public interest, and to promote a fair and efficient municipal securities market.[18]

Board Size

The Exchange Act establishes a 15-member Board but permits the MSRB to increase the size, provided that:

- The number of Board members is an odd number;
- A majority of the Board is composed of public representatives; and
- The Board is as closely divided in number as possible between public and regulated representatives.[19]

As discussed above, the Board amended MSRB Rule A–3 to expand the size of the Board to 21 members in 2010 in order to provide additional flexibility in achieving balance among its members and to broaden the range of Board-member perspectives as it sought to implement the Dodd-Frank Act.

The proposed rule change includes an amendment to MSRB Rule A–3 that would return the Board's size to 15 members, the original number established by the Exchange Act.[20] Although the 21-member Board size was particularly valuable during the period of heightened rulemaking activity required to implement the Dodd-Frank Act, particularly the complex rulemaking necessary to establish the core regulatory framework for a new type of regulated entity—*i.e.,* municipal advisors—that rulemaking activity is now complete. Thus, the Board believes that it can now return to the statutorily prescribed Board size of 15, and the attendant efficiency and lower cost of such a smaller Board, without decreasing its ability to discharge its expanded responsibilities under the Exchange Act, as amended by the Dodd-Frank Act.

The Board believes that the 15-member Board size established by Congress will continue to allow for a broad range of viewpoints as the Board fulfills its statutory mission. As discussed further in the Statement on Comments Received, each year, through its annual nominations and elections process, the Board seeks to constitute a Board that not only meets the requirements of the Exchange Act and MSRB rules but that also provides the Board with a broad and diverse range of perspectives. Although there will be fewer Board members, the Board believes that the 15-member size contemplated by the Exchange Act allows the Board to continue to assemble a Board that reflects the wide range of backgrounds and experiences within each of the statutorily required Board member categories.

Board Composition

As discussed above, when it established the 21-member Board, the MSRB required that municipal advisor representation be greater than the statutory minimum. Specifically, the Board provided in MSRB Rule A–3:

> At least one, and not less than 30 percent of the total number of regulated representatives, shall be associated with and representative of municipal advisors and shall not be associated with a broker, dealer, or municipal securities dealer.

Along with the increased Board size, the change was intended to ensure that the Board could achieve appropriately balanced representation and would have sufficient knowledge and expertise to implement the new municipal advisor regulatory framework without detracting from its ability to continue fulfilling its existing rulemaking responsibilities with respect to dealer activity.

In connection with reducing the Board's size to 15 members, the proposed rule change amends MSRB Rule A–3 to provide that at least two of the regulated representatives shall be associated with and representative of municipal advisors and shall not be associated with a broker, dealer or municipal securities dealer. As discussed further in the Statement on Comments Received, after considering comments on the RFC, the Board believes that it remains appropriate, in light of the broad range of municipal advisors subject to MSRB regulation, to require municipal advisor representation greater than the statutory minimum of one. This amendment would preserve as closely as possible the current percentage of municipal advisors on the Board as the Board moves from a 21-member Board to a 15-member Board. Specifically, the draft amendment to MSRB Rule A–3 would require that at least two (28.6%) of the regulated representatives on a 15-member Board be municipal advisor representatives, very close to the 30% representation currently required. Retaining the 30% requirement with the 15-member Board would require that three of the seven (or 42.9%) regulated members be municipal advisors; although there may be times the Board chooses to have a municipal advisor contingent of that size (just as the Board routinely has representations greater than the minimum for the other statutorily specified categories), the Board does not believe imposing a minimum larger than two is in the public interest.

Member Qualifications

MSRB Rule A–3 tracks the Exchange Act requirement that all Board members must be knowledgeable of matters related to the municipal securities markets. In its processes for the nomination and election of new members, the Board has consistently sought candidates who meet that standard, but who also have demonstrated personal and professional integrity. In order to further convey to the public the seriousness with which the Board conducts its elections and bolster public confidence in its process, the proposed rule change includes an amendment to MSRB Rule A–3 that would add an express requirement that Board members be individuals of integrity. The Board will continue to determine whether a candidate possesses the requisite personal and professional integrity through its rigorous nominations and elections processes, which include, among other things, candidate interviews, extensive screening, and background checks.

Transition Plan to Reduced Board Size

The proposed change to a 15-member Board requires a transition plan, and the Board has designed a plan to effect the necessary changes expeditiously, while minimizing any risk of disruption to

[18] *See* MSRB Mission Statement, available at *http://www.msrb.org/About-MSRB/About-the-MSRB/Mission-Statement.aspx.*

[19] Exchange Act Section 15B(b)(1), 15 U.S.C. 78*o*–4(b)(1); Exchange Act Section 15B(b)(2)(B), 15 U.S.C. 78*o*–4(b)(2)(B).

[20] As required by Section 15B(b)(1) of the Exchange Act, the 15-member Board would be composed of eight public representatives and seven regulated representatives.

MSRB governance, programs and operations.

The Board sought comment in the RFC on a transition plan that would reduce the Board's size to 15 members in the next fiscal year because the 15 Board members returning after the six Board members serving in their fourth year complete their terms on September 30, 2020 will meet the Board composition requirements set out in the proposed rule change. As discussed more fully in the Statement on Comments Received, however, the Board has determined to change the transition plan described in the RFC so that as included in the proposed rule change the Board size will be 17 members for fiscal year 2021, which begins on October 1, 2020. Although the Board generally seeks to assemble a Board that includes more than one issuer representative, under the transition plan described in the RFC, the Board would have had just a single issuer representative in fiscal year 2021. The Board is persuaded by commenters that having more than one issuer representative is of particular importance next fiscal year in light of the ongoing COVID–19 pandemic and its effects on municipal entities. Reducing the Board size to 17 members in the first year of the transition will enable the Board to include a second issuer member for fiscal year 2021.

Like the transition plan included in the RFC, the plan included in the proposed rule change transitions the Board's class structure from three classes of five members and one class of six members to three classes of four members and one class of three members. Each of the new Board classes would have the same number of public and regulated representatives except for the class of three, which would have two public representatives.

Pursuant to the transition plan included in the proposed rule change, all new Board members elected during the transition, and thereafter, would be appointed to four-year terms. The Board would resume electing new members for a four-member class with terms commencing in fiscal year 2022, which begins on October 1, 2021. No new Board members would be elected for terms beginning on October 1, 2020. The transition would be completed in fiscal year 2024, which ends on September 30, 2024.

To effect the transition, the Board would grant one-year term extensions to five public representatives and three regulated representatives, as follows:

- One public representative and one regulated representative whose terms would otherwise end on September 30, 2020;
- One public representative whose term would otherwise end on September 30, 2021;
- One public representative and one regulated representative whose terms would otherwise end on September 30, 2022; and
- Two public representatives and one regulated representative whose terms would otherwise end on September 30, 2023.

Each year, members would be considered for the one-year extensions as part of the Board's annual nominations process, once that process resumes during fiscal year 2021, so that overall Board composition, resulting from existing member extensions and new member elections, can be considered holistically.

Terms

The Exchange Act provides that Board members ''shall serve as members for a term of 3 years or for such other terms as specified by the rules of the Board.'' [21] Since 2016, MSRB Rule A–3 has provided for four-year terms and prohibited a Board member from serving more than two consecutive terms. The proposed rule change includes an amendment to MSRB Rule A–3 that would impose a six-year lifetime limit on Board service. The six-year maximum service provision would effectively limit a Board member to one complete four-year term. Allowing for up to an additional two years would permit the Board to fill a vacancy that arises in the middle of a Board member's term expeditiously, as it has in the past, by re-appointing a sitting member, or electing a former Board member, to serve for the remainder of the term of the Board member whose departure created the vacancy rather than leaving the vacancy unfilled until a more exhaustive, but time-consuming, search for a new Board member can be completed.

Based on its experience, the Board believes that regularly refreshing the Board with new members benefits the Board and, in turn, the municipal market, by bringing new and diverse perspectives to the policymaking process. The six-year lifetime limit is intended to enhance these benefits by increasing the rate at which new members will join the Board.

The proposed rule change also includes an amendment to MSRB Rule A–3 that would permit a Board member filling a vacancy to serve for any part of an unexpired term, rather than requiring such a Board member to serve for the entire unexpired portion. This change is necessary to implement the six-year lifetime limit described above because a Board member may leave the Board with more than two years remaining in his or her term. In many such cases, requiring the replacement Board member to serve the remainder of the term would disqualify current and former Board members due to the six-year limit.

Finally, MSRB Rule A–3(d) provides that ''[v]acancies on the Board shall be filled by vote of the members of the Board,'' and states in the final sentence that the term ''vacancies on the Board'' includes a vacancy resulting from the resignation of a Board member prior to the commencement of his or her term. The proposed rule change deletes this final sentence to clarify that the term includes all vacancies that arise prior to conclusion of a term for any reason.[22]

Amendments to Board Nominations and Elections Provisions

MSRB Rule A–3 includes a detailed description of the composition, responsibilities and processes of the Board's Nominating and Governance Committee. The proposed rule change includes amendments to MSRB Rule A–3 that would preserve the key features of this important Board committee while removing overly prescriptive detail that could be provided instead, and the Board believes more appropriately, in governing documents such as committee charters and Board policies. The Board believes these amendments will enhance the Board's flexibility to respond efficiently to changes in circumstances.

Specifically, the proposed rule change would remove references in MSRB Rule A–3 to the ''Nominating and Governance Committee'' and replace them with references to a committee charged with the nominating process. The proposed rule change retains the substantive requirements that the committee responsible for the nominating process be: (1) Composed of a majority of public representatives, (2) chaired by a public representative, and (3) representative of the Board's membership, but removes the more detailed requirements. The proposed rule change would also move these requirements, as amended by the proposed rule change, to MSRB Rule A–

[21] Exchange Act Section 15B(b)(1), 15 U.S.C 78*o*–4(b)(1).

[22] As discussed below, the proposed rule change also includes amendments to MSRB Rule A–3 to reorganize the rule so that topics are presented in a more logical order. As reorganized, the provision on vacancies would be a subsection of section (b), which governs Board nominations and elections.

6, Committees of the Board. The Board believes that moving these requirements relating to committee composition to a more logical location will improve transparency by making Board requirements easier to find.

The proposed rule change also includes an amendment to MSRB Rule A–3 that updates the requirement for the Board to publish a notice seeking applicants for Board membership, which the Board believes has become antiquated. Specifically, the amendment would replace the requirement to publish the notice ''in a financial journal having national circulation among members of the municipal securities industry and in a separate financial journal having general national circulation'' with the more general requirement to publish the notice ''by means reasonably designed to provide broad dissemination to the public.'' This broader and more flexible requirement recognizes that in addition to publishing the notice in financial journals as specified in MSRB Rule A–3, the Board currently uses a variety of methods to reach a broad range of potential candidates, including press releases, the MSRB website, and the Board's social media channels. The amendment to MSRB Rule A–3 would permit the Board to continue to use these methods, as well as to determine other ways to reach a wide range of potential applicants in light of available technology and media.

Public Representative Committee Chairs

As discussed above, the Board believes it should retain administrative flexibility to design and from time to time change its committee structure. The proposed rule change would enable the Board to establish its committee structure through governance mechanisms such as charters and policies. The MSRB could, for example, continue to have a committee responsible for both nominations and governance, or it could establish a separate committee on governance, freeing the nominating committee to focus on identifying, recruiting and vetting new members.

The Board believes that irrespective of the committee structure the Board from time to time may establish, responsibility for both nominations and governance should continue to be in a committee or committees chaired by a public representative, as currently required by MSRB Rule A–3. Current Board policy requires that the audit committee also be chaired by a public representative. In light of the importance of public representative leadership of the audit committee to the Board's corporate governance system, the Board believes this requirement should be included in the Board's rules, rather than only in a Board policy. Accordingly, the proposed rule change codifies these existing rule and policy requirements in a single location in MSRB Rule A–6, Committees of the Board.

Reorganizational and Technical Changes

MSRB Rule A–3 Title

The proposed rule change would change the title of MSRB Rule A–3 from ''Membership on the Board'' to ''Board Membership: Composition, Elections, Removal, Compensation.'' The new title will describe all of the topics covered by the rule and should make it easier for interested persons to locate relevant MSRB rule requirements.

MSRB Rule A–3 Organization

The proposed rule change reorganizes the content of MSRB Rule A–3 so that similar provisions are grouped together, topics are presented in a more logical sequence, and overall readability is improved. The provision on vacancies, currently section (d), would be included as a subsection of section (b), regarding nominations and elections. Similarly, the provision on Board member affiliations, currently section (f), would be included within section (a), which describes the number of Board members and the requirements for Board composition. The titles of sections (b) and (c) would be revised to more completely describe the topics covered and new subsection headers would be added to section (b) to provide a better roadmap to the section's contents. Although none of these changes is substantive, they should make it easier for interested persons to find and understand relevant MSRB requirements.

Board Member Changes in Employment and Other Circumstances

Board policies describe certain changes in a Board member's circumstances, such as a change in employment, that could result in the Board member's disqualification from continuing to serve on the Board. For example, a Board member who is a public representative at the time of his or her election may accept a position with a regulated entity during the course of his or her Board term. Assuming there are no Board vacancies at the time, such a change would result in the Board no longer being majority public and no longer as evenly divided in number as possible between public and regulated representatives. Board policy provides that the member would be disqualified from continuing to serve because the change in employment would cause a conflict with Board composition requirements.

The proposed rule change would include the substance of this policy in MSRB Rule A–3(c), with minor updates. Specifically, new subsection (c)(ii) would provide that:

- If a member's change in employment or other circumstances results in a conflict with the Board composition requirements described in section (a) of MSRB Rule A–3, as proposed to be amended, the member shall be disqualified from serving on the Board as of the date of the change.
- If the Board determines that a member's change in employment or other circumstances does not result in disqualification pursuant to the above provision but changes the category of representative in which the Board member serves, the member will remain on the Board pending a vote of the other members of the Board, to be taken within 30 days, determining whether the member is to be retained.

Including these provisions in the Board's rules, rather than its policies, is intended to improve transparency about the Board's approach to changes in Board member circumstances, including changes that require immediate disqualification due to a conflict with Board composition requirements and changes that do not cause a conflict with those requirements but might still, in the Board's judgment, require removal because, for example, they negatively affect the balanced representation on the Board that the Board seeks to maintain.

2. Statutory Basis

The MSRB has adopted the proposed rule change pursuant to Sections 15B(b)(1) and (2) of the Exchange Act.

Section 15B(b)(1) of the Act[23] provides:

> The Municipal Securities Rulemaking Board shall be composed of 15 members, or such other number of members as specified by rules of the Board pursuant to paragraph (2)(B), which shall perform the duties set forth in this section. The members of the Board shall serve as members for a term of 3 years or for such other terms as specified by rules of the Board pursuant to paragraph (2)(B), and shall consist of (A) 8 individuals who are independent of any municipal securities broker, municipal securities dealer, or municipal advisor, at least 1 of whom shall be representative of institutional or retail investors in municipal securities, at least 1 of whom shall be representative of municipal entities, and at least 1 of whom shall be a member of the public with

[23] 15 U.S.C. 78*o*–4(b)(1).

knowledge of or experience in the municipal industry (which members are hereinafter referred to as ''public representatives''); and (B) 7 individuals who are associated with a broker, dealer, municipal securities dealer, or municipal advisor, including at least 1 individual who is associated with and representative of brokers, dealers, or municipal securities dealers that are not banks or subsidiaries or departments or divisions of banks (which members are hereinafter referred to as ''broker-dealer representatives''), at least 1 individual who is associated with and representative of municipal securities dealers which are banks or subsidiaries or departments or divisions of banks (which members are hereinafter referred to as ''bank representatives''), and at least 1 individual who is associated with a municipal advisor (which members are hereinafter referred to as ''advisor representatives'' and, together with the broker-dealer representatives and the bank representatives, are referred to as ''regulated representatives''). Each member of the board shall be knowledgeable of matters related to the municipal securities markets. Prior to the expiration of the terms of office of the members of the Board, an election shall be held under rules adopted by the Board (pursuant to subsection (b)(2)(B) of this section) of the members to succeed such members.

Section 15B(b)(2)(B) of the Act [24] provides that the MSRB's rules shall:

establish fair procedures for the nomination and election of members of the Board and assure fair representation in such nominations and elections of public representatives, broker dealer representatives, bank representatives, and advisor representatives. Such rules—

(i) shall provide that the number of public representatives of the Board shall at all times exceed the total number of regulated representatives and that the membership shall at all times be as evenly divided in number as possible between public representatives and regulated representatives;

(ii) shall specify the length or lengths of terms members shall serve;

(iii) may increase the number of members which shall constitute the whole Board, provided that such number is an odd number; and

(iv) shall establish requirements regarding the independence of public representatives.

Section 15B(b)(2)(I) of the Exchange Act [25] provides that the MSRB's rules shall:

provide for the operation and administration of the Board, including the selection of a Chairman from among the members of the Board, the compensation of the members of the Board, and the appointment and compensation of such employees, attorneys, and consultants as may be necessary or appropriate to carry out the Board's functions under this section.

[24] 15 U.S.C. 78*o*–4(b)(2)(B).

[25] 15 U.S.C. 78*o*–4(b)(2)(I).

Statutory Basis for Amendments Related to Independence Standard

The proposed amendments to MSRB Rule A–3 that would increase the two-year separation period in the definition of ''no material business relationship'' to five years are consistent with Section 15B(b)(2)(B)(iv) of the Act,[26] which requires the Board to ''establish requirements regarding the independence of public representatives.'' As discussed above, MSRB Rule A–3 defines a public representative as independent if the public representative has ''no material business relationship'' with a regulated entity. An individual has no material business relationship with a regulated entity, under MSRB Rule A–3, if the individual has not been associated with a regulated entity for a two-year period. For the reasons described above and in the Statement on Comments Received below, the Board has determined to increase this period of time to five years, in order to further enhance the independence of public representatives. For these reasons, the amendments are ''requirements regarding the independence of public representatives'' and therefore consistent with Section 15B(b)(2)(B)(iv) of the Exchange Act.[27]

Statutory Basis for Amendments Related to Board Size

The proposed amendments to MSRB Rule A–3 that would return the Board to its original size of 15 members are consistent with Section 15B(b)(1) of the Exchange Act,[28] which provides that the Board ''shall be composed of 15 members, or such other number of members as specified by rules of the Board pursuant to paragraph (2)(B) . . . .'' and consist of eight public representatives and seven regulated representatives. As described above, the Board increased its size, in accordance with Section 15B(b)(2)(B) of the Exchange Act,[29] after the enactment of the Dodd-Frank Act. For the reasons described above, the Board believes it is now appropriate for the Board to return to the size specified in the Exchange Act. The 15-member Board would, as required by the Section 15B(b)(1) of the Exchange Act,[30] consist of eight public representatives and seven regulated representatives.

[26] 15 U.S.C. 78*o*–4(b)(2)(B)(iv).

[27] *Id.*

[28] 15 U.S.C. 78*o*–4(b)(1).

[29] 15 U.S.C. 78*o*–4(b)(2)(B).

[30] 15 U.S.C. 78*o*–4(b)(1).

Statutory Basis for Amendments Related to Board Composition

The amendments relating to Board composition are consistent with Section 15B(b)(2)(B) of the Exchange Act,[31] which requires MSRB Rules to ''establish fair procedures for the nomination and election of members of the Board and assure fair representation in such nominations and elections of public representatives, broker dealer representatives, bank representatives, and advisor representatives.'' As discussed above, the proposed rule change would maintain, as closely as possible on a 15-member Board, the existing balance of representation among regulated representatives and includes no changes relating to the representation of public representatives. The Board believes that requiring municipal advisor representation greater than the statutory minimum continues to assure fair representation in light of the broad range of MAs subject to MSRB regulation. Accordingly, the Board believes that the amendments related to Board composition are consistent with Section 15B(b)(2)(B) of the Exchange Act.[32]

Statutory Basis for Amendments Related to Member Qualifications

The amendment that would add an explicit requirement that Board members be ''individuals of integrity'' is consistent with Section 15B(b)(2)(B) of the Exchange Act,[33] which requires the Board to ''establish fair procedures for the nomination and election of members of the Board.'' Although the Board has always sought individuals of integrity in nominating and electing Board members, the Board believes, as described above, that adding this provision to the rules it has adopted for nominating and electing Board members is appropriate to further convey to the public the seriousness with which the Board takes those responsibilities.

Statutory Basis for Amendments Related to Transition Plan

The amendments that would provide for a transition plan that includes an interim year with a 17-member Board and extend a limited number of terms for Board members to change the structure of the Board's member classes are consistent with Sections 15B(b)(2)(B) and (I) of the Exchange Act.[34] The amendment establishing the 17-member Board is consistent with Section 15B(b)(2)(B)(iii) of the Exchange

[31] 15 U.S.C. 78*o*–4(b)(2)(B).

[32] *Id.*

[33] *Id.*

[34] 15 U.S.C. 78*o*–4(b)(2)(B), (I).

Act,[35] which permits the Board to increase the statutorily specified 15-member Board, provided that the number of members is an odd number. It is also consistent with Section 15B(b)(2)(B)(i) of the Exchange Act,[36] which requires the number of public representatives to at all times exceed the number of regulated representatives and the membership to at all times be as evenly divided in number as possible between public representatives and regulated representatives. In accordance with those requirements, the amendments provide that a 17-member Board would include nine public representatives and eight regulated representatives.

The amendments that provide for a limited number of term extensions for Board members are consistent with Section 15B(b)(2)(B)(ii) of the Exchange Act,[37] which requires the Board to ''specify the length or lengths of terms members shall serve.'' Providing in the transition plan that a limited number of Board members' terms will include a fifth year serves the purpose of specifying the length or lengths of Board members' terms.

Finally, the transition plan is also consistent with Section 15B(b)(2)(I) of the Exchange Act,[38] which requires MSRB rules to ''provide for the operation and administration of the Board.'' The primary purpose of the transition plan is administrative in nature. Specifically, the plan is intended to transition the Board from 21 members to 15 members in an orderly manner that minimizes any risk of disruption to MSRB governance, programs and operations.

Statutory Basis for Amendments Related to Terms

The amendments that would impose a six-year limit on Board service are consistent with Section 15B(b)(2)(B) of the Exchange Act,[39] which requires the Board to establish fair procedures for the nomination and election of members of the Board and ''specify the length or lengths of terms members shall serve.'' As discussed above, the six-year limit is intended to increase the rate at which new members will join the Board, thereby more regularly refreshing the perspectives the Board may draw upon in carrying out its mission. Accordingly, the limit is a fair procedure for the nomination and election of Board members. The limit also serves the purpose of specifying ''the length or lengths of terms members shall serve,'' as required by Section 15B(b)(2)(B)(ii) of the Exchange Act.[40]

Statutory Basis for Amendments to Board Nominations and Elections Provisions

The amendments that remove overly-prescriptive detail from the Board's rule regarding nominations and elections, while preserving the key features of the process, are consistent with Exchange Act Sections 15B(b)(2)(B) and (I),[41] which require the Board's rules to establish fair procedures for the nomination and election of members and provide for the operation and administration of the Board. As discussed above, the amendments would remove references in MSRB rules to a ''Nominating and Governance Committee'' and replace them with references to a committee charged with the nominating process. The proposed rule change retains the substantive requirements that the committee responsible for the nominating process be: (1) Composed of a majority of public representatives, (2) chaired by a public representative, and (3) representative of the Board's membership, but removes the more detailed requirements. Accordingly, these provisions, as amended, will remain fair procedures for the nomination and election of members. The amendments to these provisions also provide for the operation and administration of the Board because they permit the Board additional flexibility to determine its committee structure through Board charters and policies, and to determine the most appropriate methods of providing notice that the Board is soliciting applicants for membership in light of available technology and media.

Statutory Basis for Amendments Requiring Public Representative Committee Chairs

The amendments that would codify in MSRB Rule A–6 existing MSRB rule and policy requirements that the chairs of Board committees with responsibilities for nominations, governance, and audit must be public representatives is consistent with Section 15B(2)(I) of the Exchange Act,[42] which requires MSRB rules to provide for the operation and administration of the Board. As an administrative and operational matter, the Board has established a number of standing committees as well as special committees when appropriate. Determining the appropriate leadership and composition of these committees is the type of activity contemplated by Section 15B(2)(I) of the Exchange Act,[43] which recognizes that the Board will establish internal operational and administrative requirements and, in some instances, will do so by rule.

Statutory Basis for Reorganizational and Technical Amendments

As discussed above, the proposed rule change includes certain organizational and technical changes to MSRB Rule A–3. The amendments that change the rule's title and reorganize the content to present the topics in a more logical order are consistent with Section 15B(b)(2) of the Exchange Act,[44] which requires the Board to ''establish fair procedures for the nomination and election of members of the Board and assure fair representation in such nominations and elections of public representatives, broker dealer representatives, bank representatives, and advisor representatives.'' MSRB Rule A–3 establishes the Board's fair procedures for, and assures fair representation in, the nomination and election of Board members. The organizational and technical amendments make no substantive changes to these fair procedures but merely improve the rule's readability. Accordingly, these amendments are consistent with Exchange Act Section 15B(b)(2).[45]

The amendment that includes in MSRB Rule A–3 the substance of the Board's policy on Board member changes of employment or other circumstances is consistent with Exchange Act Section 15B(b)(1),[46] which imposes certain Board composition requirements, and Exchange Act Section 15B(b)(2)(B),[47] which, as discussed above, requires the Board's rules to assure fair representation in the nomination and election of Board members. As discussed above, this amendment would provide that a Board member is disqualified from further service if his or her change in employment or other circumstances would result in the Board's noncompliance with the requirements in Exchange Act Section 15B(b)(1)[48] for Board composition, including the requirements that the majority of the Board be public representatives and that the Board be as

[35] 15 U.S.C. 78*o*–4(b)(2)(B)(iii).

[36] 15 U.S.C. 78*o*–4(b)(2)(B)(i).

[37] 15 U.S.C. 78*o*–4(b)(2)(B)(ii).

[38] 15 U.S.C. 78*o*–4(b)(2)(I).

[39] 15 U.S.C. 78*o*–4(b)(2)(B).

[40] 15 U.S.C. 78*o*–4(b)(2)(B)(ii).

[41] 15 U.S.C. 78*o*–4(b)(2)(B), (I).

[42] 15 U.S.C. 78*o*–4(b)(2)(I).

[43] *Id.*

[44] 15 U.S.C. 78*o*–4(b)(2).

[45] *Id.*

[46] 15 U.S.C. 78*o*–4(b)(1).

[47] 15 U.S.C. 78*o*–4(b)(2)(B).

[48] 15 U.S.C. 78*o*–4(b)(1).

evenly divided in number as possible between public and regulated representatives. Accordingly, this amendment is consistent with Exchange Act Section 15B(b)(1).[49] Additionally, this amendment would provide that if the Board determines that a member's change in employment or other circumstances does not result in disqualification pursuant to the above provision but changes the category of representative in which the Board member serves, the member will remain on the Board pending a vote of the other members of the Board, to be taken within 30 days, determining whether the member is to be retained. This provision allows the Board to preserve the balance of Board categories on the Board that it carefully establishes each year when it elects new members. Accordingly, the amendment is designed to assure fair representation in Board nominations and elections and is consistent with Exchange Act Section 15B(b)(2)(B).[50]

B. Self-Regulatory Organization's Statement on Burden on Competition

Section 15B(b)(2)(C) of the Exchange Act requires that MSRB rules not be designed to impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[51] The proposed rule change relates only to the administration of the Board and would not impose requirements on dealers, municipal advisors or others. Accordingly, the MSRB does not believe that the proposed rule change would result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

On January 28, 2020, the Board issued the RFC, which sought comment on the matters included in the proposed rule change, other than the reorganizational and technical changes described above, for a period of 60 days. On March 23, 2020, the Board extended the comment period for an additional 30 days in light of the impact of the COVID–19 pandemic and in response to requests from market participants. The Board received 11 comment letters. These comments, along with the Board's responses, are discussed below.

Independence Standard

In the RFC, the Board sought comment on draft amendments that would increase the separation period for public representatives to five years. Of the nine commenters that expressed a view, three supported the increase to five years.[52] Two of these commenters believed that the Board should enhance what one described as the ''broad public interest perspective'' [53] that public representatives bring to the Board. Another expressed concern that individuals who have spent most of their careers working for regulated entities could become public representatives after only a two year break, and stated that Board members representing issuers should have spent the vast majority of their careers as issuers.[54] Two commenters also believed that the Board is not applying the requirement for public members to have ''no material business relationship'' with a regulated entity strictly enough and that some public members are employed in positions in which, as one described it, ''a vast majority of their work is spent interacting and doing business directly with regulated parties.'' [55]

Commenters that supported increasing the separation period to five years generally believed that doing so would not decrease the pool of individuals qualified to serve as public representatives. One suggested that the Board currently interprets the statutory requirement that one public representative be a ''member of the public with knowledge of or experience in the municipal industry'' [56] too narrowly, and that the standard should include ''those persons who have a depth of knowledge about the ways in which municipal issuers or investors interact with regulated entities in practice as well as persons that have expertise representing the public interest in any market or governmental finance context.'' [57] Another believed that the Board currently interprets the statutory standard that all Board members be ''knowledgeable of matters related to the municipal securities markets'' [58] too narrowly and that the standard should include academics, employees of issuers who have never worked for banks, community and labor activists, and others.[59]

Five commenters opposed increasing the separation period to five years.[60] These commenters generally believed that doing so would decrease the pool of candidates with the requisite knowledge of matters related to the municipal securities market [61] and was unnecessary. Commenters believed that five years away from the industry was too long given the complexity of, and rapid pace of changes to, the municipal market for an individual to serve effectively as a ''member of the public with knowledge of or experience in the municipal industry,'' [62] one of the three required categories of public representatives.[63] Commenters also

[49] *Id.*

[50] 15 U.S.C. 78*o*–4(b)(2)(B).

[51] 15 U.S.C. 78*o*–4(b)(2)(C).

[52] *See* Letter from Susan Gaffney, Executive Director, National Association of Municipal Advisors to Ronald Smith, Corporate Secretary, MSRB (Apr. 29, 2020) (''NAMA Letter''*);* Letter from Emily Swenson Brock, Director, Federal Liaison Center, Government Finance Officers Association to Ronald Smith, Corporate Secretary, MSRB (Apr. 29, 2020) (''GFOA Letter''); Letter from Americans for Financial Reform Education Fund to Ronald Smith, Corporate Secretary, MSRB (Apr. 29, 2020) (''AFR Letter''). One commenter supported an increase to the separation period but did not suggest how long the period should be. *See* Letter from Steve Apfelbacher, Renee Boicourt, Marianne Edmonds, Robert Lamb, Nathaniel Singer, and Noreen White to Ronald Smith, Corporate Secretary, MSRB (Apr. 29, 2020) (''Former Board Members Letter''). Another supported an increase to the separation period but believed five years was excessive and recommended three years. *See* Letter from Beth Pearce, President, National Association of State Auditors, Comptrollers and Treasurers to Ronald Smith, Corporate Secretary, MSRB (Apr. 30, 2020) (''NASACT Letter'').

[53] *See* NAMA Letter; *see also* AFR Letter (stating that the change to a five-year separation period ''would make a difference in shifting Board membership to more effectively represent the public interest and we strongly support it'').

[54] *See* GFOA Letter.

[55] *See id.; see also* AFR Letter (stating that an employee of a bond insurer, for example, should be viewed as having a material business relationship with regulated entities).

[56] Exchange Act Section 15B(b)(1), 15 U.S.C. 78*o*–4(b)(1).

[57] *See* NAMA Letter.

[58] Exchange Act Section 15B(b)(1), 15 U.S.C. 78*o*–4(b)(1).

[59] *See* AFR Letter.

[60] *See* Letter from Nicole Byrd, Chair, National Federation of Municipal Analysts to Ronald Smith, Corporate Secretary, MSRB (Apr. 29, 2020) (''NFMA Letter''); Letter from Dorothy Donohue, Deputy General Counsel—Securities Regulation, Investment Company Institute to Ronald Smith, Corporate Secretary, MSRB (Apr. 15, 2020) (''ICI Letter''); Letter from Leslie M. Norwood, Managing Director and Associate General Counsel, and Bernard V. Canepa, Vice President and Assistant General Counsel, Securities Industry and Financial Markets Association to Ronald Smith, Corporate Secretary, MSRB (Apr. 29, 2020) (''SIFMA Letter''); NASACT Letter (stating that some increase to the separation period is necessary but that five years is too long and recommending a three-year period); Letter from Mike Nicholas, Chief Executive Officer, Bond Dealers of America to Ronald Smith, Corporate Secretary, MSRB (Apr. 29, 2020) (''BDA Letter'').

[61] In addition, one commenter that viewed addressing public perceptions of a lack of independence as sufficiently important to justify increasing the separation period (but did not specify an optimal length) also believed that it would reduce the pool of qualified applicants. *See* Former Board Members Letter.

[62] Exchange Act Section 15B(b)(1), 15 U.S.C. 78*o*–4(b)(1).

[63] *See, e.g.,* NASACT Letter (stating that ''[w]ith almost continual changes in the municipal

Continued

noted that the current two-year separation period is longer than those applicable to public members of other SROs [64] and the post-employment restrictions for former federal government officials.[65]

Some commenters also took issue with the rationale the Board provided in the RFC for extending the separation period to five years and believed that the Board had not adequately supported the need for the increase.[66] One disagreed with the Board's assertion in the RFC that a longer separation period could better avoid any appearance of a conflict of interest,[67] while another stated that a longer separation period would fail to satisfy those who believe that there is a revolving door between the MSRB and the industry but would reduce the Board's access to eligible candidates.[68]

After considering these comments, the Board determined to include an amendment to MSRB Rule A–3 in the proposed rule change that would extend the separation period to five years. Although the Board continues to believe, as it stated in the RFC, that the Board's public representatives have acted with the independence required by the Exchange Act, MSRB rules and their duties as public representatives, notwithstanding any prior affiliation with a regulated entity, the Board also believes that a five-year separation period would further enhance not only independence in fact but also the appearance of independence. This should, in turn, provide additional assurance that the Board's decisions are made in furtherance of its mission to protect investors, municipal entities, obligated persons and the public interest, and to promote a fair and efficient municipal securities market.

Comments on the RFC suggested to the Board that although some stakeholders perceive— accurately, in the Board's view—that the Board's public representatives are independent of the entities that the Board regulates, that perception is not universally held. The Board believes that increasing the length of the separation period should address the perception held by some stakeholders that public representatives are not sufficiently independent. Although the Board understands concerns expressed by commenters that the longer separation period would decrease the pool of qualified public representatives, the Board's experience seeking and electing new Board members each year suggests that there is a sufficient number of qualified potential Board members that would meet this standard. The Board notes that although prior experience working for a regulated entity is permitted by the Exchange Act for public members, it is explicitly not required.[69] Contrary to the suggestion of some commenters, the Board does not view experience working for a regulated entity as a prerequisite for Board membership and public representatives may gain the required municipal market knowledge in any number of ways.

The Board also does not agree with commenters who suggested that the independence of the Board's public representatives has, in fact, been compromised, nor does it believe that it has incorrectly applied the requirement in MSRB Rule A–3 that public representatives have ''no material business relationship'' with a regulated entity. In particular, the Board has had many years of experience applying this standard and disagrees that the routine business interactions of a Board member's employer with other market participants, without more, would constitute a material business relationship within the meaning of MSRB Rule A–3. Indeed, the Board's issuer representatives—a statutorily required category of public representative—would be disqualified under such a reading of the requirement.

Board Size

The RFC sought comment on whether the Board should reduce its size to 15 members, the number specified in the Exchange Act.[70] Two commenters supported the reduction and one opposed it, while others expressed some concerns or offered recommendations should the Board move forward with it. Commenters that supported the change believed that 21 members is too large,[71] that a smaller Board would be more manageable,[72] and that the larger Board size, implemented after the Dodd-Frank Act, was no longer necessary now that significant Dodd-Frank Act related rulemaking has been completed.[73] One commenter that supported the change to a 15-member Board expressed concern that the necessary rule changes would not be completed by October and suggested the Board wait until fiscal year 2022, beginning on October 1, 2021, to implement the change, in light of the COVID–19 pandemic, and begin recruiting new Board members for fiscal year 2021 immediately.[74]

One commenter opposed reducing the Board's size to 15 members, particularly in light of other draft amendments in the RFC that would impose a term limit and lifetime service cap.[75] This commenter believed that the reduction would narrow the range of perspectives available to the Board, making it less effective.[76] Other commenters acknowledged that a smaller Board would be easier to manage,[77] and may reduce costs,[78] but expressed concerns that the Board would lose expertise or limit the range of viewpoints represented.[79]

After considering these comments, the Board continues to believe that returning to the original size of 15 members set in the Exchange Act is appropriate and will enable the Board to more efficiently carry out its mission to

securities market, an extended absence from the industry may prevent continuity of the appropriate level of knowledge for effective service on a regulatory board'').

[64] *See* BDA Letter; SIFMA Letter.

[65] *See* ICI Letter.

[66] *See, e.g., id.* (stating that ''[o]ther than a vague comment that 'some commentators have questioned whether a two-year separation period is sufficiently long,' the MSRB has offered no explanation for extending the period beyond two years''). In the RFC, the Board explained that it was ''considering whether a longer separation period would enhance the independence of public representatives who have prior regulated entity associations and better avoid any appearance of a conflict of interest without significantly decreasing the pool of individuals with sufficient municipal market knowledge to serve effectively as public representatives.'' RFC, at 6.

[67] *See* BDA Letter.

[68] *See* SIFMA Letter.

[69] In addition to requiring one public member who is an issuer representative and one who is an investor representative, the Exchange Act requires that one public member must have ''knowledge of *or* experience in the municipal industry'' (emphasis added). The Exchange Act is silent with regard to industry experience as a qualification for the other public members.

[70] *See* Section 15B(b) of the Exchange Act, 15 U.S.C. 78*o*–4(b) (providing that the Board ''shall be composed of 15 members, or such other number of members as specified by rules of the Board'').

[71] *See* BDA Letter.

[72] *See* SIFMA Letter.

[73] *See id.*

[74] *See* BDA Letter. In addition, one commenter stated that the Board should wait to make the changes described in the RFC until a new CEO is selected rather than presenting the new CEO with ''a *fait accompli*.'' *See* NFMA Letter. Because the CEO reports to the Board, the Board does not agree that waiting to make changes until a new CEO is selected is necessary or would be appropriate.

[75] *See* NFMA Letter.

[76] *See id.*

[77] *See* NAMA Letter.

[78] *See* NASACT Letter.

[79] *See id.;* NAMA Letter. In addition, one commenter stated that reducing the size of the Board ''would result in one Board seat available to an active issuer, thus diminishing and diluting critical issuer voices on the Board.'' *See* Letter from Shaun Snyder, Executive Director, National Association of State Treasurers to Ronald Smith, Corporate Secretary, MSRB (Apr. 29, 2020) (''NAST Letter''); *see also* GFOA Letter (expressing concern that next year's Board would include only one issuer representative); NAMA Letter (expressing concern that there would be a reduction in Board members from the issuer side of a transaction).

protect investors, municipal entities, obligated persons and the public interest, and to promote a fair and efficient municipal securities market. As some commenters noted, a smaller Board size should result in management efficiencies. A smaller Board may also be able to respond more quickly and flexibly to market developments requiring an immediate response. Although Board member compensation and expenses do not account for a substantial portion of the overall MSRB budget, a Board with fewer members will result in some reduction of costs as well.

At the same time, the Board is cognizant of the risk raised by some commenters who expressed concern that a reduction in Board size could limit the range of viewpoints represented. The Board takes great care through its annual nominations and elections process to constitute a Board that not only meets the requirements of the Exchange Act and MSRB rules but that also provides the Board with a broad and diverse range of viewpoints and perspectives. Through this process, the Board will continue to seek and elect candidates that reflect the wide range of backgrounds and experiences within each of the statutorily required Board member categories.

The Board also believes that fiscal year 2021, which begins on October 1, 2020, is the most appropriate year to effect the reduction in Board size, notwithstanding the ongoing pandemic. Rather, delaying the reduction for a year and instead seeking to fill six Board vacancies for fiscal year 2021 with appropriately qualified candidates would be more disruptive to MSRB governance, operations and programs in light of the travel and other logistical difficulties presented by the ongoing pandemic. As discussed more fully below, however, the Board agrees with commenters who expressed concern that an immediate reduction to 15 members would leave the Board with only one issuer representative in fiscal year 2021. Although the Board always strives to exceed the minimum required number of issuer representatives, it will be of particular importance in fiscal year 2021 in light of the ongoing effects of the pandemic on municipalities and the municipal securities market more generally. Accordingly, the Board has revised the transition plan proposed in the RFC to provide for an interim transition year with 17 members in fiscal year 2021, which will enable the Board to include a second issuer representative.

Board Composition

In the RFC, the Board sought comment on whether, if the Board's size were reduced, the Board should replace the requirement that 30% of regulated members be municipal advisor representatives with a requirement that the Board include at least two municipal advisor representatives. In addition, the Board sought comment on whether it should permit—but not require—one municipal advisor representative to be associated with a dealer, provided that the dealer does not engage in underwriting the public distribution of municipal securities.[80] MSRB Rule A–3 currently provides that the required municipal advisor representatives may not be associated with a dealer.

With respect to the number of municipal advisor representatives, two commenters generally supported requiring at least two municipal advisor representatives, with one suggesting that two municipal advisor representatives ''among the seven regulated representatives should provide appropriate knowledge and representation to the Board.'' [81] Two commenters believed that the rule should require only the statutory minimum of one municipal advisor.[82] One noted that the Exchange Act requires only at least one municipal advisor representative and stated that reserving additional slots for municipal advisor representatives is unnecessary now that municipal advisors have been regulated for nearly 10 years.[83] The other commented that reserving two seats for municipal advisor representatives would give municipal advisors disproportionate representation on the Board because the number of licensed municipal advisors and those that support them is ''a mere fraction'' of the ''tens of thousands of [dealer employees] who are licensed to transact in municipal securities.'' [84] This commenter also noted ''that dealers are also subject to the whole gambit of the MSRB's rulebook for the broad range of activities they engage in and they pay the majority of the MSRB's fees.'' [85]

Three commenters believed that at least three municipal advisor representatives should be required.[86] These commenters generally believed that due to the diverse nature of the municipal advisor community, at least three municipal advisor representatives are necessary to assure sufficient representation, particularly in light of current policy discussions that affect municipal advisors. Two cited an MSRB letter from 2011,[87] in which the Board explained the need for the 30% requirement in the context of a 21-member board by stating that while the Board had made progress in developing rules for municipal advisors, its work was not complete and that ''over the years, it will continue to write rules that govern the conduct of municipal advisors and provide interpretive guidance on those rules, just as it has over the years for broker-dealers since it was created by Congress in 1975.'' [88] Another stated that since municipal advisors have a fiduciary duty to their issuer clients, sufficient municipal advisor representation is necessary in light of what it perceived to be a reduction in representation of those on the issuer side of a transaction.[89]

After considering the comments on the municipal advisor composition requirement, the Board determined to include in the proposed rule change an amendment to MSRB Rule A–3 that would require that at least two regulated representatives be associated with and representative of municipal advisors and not be associated with dealers. This requirement will preserve, as closely as possible, the *status quo* regarding Board composition as the Board moves to a 15-member Board. Specifically, two municipal advisor representatives among seven regulated representatives will constitute 28.6% of the regulated representatives, as compared to the 30% that is currently required. Three municipal advisors, which the Board believes is too many, would constitute 42.9%.

In determining to require at least two municipal advisor representatives, the

[80] Although some commenters stated that they would not object to permitting one municipal advisor representative to be associated with a dealer that does not engage in underwriting the public distribution of municipal securities under certain conditions not contemplated in the RFC, no commenter supported it as described in the RFC. As discussed below, the Board has determined to maintain, as closely as possible, the status quo with respect to Board composition on a 15-member Board and, accordingly, has not included this provision in the proposed rule change.

[81] *See* NASACT Letter.

[82] *See* SIFMA Letter; BDA Letter.

[83] *See* BDA Letter.

[84] *See* SIFMA Letter.

[85] *See id.*

[86] *See* Letter from Kim M. Whelan and Noreen P. White, Co-Presidents, Acacia Financial Group, Inc. to Ronald Smith, Corporate Secretary, MSRB (Apr. 29, 2020) (''Acacia Letter''); Former Board Members Letter; NAMA Letter.

[87] *See* Letter from Lawrence P. Sandor, Senior Associate General Counsel, MSRB, to Elizabeth Murphy, Secretary, SEC (Sept. 19, 2011), available at *https://www.sec.gov/comments/sr-msrb-2011-11/msrb201111-4.pdf.*

[88] *See* Former Board Members Letter; Acacia Letter.

[89] *See* NAMA Letter.

Board carefully considered the comments of those who believed that only at least one should be required and those who believed that at least three should be required. The Board continues to believe, as it noted in the RFC, that, in light of the broad range of municipal advisors subject to MSRB regulation, it will serve the MSRB's regulatory mission to require municipal advisor representation greater than the statutory minimum. At the same time, a blanket requirement that at least three of seven regulated members must be municipal advisor representatives would be disproportionate to the required number of dealer and bank dealer representatives. The Board notes that two municipal advisor representatives is a minimum number and not a limit.

Finally, although the Board did not seek comment on changes to board composition requirements other than those described above related to municipal advisors, some commenters noted their continued support for issuer representation on the Board that is greater than the one required position. One commenter acknowledged that in recent years the Board had incorporated its suggestion for issuer representation beyond the one required position, but expressed concern that in the first fiscal year after a reduction in size there will be only one issuer representative.[90] Another urged the Board to consider changing its rules or policies to specify a minimum number of seats for issuer representatives and reserving one for a small issuer representative and another for a representative of a state 529 plan.[91]

Although the proposed rule change does not include amendments that would change the number of required issuer representatives on the Board, the Board agrees with commenters that issuer representation beyond the statutory minimum is important to achieving a balanced Board and, in most years, the Board has included more than one issuer representative. As noted above, if the Board were to transition to 15 members in the next fiscal year, the Board would be left with only one issuer representative for that year. Although circumstances may arise that require the Board to operate with only one issuer representative in a given year, the Board agrees with commenters that this is a particularly undesirable result in fiscal year 2021 in light of the effects of the COVID–19 pandemic on municipalities and the municipal securities market more generally. Accordingly, as discussed above, the Board determined to specify an interim Board size of 17 members in the first year of its transition to the reduced Board size of 15 members, which will allow the Board the benefit of a second issuer representative in fiscal year 2021.

Board Member Qualifications

In the RFC, the Board stated that in order to further convey to the public the seriousness with which the Board conducts its elections and bolster public confidence in its processes, it believed codifying in its rules the requirement that members be individuals of integrity was appropriate. One commenter supported this proposal and asked the Board to provide details on how it would determine that a prospective Board member possessed the necessary integrity.[92]

The Board continues to believe that adding the express requirement is appropriate and has included this amendment to MSRB Rule A–3 in the proposed rule change. As explained in the RFC, the Board has consistently sought candidates of demonstrated personal and professional integrity. The purpose of the amendment is to further convey to the public the seriousness with which the Board conducts its elections and bolster public confidence in its process. The Board will continue to determine whether a candidate possesses the requisite personal and professional integrity through its rigorous nominations and elections processes, which include, among other things, candidate interviews, extensive screening, and background checks.

Transition Plan

The RFC sought comment on a transition plan that would involve granting one-year term extensions to four public representatives and two regulated representatives over a three-year period. The four commenters who commented on the plan generally believed the plan was appropriate.[93] One commenter stated that transparency should be a priority in implementing the transition plan.[94]

As discussed above, the proposed rule change includes the transition plan described in the RFC, but adjusted to provide that in the first transition year the Board will have 17 members. That adjustment will be achieved by granting one-year extensions to an additional public representative and an additional regulated representative, in order to comply with the requirements that the Board size be an odd number and that the Board be as evenly divided in number as possible between public and regulated representatives.

The Board agrees that transparency in connection with the transition plan is an important consideration and has included the details of the plan above for that reason. As noted above, the Board will determine extensions pursuant to the plan each year in conjunction with its annual nominations and elections process, when that process resumes in fiscal year 2021, so that candidates for extensions and new candidates may be considered holistically. Candidates for the one-year extensions will have already been evaluated by the Board once before, when they were first nominated for a Board term.

Terms

In the RFC, the Board sought comment on draft amendments that would remove the current maximum of two consecutive terms, provide that a Board member could serve for a total of no more than six years, and prohibit a Board member who had reached the six-year limit from returning to the Board, even after a period away. In response, the Board received four comments supporting the six-year limit described in the RFC.[95] These commenters generally agreed that the limit would serve to refresh the perspectives available to the Board. One commenter opposed replacing the two consecutive term limit with a six-year cap and stated that, in light of the proposal to extend the separation period, ''there needs to be a level of comfort that the caliber and quantity of historical applications will continue in the future.'' [96] Some commenters requested further clarification about when a Board member would receive an additional two years.[97]

Two commenters specifically agreed with the proposal to impose a lifetime limit on Board service, and generally believed that there is a wide range and large number of applicants that could be considered for Board service.[98] In

[90] *See* GFOA Letter (suggesting that the public representatives on a 15-member Board should consist of three issuer representatives, three investor representatives, and two members of the public with knowledge of or experience in the municipal industry).

[91] *See* BDA Letter; *see also* NAST Letter (stating that ''the MSRB should continue to prioritize the inclusion of a State Treasurer on the Board at all times, but should also include additional active issuers, including those from local governments and other issuer entities'').

[92] *See* BDA Letter.

[93] *See* SIFMA Letter; BDA Letter; NAMA Letter; NASACT Letter.

[94] *See* NASACT Letter.

[95] *See* BDA Letter; GFOA Letter; NAMA Letter; NASACT Letter.

[96] *See* NFMA Letter.

[97] *See* NAMA Letter; NFMA Letter.

[98] *See* NAMA Letter; GFOA Letter.

contrast, two commenters opposed the lifetime cap. One believed that a former Board member might be the best candidate among applicants and that it would be disadvantageous to disqualify him or her ''because of an arbitrary lifetime service limit.'' [99] This commenter suggested that an alternative to the lifetime service limit could be to establish a separation period before a former Board member could return. Another commenter who opposed the lifetime limit suggested that an ''alternative to achieve the MSRB's stated goals might be to prohibit a Board member from serving in the same class as his or her previous term.'' [100]

After considering these comments, the Board determined to include the six-year service limit in the proposed rule change. The Board agrees that there is a wide range of potential candidates for Board service and that regularly refreshing the perspectives available to the Board assists the Board in carrying out its mission to protect investors, municipal entities, obligated persons and the public interest, and to promote a fair and efficient municipal securities market.

As described above, although one four-year term would be the norm under the proposed rule change, Board members would be eligible to serve for an additional two years as necessary for the Board to fill expeditiously a vacancy that arises in the middle of a Board member's term. In such circumstances, the Board sometimes chooses to fill such a vacancy for a short period of time by re-appointing a sitting Board member to serve for the remainder of the term of the Board member whose departure created the vacancy or electing a recently departed former Board member who has already been through the extensive nominations and elections process and will be familiar with matters then before the Board, rather than leaving the vacancy unfilled until a more exhaustive, but time-consuming, search for a new Board member can be completed. The proposed rule change would permit the Board to continue to do so, provided that no Board member's total time on the Board exceeds six years.

Amendments to Board Nominations and Elections Process

The RFC sought comment on amendments to MSRB Rule A–3 that would preserve the essential features of the nominations and elections process but remove overly prescriptive detail, such as the specific requirement for a ''nominations and governance committee.'' One commenter agreed that allowing for flexibility to determine such matters by policy rather than rulemaking would be more effective and resilient.[101] One commenter did not believe there was a need to reduce the detailed requirements in the rule but stated that it would not object if key issues were addressed in policies, provided the policies were publicly available.[102] Another similarly stated that it did not object to the Board preserving flexibility to determine committee structure through policies and charters, but that to preserve transparency the reasons for any changes should be available on the Board's website.[103]

After considering these comments, the Board determined to remove the prescriptive detail in MSRB Rule A–3, as described in the RFC. As noted in the RFC, the substantive provisions, such as the requirements that the committee responsible for nominations have a public representative majority and be chaired by a public representative, would remain in the Board's rules.[104] The Board also notes that key policies of interest to stakeholders, including the Code of Ethics and Business Conduct, the Conflicts of Interest Policy, and the Whistleblower Policy and Complaint Handling Procedures, are all available to the public on the Board's website.[105]

Committee Public Representative Chairs

The RFC sought comment on whether the Board should include in MSRB rules a requirement that a public representative chair the Board committees responsible for governance, nominations, and audit. One commenter wrote in support of these provisions and the proposed rule change includes an amendment to MSRB Rule A–6 that incorporates them.[106]

[99] *See* NFMA Letter.

[100] *See* SIFMA Letter.

[101] *See* NASACT Letter.

[102] *See* NAMA Letter (also suggesting that the Board consider reviewing and potentially revising policies on term extensions and conflicts of interest and the code of ethics as part of a public process).

[103] *See* NFMA Letter.

[104] In the RFC, the Board noted that it was reconsidering, and sought commenters' views on, the requirement that the Board make available on its website the names of all applicants who agreed to be considered by the nominations committee. Four commenters believed this requirement should be retained for purposes of transparency, while one supported not publishing the names but making them available to individuals upon request, also in the interest of transparency. The Board did not include any change to the existing requirement in the proposed rule change.

[105] These policies and procedures are available at *http://www.msrb.org/About-MSRB/Governance.aspx.*

[106] *See* NFMA Letter.

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 of up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove 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–MSRB–2020–04 on the subject line.*

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–MSRB–2020–04. 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 MSRB. 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–MSRB–2020–04 and should be submitted on or before July 15, 2020.

For the Commission, pursuant to delegated authority.[107]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–13535 Filed 6–23–20; 8:45 am]

BILLING CODE 8011–01–P

[107] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89093; File No. SR–MIAX–2020–15]

Self-Regulatory Organizations; Miami International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Temporarily Extend Filing Deadlines for Certain Supervision-Related Reports

June 18, 2020.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 4, 2020, Miami International Securities Exchange, LLC (''MIAX Options'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend Exchange Rule 1308, Supervision of Accounts, to temporarily extend the filing requirements for certain supervision-related reports, currently given an extension to June 1, 2020, to June 30, 2020.

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/* at MIAX Options' principal office, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Given current market conditions, the Exchange proposes to provide its members temporary relief from filing certain supervision-related reports pursuant to Exchange Rule 1308 (Supervision of Accounts).[3]

The Exchange has been closely monitoring the current situation regarding the novel coronavirus (''COVID–19'') pandemic. The Exchange understands COVID–19 has placed stress on market participants' information technology infrastructure and the required deployment of significant resources, including to implement and continuously adapt business continuity plans. On March 11, 2020, the World Health Organization characterized COVID–19 as a pandemic.[4] To slow the spread of the disease, federal and state officials implemented social-distancing measures, placed significant limitations on large gatherings, limited travel, and closed non-essential businesses, all of which are largely still in place for the foreseeable future. The Exchange also notes that in response to COVID–19, the Financial Industry Reporting Authority (''FINRA'') recently reissued temporary relief for member firms by, among other things, extending the deadline for submitting their supervision-related reports (FINRA Rule 3120 Report and FINRA Rule 3130 certification) from their initial extension deadlines of June 1, 2020[5] to June 30, 2020.[6] The Exchange notes, too, that other options exchanges that had previously extended the supervisory report deadlines from April 1 to June 1 for their members,[7] also plan to submit similar filings to, again, extend their deadlines through June 30, 2020.

By way of background, Exchange Rule 1308(g) requires each Exchange member that conducts a non-member customer business to submit to the Exchange a written report on the member's supervision and compliance effort during the preceding year and on the adequacy of the member's ongoing compliance processes and procedures. Each member that conducts a public customer options business is also required to specifically include its options compliance program in the report.[8] The Exchange Rule 1308(g) report is due on April 1 of each year. Exchange Rule 1308(h) requires that each member submit, by April 1 of each year, a copy of the Rule 1308(g) report to one or more control persons or, if the member has no control person, to the audit committee of its board of directors or its equivalent committee or group.[9]

Rule 1308 currently provides relief to members and their employees by extending these deadlines to June 1, 2020.[10] However, as COVID–19 remains an ongoing pandemic, to meet the current June 1 deadlines in Rule 1308, member personnel would have to divide their efforts and resources that are otherwise necessary to address continued disruptions and stresses as a result of the ongoing COVID–19 pandemic. Therefore, the Exchange proposes to extend the filing deadline through June 30, 2020, thus allowing

[3] The Exchange notes that MIAX Rule 1308 is incorporated by reference into the rulebooks of MIAX PEARL, LLC (''PEARL'') and MIAX Emerald, LLC (''Emerald''). As such, the amendments to MIAX Rule 1308 proposed herein will also impact PEARL and Emerald Rules 1308. The Exchange initially filed the proposal on June 1, 2020 (SR–MIAX–2020–14). On June 4, 2020, the Exchange withdrew that filing and submitted this filing.

[4] *See* WHO Director-General's Opening Remarks at the Media Briefing on COVID–19 (March 11, 2020), available at *https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarksat-the-media-briefing-on-covid-19---11-march-2020*.

[5] *See* FINRA Regulatory Notice 20–08 (March 9, 2020) available at *https://www.finra.org/rules-guidance/notices/20-08*.

[6] *See* FINRA Regulatory Notice 20–08, FAQs, Supervision (May 19, 2020) available at *https://www.finra.org/rules-guidance/key-topics/covid-19/faq#supe*.

[7] *See* SR–CBOE–2020–049 (May 29, 2020). *See* Securities Exchange Act Release Nos. 88524 (March 31, 2020), 85 FR 19198 (April 6, 2020) (SR–ISE–2020–14); *and* 88527 (March 31, 2020), 85 FR 19190 (April 6, 2020) (SR–Phlx–2020–16).

[8] The report shall include, but not be limited to, the information set out in Exchange Rule 1308(g)(1)–(6).

[9] *See* Exchange Rule 1308(h) for the meaning of the term ''control person'' and requirements in the case of a control person that is an organization.

[10] *See* Securities Exchange Act Release No. 88543 (April 2, 2020), 85 FR 19788 (April 8, 2020) (SR–MIAX–2020–06).

member personnel that are tasked with organizing, compiling and filing such reports, but are also tasked with maintaining critical operations and sustainable business continuity plans, and otherwise adjusting the member's trading operations in line with evolving market conditions and initiatives to address such conditions to focus their attention on those immediate needs.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act [11] in general, and furthers the objectives of Section 6(b)(5) of the Act [12] in particular, in that 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 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) [13] 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 that the proposed rule will foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. The proposed rule change will allow the Exchange to extend temporary relief to its members by issuing another extension of certain supervisory reporting deadlines from June 1, 2020 to June 30, 2020 in light of the ongoing COVID–19 crisis. The Exchange understands this pandemic has caused, and continues to cause, stress on market participants' information technology infrastructure and the deployment of significant resources to address ongoing disruptions and continued stresses. By allowing the Exchange to re-extend the deadlines for filing certain supervision related reports in Rule 1308, the Exchange believes the proposed rule will allow member personnel, who would normally be tasked with organizing and compiling such reports, to focus their attention on maintaining critical operations and sustainable business continuity plans, and otherwise adjusting their trading operations in line with evolving market conditions and initiatives in response to the ongoing COVID–19 pandemic. The Exchange also believes the proposed rule change removes impediments to and perfects the mechanism of a free and open market and a national market system because, as noted above, FINRA has also re-extended the time for their members to file supervision-related reports from June 1, 2020 to June 30, 2020.[14] Additionally, as indicated above, other options exchanges that had previously extended the supervisory report deadlines from April 1 to June 1 for their members,[15] plan to submit similar filings to re-extend their deadlines through June 30, 2020.

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 proposed rule change is not intended to address competitive issues. The Exchange does not believe the proposed rule would impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the Act, because the additional June 30, 2020 extension for supervision-related reports in Rule 1308 will apply equally to all members. The Exchange does not believe that the proposed rule change would impose any burden on intermarket competition because it relates only to the extension of the filing deadline for supervision-related reports. Additionally, and as stated above, FINRA has recently notified its members that the filing deadline for their supervision-related reports has again been extended from June 1, 2020 to June 30, 2020,[16] and other options exchanges plan to file for the same relief through June 30, 2020, as well.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [17] and subparagraph (f)(6) of Rule 19b–4 thereunder.[18]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [19] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [20] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Commission notes that the proposed rule change would allow the Exchange, in light of the COVID–19 pandemic, to provide temporary relief for members by extending the deadlines in paragraphs (g) and (h) of Exchange Rule 1308 (Supervision of Accounts) from June 1, 2020 to June 30, 2020. This is consistent with the extension FINRA has provided its members for supervision-related reports and certifications required pursuant to FINRA Rule 3120 and FINRA Rule 3130 [21] and the extension for certain supervision-related reports Cboe Exchange, Inc. has provided its trading permit holders.[22] The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[23]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] *Id.*

[14] *See supra* note 6.

[15] *See supra* note 7.

[16] *See supra* note 6.

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission has waived this requirement.

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6)(iii).

[21] *See supra* note 6.

[22] *See* Securities Exchange Act Release No. 88978 (June 1, 2020), 85 FR 34688 (June 5, 2020) (SR–CBOE–2020–049).

[23] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

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–MIAX–2020–15 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–MIAX–2020–15. 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–MIAX–2020–15 and should be submitted on or before July 15, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–13537 Filed 6–23–20; 8:45 am]

BILLING CODE 8011–01–P

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89088; File No. SR–NSCC–2020–010]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of and Immediate Effectiveness of a Proposed Rule Change To Amend Rules With Respect to Index Receipts

June 18, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 11, 2020, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. NSCC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(4) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to Procedure II (Trade Comparison and Recording Service) of the NSCC Rules & Procedures (''Rules'') with respect to index receipts, as described in greater detail below.[5]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend Procedure II (Trade Comparison and Recording Service) with respect to index receipts in order to (i) reflect the publication of ETF portfolio holdings for pricing purposes via the Portfolio Report (as defined below and in the proposed rule text) and (ii) permit Index Receipt Agents to submit to NSCC index receipt creation and redemption instructions with a scheduled settlement date that is greater than the standard settlement cycle of second business day after the trade date (''T+2''). The proposed rule change would also make technical and clarifying changes.

(i) Background

Overview of Exchange-Traded Funds

Exchange-traded funds (''ETFs'') (referred to as ''index receipts'' in the Rules) are marketable securities that track stock indices, commodities, bonds, or baskets of assets. ETFs are listed on exchanges and are traded throughout the trading day. Shares of ETFs are created and redeemed in the primary market and are traded on listed exchanges in the secondary market. Each share of an ETF represents an undivided interest in the underlying assets of the ETF. NSCC facilitates the in-kind [6] clearing and settlement of the creation and redemption of ETF shares in the primary market as well as clearing of ETF trades in the secondary market.

The participants in the ETF primary market typically consist of the issuers of ETFs (''ETF Sponsors''), custodian banks (''ETF Agents,'' also referred to as ''Index Receipt Agents'' in the Rules), and brokers/dealers that have agreements directly with ETF Sponsors to allow the brokers/dealers to place orders for the creation and redemption of ETF shares (''Authorized Participants'' or ''APs''). Both the ETF Agents and APs [7] are Members of NSCC.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4).

[5] Capitalized terms not defined herein are defined in the Rules, *available at http://dtcc.com/~/media/Files/Downloads/legal/rules/nscc_rules.pdf.*

[6] In the ETF industry, the clearing of ETF creations and redemptions ''in-kind'' represents an exchange of ETF shares for a basket of component securities rather than cash.

[7] Form N–CEN defines AP as a broker-dealer that is also a member of a clearing agency registered with the Commission, and which has a written agreement with the ETF or one of its designated service providers.

As described in more detail below, NSCC understands that ETFs are able to realize a tax efficiency that other corporations generally cannot because redemptions from ETFs that are made in-kind (that is, by delivering certain assets from the ETF's portfolio, rather than in cash) do not require the ETF to realize and recognize capital gains if such assets have appreciated in value.

Trading Baskets and ETF Portfolio Holdings for Pricing Purposes

APs create and redeem ETF shares from the ETF Sponsors in blocks called ''creation units.'' An AP that purchases a creation unit of ETF shares delivers a ''basket'' of securities and other assets to the ETF Agent, and then receives the creation unit of ETF shares in return for those assets. The redemption process is the reverse of the creation process: the AP redeems a creation unit of ETF shares for a basket of securities and other assets. These creation and redemption baskets are referred to as ''trading baskets.''

A trading basket is generally representative of the ETF's portfolio and, together with a cash balancing amount, equal in value to the aggregate net asset value (''NAV'') of the ETF shares in the creation unit. There are two types of trading baskets: standard trading baskets and custom trading baskets. Trading baskets that reflect a pro rata representation of the ETF's portfolio are referred to as ''standard trading baskets.'' Trading baskets that are not standard trading baskets are referred to as ''custom trading baskets.'' A custom trading basket is a basket that contains a non-representative selection of the ETF's portfolio holdings and does not reflect a pro rata representation of the ETF's portfolio holdings. Custom trading baskets may, pursuant to recently adopted Rule 6c–11 under the Investment Company Act of 1940 [8] (''Rule 6c–11'') or applicable exemptive relief, substitute other securities or cash in the basket for some (or all) of the ETF's portfolio holdings.

In contrast to trading baskets, the ''ETF portfolio holdings for pricing purposes'' reflects an ETF's entire portfolio holding information and is not used for creations and redemptions.[9] The ETF portfolio holdings for pricing purposes provides information such as a comprehensive list of securities and assets held by an ETF, as well as the associated asset types, *i.e.,* fixed income, commodities, swaps, and futures.[10] Accordingly, the ETF portfolio holdings for pricing purposes can be used by APs to facilitate valuing an ETF's portfolio on an intraday basis, which, in turn, enables APs to identify any potential premiums and discounts for the ETF in the secondary market. The ability to identify an ETF's potential premiums and discounts in the secondary market is necessary for keeping the market prices of the ETF shares at or close to the NAV per share of the ETF. The ETF portfolio holdings for pricing purposes may include information beyond the disclosure required of an ETF under Rule 6c–11.[11]

ETF Portfolio Reporting Service

NSCC's ETF portfolio reporting service is an optional service that is available to Members by subscription.[12] This service is covered in Procedure II (Trade Comparison and Reporting Service), Section F, of the Rules.

On the business day preceding the trade date (''T–1''), an ETF's NAV is calculated by the ETF Sponsor or the ETF Agent after the market closes. Following the calculation of the NAV, these firms calculate trading baskets for use on the trade date (''T''). Pursuant to Procedure II, Section F.1. of the Rules, the ETF Agent, on behalf of the ETF Sponsor, transmits to NSCC on T–1 files that contain (a) the composition of index receipts for creations and redemptions occurring on the next business day (T), *i.e.,* the shares and their associated quantities, (b) the cash value of the portfolio for creates and redeems made solely for cash, and, if applicable, (c) the estimated cash amount, representing accrued dividend, cash-in-lieu of components,[13] if applicable, and balancing amount data (''Dividend/Balancing Cash Amount''), and (d) such other financial data as NSCC may require or permit from time to time.[14]

NSCC compiles the information on the evening of T–1 and provides Members that subscribe to the ETF portfolio reporting service with a portfolio composition report (''Portfolio Report'') detailing, if applicable, the estimated Dividend/Balancing Cash Amount, other financial data, and the composition of the next business day's ETFs. The Portfolio Reports provide subscribing Members a convenient and comprehensive publication of basket data for U.S.-listed ETFs in a standardized format. For each U.S.-listed ETF, NSCC currently publishes a Portfolio Report that includes one standard trading basket and, if applicable, multiple custom trading baskets.[15]

On T, based on the Portfolio Report, create and redeem orders for the ETF shares can be placed by APs with the ETF Sponsors. The ETF Sponsors can, via the ETF Agents, submit those orders to NSCC on a locked-in basis for clearing and settlement via NSCC's Continuous Net Settlement (''CNS'') System. The delivers and receives are processed through NSCC's Universal Trade Capture (''UTC'') system and netted in the CNS System for settlement.

The Rules do not currently provide for the publication of ETF portfolio holdings for pricing purposes via the Portfolio Report. In addition, the Rules currently only permit the ETF Agents to submit creation and redemption instructions with scheduled settlement date of one business day after the trade date (''T+1'') or T+2.

(ii) Proposed Enhancements

Publication of ETF Portfolio Holdings for Pricing Purposes via Portfolio Reports

As discussed above, trading baskets and ETF portfolio holdings for pricing

[8] *See* Exchange-Traded Funds, Release Nos. 33–10695; IC 33646 (September 25, 2019), *available at https://www.sec.gov/rules/final/2019/33-10695.pdf* (the ''Adopting Release'').

[9] As an example, the trading basket for the Financial Select Sector SPDR® Fund (an ETF that tracks an index of S&P 500® financial stocks) would include the underlying securities of the relevant financial institutions while the portfolio holdings for pricing purposes for the ETF may include futures, swaps, options, and fractional shares of those underlying securities.

[10] NSCC recognizes that an ETF would be able to provide NSCC with such portfolio information only to the extent consistent with its obligations under the federal securities laws governing the disclosure of non-public portfolio information. *See* Adopting Release Footnote 271 and accompanying text, *supra* note 8.

[11] Rule 6c–11 requires any ETF relying upon Rule 6c–11 to disclose prominently on its website, publicly available and free of charge, the portfolio holdings that will form the basis for each calculation of NAV per share, and any cash balancing amount. The rule requires that the portfolio holdings information contain specified information, including description and amount of each position. Rule 6c–11 also requires an ETF to disclose on its website (i) the ETF's NAV per share, market price, and premium or discount, each as of the end of the prior business day; (ii) a tabular chart and line graph showing the ETF's premiums and discounts for the most recently completed calendar year and the most recently completed calendar quarters of the current year (or for the life of the ETF if shorter); and (iii) the ETF's median bid-ask spread over the last 30 calendar days. *See* Adopting Release Footnotes 675, 676 and 677 and accompanying text, *supra* note 8.

[12] Firms that are not Members can obtain Portfolio Reports via the DTCC ETF Portfolio Data Service provided by DTCC Solutions LLC, an affiliate of NSCC.

[13] The ''cash-in-lieu of securities'' portion of the cash amount represents cash substituted for a partial quantity of the components underlying a creation or redemption rather than acting as the sole underlying component.

[14] NSCC currently does not require any additional financial data.

[15] ETFs can, pursuant to Rule 6c–11 or applicable exemptive relief, use custom trading baskets to create and redeem shares.

purposes facilitate ETF trading activities; however, because NSCC's Rules do not currently provide for the publication of ETF portfolio holdings for pricing purposes via the Portfolio Report, Members need to obtain ETF portfolio holdings for pricing purposes via means outside of the Portfolio Report.[16] Based on its discussion with the ETF industry group,[17] NSCC understands that obtaining ETF portfolio holdings for pricing purposes outside of the Portfolio Report is inefficient for Members. Members generally prefer to receive trading baskets and ETF portfolio holdings for pricing purposes within one single consolidated and standardized file. Therefore, NSCC is proposing to enhance the Portfolio Report by publishing ETF portfolio holdings for pricing purposes along with trading baskets in a standardized format.[18]

NSCC is proposing to amend Procedure II (Trade Comparison and Recording Service), Section F.1. to reflect the publication of ETF portfolio holdings for pricing purposes via the Portfolio Report. Unlike trading baskets, ETF portfolio holdings for pricing purposes are not used for creations and redemptions. Accordingly, NSCC is proposing to add an additional paragraph to Section F.1. that provides each day, by such time as determined by NSCC from time to time, the Index Receipt Agent may also report to NSCC the composition of index receipts for purposes other than creations and redemptions.[19] NSCC is also proposing to add an additional sentence to the last paragraph of Section F.1. that provides the Portfolio Report will also include, if available, portfolio holdings of the index receipts.

Extending ETF Creation/Redemption Settlement Dates Beyond T+2

As mentioned above, NSCC understands that an ETF is able to realize a tax efficiency for the ETF when redemptions from the ETF are made in-kind. It is NSCC's understanding that this tax efficiency is particularly implicated when an ETF needs to undertake a large rebalancing (generally due to a change in an index that the ETF's holdings track). This is because when an index changes, the ETF needs to rebalance by disposing of its holding in securities that are no longer in the index. NSCC understands that the sale of such securities would generally incur a capital gain tax liability (assuming the securities have appreciated in market value); however, if the ETF redeems its shares from the ETF's shareholders in exchange for the securities that are no longer in the index, such transaction would generally not result in capital gains tax under the current U.S. federal income tax laws and regulations.

As understood by NSCC, this tax efficiency for ETFs is generally known in the market as giving rise to so called ''heartbeat trades.''[20] Market participants refer to heartbeat trades as transactions in which an ETF would fulfill a creation order from an AP (AP gets newly created ETF shares in exchange for either cash or securities), the AP would then place a custom redemption order to exchange the newly created ETF shares for that ETF's holding in securities that are no longer in the index. NSCC understands that an AP would look to align the settlement dates of both the creation and redemption orders in order to minimize any overnight positions and related margin impact. In addition, NSCC understands that APs would prefer to hold the newly created ETF shares for at least one day before placing any redemption orders for such shares.

The Rules currently only permit ETF creation and redemption instructions with scheduled settlement dates of T+1 or T+2. This means that when an AP submits a creation order on Monday (T), the creation order has to settle no later than Wednesday (T+2); however, if the AP desires to hold the newly created ETF shares for at least one day (*i.e.,* Tuesday), then the earliest that the AP can submit a redemption order for those ETF shares would be on Wednesday for settlement on Thursday. Therefore, under the current Rules, the settlement dates of the creation and redemption orders could not be aligned if the AP were to hold the newly created ETF shares for at least one day.[21]

NSCC is proposing to modify Procedure II (Trade Comparison and Recording Service) Section F.2. to provide APs more flexibility when selecting settlement dates for creation and redemption orders while still being able to hold the newly created ETF shares for at least one day. Specifically, NSCC is proposing to revise the language in the second paragraph of Section F.2. so that Index Receipt Agents[22] would be permitted to select a Settlement Date of T+1 or later for their index receipts.[23]

As proposed, when an AP submits a creation order on Monday (T), it would be able to have the creation order settle on Thursday (T+3), which could be aligned with a T+1 settlement date of a redemption order submitted on Wednesday while enabling the AP to hold the newly created ETF shares for one day (*i.e.,* Tuesday). The proposal would thus enable the AP to align the settlement dates of both the creation and redemption orders (*i.e.,* Thursday) in order to minimize any overnight positions and related margin impact while holding the newly created ETF shares for one day (*i.e.,* Tuesday) before placing any redemption orders for such shares.

Technical and Clarifying Changes

NSCC is proposing technical and clarifying changes in Sections F.1. and F.2 of Procedure II (Trade Comparison and Recording Service). Specifically, NSCC is proposing to modify Section F.1. by replacing the term ''cash-in-lieu of components'' with ''cash-in-lieu of securities'' in order to conform with the current industry terminology usage. Likewise, NSCC is proposing technical changes in footnote 1 of Section F.1. to ensure consistent placement of hyphens with respect to the term ''cash-in-lieu of securities.''

NSCC is also proposing a technical change to define Portfolio Report in

[16] It is NSCC's understanding that Members currently obtain ETF portfolio holdings for pricing purposes from ETF Sponsors. In addition, Members can also obtain ETF portfolio holdings information from an ETF's website. As noted above, Rule 6c–11 requires any ETF relying upon Rule 6c–11 to disclose prominently on its website, publicly available and free of charge, the portfolio holdings that will form the basis for each calculation of NAV per share, and any cash balancing amount. *Supra* note 11.

[17] The ETF industry group is comprised of Members that are ETF Agents and APs.

[18] Based on its discussions with the ETF industry group, NSCC understands that, although Rule 6c–11 does not require ETFs to publish any trading basket information, Members would nevertheless prefer to receive Portfolio Reports that include both trading baskets and ETF portfolio holdings for pricing purposes.

[19] While NSCC believes publication of ETF portfolio holdings for pricing purposes via the Portfolio Reports would be an efficient and effective means for ETF Agents to transmit ETF portfolio holdings for pricing purposes, ETF Agents would not be required to use Portfolio Reports.

[20] Members interested in heartbeat trades should discuss with their legal and tax advisers. By submitting this proposal, NSCC is not opining on the practice of heartbeat trades or any related tax implications, including, but not limited to, whether the alignment of the settlement dates of both the creation and redemption orders impacts the tax treatment of these transactions.

[21] Currently, ETF creations and redemptions with scheduled settlement dates beyond T+2 are settled broker-to-broker outside of NSCC.

[22] Create and redeem orders for the ETF shares are placed by APs with the ETF Sponsors. The ETF Sponsors, via the Index Receipt Agents, submit those orders to NSCC for clearing and settlement.

[23] NSCC believes extending ETF creation/redemption settlement date beyond T+2 would be consistent with rule 15c6–1 of the Act. Rule 15c6–1 requires that most securities transactions settle within two business days of the trade date, unless otherwise expressly agreed to by the parties at the time of the transaction. 17 CFR 240.15c6–1.

Section F.1., which is a term currently used in the Rules but has not been defined. Specifically, NSCC is proposing to delete the first instance of ''Portfolio Report'' from the last paragraph of Section F.1. and replace it with ''report.'' In addition, NSCC is proposing to define the term ''Portfolio Report'' at the end of the first sentence in the last paragraph of Section F.1.

In the second paragraph of Section F.2., NSCC is proposing a technical change to replace ''Index Receipts'' with ''index receipts'' because it is not a defined term under the Rules.

In addition, NSCC is proposing a clarifying change in the last paragraph of Section F.1. The clarifying change would make it clear that the composition data within the Portfolio Report may be used by NSCC to process index receipt creations and redemptions on the next business day.

(iii) Member Outreach

Beginning in October 2017, NSCC has conducted ongoing outreach to each Member in order to provide them with notice of the proposed changes. As of the date of this filing, no written comments relating to the proposed changes have been received in response to this outreach. The Commission will be notified of any written comments received.

(iv) Implementation Timeframe

NSCC would implement the proposed changes by no later than August 31, 2020 and would announce the effective date of the proposed changes by an Important Notice, posted to its website. As proposed, a legend would be added to Procedure II stating there are changes that became effective upon filing with the Commission but have not yet been implemented. The proposed legend also would include a date by which such changes would be implemented and the file number of this proposal, and state that, once this proposal is implemented, the legend would automatically be removed from Procedure II.

2. Statutory Basis

NSCC believes this proposal is consistent with the requirements of the Act, and the rules and regulations thereunder applicable to a registered clearing agency. Specifically, NSCC believes this proposal is consistent with Section 17A(b)(3)(F) [24] of the Act and Rule 17Ad–22(e)(21),[25] as promulgated under the Act, for the reasons described below.

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions and to protect investors and the public interest.[26] NSCC believes that the proposed rule change to provide for the publication of ETF portfolio holdings for pricing purposes via the Portfolio Report would protect investors and the public interest. This is because publishing the ETF portfolio holdings for pricing purposes via the Portfolio Report would provide Members with the necessary information to facilitate their valuation of the ETF portfolios on an intraday basis, which, in turn, would help enable them to assess whether any potential ETF trading premiums or discounts exist in the secondary market when comparing to the ETF NAVs. The ability to identify potential premiums and discounts in the secondary market is necessary for keeping the market prices of ETF shares at or close to the NAV per share of the ETF, thereby helping to ensure ETF investors are treated equitably when buying and selling ETF shares. Therefore, NSCC believes that the proposed rule change to provide for the publication of ETF portfolio holdings for pricing purposes via the Portfolio Report would protect investors and the public interest, consistent with Section 17A(b)(3)(F) of the Act.

The proposed rule change to make technical and clarifying changes would help ensure that the Rules remain accurate and clear to Members. Having accurate and clear Rules would help Members to better understand their rights and obligations regarding NSCC's clearance and settlement services. NSCC believes that when Members better understand their rights and obligations regarding NSCC's clearance and settlement services, they can act in accordance with the Rules. NSCC believes that better enabling Members to comply with the Rules would promote the prompt and accurate clearance and settlement of securities transactions by NSCC. As such, NSCC believes the proposed rule changes to make technical and clarifying changes are consistent with Section 17A(b)(3)(F) of the Act.

Rule 17Ad–22(e)(21) under the Act requires NSCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to be efficient and effective in meeting the requirements of its participants and the markets it serves.[27] The proposed rule change to provide for the publication of ETF portfolio holdings for pricing purposes via the Portfolio Report would enhance the efficiency of the current reporting capability by enabling Members to receive both ETF portfolio holdings for pricing purposes and trading baskets in one single consolidated file instead of having to receive them from multiple sources. The proposed rule change to provide for the publication of ETF portfolio holdings for pricing purposes via the Portfolio Report would enhance the effectiveness of the current reporting capability by providing both ETF portfolio holdings for pricing purposes and trading baskets in a standardized format, which, NSCC believes, would help reduce the need for Members to work with data in different formats and, in turn, result in fewer data conversion errors and omissions. Therefore, by establishing a more efficient and effective reporting capability for ETFs, NSCC believes that the proposed rule change to provide for the publication of ETF portfolio holdings for pricing purposes via the Portfolio Report is consistent with Rule 17Ad–22(e)(21) under the Act.

The proposed rule change to extend ETF creation and redemption settlement dates beyond T+2 is designed to meet the requirements of APs and ETF Agents by providing them with more flexibility when selecting settlement dates for ETF creation and redemption orders. As discussed above, in order to minimize any overnight positions and related margin impact, NSCC understands that APs and ETF Agents are looking to align the applicable ETF creation and redemption settlement dates while holding newly created ETF shares for the requisite time frame. The proposal to extend ETF creation and redemption settlement dates beyond T+2 would provide APs and ETF Agents with additional flexibility when selecting settlement dates for ETF creation and redemption orders. Having more flexibility when selecting settlement dates for ETF creation and redemption orders would enable APs and ETF Agents to align the applicable settlement dates more easily while still holding newly created ETF shares for the desired time period. Therefore, NSCC believes that the proposed rule change to extend ETF creation and redemption settlement dates beyond T+2 is consistent with Rule 17Ad–22(e)(21) under the Act.

(B) Clearing Agency's Statement on Burden on Competition

NSCC does not believe the proposed rule change to provide for the publication of ETF portfolio holdings for pricing purposes via the Portfolio

[24] 15 U.S.C. 78q–1(b)(3)(F).

[25] 17 CFR 240.17Ad–22(e)(21).

[26] 15 U.S.C. 78q–1(b)(3)(F).

[27] 17 CFR 240.17Ad–22(e)(21).

Report would have any adverse impact, or impose any burden, on competition.[28] This is because the proposed rule change would enhance NSCC's reporting capabilities in a manner that would enable Members to receive all necessary information to support their ETF trading activities in one single consolidated and standardized file. The proposed rule change would not disproportionally impact any Members.

Moreover, NSCC believes the proposed rule change would have a positive effect on competition among ETF industry participants. This is because the proposed rule change to provide for the publication of ETF portfolio holdings for pricing purposes via the Portfolio Report would provide the ETF industry a more efficient and effective method to disseminate ETF portfolio holdings for pricing purposes and also enable Members to receive all necessary information to support their ETF trading activities in one single consolidated and standardized file. Therefore, NSCC believes the proposed rule change to provide for the publication of ETF portfolio holdings for pricing purposes via the Portfolio Report would enhance competition among ETF industry participants by allowing information to be distributed more quickly and in a more streamlined manner.

NSCC does not believe the proposed rule change to extend ETF creation and redemption settlement dates beyond T+2 would have any adverse impact, or impose any burden, on competition.[29] This is because the proposed rule change is designed to meet the requirements of APs and ETF Agents by providing them with more flexibility when selecting settlement dates for ETF creation and redemption orders. The proposed rule change would not disproportionally impact any Members.

NSCC does not believe the proposed rule changes to make technical and clarifying changes would impact competition.[30] These changes would apply equally to all Members and would not affect Members' rights and obligations. As such, NSCC believes these proposed rule changes would not have any impact on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to this proposed rule change have not been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change, and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [31] and paragraph (f) of Rule 19b–4 thereunder.[32] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–NSCC–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.

All submissions should refer to File Number SR–NSCC–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 NSCC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). 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–NSCC–2020–010 and should be submitted on or before July 15, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–13541 Filed 6–23–20; 8:45 am]

BILLING CODE 8011–01–P

[28] 15 U.S.C. 78q–1(b)(3)(I).

[29] *Id.*

[30] *Id.*

[31] 15 U.S.C. 78s(b)(3)(A).

[32] 17 CFR 240.19b–4(f).

[33] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89090; File No. SR–ICEEU–2020–009]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the ICE Clear Europe Model Risk Governance Framework

June 18, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 12, 2020, ICE Clear Europe Limited (''ICE Clear Europe'' or the ''Clearing House'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule changes described in Items I, II, and III below, which Items have been primarily prepared by ICE Clear Europe. ICE Clear Europe filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(6) [4] thereunder, such that the proposed rule change was immediately effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed amendments is for ICE Clear Europe to modify its Model Risk Governance Framework (the ''Model Risk Governance Framework'' or ''Framework'') to clarify the Clearing House's model risk management processes and to update the Framework's document governance and exception handling processes. The revisions to the Model Risk Governance Framework would not involve any changes to the ICE Clear Europe Clearing Rules or Procedures.[5]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe 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. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

Following its annual review of the Model Risk Governance Framework, ICE Clear Europe is proposing to amend the Framework as follows: (i) Clarify certain procedures for model risk management, including with respect to new models and reviews of existing models; (ii) to update governance provisions relating to document review, breach management and exception handling; and (iii) to make various drafting clarifications and improvements.

Model Risk Management

The section of the Framework addressing validation and model performance assessment would be renamed to the more general ''Model Risk Management'' and clarify that the Clearing House will identify, measure, monitor and mitigate model risk in all stages of a model life cycle. Certain general explanatory, non-substantive language (such as language generally explaining stages of new models, referencing the general nature of model changes and explaining the general importance of model validation and performance assessment) would be removed as unnecessary.

With respect to new models, language would be introduced to clarify that the time elapsed from validation to the production date is not to exceed the validation cycle.

With respect to review of existing models, the Clearing House proposes to add further detail regarding annual validation cycles: The time horizon of the cycles would be measured on a month-to-month basis, and the time the remediation plan was approved would be used as a reference. In addition, it would be clarified that model performance assessments would be conducted on a periodic basis, with cycles no greater than those used for validations (as opposed to no greater than one year). These assessments would, at a minimum, include the review of the testing performance of the models as well as the appropriateness of the parameters and assumptions used in them.

In the section discussing model retirement, language providing that the efficiency of a model may deteriorate over its life cycle for several reasons would be removed as unnecessary. The section would also be updated to provide that the Clearing House's assessment of the risks and consequences of retiring a model would, at a minimum, include a review of the reasons for the retirement, the coverage of risks post-retirement, the existing interdependencies and the regulatory compliance.

Governance

The amendments to the Framework would also update arrangements for breach management, ongoing Framework reviews and exception handling. The amendments are intended to make the Framework consistent in this regard with other ICE Clear Europe policies and governance processes. In particular, the amendments would provide that (i) the document owner, as specified in ICE Clear Europe policies, is responsible for ensuring that documents remain up-to-date and are reviewed in accordance with the Clearing House's governance processes, (ii) the document owner will report material breaches or unapproved deviations from the Framework to their Head of Department, the Chief Risk Officer and the Head of Compliance (or their delegates) who will determine if further escalation will be made to relevant senior executives, the Board and/or competent authorities, and (iii) exceptions to the Model Risk Governance Framework would be approved in accordance with the Clearing House's governance process for the approval of changes to such document.

General Drafting Clarifications and Improvements

By way of general drafting clarification and improvements, the amendments to the Model Risk Governance Framework would re-word certain sections for improved readability as well as make general grammatical and typographical corrections. Certain terminology would be updated throughout the Framework, including clarifying the use of the term ''remediation plan'' as opposed to ''remediation action''. The ''Second Line'' discussion of Model Risk Governance would be clarified to provide that the Risk Oversight Department is responsible to establish, maintain and observe guidelines for performing independent validation exercises only, and not also for model performance assessments and review of impact assessments (as those are generally ''First Line'' functions).

(b) Statutory Basis

ICE Clear Europe believes that the proposed amendments to the Model Risk Governance Framework are consistent with the requirements of Section 17A of the Act[6] and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act[7] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest. The proposed changes to the Model Risk Governance Framework are designed to clarify and strengthen ICE Clear Europe's model risk management framework. The amendments would clarify that model risk management is to be identified, measured, monitored and mitigated in all stages of a model life cycle. The amendments would provide greater detail as to the timing of the Clearing House's assessment of new models and of existing models; specifically, the time elapsed to the production launch date with respect to a new model would not be greater than the validation cycle, and the time horizon of existing models

[5] Capitalized terms used but not defined herein have the meanings specified in the ICE Clear Europe Clearing Rules.

[6] 15 U.S.C. 78q–1.

[7] 15 U.S.C. 78q–1(b)(3)(F).

would be measured on a month-to-month basis, using the time the remediation plan was approved as reference. The amendments would also clarify requirements for ongoing performance assessments, and enhance the governance over the Framework, to be consistent with other ICE Clear Europe policies. ICE Clear Europe believes that the Framework as so amended would enhance the overall risk management of the Clearing House, and thereby promote the prompt and accurate clearance of transactions and further the public interest in sound operation of clearing agencies, within the meaning of Section 17A(b)(3)(F).[8] The amendments are not intended to affect, and are consistent with, the Clearing House's existing Rules and Procedures relating to the safeguarding of funds and securities in the custody or control of the Clearing House or for which it is responsible, within the meaning of that section.

In addition, ICE Clear Europe believes that the proposed revisions to the Model Risk Governance Framework are consistent with the relevant requirements of Rule 17Ad–22.[9] Rule 17Ad–22(b)(4)[10] requires clearing agencies to perform an annual model validation, including a performance evaluation, of their margin models and the related parameters and assumptions. Rules 17Ad–22(e)(4)(vii)[11] and 17Ad–22(e)(6)(vii),[12] also require clearing agencies to have policies and procedures in place to ensure the performance of a model validation of their credit risk models, margin system, and related models not less than annually. Pursuant to the amendments, validation would continue to be performed on an annual basis and the additional clarifications minimum standards would further improve the review and validation process, in compliance with these requirements.

Rule 17Ad–22(e)(2)[13] requires clearing agencies to establish reasonably designed policies and procedures to provide for governance arrangements that are clear and transparent and specify clear and direct lines of responsibility. The proposed amendments to the Framework more clearly define the roles and responsibilities of the document owner, the Head of Department, the senior members of the Risk Oversight Department and the senior members of the Compliance Department, consistent with governance arrangement for other ICE Clear Europe policies and procedures. ICE Clear Europe believes that the amendments to the Framework are therefore consistent with the requirements of Rule 17Ad–22(e)(2).[14]

(B) Clearing Agency's Statement on Burden on Competition

ICE Clear Europe does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The amendments are being adopted to further strengthen the Model Risk Governance Framework by implementing internal procedures intended to strengthen oversight of models. The amendments would apply to all product categories, and are not intended to affect directly Clearing Members or market participants, or the markets for cleared products. As a result, ICE Clear Europe does not otherwise believe the amendments would affect the costs of or access to clearing, or the market for clearing services generally. Therefore, ICE Clear Europe does not believe the proposed rule change imposes any burden on competition that is inappropriate in furtherance of the purposes of the Act.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed amendments have not been solicited or received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any written comments received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[15] and Rule 19b–4(f)(6)[16] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule 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–ICEEU–2020–009 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.

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 17 CFR 240.17Ad–22.

[10] 17 CFR 240.17Ad–22(b)(4). The rule states that ''[a] registered clearing agency that performs central counterparty services shall establish, implement, maintain and enforce written policies and procedures reasonably designed to: (4) Provide for an annual model validation consisting of evaluating the performance of the clearing agency's margin models and the related parameters and assumptions associated with such models by a qualified person who is free from influence from the persons responsible for the development or operation of the models being validated''.

[11] 17 CFR 240.17Ad–22(e)(4)(vii). The rule states that ''[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: (4) Effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by: (vii) Performing a model validation for its credit risk models not less than annually or more frequently as may be contemplated by the covered clearing agency's risk management framework established pursuant to paragraph (e)(3) of this section''

[12] 17 CFR 240.17Ad–22(e)(6)(vii). The rule states that ''[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: (6) Cover, if the covered clearing agency provides central counterparty services, its credit exposures to its participants by establishing a risk-based margin system that, at a minimum:

(vii) Requires a model validation for the covered clearing agency's margin system and related models to be performed not less than annually, or more frequently as may be contemplated by the covered clearing agency's risk management framework established pursuant to paragraph (e)(3) of this section''

[13] 17 CFR 240.17 Ad–22(e)(2). The rule states that ''[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: (2) Provide for governance arrangements that: (i) Are clear and transparent (ii) Clearly prioritize the safety and efficiency of the covered clearing agency; (iii) Support the public interest requirements in Section 17A of the Act (15 U.S.C. 78q–1) applicable to clearing agencies, and the objectives of owners and participants; (iv) Establish that the board of directors and senior management have appropriate experience and skills to discharge their duties and responsibilities; (v) Specify clear and direct lines of responsibility; and (vi) Consider the interests of participants' customers, securities issuers and holders, and other relevant stakeholders of the covered clearing agency.''

[14] 17 CFR 240.17 Ad–22(e)(2).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

All submissions should refer to File Number SR–ICEEU–2020–009. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe's website at *https://www.theice.com/notices/Notices.shtml?regulatoryFilings.*

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–ICEEU–2020–009 and should be submitted on or before July 15, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–13536 Filed 6–23–20; 8:45 am]

BILLING CODE 8011–01–P

[17] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16485 and #16486; California Disaster Number CA–00319]

Administrative Declaration of a Disaster for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of California dated 06/17/2020.

Incident: Civil Unrest.

Incident Period: 05/26/2020 and continuing.

DATES: Issued on 06/17/2020.

Physical Loan Application Deadline Date: 08/17/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 03/17/2021.

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: Los Angeles.

Contiguous Counties:

California: Kern, Orange, San Bernardino, Ventura.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	2.500
Homeowners Without Credit Available Elsewhere	1.250
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	3.000
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	3.000
Non-Profit Organizations Without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 16485 F and for economic injury is 16486 0.

The State which received an EIDL Declaration # is California.

(Catalog of Federal Domestic Assistance Number 59008)

Jovita Carranza,

Administrator.

[FR Doc. 2020–13514 Filed 6–23–20; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #16484; CALIFORNIA Disaster Number CA–00320 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 06/17/2020.

Incident: Pier 45 Fire.

Incident Period: 05/23/2020.

DATES: Issued on 06/17/2020.

Economic Injury (EIDL) Loan Application Deadline Date: 03/17/2021.

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 Francisco.

Contiguous Counties:

California: Alameda, Marin, San Mateo.

The Interest Rates are:

	Percent
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	3.000
Non-Profit Organizations without Credit Available Elsewhere	2.750

The number assigned to this disaster for economic injury is 164840.

The State which received an EIDL Declaration # is California.

(Catalog of Federal Domestic Assistance Number 59008)

Jovita Carranza,

Administrator.

[FR Doc. 2020–13518 Filed 6–23–20; 8:45 am]

BILLING CODE 8026–03–P

SOCIAL SECURITY ADMINISTRATION

[Docket No: SSA–2020–0028]

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages requiring clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. This notice includes revisions of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Mail, email, or fax your comments and recommendations on the information collection(s) to the OMB Desk Officer and SSA Reports Clearance Officer at the following addresses or fax numbers.

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA, Fax: 202–395–6974, Email address: *OIRA_Submission@omb.eop.gov*

(SSA) Social Security Administration, OLCA, Attn: Reports Clearance Director, 3100 West High Rise, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–966–2830, Email address: *OR.Reports.Clearance@ssa.gov*

Or you may submit your comments online through *www.regulations.gov,* referencing Docket ID Number [SSA–2020–0028].

I. The information collections below are pending at SSA. SSA will submit them to OMB within 60 days from the date of this notice. To be sure we consider your comments, we must receive them no later than August 24, 2020. Individuals can obtain copies of the collection instruments by writing to the above email address.

1. Marriage Certification—20 CFR 404.725–0960–0009. Sections 202(b) and 202(c) of the Social Security Act (Act) stipulate that every spouse of an individual entitled to Old-Age, Survivors, and Disability Insurance (OASDI) benefits is entitled to a spouse benefit if the wife or husband, in addition to meeting the entitlement requirements, meets the relationship criteria in Section 216(h)(1)(A) and (B) of the Act. SSA uses Form SSA–3 to determine if a spouse claimant has the necessary relationship to the Social Security number holder (*i.e.,* the worker) to qualify for the worker's OASDI benefits. The respondents are applicants for spouse's OASDI benefits.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–3	62,342	1	5	5,195	* $25.72	** 24	*** $774,995

* We based this figures on average U.S. citizen's hourly salary, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_stru.htm*).
** We based this figure on the average FY 2020 wait times for field offices, based on SSA's current management information data.
*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

2. Farm Arrangement Questionnaire—20 CFR 404.1082(c)–0960–0064. When self-employed workers submit earnings data to SSA, they cannot count rental income from a farm unless they demonstrate ''material participation'' in the farm's operation. A material participation arrangement means the farm owners must perform a combination of physical duties, management decisions, and capital investment in the farm they are renting out. SSA uses Form SSA–7157, the Farm Arrangement Questionnaire, to document material participation. The respondents are workers who are renting farmland to others; are involved in the operation of the farm; and want to claim countable income from work they perform relating to the farm.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–7157	662	1	30	331	* $38.63	** 24	*** $23,023

* We based this figures on average Farmer's hourly salary, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm*).
** We based this figure on the average FY 2020 wait times for field offices, based on SSA's current management information data.
*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

3. RS/DI Quality Review Case Analysis: Sampled Number Holder; Auxiliaries/Survivors; Parent; and Stewardship Annual Earnings Test—0960–0189. Section 205(a) of the Act authorizes the Commissioner of SSA to conduct the quality review process, which entails collecting information related to the accuracy of payments made under OASDI. Sections 228(a)(3), 1614(a)(1)(B), and 1836(2) of the Act require a determination of the citizenship or alien status of the beneficiary; this is only one item that we might explore as part of the Annual Quality review. SSA uses Forms SSA–2930, SSA–2931, and SSA–2935 to establish a national payment accuracy rate for all cases in payment status, and to serve as a source of information regarding problem areas in the Retirement Survivors Insurance (RSI) and Disability Insurance (DI) programs. We also use the information to measure

the accuracy rate for newly adjudicated RSI or DI cases. SSA uses Form SSA–4659 to evaluate the effectiveness of the annual earnings test, and to use the results in developing ongoing improvements in the process. About 25% percent of respondents have in-person reviews and receive one of the following appointment letters: (1) Form SSA–L8550–U3 (Appointment Letter—Sample Individual); (2) Form SSA–L8551–U3 (Appointment Letter—Sample Family); or (3) Form SSA–L8552–U3 (Appointment Letter—Rep Payee). Seventy-five percent of respondents receive a notice for a telephone review using Form SSA–L8553–U3 (Beneficiary Telephone Contact) or Form SSA–L8554–U3 (Rep Payee Telephone Contact). To help the beneficiary prepare for the interview, we include three forms with each notice: (1) Form SSA–85 (Information Needed to Review Your Social Security Claim) lists the information the beneficiary will need to gather for the interview; (2) Form SSA–2935 (Authorization to the Social Security Administration to Obtain Personal Information) verifies the beneficiary's correct payment amount, if necessary; and (3) Form SSA–8552 (Interview Confirmation) confirms or reschedules the interview if necessary. The respondents are a statistically valid sample of all OASDI beneficiaries in current pay status or their representative payees.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–2930	1,500	1	30	750	* $10.22	** 24	*** $13,797
SSA–2931	850	1	30	425	* 10.22	** 24	*** 7,818
SSA–4659	325	1	10	54	* 10.22	** 24	*** 1,880
SSA–L8550–U3	385	1	5	32	* 10.22	** 24	*** 1,901
SSA–L8551–U3	95	1	5	8	* 10.22	** 24	*** 470
SSA–L8552–U3	35	1	5	3	* 10.22	** 24	*** 174
SSA–L8553–U3	4,970	1	5	414	* 10.22	** 24	*** 24,548
SSA–L8554–U3	705	1	5	59	* 10.22	** 24	*** 3,485
SSA–8552	2,350	1	5	196	* 10.22	** 24	*** 11,610
SSA–85	3,850	1	5	321	* 10.22	** 24	*** 19,019
SSA–2935	2,350	1	5	196	* 10.22	** 24	*** 11,610
SSA–8510 (also saved under OMB No. 0960-0707)	800	1	5	67	* 10.22	** 24	*** 3,955
Totals	18,215			2,525			*** 100,267

* We based these figures on average DI hourly wages based on SSA's current FY 2019 data (*https://www.ssa.gov/legislation/2019%20Fact%20Sheet.pdf*).
** We based this figure on the average FY 2020 wait times for field offices, based on SSA's current management information data.
*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

4. Claimant's Work Background—20 CFR 404.1512(a); 404.1520(a)(4); 404.1565(b); 416.912(a); 416.920(a)(4); 416.965(b)–0960–0300. Sections 205(a) and 1631(e) of the Act provide the Commissioner of Social Security with the authority to establish procedures for determining if a claimant is entitled to disability benefits. The administrative law judge (ALJ) may ask individuals to provide background information on Form HA–4633 about work they performed in the past 15 years. When a claimant requests a hearing before an ALJ to establish an entitlement to disability benefits, the ALJ may request that the claimant provide a work history to assist the ALJ in fully inquiring into issues related to the disability. The ALJ uses the information collected from the claimants on Form HA–4633 to: (1) Identify the claimant's relevant work history; (2) decide if SSA requires expert vocational testimony and, if so, have a vocational expert available to testify during the hearing; and (3) provide a reference for the ALJ to discuss the claimant's work history. The ALJ makes the completed Form HA–4633 part of the documentary evidence of record. The respondents are claimants for disability benefits under Title II or Title XVI who requested a hearing before an ALJ after SSA denied their application for disability payments.

Type of Request: Revision to an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
HA–4633—PDF/paper version	53,200	1	15	13,300	* $10.22	** 24	*** $353,408
Electronic Records Express Submissions	136,800	1	15	34,200	* 25.72	0	*** 879,624
Totals	190,000			47,500			*** 1,233,032

* We based these figures on average DI hourly wages based on SSA's current FY 2019 data (*https://www.ssa.gov/legislation/2019%20Fact%20Sheet.pdf*); and on average U.S. citizen's hourly salary, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_stru.htm*).
** We based this figure on the average FY 2020 wait times for field offices, based on SSA's current management information data.
*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

5. Letter to Landlord Requesting Rental Information—20 CFR 416.1130(b)–0960–0454. SSA uses Form SSA–L5061 to obtain rental subsidy information, which enables SSA to determine and verify an income value for such subsidies. SSA uses this income value as part of determining eligibility for Supplemental Security Income (SSI) and establishing the correct amount of SSI payable to the claimant. SSA bases an individual's

eligibility for SSI payments, in part, on the amount of countable income the individual receives. Income includes in-kind support and maintenance in the form of room or rent, such as a subsidized rental arrangement. SSA requires claimants to assist in obtaining this information to prevent a delay or overpayment with their SSI payments. We collect this information only if the SSI applicant or recipient is the parent or child of the landlord (respondent). For most respondents, we collect this information once per year, or less, via telephone or face-to-face personal interview. The claims representative records the information in our SSI Claims Systems, and we require verbal attestation in lieu of a wet signature. However, if the claims representative is unable to contact the respondent via the telephone or face-to-face, we print and mail a paper form to the respondent for completion. The respondent completes, signs, and returns the form to the claims representative. Upon receipt, the claims representative documents the information in the SSI Claims System or, for non-SSI Claims System cases, faxes the form into the appropriate electronic folder and shreds the paper form. The respondents are landlords related to the SSI beneficiaries as a parent or child.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–L5061	71,280	1	10	11,880	* $25.72	** 24	**** $1,038,883

* We based this figures on average U.S. citizen's hourly salary, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_stru.htm*).
** We based this figure on the average FY 2020 wait times for field offices, based on SSA's current management information data.
*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

6. Marital Relationship Questionnaire—20 CFR 416.1826–0960–0460. SSA uses Form SSA–4178, Marital Relationship Questionnaire, to determine if unrelated individuals of the opposite sex who live together are misrepresenting themselves as husband and wife. SSA needs this information to determine whether we are making correct payments to couples and individuals applying for, or currently receiving, SSI payments. The respondents are applicants for, and recipients of, SSI payments.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSI Claims System	1,275	1	5	106	* $10.22	** 24	*** $6,296
SSA–4178	3,825	1	5	319	* 10.22	** 24	*** 18,897
Totals	5,100			425			*** 25,192

* We based these figures on average DI hourly wages based on SSA's current FY 2019 data (*https://www.ssa.gov/legislation/2019%20Fact%20Sheet.pdf*).
** We based this figure on the average FY 2020 wait times for field offices, based on SSA's current management information data.
*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

7. Questionnaire for Children Claiming SSI Benefits—20 CFR 416.912(a)–0960–0499. Sections 1614 and 1631 of the Act allow SSA to determine the eligibility of an applicant's claim for SSI payments. Parents or legal guardians seeking to obtain or retain SSI eligibility for their children use Form SSA–3881–BK to provide SSA with the addresses of non-medical sources such as schools, counselors, agencies, organizations, or therapists who would have information about a child's functioning. SSA uses this information to help determine a child's claim or continuing eligibility for SSI. The respondents are the parents, guardians, or other caretakers of: (1) Applicants who appeal SSI childhood disability decisions; or (2) recipients undergoing a continuing disability review.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–3881–BK (Paper Version)	81,250	1	30	40,625	* $25.72	** 24	*** $1,880,775
SSA–3881–BK (Intranet Version)	43,750	1	30	21,875	* 25.72	** 24	*** 1,012,725
Totals	125,000			62,500			*** 2,893,500

* We based this figures on average U.S. citizen's hourly salary, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_stru.htm*).
** We based this figure on the average FY 2020 wait times for field offices, based on SSA's current management information data.
*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

8. Social Security Administration Eligible Non-Attorney Representative—20 CFR 404.1717, 404.1745–404.1799, 416.1517, and 416.1545–416.1599–0960–0699. Section 3 of the Social Security Disability Applicants' Access

to Professional Representation Act of 2010, Public Law 111–142, permanently extends the direct payment provision of Section 303 of the Social Security Protection Act (SSPA) of 2004, Public Law 108–203. The law permits SSA to extend direct payment of approved fees from claimants' past-due benefits to certain non-attorney representatives. Prior to the enactment of the SSPA and Professional Representation Act, only attorneys could receive direct payment of SSA-approved fees. Under the Professional Representation Act, non-attorneys must meet certain prerequisites to be eligible for direct payment of fees. These prerequisites include: (1) A bachelor's degree from an accredited institution of higher education, or four years of relevant professional experience and a high school diploma or General Education Development certificate; (2) passing a written examination administered by SSA testing the knowledge of relevant provisions of the Act under Titles II and XVI; (3) securing and maintaining continuous professional liability insurance, or equivalent, to protect claimants from malpractice; (4) passing a criminal background check; and (5) demonstrating ongoing completion of continuing education courses. The Professional Representation Act requires SSA to collect the information needed to determine if applicants have satisfied these prerequisites. SSA uses the information we collect on Form SSA–1691 to determine whether an applicant has fulfilled the statutory prerequisites and regulatory requirements as listed above. To verify this information, we also request the five required items listed above from each new applicant, and we request items #3 and #5 from all non-attorney representatives (new and existing) on a yearly basis. Every year, SSA evaluates the applications; conducts verification investigations; and issues recommendations regarding applicants' eligibility to sit for the examination and eligibility to receive direct payment. The respondents are non-attorneys who want to receive direct payment of their fees for representational services before SSA.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
New Respondents—Paper Application (complete and submit)—404.1717(b)&(c); 416.1517(b)&(c)	468	1	45	351	* $26.45	** 24	*** $14,230
New Respondents Examination—404.1717(a)(5); 416.1517(a)(5)	460	1	120	920	* 26.45	** 24	*** 29,201
New Respondents—Submission of proof of Bachelor's Degree or Equivalent Qualifications—404.1717(a)(3); 416.1517(a)(3)	458	1	10	76	* 26.45	** 24	*** 6,851
New and Existing Respondents—CE Submission via email/mail/or FAX of training courses taken as prescribed by SSA—404.1717(a)(7); 416.1517(a)(7)	1,374	1	20	458	* 26.45	** 24	*** 26,662
New and Existing Respondents—Proof of Continuous Professional or Business Liability Insurance Coverage (Scan and Email)—404.1717(a)(6); 416.1517(a)(6)	1,099	1	10	183	* 26.45	** 24	*** 45,547
New and Existing Respondents—Proof of Continuous Professional or Business Liability Insurance Coverage (Copy and Mail)—404.1717(a)(6); 416.1517(a)(6)	275	1	15	69	* 26.45	** 24	*** 4,735
New and Existing Respondents—Written Protests—404.1717(d); 416.1517(d)	45	1	45	34	* 26.45	** 24	*** 1,375
Totals	4,179			2,091			*** 128,511

* We based these figures on average Paralegal's hourly salary, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes_nat.htm).*

** We based this figure on the average FY 2020 wait times for field offices, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

II. SSA submitted the information collection below to OMB for clearance. Your comments regarding this information collection would be most useful if OMB and SSA receive them 30 days from the date of this publication. To be sure we consider your comments, we must receive them no later than July 24, 2020. Individuals can obtain copies of the OMB clearance package by writing to *OR.Reports.Clearance@ssa.gov.*

Authorization to Obtain Earnings Data From the Social Security Administration—0960–0602. On occasion, public and private organizations and agencies need to obtain detailed earnings information about specific Social Security number (SSN) holding wage earners for business purposes (*e.g.,* pension funds and State agencies). Respondents use Form SSA–581 to identify the SSN holder whose information they are requesting, and provide authorization from the SSN holder, when applicable. SSA uses the information provided on Form SSA–581 to: (1) Identify the wage earner; (2) establish the period of earnings information requested; (3) verify the wage earner authorized SSA to release this information to the requesting party; and (4) produce the Itemized Statement of Earnings (SSA–1826). The respondents are private businesses, state or local agencies, and other federal agencies.

Type of Request: Revision of an OMB-approved information collection.

Modality of completion	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated total annual burden (hours)	Average theoretical hourly cost amount (dollars) *	Average wait time in field office (minutes) **	Total annual opportunity cost (dollars) ***
SSA–581	24,000	1	2	800	* $33.58	** 24	*** $349,232

* We based this figure on average Compensation, Benefits, and Job Analysis Specialists hourly salary, as reported by Bureau of Labor Statistics data (*https://www.bls.gov/oes/current/oes131141.htm).*

** We based this figure on the average FY 2020 wait times for field offices, based on SSA's current management information data.

*** This figure does not represent actual costs that SSA is imposing on recipients of Social Security payments to complete this application; rather, these are theoretical opportunity costs for the additional time respondents will spend to complete the application. *There is no actual charge to respondents to complete the application.*

Dated: June 19, 2020.

Naomi Sipple,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 2020–13583 Filed 6–23–20; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 11143]

30-Day Notice of Proposed Information Collection: Annual Report—J–NONIMMIGRANT Exchange Visitor Program

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 30 days for public comment.

DATES: Submit comments up to July 24, 2020.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to G. Kevin Saba, who may be reached on (202) 634–4710 or at *JExchanges@state.gov*.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Annual Report—J–NONIMMIGRANT Exchange Visitor Program.
- *OMB Control Number:* 1405–0151.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Educational and Cultural Affairs, Office of Private Sector Exchange, ECA/EC.
- *Form Number:* Form DS–3097.
- *Respondents:* Designated J–NONIMMIGRANT program sponsors.
- *Estimated Number of Respondents:* 1,500.
- *Estimated Number of Responses:* 1,500.
- *Average Hours per Response:* 2 hours.
- *Total Estimated Burden:* 3,000 hours.
- *Frequency:* Annually.
- *Obligation to Respond:* Required to Obtain or Retain Benefits.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Abstract of Proposed Collection

Annual reports from designated program sponsors assist the Department in oversight and administration of the J–NONIMMIGRANT Exchange Visitor Program. The reports provide qualitative data on the number of exchange participants an organization sponsored annually per category of exchange. The reports also provide a summary of the activities in which exchange visitors were engaged and indicate information about program effectiveness. Program sponsors include government agencies, academic institutions, and private sector not-for-profit and for-profit entities.

Methodology

Annual reports are completed through the Student and Exchange Visitor *Information* System (SEVIS) and then printed and signed by a sponsor official, and sent to the Department by email, mail, or fax.

Zachary Parker,

Director.

[FR Doc. 2020–13591 Filed 6–23–20; 8:45 am]

BILLING CODE 4710–05–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Product Exclusion and Amendments: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of product exclusion and amendments.

SUMMARY: In September 2018, the U.S. Trade Representative imposed additional duties on goods of China with an annual trade value of approximately $200 billion as part of the action in the Section 301 investigation of China's acts, policies, and practices related to technology transfer, intellectual property, and innovation. The U.S. Trade Representative initiated a product exclusion process in June 2019, and interested persons have submitted requests for the exclusion of specific products. This notice announces the U.S. Trade Representative's determination to grant an additional exclusion request, as specified in the Annex to this notice, and corrects technical errors in previously announced exclusions.

DATES: The product exclusions announced in this notice will apply as of September 24, 2018, the effective date of the $200 billion action, and extend to August 7, 2020. The amendments announced in this notice are retroactive to the date that the original exclusions were published.

FOR FURTHER INFORMATION CONTACT: For general questions about this notice, contact Assistant General Counsels Philip Butler or Megan Grimball, or Director of Industrial Goods Justin Hoffmann at (202) 395–5725. For specific questions on customs classification or implementation of the product exclusions identified in the Annex to this notice, contact *traderemedy@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

For background on the proceedings in this investigation, please see prior notices including 82 FR 40213 (August 24, 2017), 83 FR 14906 (April 6, 2018), 83 FR 28710 (June 20, 2018), 83 FR 33608 (July 17, 2018), 83 FR 38760 (August 7, 2018), 83 FR 47974 (September 21, 2018), 83 FR 49153 (September 28, 2018), 83 FR 65198 (December 19, 2018), 84 FR 7966 (March 5, 2019), 84 FR 20459 (May 9, 2019), 84 FR 29576 (June 24, 2019), 84 FR 38717 (August 7, 2019), 84 FR 46212 (September 3, 2019), 84 FR 49591 (September 20, 2019), 84 FR 57803 (October 28, 2019), 84 FR 61674 (November 13, 2019), 84 FR 65882 (November 29, 2019), 84 FR 69012 (December 17, 2019), 85 FR 549 (January 6, 2020), 85 FR 6674 (February 5, 2020), 85 FR 9921 (February 20, 2020), 85 FR 15015 (March 16, 2020), 85 FR 17158 (March 26, 2020), 85 FR 23122 (April 24, 2020), 85 FR 27489 (May 8, 2020), and 85 FR 32094 (May 28, 2020).

Effective September 24, 2018, the U.S. Trade Representative imposed additional 10 percent *ad valorem* duties on goods of China classified in 5,757 full and partial subheadings of the Harmonized Tariff Schedule of the United States (HTSUS), with an approximate annual trade value of $200 billion. *See* 83 FR 47974, as modified by 83 FR 49153. In May 2019, the U.S. Trade Representative increased the additional duty to 25 percent. *See* 84 FR 20459. On June 24, 2019, the U.S. Trade Representative established a process by which stakeholders could request exclusion of particular products classified within an eight-digit HTSUS subheading covered by the $200 billion action from the additional duties. *See* 84 FR 29576 (the June 24 notice).

Under the June 24 notice, requests for exclusion had to identify the product subject to the request in terms of the physical characteristics that distinguish the product from other products within the relevant eight-digit HTSUS subheading covered by the $200 billion action. Requestors also had to provide the ten-digit HTSUS subheading most applicable to the particular product requested for exclusion, and could submit information on the ability of U.S. Customs and Border Protection to administer the requested exclusion. Requestors were asked to provide the quantity and value of the Chinese-origin product that the requestor purchased in the last three years. With regard to the rationale for the requested exclusion, requests had to address the following factors:

- Whether the particular product is available only from China and specifically whether the particular product and/or a comparable product is available from sources in the United States and/or third countries.
- Whether the imposition of additional duties on the particular product would cause severe economic harm to the requestor or other U.S. interests.
- Whether the particular product is strategically important or related to ''Made in China 2025'' or other Chinese industrial programs.

The June 24 notice stated that the U.S. Trade Representative would take into account whether an exclusion would undermine the objective of the Section 301 investigation.

The June 24 notice required submission of requests for exclusion from the $200 billion action no later than September 30, 2019, and noted that the U.S. Trade Representative periodically would announce decisions. In August 2019, the U.S. Trade Representative granted an initial set of exclusion requests. *See* 84 FR 38717. The U.S. Trade Representative granted additional exclusions in September, October, November and December 2019, and January, February, March, April and May 2020. *See* 84 FR 49591; 84 FR 57803; 84 FR 61674; 84 FR 65882; 84 FR 69012; 85 FR 549; 85 FR 6674; 85 FR 9921; 85 FR 15015; 85 FR 17158; 85 FR 23122; 85 FR 27489; and 85 FR 32094. The Office of the United States Trade Representative regularly updates the status of each pending request on the Exclusions Portal at *https://exclusions.ustr.gov/s/docket?docketNumber=USTR-2019-0005.*

B. Determination To Grant Certain Exclusions

Based on evaluation of the factors set forth in the June 24 notice, which are summarized above, pursuant to sections 301(b), 301(c), and 307(a) of the Trade Act of 1974, as amended, and in accordance with the advice of the interagency Section 301 Committee, the U.S. Trade Representative has determined to grant the product exclusion set forth in the Annex to this notice. The U.S. Trade Representative's determination also takes into account advice from advisory committees and any public comments on the pertinent exclusion requests.

As set forth in the Annex, the exclusion is reflected in one specially prepared product description, which responds to one exclusion request.

In accordance with the June 24 notice, the exclusion is available for any product that meets the description in the Annex, regardless of whether the importer benefitting from the product exclusion filed an exclusion request. Further, the scope of the exclusion is governed by the scope of the product description in the Annex, and not by the product description found in any particular request for exclusion.

Paragraph A, of the Annex contains a conforming amendment to the HTSUS reflecting the modifications made by the Annex.

Paragraph B of the Annex makes technical corrections to certain notes of the HTSUS. Specifically, paragraph B, subparagraph (1), corrects a typographical error in the product descriptions contained in U.S. note (20)(mm)(30), published at 84 FR 61674. Paragraph B, subparagraphs (2)–(5), make technical corrections to the specially prepared product descriptions in certain notes to the HTSUS, specifically, U.S. notes (20)(xx)(17) and (47), published at 85 FR 23122 (April 24, 2020), and U.S. notes (20)(yy)(54) and (65), published at 85 FR 27489 (May 8, 2020).

As stated in the September 20, 2019 notice, the exclusions will apply from September 24, 2018 to August 7, 2020. U.S. Customs and Border Protection will issue instructions on entry guidance and implementation.

The U.S. Trade Representative will continue to issue determinations on pending requests on a periodic basis.

ANNEX

A. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01 a.m. eastern daylight time on September 24, 2018, and before August 7, 2020, U.S. note 20(aaa) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified by inserting the following exclusions in numerical order after exclusion (78):

(79) Motorboats with displacement hulls of reinforced fiberglass and wood, each motorboat measuring not less than 14.47 m and not more than 36.57 m in length and weighing not less than 28 t and not more than 363 t, powered by inboard engines, other than inboard/outdrive (described in statistical reporting number 8903.92.0065)

B. Effective with respect to goods entered for consumption, or withdrawn from warehouse for consumption, on or after 12:01

a.m. eastern daylight time on September 24, 2018, subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States (HTSUS) is modified:

a. U.S. note 20(mm)(30) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting ''Ratcheting chain hoists,'' and inserting ''Ratcheting chain, rope or cable hoists,'' and by deleting ''such chain hoists not powered by an electric motor'' and inserting ''such hoists not powered by an electric motor'' in lieu thereof.

b. U.S. note 20(xx)(17) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting ''not more than 123 cm in length'' and inserting ''not more than 185 cm in length'' in lieu thereof.

c. U.S. note 20(xx)(47) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting ''measuring not less than 15 cm in width by 21 cm depth but not more than 41 cm in width by 25 cm in depth'' and inserting ''measuring not less than 15 cm in width by 20 cm depth but not more than 41 cm in width by 32 cm in depth'' in lieu thereof.

d. U.S. note 20(yy)(54) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting '', each measuring at least 610.1 cm by 10.1 cm by 10.1 cm but not more than 16.6 cm by 7.7 cm by 10.2 cm and weighing at least 0.4 kg but not more than 1.4 kg, conforming to Association of American Railroads (''AAR'') specifications S–491, M–601 and RP–5595''.

e. U.S. note 20(yy)(65) to subchapter III of chapter 99 of the Harmonized Tariff Schedule of the United States is modified by deleting ''not more than 25.4 cm by 15.3 cm by 17.8 cm and weighing at least 9 kg and not more than 20.5 kg,'' and inserting ''not more than 42 cm by 34 cm by 115 cm and weighing at least 4 kg and not more than 22 kg,'' in lieu thereof.

Joseph Barloon,

General Counsel, Office of the United States Trade Representative.

[FR Doc. 2020–13596 Filed 6–23–20; 8:45 am]

BILLING CODE 3290–F0–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Adoption of Wyoming Army National Guard Environmental Assessment for Training and Maneuver Activities at Camp Guernsey, and Finding of No Significant Impact and Record of Decision for Establishment of Controlled Firing Areas, Guernsey, Wyoming, June 2020

1.0 Introduction

The Proposed Action is to establish three Controlled Firing Areas (CFA) at Camp Guernsey, Guernsey, Wyoming. Under the Proposed Action, the CFAs would be established for up to two years. CFAs provide a means to accommodate, without impact to aviation, certain hazardous activities, such as field-based artillery, that can be immediately suspended if a non-participating aircraft approaches the area.

As the lead agency, the Wyoming Army National Guard (WYARNG) prepared an Environmental Assessment (EA), Training and Maneuver Activities at Camp Guernsey, Guernsey, Wyoming, in March 2020, and issued a Finding of No Significant Impact (FONSI) on March 16, 2020, in accordance with the National Environmental Policy Act (NEPA). The WYARNG invited the Federal Aviation Administration (FAA) to participate as a cooperating agency on October 10, 2018 (40 CFR 1501.6). The FAA, having jurisdiction by law for approving special use airspace (SUA) under 49 U.S.C. 40103(b)(3)(A), accepted the cooperating agency status on November 19, 2018. This is also in accordance with the October 2019 Memorandum of Understanding between the FAA and Department of Defense (DoD) for Environmental Review of SUA Actions (FAA 7400.2M, Appendix 7). As a cooperating agency, the FAA coordinated closely with the WYARNG, and actively participated in the preparation of the Draft and Final EA.

In accordance with its applicable FAA Order 1050.1F, the FAA has conducted an independent evaluation and analysis of the WYARNG's EA and only adopts portions of the EA associated with the CFAs, all associated Appendices, as well as all materials identified in the EA and/or Appendices and incorporated by reference and made available to the public, for purposes of making its decision regarding the Proposed Action pursuant to 40 CFR 1506.3. As discussed below, based on the information in the EA, the FAA has determined that the Proposed Action will not have a significant effect on the human environment (40 CFR 1508.13) and is issuing this FONSI/Record of Decision (ROD) for the Proposed Action (40 CFR 1505.2).

2.0 Background

In the EA, the WYARNG's Proposed Action consists of both land-based activities (training and maneuver) and airspace activities that require SUA in the form of a CFA or Restricted Area (RA). Some of the proposed land-based activities use field artillery that requires the establishment of surface distance zones (SDZ) for safety reasons. These SDZs provide separation of the field artillery from aircraft (civilian and military traversing the airspace). The proposed CFAs and RAs would accommodate the SDZs. While the CFAs and RAs would prevent aircraft from being struck by errant artillery fired from Camp Guernsey, they would accomplish this in different ways, as described below.

Controlled Firing Areas

A CFA is airspace designated to contain activities that, if not conducted in a controlled environment, would be hazardous to aircraft.[1] CFAs provide a means to accommodate, without impact to aviation, certain hazardous activities that can be immediately suspended if a non-participating aircraft approaches the area. The distinguishing feature of a CFA, compared to other SUA (*e.g.,* RA), is that CFA activities shall be suspended immediately when a non-participating aircraft approaches the area. This responsibility lies completely with the CFA user—in this case, the WYARNG—to terminate activities so that there is no impact on aviation. Additionally, there are no required communications or Air Traffic Control separation associated with CFAs. Only those activities that can be immediately suspended on notice that a non-participating aircraft is approaching are appropriate for a CFA. Field artillery live-fire exercises would also be appropriate for CFAs, provided that they meet the criteria and comply with the safety precautions described in FAA Order 7400.2M, Chapter 27. CFAs are not intended to contain aircraft ordnance delivery activities.

The Camp Guernsey existing airspace contains civilian and military aircraft that currently traverse the proposed CFA airspace. The existing military aircraft in the proposed airspace are not performing any military flight operations that require SUA. CFAs have no impact to aviation; therefore, existing aircraft would continue to traverse the proposed CFA airspace. CFAs are not depicted on aeronautical charts, and there is no requirement for non-participating aircraft to avoid the SUA.

The role of the FAA in the establishment of the proposed CFAs is to authorize the proponent to conduct their operations (field-based artillery) based on FAA approved safety measures. Under the Proposed Action, the CFA would protect aircraft from potentially being struck by errant artillery, as the safety measures in place dictate that operations are suspended if any aircraft enters the CFA airspace.

[1] FAA Order 7400.2M, paragraphs 27–1–1 (definition) and 27–1–2 (purpose).

Restricted Areas

An RA is airspace established under 14 CFR part 73 provisions, within which the flight of aircraft, while not wholly prohibited, is subject to restriction. RAs are established when determined necessary to confine or segregate activities considered hazardous to non-participating aircraft. RAs are depicted on aeronautical charts and there is a requirement for non-participating aircraft to avoid the SUA.

The EA also analyzes the RAs to accommodate the SDZs associated with field artillery. The RAs would also permit hazardous military flight operations; however, non-participating aircraft (civilian or other military aircraft not associated with the operations or exercise) are not permitted to enter the RA airspace. This differs from the CFA, where military aircraft operations are not permitted.

An RA allows for both ground-based hazards (artillery) and air-based hazards, such as military flight operations, to occur within it. Unlike a CFA, an RA does not allow for the existing military and civilian aircraft to traverse the RA and, because of that, impacts to the National Airspace System (NAS) are realized.

3.0 FAA Proposed Action

The FAA's Proposed Action for this FONSI/ROD is the establishment of three CFAs: CFA North, CFA West, and CFA South. The CFAs would be established, up to two years, and would be replaced by the permanent establishment of three RAs: R–7002A, R–7002C, and R–7002B, respectively. While the EA analyzed both CFAs and RAs, only the CFAs are ripe for a FAA decision at this time and are the subject of the FAA's FONSI/ROD.

The WYARNG submitted an Aeronautical Proposal in May 2020 that includes the future RAs described above. During the two-year interim period following the establishment of the CFAs, the FAA will analyze, aeronautically, the permanent establishment of the RAs. FAA issuance of a CFA typically takes months, per FAA 7400.2M, and is only permitted for use for a maximum of two years per issuance. RAs are permanent, and the process to establish an RA may take years due to required rulemaking actions (14 CFR part 73). Given the temporary nature of CFAs, as well as the timeline for the establishment of the permanent RAs, the WYARNG is first pursuing the establishment of CFAs. The CFAs would permit usage of the proposed airspace for hazardous activities associated with field-based artillery for two years until the RA has been established. If the RA rulemaking process takes longer than two years or is not granted, additional CFA requests may be pursued.

These CFAs are located in the airspace above the Camp Guernsey installation boundary in Platte County, Wyoming. The proposed CFA legal descriptions are depicted in Figure 1 and described below:

CFAs

Camp Guernsey, CFA North

Altitudes: Surface up to and including 16,000 feet mean sea level (MSL).

Time of Use: By Notice to Airmen (NOTAM). Approximately 20 days per year.

Using Agency: WYARNG—Camp Guernsey.

Camp Guernsey, CFA South

Altitudes: Surface up to and including 12,500 feet MSL.

Time of Use: By NOTAM. Approximately 20 days per year.

Using Agency: WYARNG—Camp Guernsey.

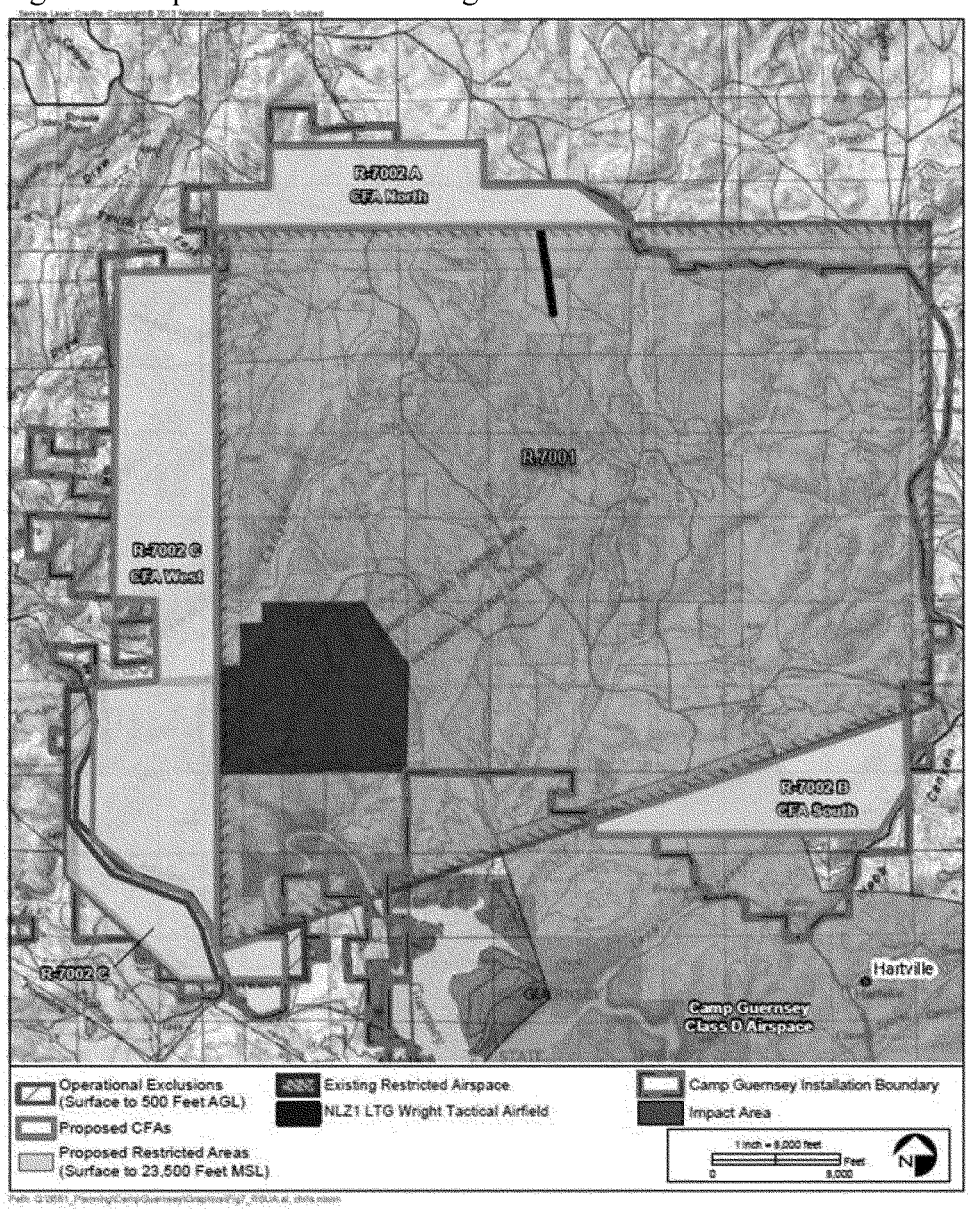
Camp Guernsey, CFA West

Altitudes: Surface up to and including 17,500 feet MSL.

Time of Use: By NOTAM. Approximately 20 days per year.

Using Agency: WYARNG—Camp Guernsey.

Figure 1: Proposed Controlled Firing Areas



4.0 Purpose and Need

The FAA's Proposed Action establishes three CFAs that would provide separation of the field artillery SDZs from aircraft. The proposed CFAs area needed to prevent aircraft from being struck by errant artillery fired from Camp Guernsey. The implementation of the proposed CFAs would fulfill the FAA's requirements to ensure the safe and efficient use of navigable airspace pursuant to 49 U.S.C. 47101(a)(1), which describes the FAA's authority and regulatory responsibilities.

5.0 Alternatives

The EA evaluated the WYARNG's Proposed Action and the No Action Alternative.

Existing conditions provide a baseline and also represent the No Action Alternative conditions. Under the No Action Alternative, the proposed CFAs would not be established. The existing conditions consists of aircraft (civilian and military) traversing the proposing CFA. Under the No Action Alternative, existing aircraft would continue to occupy the CFA airspace.

The SUA at Camp Guernsey would continue to be limited to the existing R–7001. The implementation of the No Action Alternative would continue to limit the WYARNG's full training potential. The No Action Alternative is not considered a reasonable alternative because it does not meet the purpose of, and need for, the WYARNG's Proposed Action or the FAA's Proposed Action. However, as required under Council on Environmental Quality (CEQ) regulations (40 CFR 1502.14[d]), the No Action Alternative does provide a description of the conditions against which the impacts of the FAA's Proposed Action can be compared.

The EA also evaluated the Proposed Action, which is the temporary establishment, up to two years, of three CFAs: CFA North, CFA West, and CFA South.

6.0 Environmental Impacts

The following summarizes the results of the FAA's independent evaluation of the EA regarding its Proposed Action and the potential environmental impacts associated with the establishment of the CFAs.

Given the nature of the Proposed Action, the FAA's only involvement in establishing a CFA is to authorize the proponent to conduct their operations based on FAA approved safety measures. Under the Proposed Action, the CFA protects aircraft from potentially being struck by errant artillery as the operations are halted if any aircraft enters the CFA airspace. There is no charting or removal of airspace from the NAS and, for this reason, CFAs have no impact to the NAS. In other words, all aircraft can traverse a CFA without impact.

The FAA's Proposed Action would not involve land acquisition, physical disturbance, construction activities, any changes flight operations, nor impact the NAS; therefore, the effects of the Proposed Action on the FAA's impact categories are minimal or nonexistent.

The following NEPA impact categories were assessed:

Air Quality

The FAA impact category of Air Quality is incorporated into the Air Quality section of the EA. FAA Order 1050.1F provides the FAA's significance threshold for air quality: Potentially significant air quality impacts associated with an FAA project or action would be demonstrated by the project or action exceeding one or more of the National Ambient Air Quality Standards (NAAQS) for any of the time periods analyzed. The Clean Air Act (CAA) established NAAQS for six criteria pollutants. The six criteria pollutants are carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO2), ozone (O3), particulate matter (PM–10 and PM–2.5), and sulfur dioxide (SO_2).

Section 176(c) of the CAA, as articulated in the U.S. Environmental Protection Agency (EPA) General Conformity Rule, states that a federal agency cannot issue a permit for, or support, an activity unless the agency determines that it will conform to the most recent EPA-approved State Implementation Plan. This means that projects using federal funds or requiring federal approval must not: (1) Cause or contribute to any new violation of a NAAQS; (2) increase the frequency or severity of any existing violation; or (3) delay the timely attainment of any standard, interim emission reduction, or other milestone.

The General Conformity Rule applies to NAAQS in federal non-attainment areas. Since the air basin in the Region of Interest (ROI) is in attainment of all NAAQS for all criteria pollutants, the General Conformity Rule would not apply to the FAA's Proposed Action. The establishment of CFAs would not result in the generation of air emissions. Therefore, the FAA has determined that its Proposed Action will not result in significant impacts on air quality when compared to the No Action Alternative.

Biological Resources (Including Fish, Wildlife, and Plants)

The FAA impact category of Biological Resources (including fish, wildlife, and plants) is incorporated into the Biological Resources section of the EA. The FAA's Proposed Action would not result in any construction, ground disturbance, change in aircraft operations, or affect the NAS in any way.

Plants

The FAA's Proposed Action would be limited to airspace establishment. It would not affect ground-based training activities and, therefore, would not result in any physical development that would require clearing of native vegetation at Camp Guernsey or the surrounding vicinity.

Fish and Wildlife

The establishment of the CFA would not result in any physical development with the potential to affect fish and wildlife.

Endangered Species Action Consultation

The WYARNG downloaded an official U.S. Fish and Wildlife Service (USFWS) species list for Camp Guernsey on December 27, 2019, from the USFWS's Information, Planning, and Conservation (IPaC) system website (*http://ecos.fws.gov.ipac/*). The USFWS Official Species List for Camp Guernsey listed the following species as federally protected: Preble's meadow jumping mouse (*Zapus hudsonius preblei*); Ute ladies'-tresses (*Spiranthes diluvialis*); and Platte River Species including least tern (*Sterna antillarum*), piping plover (*Charadrius melodus*), whooping crane (*Grus americanus*), pallid sturgeon (*Scaphirhynchus albus*), and western prairie fringed orchid (*Platanthera praeclara*). The USFWS has not designated any critical habitat on Camp Guernsey.

An Endangered Species Act (ESA) Section 7 review and effects determination for the federally listed species was completed by the WYARNG. A no effect determination was made for all the species listed above.

The northern long-eared bat was federally listed as threatened in 2015. The current USFWS range map does not include Platte County within the range of the northern long-eared bat; therefore, it is not on the USFWS species list for Camp Guernsey. However, neighboring Goshen County is within this species' range. No maternity roost trees, hibernacula, or swarming sites for the northern long-eared bat have been identified on Camp Guernsey.

Acoustic surveys conducted on Camp Guernsey in the summer of 2019 recorded bat calls that, when analyzed using USFWS accepted acoustic survey protocols, were classified as northern long-eared bat. However, other *Myotis* spp. with similar acoustic are known to be present on Camp Guernsey and classification of *Myotis* spp. can be difficult using acoustic methods alone. Northern long-eared bats have never been captured during mist nest sampling; however, capture efforts through mist netting has been low on Camp Guernsey. Through conversations with the USFWS, the WYARNG has decided to analyze the Proposed Action as if the northern long-eared bat is present.

While no northern long-eared bats or habitat have been identified on Camp Guernsey, long-eared bats could potentially occur on the land below the proposed CFAs; however, the FAA's Proposed Action does not have the potential to effect the long-eared bat.

Therefore, the FAA has determined that its Proposed Action will not result in significant impacts on biological resources when compared to the No Action Alternative.

Climate

The FAA impact category of Climate is incorporated into the Climate Change/Greenhouse Gases section of the EA. Significant increases in the emissions of greenhouse gases (GHG) and associated climate change impacts could occur if the Proposed Action would result in GHG emissions equal to or greater than 25,000 metric tons of carbon dioxide equivalent (CO2e) annually. In draft guidance released on December 24, 2014, the CEQ recommended that emissions equal to or greater than 25,000 metric tons of CO2e annually should be included in NEPA assessments (CEQ 2014). On August 1, 2016, the CEQ released final guidance; however, pursuant to Executive Order 13783, Promoting Energy Independence and Economic Growth, the CEQ has withdrawn its final guidance for federal agencies on how to consider GHG emissions and the effects of climate change in NEPA reviews. FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, requires an assessment of GHG emissions as they relate to climate. However, the FAA has not established significance criteria for

GHG emissions or impacts to climate. Therefore, given the nature of the FAA's Proposed Action and the uncertainty around long-term training schedules, GHG emissions are discussed qualitatively below.

Under the FAA's Proposed Action, there would be no new aircraft operations that would have an effect on the acceleration of global climate change. The Proposed Action does not permit military aircraft operations and, therefore, there would be no change from the No Action Alterative.

Therefore, the FAA has determined that its Proposed Action will not result in significant impacts on climate when compared to the No Action Alternative.

Coastal Resources

There are no coastal resources in the study area; therefore, this resource was eliminated from further consideration.

Compatible Land Use

The FAA Compatible Land Use impact category is incorporated into the Land Use and Cover section of the EA. The FAA has not established a significance threshold for land use. The compatibility of existing and planned land uses with an aeronautical proposal is usually associated with noise impacts, disruption of communities, relocation, and induced socioeconomic impacts. The determination that significant impacts exist usually depends on whether the Proposed Action would result in other impacts exceeding thresholds of significance that have land use ramifications. The FAA's Proposed Action would be entirely airspace-based and would not involve construction, physical improvements, modifications, or flight operations. As a result, there would be no shifts in patterns of population movement and growth, public service demands, or changes in business and economic activity resulting from the Proposed Action.

Camp Guernsey is located in Platte County, Wyoming, and is composed of a northern and southern training area. The cantonment area contains an airstrip/airfield (Camp Guernsey Joint-Use Airport) and is located between the two training areas. The Proposed Action occurs in the northern training area of Camp Guernsey. Land use under the proposed CFAs is primarily vacant and undeveloped. Adjacent land use that is not under the proposed CFAs is used for ranching and a few dozen residences. The largest nearby town is Guernsey, with a population of 1,147 in 2010.

The proposed CFAs would occupy airspace located above Camp Guernsey, within the installation boundaries. All of the land under the proposed SUA is either owned or managed by the WYARNG under a variety of different permits and memorandums of understanding.

All land within the installation boundary of Camp Guernsey is considered Federal Property, and the public is not permitted on installation property without permission or except during known designated public access periods. A small portion of the Guernsey State Park is located under the proposed CFA, within the installation boundaries. Public access to this portion of the Guernsey State Park is restricted except for the limited activities described below during specified time periods. The main portion of Guernsey State Park is located directly south of the installation boundary and contains a reservoir.

Under existing conditions (No Action Alternative), the public is not permitted on installation property unless permitted for specific activities. Under existing conditions, little to no public recreation is allowed during the summer months when military training activities are being conducted. However, the WYARNG does allow hunting, fishing, trapping, firewood gathering, and holiday tree cutting during the fall and winter months. Under the WYARNG's Proposed Action, Camp Guernsey would remain closed to recreational activities during the summer when military training activities are being conducted. The use of the CFAs would occur approximately 20 days per year. However, recreational activities would continue during the fall and winter months. Increases in the frequency of brigade-level training exercises would be limited to the summer months and would not affect recreational activities during the fall and winter months. The establishment of the CFAs would not restrict recreational activities on Camp Guernsey, beyond the closures during training and maneuver activities, as previously described, that are already occurring as part of the No Action Alternative.

The FAA's Proposed Action does not involve any change to flight operations and, therefore, the nearby land uses that may be sensitive to noise and visual effects (Guernsey State Park located on the installation, Guernsey State Park located off the installation, and residences) would not be affected.

Since the FAA's Proposed Action would not involve land acquisition, physical disturbance, construction activities, or flight operations, there would be no potential that any of the FAA impact areas would affect compatible land use.

Therefore, the FAA has determined that its Proposed Action will not result in significant impacts on land use when compared to the No Action Alternative.

Department of Transportation Act: Section 4(f)

Per FAA Order 1050.1F, Change 1, Appendix A, Section 6, this EA does not provide a Section 4(f) analysis. The designation of airspace for military flight operations is exempt from Section 4(f) of the Department of Transportation Act. The DoD reauthorization in 1997 provided that ''[n]o military flight operations (including a military training flight), or designation of airspace for such an operation, may be treated as a transportation program or project for purposes of Section 303(c) of Title 49, U.S. Code (Pub. L. 105–85).'' Per FAA Order 1050.1F, SUA actions are exempt from the requirements of Section 4(f) and, therefore, this resource was eliminated from further consideration.

Farmlands

The Proposed Action would be limited to the establishment of airspace only and would not include any project components that would directly disturb soils. Therefore, geological resources, including farmland soils, were eliminated from further consideration.

Hazardous Materials, Solid Waste, and Pollution Prevention

No ground-disturbing activities would occur as a part of the FAA's Proposed Action. Therefore, this resource was eliminated from further consideration.

Historical, Architectural, Archeological, and Cultural Resources

The FAA impact category of Historical, Architectural, Archeological, and Cultural Resources is incorporated into the Cultural Resources section of the EA. The National Historic Preservation Act (NHPA) Section 106 (Section 106) regulations direct federal agencies to make reasonable and good faith efforts to identify historic properties in regards to a Proposed Action (36 CFR 800.4(b)(1)). Federal agencies are to take into account the nature and extent of potential effects on historic properties, and the likely nature and location of historic properties within areas that may be affected. Compliance with Section 106 requires consultation with the State Historic Preservation Officer (SHPO) and/or the Tribal Historic Preservation Officer (THPO) if there is a potential adverse effect to historic properties within the Area of Potential Effect (APE) that are on, or eligible for listing on, the National Register of Historic Places.

The FAA's Proposed Action does not include any project components that would directly or indirectly affect the ground surface. Cultural resources within the APE would not be disturbed since there would be no ground-disturbing activities (*e.g.,* construction or demolition) associated with the FAA's Proposed Action. Additionally, the potential for effects on cultural resources underlying the proposed CFA would not occur as there are no changes to aircraft operations associated with the Proposed Action. No noise or visual impacts would occur under the Proposed Action.

The FAA's Proposed Action does not have the potential to effect cultural resources.

Therefore, the FAA has determined that its Proposed Action will not result in significant impacts on Historical, Architectural, Archeological, and Cultural Resources when compared to the No Action Alternative.

Natural Resource and Energy Supply

The Proposed Action would not involve extractive activities or changes in the energy supply. Therefore, this resource was eliminated from further consideration.

Noise

The FAA Noise impact category is incorporated into the Noise section of the EA. As mentioned previously, the EA analyzed the WYARNG's Proposed Action, which consists of both land-based activities (training and maneuver) and airspace activities (CFA). Some of the proposed land-based activities require the establishment of SDZs for safety reasons. These SDZs provide separation of artillery from non-participating aircraft. The proposed CFAs would accommodate the SDZs. The FAA's Proposed Action, the establishment of the CFAs, simply ensures that the proponent's safety measures protect aircraft and does not change any existing flight operations. Given the nature of the FAA's Proposed Action, there is no potential to affect noise.

The FAA's significance criteria for noise and compatible land use would not be met; therefore, the Proposed Action would not result in significant impacts when compared to the No Action Alternative.

Socioeconomics, Environmental Justice, and Children's Environmental Health and Safety Risks

The FAA Socioeconomic, Environmental Justice, and Children's Environmental Health and Safety Risks impact category is incorporated into the Socioeconomics and Infrastructure sections, as well as the Protection of Children and Environmental Justice sections of the EA. The FAA has not established a significance threshold for these impacts. However, the determination that significant impacts exists can be determined by whether an alternative would substantially alter the location and distribution of the human population, cause the population to exceed historical growth rates, or substantially affect the local housing market and vacancy rates, or create a need for new or increased fire or police protection or medical services, beyond the current capability of the local community. An alternative that involves substantial acquisition of real estate, relocation of residents or community businesses, disruption of local traffic patterns, a substantial loss in the community tax base, or changes to the fabric of the community could also result in a significant effect.

The FAA's Proposed Action does not involve any activities that would cause noise or visual effects as there are no changes to flight operations as part of the CFA establishment. The small portion of Guernsey State Park that is located within the installation boundary is in the southernmost portion of Camp Guernsey and, as previously stated, the park is already closed and will continue to be closed to the public during summer exercises, so there should be no impact from the FAA's Proposed Action. Since the park has already been closed for summer exercises, continuing to have the park closed when the proposed CFA is established would not have an impact on recreational user access.

The proposed CFAs would occur entirely in the airspace above the existing boundaries of Camp Guernsey and they would not affect nearby airspaces (*e.g.,* Class D airspace in the vicinity of Camp Guernsey Joint-Use Airport). Similarly, the proposed CFAs would not intersect with or otherwise affect the two Victor Airways or the Jet Route in the immediate vicinity of the FAA's Proposed Action. Additionally, the airspace in the vicinity of Camp Guernsey and the Camp Guernsey Joint-Use Airport is most commonly used by military aircraft associated with training activities, while civilian flight movements only accounted for 15% of all 2018 flight movements. Given the adjacency to the existing RA, R–7001, the proposed CFAs would not impact general aviation or commercial air traffic, as air traffic would be allowed to continue through the CFAs. Also, WYARNG training activities would be required to cease if a non-participating aircraft approaches the area.

The FAA has not established a significance threshold for Environmental Justice or for Children's Environmental Health and Safety Risks. Executive Order 12898, *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,* and the accompanying Presidential Memorandum, and Order DOT 5610.2, *Environmental Justice,* require the FAA to provide for meaningful public involvement by minority and low-income populations, and analysis that identifies and addresses potential impacts to these populations that may be disproportionately high and adverse.

Camp Guernsey does not have any residential structures that house employees and their families within the installation boundary. Additionally, Camp Guernsey does not have any school or hospital uses within the boundaries of the installation. The proposed CFAs would occur in airspace above and within the boundaries of Camp Guernsey and not in close proximity to any children. No CFAs would cross the installation's boundary and into close proximity to any children.

As identified in Table 3.8–1 of the EA, the ROI and surrounding communities do not have a disproportionately high minority or low-income population. Also, there are no significant impacts on the human environment resulting from the implementation of the FAA's Proposed Action that would affect an environmental justice population in a way that is unique or significant to that population. In addition, there are no specific impacts on the general health or quality of life that would adversely or disproportionately impact the ROI population, including no increased environmental health risks or safety risks to children.

The CEQ defines minority populations as members of the following population groups: American Indian or Alaskan Native; Asian or Pacific Islander; Black, not of Hispanic origin; or Hispanic. Minority populations are identified where either: (1) The minority population of the affected area exceeds 50%, or (2) the minority population percentage of the affected area is meaningfully greater than the minority population percentage in the general population or other appropriate unit of geographic analysis. The FAA's Proposed Action occurs in airspace located above and within the boundaries of Camp Guernsey. Based on the EPA's Environmental Justice Mapping and Screening Tool

(EJSCREEN) (2019b), no minority population or low-income populations that meet the CEQ definition are located within or immediately adjacent to Camp Guernsey (*i.e.,* EJSCREEN reports local minority population as 28% in the Town of Guernsey).

Therefore, the FAA's Proposed Action would not have the potential to result in any significant impacts to minority or low-income communities as none exist within or immediately adjacent to Camp Guernsey. Similarly, there are no potential impacts to Children's Environmental Health and Safety Risks or Environmental Justice as there are no child, minority, or low-income communities present.

Therefore, the Proposed Action would have no significant impacts on Socioeconomics, Children's Environmental Health and Safety Risks, or Environmental Justice when compared with the No Action Alternative.

Visual Effects (Including Light Emissions)

The FAA impact category of Visual Effects (including light emissions) is incorporated into the Aesthetics and Visual Resources section of the EA. The FAA has not established a significance threshold for visual effects. The FAA's Proposed Action would not result in any physical development that would alter the visual character of Camp Guernsey and the surrounding vicinity since there are no flight operations permitted in the CFA. There is no potential to affect visual resources.

Therefore, the Proposed Action would have no significant impacts on Visual Effects (including light emissions) when compared with the No Action Alternative.

Water Resources (Including Wetlands, Floodplains, Surface Waters, Groundwater, and Wild and Scenic Rivers)

No construction activities or other ground-based activities would occur under the FAA's Proposed Action, and its implementation would not cause any disturbance of water resources; therefore, this resource was eliminated from further consideration.

Cumulative Impacts

Cumulative impacts result from incremental impacts of an action when combined with other past, present, and reasonably foreseeable future actions (40 CFR 1508.7). Cumulative impacts can result from individually minor but collectively significant actions over a period of time (CEQ, 1997). Cumulative impacts would occur if incremental impacts of the Proposed Action, added to the environmental impacts of past, present, and reasonably foreseeable future actions, would result in an adverse effect to resources in the region.

The cumulative impacts analysis focuses on those resource areas that may be significantly impacted by the FAA's Proposed Action, and/or those resource areas currently in poor or declining health or at risk, even if the Proposed Action impacts would be relatively small.

Past, Present, and Reasonably Foreseeable Future Actions

Helicopter Aerial Gunnery Range—Foreseeable Future Action

A potential future action is the construction and operation of a new U.S. Air Force Helicopter Aerial Gunnery Range in the northern training area. This Proposed Action would not require an action by the FAA for the establishment or modification of any SUA, as it would use the existing SUA and/or the newly proposed SUA that is part of the subject Proposed Action. The WYARNG would conduct a separate NEPA analysis for this action in the future. This action has not been determined to be an immediate need for the WYARNG and, therefore, is not ripe for analysis.

Restricted Areas—R–7002A, R–7002B, and R–7002C—Foreseeable Future Action

The WYARNG submitted an Aeronautical Proposal in May 2020 that includes future RAs (R–7002A, R–7002B, and R–7002C). During the two-year interim period following the establishment of the CFAs, the FAA will analyze, aeronautically, the permanent establishment of the RAs that would replace the temporary CFAs that are the subject of this FONSI/ROD. FAA issuance of a CFA typically takes months, per FAA 7400.2M, and is only permitted for use for a maximum of two years per issuance. RAs are permanent, and the process to establish an RA may take years due to required rulemaking actions (14 CFR part 73). Given the temporary nature of CFAs, as well as the timeline for the establishment of the permanent RAs, the WYARNG is first pursuing the establishment of CFAs. The CFAs would permit usage of the proposed airspace for hazardous activities for two years, until the RA has been established. If the RA rulemaking process takes longer than two years, additional CFA requests may be pursued.

The EA analyzed the RAs to accommodate the SDZs associated with field artillery. The RAs would also permit hazardous military flight operations; however, different from the CFAs, non-participating aircraft (civilian or other military aircraft not associated with the operations or exercise) would not be permitted to enter the RA airspace. The RA would allow for both ground-based hazards (artillery) and air-based hazards, such as military flight operations, to occur within it. Unlike a CFA, an RA does not allow for the existing military and civilian aircraft to traverse the RA and, because of that, impacts to the NAS are realized.

In addition to containing the SDZs associated with artillery, the proposed RAs would also facilitate unmanned aircraft systems (UAS) operations and support laser targeting operations. The WYARNG anticipates that, along with the proposed establishment of the RAs, total aircraft operations in Camp Guernsey (including existing R–7001 and using UAS operations) would increase by approximately 15% relative to current levels.

As previously stated, the establishment of these RAs is not ripe for an FAA decision as the process of aeronautically analyzing the WYARNG's aeronautical proposal is not far enough along for a decision. However, the EA analyzed the potential impact of the establishment of the RAs for the 14 FAA impact areas. The analysis in the EA revealed that the Proposed Action of establishing the RAs would not result in significant impacts when compared to the No Action Alternative. Given the analysis to date, pending any changes to the proposal during the aeronautical process, there would be limited impacts from the proposed establishment of the RAs when combined with past, present, and other reasonably foreseeable projects.

R–7001D—Foreseeable Future Action

Another potential future action is raising the altitude of an existing RA, R–7001, by creating a new subsection, R–7001D. This Proposed Action would require an action by the FAA to raise the altitude of the existing R–7001. The WYARNG submitted an Aeronautical Proposal in May 2020 that includes R–7001D and is currently preparing a Supplemental EA for this action, as it was determined that this additional airspace would be needed in the future. At which time the Supplemental EA is presented to the FAA for review, impacts from the establishment of R–7001D would be assessed along with the aeronautical analysis.

The FAA's Proposed Action would not result in significant impacts to any

of the impact categories assessed in this FONSI/ROD. Incremental effects from implementation of the FAA's Proposed Action, when combined with other actions, would result in a less than significant cumulative impact to the impact categories assessed in this FONSI/ROD. Based on its independent review of the FAA's Proposed Action, the FAA has determined there would be no significant cumulative impacts as a result of the establishment of the FAA's Proposed Action.

7.0 Public Involvement

NEPA

As part of the NEPA process, the Draft EA was provided for public review from February 25–March 11, 2020, and one comment was received from the Bureau of Reclamation indicating an incorrect date of the Free Use Permit. The date has since been corrected in the EA.

The EA was finalized in March 2020, and the WYARNG signed its FONSI on March 16, 2020. The FONSI is the WYARNG's decision to implement the preferred alternative identified in the EA as the Proposed Action.

8.0 Decisions and Orders

The WYARNG has requested airspace changes in the form of the Proposed Action; namely, to establish the proposed CFAs.

Adoption

In accordance with FAA Order 1050.1F and CEQ regulation 40 CFR 1506.3, the FAA has conducted an independent review and evaluation of the WYARNG's EA for the proposed CFAs. Based on its independent review, the FAA has determined that the sections of the EA pertaining to CFAs, and its supporting documentation, as incorporated by reference, adequately assess and disclose the environmental impacts of the FAA's Proposed Action and that the adoption of the EA by the FAA is authorized under 40 CFR 1506.3 and FAA Order 1050.1F, paragraph 8–2.

Accordingly, the FAA adopts the sections of the EA pertaining to the CFAs, appendices, and all information identified therein, incorporated by reference, and made publicly available.

Decision and Approval

After careful and thorough consideration of the adopted EA and the facts contained herein, the undersigned finds that the FAA's Proposed Action is consistent with existing national environmental policies and objectives as set forth in Section 101 of NEPA and other applicable environmental requirements, and will not significantly affect the quality of the human environment or otherwise include any condition requiring consultation pursuant to Section 102(2)(C) of NEPA. Therefore, an environmental impact statement will not be prepared.

The undersigned has carefully considered the FAA's statutory mandate under 49 U.S.C. 40103 to ensure the safe and efficient use of the NAS and the other aeronautical goals and objectives discussed in the EA. The undersigned finds that the FAA's Proposed Action provides the best airspace combination for meeting the needs stipulated in the EA and that all practicable means to avoid or minimize environmental harm from that alternative have been adopted.

Accordingly, under the authority delegated to the undersigned by the Administrator of the FAA, the undersigned approves and authorizes all necessary Agency action to establish the CFAs, as described in the FAA's Proposed Action.

This decision signifies that applicable federal environmental requirements relating to the Proposed Action have been met.

Shawn M. Kozica,

Manager, Operations Support Group, Western Service Center, AJV–W2.

Right of Appeal

This FONSI/ROD constitutes a final order of the FAA Administrator and is subject to exclusive judicial review under 49 U.S.C. 46110 by the U.S. Circuit Court of Appeals for the District of Columbia or the U.S. Circuit Court of Appeals for the circuit in which the person contesting the decision resides or has its principal place of business. Any party having substantial interest in this order may apply for review of the decision by filing a petition for review in the appropriate U.S. Court of Appeals no later than 60 days after the order is issued in accordance with the provisions of 49 U.S.C. 46110. Any party seeking to stay implementation of the FONSI/ROD must file an application with the FAA prior to seeking judicial relief as provided in Rule 18(a) of the Federal Rules of Appellate Procedure.

[FR Doc. 2020–13571 Filed 6–23–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

NextGen Advisory Committee

AGENCY: Federal Aviation Administration, Department of Transportation.

ACTION: Notice of NextGen Advisory Committee (NAC) renewal.

SUMMARY: The FAA is issuing this notice to advise the public of the renewal of the NAC for 2 years. The Secretary of Transportation established the NAC under agency authority in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, Public Law 92–463, 5 U.S.C. App. 2. The Secretary determined the NAC is necessary and is in the public interest. The nature and purpose of the NAC is to seek resolution of issues and challenges involving concepts, requirements, operational capabilities, the associated use of technology, and related considerations to aeronautical operations that affect the future of the Air Traffic Management System and the integration of new technologies.

FOR FURTHER INFORMATION CONTACT: Gregory Schwab, Manager, Stakeholder Collaboration Division, at *Gregory.schwab@faa.gov* or 202–267–1201. Any committee related request should be sent to the person listed in this section.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, FAA is giving notice of the renewal of the NAC charter. The primary goal of the NAC is to provide advice on agency-level issues facing the aviation community in implementing the Next Generation Air Transportation System (NextGen) modernization efforts across the National Airspace System. NAC membership is structured to maintain a deliberately derived distribution of the aviation community representation in order for FAA to align its investments. Complete information regarding the NAC is available on the FAA website at *https://www.faa.gov/about/office_org/headquarters_offices/ang/nac/.*

Issued in Washington, DC, this 15 day of June 2020.

Tiffany McCoy,

General Engineer, NextGen Office of Collaboration and Messaging, ANG–M, Office of the Assistant Administrator for NextGen, Federal Aviation Administration.

[FR Doc. 2020–13599 Filed 6–23–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of the Finding of No Significant Impact/Record of Decision and Adoption of the Wyoming Army National Guard Environmental Assessment for the Establishment of Controlled Firing Areas

AGENCY: Federal Aviation Administration (FAA), Department of Transportation.

ACTION: Notice of Availability of the Finding of No Significant Impact (FONSI)/Record of Decision (ROD).

SUMMARY: The FAA announces its decision to adopt the Wyoming Army National Guard (WYARNG) Environmental Assessment (EA), entitled *Training and Maneuver Activities at Camp Guernsey, Guernsey, Wyoming,* for the establishment of three Controlled Firing Areas (CFA) at Camp Guernsey. Under the Proposed Action, the CFAs would be established for up to two years. This notice announces that, based on its independent review and evaluation of the EA and supporting documents, the FAA is adopting portions of the EA associated with the CFAs and issuing a FONSI/ROD for the establishment of the Camp Guernsey CFAs.

FOR FURTHER INFORMATION CONTACT: Shawn M. Kozica, Manager, Operations Support Group, Western Service Center, Federal Aviation Administration, 2200 S 216th St., Des Moines, WA, 98198–6547; telephone: (206) 231–2251.

SUPPLEMENTARY INFORMATION:

Background

The FAA Proposed Action is the establishment of three CFAs: CFA North, CFA West, and CFA South. The CFAs would be established, up to two years, and would be replaced by the permanent establishment of three RAs: R–7002A, R–7002C, and R–7002B, respectively. While the EA analyzed both CFAs and RAs, only the CFAs are ripe for an FAA decision at this time and are the subject of the FAA's FONSI/ROD.

Given the temporary nature of CFAs, as well as the timeline for the establishment of the permanent RAs, the WYARNG is first pursuing the establishment of CFAs. The CFAs would permit usage of the proposed airspace for hazardous activities for two years until the RA has been established. During the two-year interim period following the establishment of the CFAs, the WYARNG would prepare and submit an Aeronautical Proposal to the FAA for the establishment of three RAs: R–7002A, R–7002B, and R–7002C.

The WYARNG's Proposed Action consists of both land-based activities (training and maneuver) and airspace activities that require Special Use Airspace (SUA) in the form of a CFA or Restricted Area (RA). Some of the proposed land-based activities use field artillery that requires the establishment of surface distance zones (SDZ) for safety reasons. These SDZs provide separation of the field artillery from aircraft (civilian and military traversing the airspace). The proposed CFAs and RAs would accommodate the SDZs.

Implementation

After evaluating the EA, the FAA has issued a FONSI/ROD to establish three CFAs. CFA North would be established up to and including 16,000 feet mean sea level (MSL), and would be used approximately 20 days per year. CFA South would be established up to and including 12,500 feet MSL and would be used approximately 20 days per year. CFA West would be established up to and including 17,500 feet MSL and would be used approximately 20 days per year.

In accordance with Section 102 of the National Environmental Policy Act of 1969 (NEPA), the Council on Environmental Quality's (CEQ) regulations for implementing NEPA (40 CFR parts 1500–1508), and other applicable authorities (including FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 8–2, and FAA Order JO 7400.2M, Procedures for Handling Airspace Matters, paragraph 32–2–3), the FAA has conducted an independent review and evaluation of the WYARNG's EA, dated March 2020. As a cooperating agency with responsibility for approving SUA under 49 U.S.C. 40103(b)(3)(A), the FAA provided subject matter expertise and coordinated with the WYARNG during the environmental review process. The implementation of the proposed CFAs would fulfill the FAA's requirements to ensure the safe and efficient use of navigable airspace pursuant to 49 U.S.C. 47101(a)(1), which describes the FAA's authority and regulatory responsibilities.

The WYARNG provided the Draft EA for public review from February 25–March 11, 2020, and one comment was received from the Bureau of Reclamation indicating an incorrect date of the Free Use Permit. The date has since been corrected in the EA.

The FONSI/ROD and EA are available upon request by contacting Shawn M. Kozica, Manager, Operations Support Group, Western Service Center, Federal Aviation Administration, 2200 S 216th St., Des Moines, WA, 98198–6547; telephone: (206) 231–2251.

Shawn M. Kozica,

Manager, Operations Support Group, Western Service Center.

[FR Doc. 2020–13570 Filed 6–23–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2020–0621]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: National Air Tours Safety Standards

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 requirements in FAA regulations that set safety and oversight rules for a broad variety of sightseeing and commercial air tour flights to improve the overall safety of commercial air tours by requiring all air tours to submit information.

DATES: Written comments should be submitted by August 24, 2020.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By mail: Sandra Ray, Federal Aviation Administration, Policy Integration Branch AFS–270, 1187 Thorn Run Road, Suite 200, Coraopolis, PA 15108.

By fax: 412–239–3063.

FOR FURTHER INFORMATION CONTACT: Sandra Ray by email at: *Sandra.ray@faa.gov;* phone: 412–329–3088.

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: 2120–0717.

Title: National Air Tours Safety Standards.

Form Numbers: None.

Type of Review: Renewal of an information collection.

Background: FAA regulations set safety and oversight rules for a broad variety of sightseeing and commercial air tour flights to improve the overall safety of commercial air tours by requiring all air tour operators to submit information. The FAA uses the information it collects and reviews to ensure compliance and adherence to regulations and, if necessary, take enforcement action on violators of the regulations.

Respondents: Approximately 13,751 respondents.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: Burden varies per respondent.

Estimated Total Annual Burden: 5,182 hours.

Issued in Washington, DC, on June 19, 2020.

Sandra L. Ray,

Aviation Safety Inspector, FAA, Policy Integration Branch, AFS–270.

[FR Doc. 2020–13606 Filed 6–23–20; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[DOT–OST–2019–XXXX]

Research, Engineering, and Development Advisory Committee (REDAC); Notice of Public Meeting

AGENCY: Federal Aviation Administration, Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the Research, Engineering, and Development Advisory Committee (REDAC).

DATES: The meeting will be held on July 9, 2020, from 9:00 a.m.–4:00 p.m. EDT.

Requests for accommodations to a disability must be received by June 25, 2020. Individuals requesting to speak during the meeting must submit a written copy of their remarks to DOT by June 25, 2020. Requests to submit written materials to be reviewed during the meeting must be received no later than June 25, 2020.

ADDRESSES: The meeting will be held virtually. Virtual attendance information will be provided upon registration. A detailed agenda will be available on the REDAC internet website at *http://www.faa.gov/go/redac* at least one week before the meeting, along with copies of the meeting minutes after the meeting.

FOR FURTHER INFORMATION CONTACT: Chinita Roundtree-Coleman, REDAC PM/Lead, FAA/U.S. Department of Transportation, at *chinita.roundtree-coleman@faa.gov* or (609) 485–7149. Any committee related request should be sent to the person listed in this section.

SUPPLEMENTARY INFORMATION:

I. Background

The Research, Engineering, and Development Advisory Committee was created under the Federal Advisory Committee Act (FACA), in accordance with Public Law 100–591 (1988) and Public Law 101–508 (1990) to provide advice and recommendations to the FAA Administrator in support of the Agency's Research and Development (R&D) portfolio.

II. Agenda

At the meeting, the agenda will cover the following topics:

- FAA Research and Development Plan.
- Emergence of new entrant vehicles and operations into the National Airspace System.

III. Public Participation

The US Department of Transportation is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language, interpretation, or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

There will be 45 minutes allotted for oral comments from members of the public joining the meeting. To accommodate as many speakers as possible, the time for each commenter may be limited. Individuals wishing to reserve speaking time during the meeting must submit a request at the time of registration, as well as the name, address, and organizational affiliation of the proposed speaker. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the FAA may conduct a lottery to determine the speakers. Speakers are requested to submit a written copy of their prepared remarks for inclusion in the meeting records and for circulation to REDAC members before the deadline listed in the **DATES** section. All prepared remarks submitted on time will be accepted and considered as part of the meeting's record. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, this 17 day of June 2020.

Chinita Roundtree-Coleman,

REDAC PM/Lead, Federal Aviation Administration.

[FR Doc. 2020–13556 Filed 6–23–20; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Special Experimental Project (SEP–16) To Evaluate Proposals for Delegation of FHWA Responsibilities to States

AGENCY: Federal Highway Administration (FHWA), U.S Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: The FHWA is expanding the Special Experimental Project (SEP–16), originally announced in a **Federal Register** notice published on September 20, 2018. The SEP–16 permits testing and evaluation of delegations to States of FHWA program-level actions. The FHWA is expanding SEP–16 to allow experimentation with delegation of FHWA responsibilities related to project delivery. This new SEP–16 scope includes potential experimentation with responsibilities not previously considered subject to assumption under Stewardship and Oversight Agreements between FHWA and State departments of transportation (State DOT).

DATES: This expanded SEP–16 Project is effective on June 24, 2020.

FOR FURTHER INFORMATION CONTACT: For technical information: Peter Stephanos, Office of Stewardship, Oversight, and Management, (202) 366–0027; for legal information: Janet Myers, Office of the Chief Counsel (HCC), (202) 366–2019, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 8:00 a.m. to 4:30 p.m., ET, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this notice may be downloaded from the **Federal Register**'s home page at: *http://www.archives.gov;* the Government Publishing Office's database at: *https://www.gpo.gov/fdyss/;* or the specific docket page at: *www.regulations.gov.*

Background

For information on the background and legal authority for SEP–16 pursuant to 23 U.S.C. 502(b), please refer to the **Federal Register** notice announcing SEP–16, published on September 20, 2018 (83 FR 47674) (SEP–16 notice).

After announcing SEP–16, FHWA received expressions of interest from States wishing to experiment with types of delegation not expressly included within the scope of the SEP–16 notice. Several of the requests related to actions that, to date, FHWA has not treated as subject to assumption under 23 U.S.C. 106(c) or other authorities.

After consideration, FHWA concluded that expanding SEP–16 into a general authority for experimentation with delegation to States of FHWA program/project authorities could provide useful information for future determinations about administration of the Federal-aid Highway Program (FAHP). This supplemental notice expands SEP–16 to allow experimentation with delegations of authority for FAHP program/project actions where FHWA determines such experimentation is appropriate.

The scope of permissible experimentation is subject to the conditions described in the SEP–16 notice (83 FR 47675) except as modified in this notice. This expanded authority may be used to experiment with project development, construction, and post-construction actions relating to a specific project, group of projects, or a program. The SEP–16 experimental authority continues to exclude from testing and evaluation the Federal decisions relating to eligibility, obligation, reimbursement, authorization, and compliance. In addition, SEP–16 experimental authority will not be available to test delegations relating to the environmental review process, as there are statutes and regulations that expressly address assignment of FHWA's environmental responsibilities (*see, e.g.,* 23 U.S.C. 327).

This expansion of SEP–16 will allow FHWA to understand more fully the potential implications of delegating FAHP decisions not previously subject to assumption or delegation under 23 U.S.C. 106(c) and other authorities. The lessons learned from SEP–16 will aid FHWA in developing comprehensive policies and inform stakeholders if the delegation of FHWA authorities is appropriate.

To facilitate public access to SEP–16 information, all SEP–16 proposals, workplans, and reports will be posted on a public facing website.[1]

Solicitation of Letters of Interest

This notice announces the expanded SEP–16 and requests Letters of Interest for experimentation with FHWA actions relating to program/project delivery. Entities eligible to submit letters (''Applicants'') are State DOTs as defined in 23 U.S.C. 101. Letters of Interest, which should be submitted to the appropriate FHWA Division Office, initiate the application process described below. The Letter of Interest should include a high-level description of the Applicant's proposal, reasons for wanting to assume the authority, and the anticipated resulting improvements to program/project delivery. Ideally, the Applicant will quantify the resulting improvements in terms of time and/or cost savings. The Applicant should include enough detail to allow FHWA to determine how the proposal deviates from current law (including regulations) and practice, and how the actions covered by the proposal are addressed in current policy. The Letter of Interest should reference the specific legal authority(ies) under Title 23 being requested for delegation. Further, the Applicant should provide specific examples that demonstrate experience with delegation in the affected area(s), or in areas the Applicant deems similar in nature, if applicable. The Applicant should describe the level of collaboration conducted so far with relevant FHWA Division or program offices about the proposal.

Application Process

The FHWA is retaining the application process announced in the SEP–16 notice which is repeated here for reference. The application process is three-tiered, with each step developing more specifics of the proposed assumption(s) for FHWA consideration and feedback. The FHWA will evaluate each step to determine whether a proposal falls within the scope of section 502(b) and is appropriate for this experimental process before inviting and working with an Applicant to proceed to the next step for more detailed proposal development.

The first step in the application process is the Letter of Interest described above. The FHWA will acknowledge receipt of the Letter of Interest and provide an anticipated timeframe for initially evaluating the proposal and providing a formal response. After review of the proposal, FHWA will provide a formal response that will either request the Applicant to proceed with submitting a Concept Paper, or provide FHWA's explanation for not advancing the proposal.

If a Concept Paper is requested, the Applicant should submit to the appropriate FHWA Division Office a narrative further detailing the Applicant's proposal. This Concept Paper should not exceed 5 pages and be formatted single-spaced, using a standard 12-point font with 1-inch margins. Charts, tables, and other items may also be submitted as attachments to supplement the narrative and do not count toward the 5-page limit. The Concept Paper should demonstrate that the State has the necessary laws, regulations, controls, and resources in place to assume the Federal role for the responsibilities requested. If applicable, the Applicant may use experience with assumption of authorities under 23 U.S.C. 106(c) and other authorities to demonstrate readiness to assume the requested responsibilities. If any necessary piece is missing, the Applicant should outline a plan and timeline anticipated to put pieces in place. In addition, the Concept Paper should detail supporting analysis for the anticipated program/project delivery improvements and consider a risk assessment of the expected impact the assumption of authority may have on the State's program—specifically on resources, processes, and stakeholders—and include measures the State would use to ensure the responsibilities are carried out in accordance with Federal requirements. The Concept Paper should also summarize any preparation the Applicant may need to make if the experiment is approved and the time necessary for that preparation (*e.g.,* provide training for staff, make needed changes to procedures, organization charts). The FHWA will evaluate the Concept Paper, and either request the Applicant to proceed to the Detailed Proposal stage, or provide an explanation for not advancing the request.

Since the requirements for the Detailed Proposal will vary depending on the complexity of the proposed delegation and the results of FHWA's evaluation of the Concept Paper, the appropriate FHWA Division will coordinate with the Applicant in preparing the Detailed Proposal. At a minimum, the Applicant's Detailed Proposal should: (1) Propose a duration for conducting the experiment, including a timeline for any transition activities; (2) identify key personnel and contacts with proposed roles and responsibilities; and (3) recommend an

[1] https://www.fhwa.dot.gov/innovativeprograms/sep-16/.

Evaluation Plan with reporting mechanisms, performance measures, goals, and other evaluation criteria, and frequency of reviews. To provide consistency among the SEP–16 experiments, FHWA will provide the Applicant certain performance measures and evaluation criteria common to all SEP–16 Evaluation Plans.

Should FHWA decide to proceed with the experiment, FHWA and the Applicant will enter into a memorandum of understanding and develop a workplan for the experiment.

Conclusion

The FHWA is committed to continuing its transition to a risk-based approach to stewardship and oversight of the FAHP. To this end, SEP–16 is designed to provide FHWA with a better understanding of the implications of allowing States to assume program/project authorities currently exercised by FHWA. This notice supplements the SEP–16 notice published on September 20, 2018, by expanding SEP–16 to allow experimentation with delegation of FHWA authorities relating to program and project delivery, and amending the application process to reflect this expansion.

(Authority: 23 U.S.C. 315 and 502).

Nicole R. Nason,

Administrator, Federal Highway Administration.

[FR Doc. 2020–13564 Filed 6–23–20; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Buy America Waiver Notification

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: This notice provides information regarding FHWA's finding that a Buy America waiver is appropriate for procurement of a mobile harbor crane constructed with foreign iron and steel components for the International Marine Terminal (IMT) at the Port of Portland in the State of Maine.

DATES: The applicable date of the waiver is June 25, 2020.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, please contact Mr. Gerald Yakowenko, FHWA Office of Program Administration, (202) 366–1562, or via email at *Gerald.Yakowenko@dot.gov*. For legal questions, please contact Mr. Patrick Smith, FHWA Office of the Chief Counsel, (202) 366–1345, or via email at *Patrick.C.Smith@dot.gov*. Office hours for FHWA are from 8:00 a.m. to 4:30 p.m., E.S.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded from the **Federal Register**'s home page at: *http://www.archives.gov* and the Government Publishing Office's database at: *http://www.access.gpo.gov/nara.*

Background

The FHWA's Buy America regulation in 23 CFR 635.410 requires a domestic manufacturing process for any steel or iron products (including protective coatings) that are permanently incorporated in a Federal-aid construction project. The regulation also provides for a waiver of the Buy America requirements when the application would be inconsistent with the public interest or when satisfactory quality domestic steel and iron products are not produced in the United States in sufficient and reasonably available quantities. This notice provides information regarding FHWA's finding that a Buy America waiver is appropriate for use of non-domestic iron and steel components associated with a mobile harbor crane for the IMT at the Port of Portland in the State of Maine. The mobile harbor crane is not available to be produced using 100 percent domestic steel or iron.

Maine Intermodal Port Productivity Project: On July 1, 2016, DOT selected the Maine Department of Transportation (MaineDOT) to receive a grant of funds for the Maine Intermodal Port Productivity Project (Project) at the Port of Portland under the FASTLANE discretionary grant program. On February 6, 2017, FHWA executed a term sheet with MaineDOT, formalizing the scope, schedule, and budget of the award. Improvements under the Project included: (i) Removing the existing maintenance facility and infill of the wharf; (ii) installing a new mobile harbor crane and other cargo handling equipment; (iii) constructing a highway and rail crossing upgrade; and (iv) building a new terminal operations and maintenance center. The projected cost of the new mobile harbor crane was $4.5 million, with $2.25 million from the FASTLANE Program, $1.3 million from the Congestion Mitigation and Air Quality Improvement Program, and $950,000 from a State bond. The U.S. Maritime Administration (MARAD) was designated as the DOT Operating Administration responsible for overseeing the Project, but FHWA also retained certain responsibilities related to the project agreement(s), overseeing the reimbursement process, and final close-out.

MaineDOT and MARAD determined that the improvements under the Project each had independent utility or independent significance. Thus, each improvement proceeded under a different development timeline and separate Categorical Exclusion (CE) under the National Environmental Policy Act, including a separate CE for the mobile harbor crane.

In early 2017, MaineDOT determined that mobile harbor cranes meeting its needs for the Project were not produced in the United States. Based on this determination, it submitted a Buy America waiver request to FHWA for the mobile harbor crane on March 8, 2017. Outside the scope of the FASTLANE grant, MaineDOT purchased a new mobile harbor crane for the IMT at the Port of Portland in 2018 using State funds only. However, MaineDOT continues to need the mobile harbor crane under the FASTLANE grant to replace the older of the two cranes it now has at the IMT at the Port of Portland.

As of the date of this notice, the Project improvements are complete except for purchasing the mobile harbor crane. Without a Buy America waiver, MaineDOT cannot proceed with purchasing a crane using FASTLANE grant funds because the only known manufacturer for this type of crane is in Germany.

Mobile Harbor Crane Needed by Maine DOT: MaineDOT continues to need one mobile harbor crane, which is suited for port operations in a marine environment for use in container or spreader loading and unloading operations. The crane must be mobile and equipped with rubber tires, feature level luffing, and include an enclosed cabin and staircase. The crane must be capable of simultaneous and independent operations of slewing, main hoist, and boom hoist motions under full load and speed. The crane must have the capability to lift containers of 41 metric tons (90,000 lbs.) while at a 101 foot (31 meter) working radius when operating within the limited outrigger footprint. The crane Load Moment Indicator must also have a pre-programmed mode to take this limited footprint into consideration. Specially designed outrigger pads will also need to be included to accommodate the structural limitations of the pier. The crane will need to have

the specially designed outrigger pads to ensure that the corner load is evenly distributed over three structural pile caps and directly above the piles themselves. Additional information on the mobile harbor crane needed by MaineDot is available under RFP # 201910181 issued on January 10, 2020, at *https://www.maine.gov/dafs/bbm/procurementservices/vendors/rfps.*

Waiver Request and Supporting Information: The MaineDOT originally submitted a Buy America waiver request to FHWA for the mobile harbor crane on March 8, 2017. Prior to submitting its waiver request, MaineDOT sought but was unable to identify domestic manufacturers for the crane. The FHWA initially published a notice of intent to issue a waiver on its website on March 13, 2017.

On April 18, 2017, President Trump issued Executive Order (E.O.) 13788 requiring every executive branch agency to monitor, enforce, and comply with existing ''Buy American Laws'' and minimize the use of waivers. In addition, E.O. 13788 also set forth a policy ''to maximize, consistent with law, . . . the use of goods, products, and materials produced in the United States.'' Consistent with E.O. 13788, before issuing a waiver, FHWA requested that MaineDOT seek to maximize the use of domestic content on the mobile harbor crane.

Following this request, MaineDOT spent several months working with FHWA and MARAD to develop a request for proposal (RFP) for the mobile harbor crane seeking to identify domestic manufacturers or, if full compliance was not possible, foreign manufacturers that could maximize use of domestic content by using greater quantities of U.S. steel. The RFP was issued by MaineDOT on January 10, 2020, and is available under RFP #201910181, at *https://www.maine.gov/dafs/bbm/procurementservices/vendors/rfps.* In that RFP, MaineDOT included two notable provisions to increase its use of domestic content. First, the RFP required bidders to describe domestic content in their bid and weighted that information in its best value evaluation. Second, the RFP stated that a bid would not be considered responsive, and therefore could not be selected, unless the bidder certified compliance with Buy America or maximized the use of domestic content to justify a Buy America waiver. Recognizing the need for Buy America compliance, MaineDOT has not awarded a bid while its waiver request is outstanding.

Following issuance of RFP #201910181, MaineDOT received a single bid on February 10, 2020, from Liebherr USA, Co., a German manufacturer, for $5.085 million including zero American steel content. The bid requested a Buy America waiver. Liebherr explained that it produces its Liebherr Mobile Harbor Cranes in its existing factory in Rostock, Germany. Liebherr also explained that establishing a unique design and order process to incorporate U.S. steel content into the crane was technically possible, but would increase delivery time by 18 months and the cost of the crane by at least 35 percent to around $7 million (or more). Although it does not produce mobile harbor cranes in the U.S., Liebherr explained that it does have other manufacturing facilities in the U.S. For example, it explained that it invested $45 million into expanding a factory and warehouse in Newport News, Virginia. Liebherr maintains that, between facilities in Virginia and Miami, Florida, it has invested over $65 million into U.S. facilities and has over 1,100 U.S. employees. Considering that MaineDOT originally estimated that a new mobile harbor crane would cost $4.5 million, asking Liebherr to develop a unique design and order process to incorporate U.S. steel content appears financially infeasible.

As described above, although MaineDOT did not identify compliant products, it provided information to FHWA supporting its waiver request, including:

- Information describing the domestic content characteristics of the manufactured product needed, including the sources and assembly locations of that product;
- information supporting the technical necessity of this specific product for operations of the IMT at the Port of Portland; and
- information documenting efforts to maximize domestic content even if full compliance was not possible, including collaboration with FHWA to develop an RFP designed to maximize domestic content.

Public Comments on Waiver Request: In accordance with the Consolidated Appropriations Act of 2016 (Pub. L. 114–113) and the Continuing Appropriations Act of 2017 (Pub. L. 114–223), FHWA published a notice of intent to issue a waiver on its website, *https://www.fhwa.dot.gov/construction/contracts/waivers.cfm?id=145*, on March 13, 2017. The FHWA received no comments in response to the publication.

Finding and Request for Comments: Based on all the information available to and received by it, FHWA concludes that there are no domestic manufacturers of the mobile harbor crane. This finding is only for a single mobile harbor crane for the IMT at the Port of Portland in the State of Maine.

The MaineDOT and its contractors and subcontractors involved in the procurement of the mobile harbor crane are reminded of the need to comply with the Cargo Preference Act in 46 CFR part 38, if applicable.

In accordance with the provisions of section 117 of the SAFETEA–LU Technical Corrections Act of 2008 (Pub. L. 110–244, 122 Stat. 1572), FHWA is providing this notice as its finding that a waiver of Buy America requirements is appropriate. The FHWA invites public comment on this finding for an additional 5 days following the effective date of the finding. Comments may be submitted to FHWA's website via the link provided to the waiver page noted above.

(Authority: 23 U.S.C. 313; Pub. L. 110–161, 23 CFR 635.410)

Nicole R. Nason,

Administrator, Federal Highway Administration.

[FR Doc. 2020–13563 Filed 6–23–20; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2020–0009]

Renewal Package From the State of Ohio to the Surface Transportation Project Delivery Program and Proposed Memorandum of Understanding (MOU) Assigning Environmental Responsibilities to the State

AGENCY: Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Notice; request for comments.

SUMMARY: This notice announces that FHWA has received and reviewed a renewal package from the Ohio Department of Transportation (ODOT) requesting participation in the Surface Transportation Project Delivery Program (Program). This Program allows for FHWA to assign, and States to assume, responsibilities under the National Environmental Policy Act (NEPA), and all or part of FHWA's responsibilities for environmental review, consultation, or other actions required under any Federal environmental law with respect to one or more Federal highway projects within the State. The FHWA has determined the renewal package to be complete, and developed a draft renewal MOU with ODOT outlining

how the State will implement the Program with FHWA oversight. The public is invited to comment on ODOT's request, including its renewal package and the proposed renewed MOU, which includes the proposed assignments and assumptions of environmental review, consultation, and other activities.

DATES: Please submit comments by July 24, 2020.

ADDRESSES: To ensure that you do not duplicate your docket submissions, please submit them by only one of the following means:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for submitting comments.
- *Facsimile (Fax):* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Ave. SE, West Building Ground Floor Room W12–140, Washington, DC 20590.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE, Washington, DC 20590 between 9:00 a.m. and 5:00 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name and docket number at the beginning of your comments. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT:

For FHWA: Noel Mehlo by email at *noel.mehlo@dot.gov* or by telephone at 614–280–6841. The FHWA Ohio Division Office's normal business hours are 8 a.m. to 4:30 p.m. (Eastern Time), Monday–Friday, except for Federal holidays. *For the State of Ohio:* Tim Hill by email at *tim.hill@dot.ohio.gov* or by telephone at 614–644–0377. State business hours are the same as above although State holidays may not completely coincide with Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may submit or retrieve comments online through the Federal eRulemaking portal at: *http://www.regulations.gov.* The website is available 24 hours each day, 365 days each year. Please follow the instructions. Electronic submission and retrieval help and guidelines are available under the help section of the website.

An electronic copy of this document may also be downloaded from the Office of the Federal Register's home page at: *http://www.archives.gov* and the U.S. Government Publishing Office's web page at: *http://www.access.gpo.gov/nara.*

Background

Section 327 of title 23, United States Code (23 U.S.C. 327), allows the Secretary of DOT to assign, and a State to assume, the responsibilities under NEPA (42 U.S.C. 4321 *et seq.*) and all or part of the responsibilities for environmental review, consultation, or other actions required under certain Federal environmental laws with respect to one or more Federal-aid highway projects within the State. The FHWA is authorized to act on behalf of the Secretary with respect to these matters.

The ODOT entered the Program on December 28, 2015, after submitting its application to FHWA, obtaining FHWA's approval, and entering into a MOU in accordance with 23 U.S.C. 327 and FHWA's application regulations for the pilot program (23 CFR part 773). The MOU was amended on June 6, 2018. On December 6, 2019, after coordination with FHWA, ODOT submitted the renewal package in accordance with the renewal regulations in 23 CFR 773.115.

Under the proposed renewal MOU, FHWA would assign to the State, through ODOT, the responsibility for making decisions on the following types of highway projects:

1. All Class I, or environmental impact statement projects, both on the State Highway System (SHS) and local government projects off the SHS that are funded by FHWA or require FHWA approvals.
2. All Class II, or categorically excluded projects, both on the SHS and local government projects off the SHS that are funded by FHWA or require FHWA approvals.
3. All Class III, or environmental assessment projects, both on the SHS and local government projects off the SHS that are funded by FHWA or require FHWA approvals.
4. Projects funded by other Federal agencies (or projects without any Federal funding) of any Class that also include funding by FHWA or require FHWA approvals. For these projects, ODOT would not assume the NEPA responsibilities of other Federal agencies.

Excluded from assignment are highway projects authorized under 23 U.S.C. 202 and 203, highway projects under 23 U.S.C. 204 unless the project will be designed and constructed by ODOT, projects that cross State boundaries, projects that cross or are adjacent to international boundaries, projects under the Recreational Trails Program (23 U.S.C. 206), and programs and projects advanced by direct recipients of Federal-aid highway program funds other than ODOT.

The assignment also would give ODOT the responsibility to conduct the following environmental review, consultation, and other related activities:

Air Quality

- Clean Air Act (CAA), 42 U.S.C. 7401–7671q, with the exception of any conformity determinations

Noise

- Noise Control Act of 1972, 42 U.S.C. 4901–4918
- Compliance with the noise regulations in 23 CFR part 772

Wildlife

- Endangered Species Act of 1973, 16 U.S.C. 1531–1544
- Fish and Wildlife Coordination Act, 16 U.S.C. 661–667d
- Anadromous Fish Conservation Act, 16 U.S.C. 757a–757f
- Migratory Bird Treaty Act, 16 U.S.C. 703–712

Hazardous Materials Management

- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601–9675
- Superfund Amendments and Reauthorization Act (SARA), 42 U.S.C. 9671–9675
- Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901–6992k

Historic and Cultural Resources

- National Historic Preservation Act of 1966, as amended, 54 U.S.C. 300101, *et seq.*
- Archeological Resources Protection Act of 1979, 16 U.S.C. 470aa–mm
- Title 54, Chapter 3125—Preservation of Historical and Archeological Data, 54 U.S.C. 312501–312508
- Native American Grave Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001–3013; 18 U.S.C. 1170

Social and Economic Impacts

- American Indian Religious Freedom Act, 42 U.S.C. 1996
- Farmland Protection Policy Act (FPPA), 7 U.S.C. 4201–4209

Water Resources and Wetlands

- Clean Water Act, 33 U.S.C. 1251–1387 (Section 401, 402, 404, 408, and Section 319)
- Coastal Barrier Resources Act, 16 U.S.C. 3501–3510
- Coastal Zone Management Act, 16 U.S.C. 1451–1466
- Safe Drinking Water Act, 42 U.S.C. 300f– 300j–26

- General Bridge Act of 1946, 33 U.S.C. 525–533
- Rivers and Harbors Act of 1899, 33 U.S.C. 401–406
- Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287
- Emergency Wetlands Resources Act, 16 U.S.C. 3901 and 3921
- Wetlands Mitigation, 23 U.S.C. 119(g), 133(b)(14)
- FHWA wetland and natural habitat mitigation regulations, 23 CFR part 777
- Flood Disaster Protection Act, 42 U.S.C. 4001–4130

Parklands

- 23 U.S.C. 138 and 49 U.S.C. 303 (Section 4(f)) and implementing regulations at 23 CFR part 774
- Land and Water Conservation Fund (LWCF) Act, 54 U.S.C. 200302–200310

FHWA-Specific

- Planning and Environmental Linkages, 23 U.S.C. 168, with the exception of those FHWA responsibilities associated with 23 U.S.C. 134 and 135
- Programmatic Mitigation Plans, 23 U.S.C. 169 with the exception of those FHWA responsibilities associated with 23 U.S.C. 134 and 135

Executive Orders (E.O.) Relating to Highway Projects

- E.O. 11990, Protection of Wetlands
- E.O. 11988, Floodplain Management (except approving design standards and determinations that a significant encroachment is the only practicable alternative under 23 CFR 650.113 and 650.115)
- E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations
- E.O. 13112, Invasive Species
- E.O. 13807, Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects (aka ''One Federal Decision'').

The proposed renewal MOU would allow ODOT to continue to act in the place of FHWA in carrying out the environmental review-related functions described above, except with respect to government-to-government consultations with federally recognized Indian Tribes. The FHWA will retain responsibility for conducting formal government-to-government consultation with federally recognized Indian Tribes, which is required under some of the listed laws and executive orders. The ODOT also will not assume FHWA's responsibilities for conformity determinations required under Section 176 of the CAA (42 U.S.C. 7506) or any responsibility under 23 U.S.C. 134 or 135, or under 49 U.S.C. 5303 or 5304.

A copy of the proposed renewal MOU and renewal package may be viewed on the docket at *www.regulations.gov,* as described above, or may be obtained by contacting FHWA or the State at the addresses provided above. A copy also may be viewed on ODOT's website at: *https://transportation.ohio.gov/wps/portal/gov/odot/programs/nepa-assignment.* The FHWA will consider the comments submitted when making its decision on the proposed MOU revision. Any final renewal MOU approved by FHWA may include changes based on comments and consultations relating to the proposed renewal MOU and will be made publicly available.

Authority: 23 U.S.C. 327; 42 U.S.C. 4331, 4332; 23 CFR 771.117; 40 CFR 1507.3, 1508.4.

Nicole R. Nason,

Administrator, Federal Highway Administration.

[FR Doc. 2020–13579 Filed 6–23–20; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2014–0420]

Hours of Service of Drivers: Specialized Carriers & Rigging Association (SC&RA); Application for Renewal of Exemption

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

ACTION: Notice of final disposition; grant of application for exemption.

SUMMARY: FMCSA announces its decision to renew the exemption from the minimum 30-minute rest break provision of the Agency's hours-of-service (HOS) regulations requested by the Specialized Carriers & Rigging Association (SC&RA) for certain commercial motor vehicle (CMV) drivers. The exemption covers drivers for all specialized carriers transporting loads that exceed normal weight and dimensional limits—oversize/overweight (OS/OW) loads—and require a permit issued by a government authority. FMCSA has analyzed the exemption application and the public comments and has determined that the exemption, subject to the terms and conditions imposed, will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

DATES: The exemption is applicable from June 18, 2020 through June 17, 2025.

ADDRESSES:

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The on-line Federal Docket Management System (FDMS) is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgment page that appears after submitting comments on-line.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

FOR FURTHER INFORMATION CONTACT: For information concerning this notice, contact Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202–366–4225. Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *www.regulations.gov* and insert the docket number, ''FMCSA–2020–0420'' in the ''Keyword'' box and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket by visiting the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Docket Operations.

II. Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315(b) to grant exemptions from certain Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

III. Background

The SC&RA requested a renewal of the exemption from the mandatory rest break requirement of 49 CFR 395.3(a)(3)(ii) on behalf of all specialized carriers and drivers responsible for the transportation of loads exceeding standard legal weight and dimensional limits—oversize/overweight (OS/OW) loads—that require a permit issued by a government authority. The exemption was first granted on June 18, 2015 (80 FR 34957) and later extended through June 17, 2020 (81 FR 79556, Nov. 14, 2016).

According to SC&RA the 30-minute break uniquely affects OS/OW loads and has exacerbated the number of instances in which drivers have had to park these loads at roadside, consequently impacting the safety of both the public and the driver. The renewed exemption would apply to all specialized carriers and drivers responsible for the transportation of loads that exceed maximum legal weight and dimensional limits—OS/OW loads—that require a permit issued by a government authority. The hours of operation in which a driver may move an OS/OW load on a valid permit vary tremendously from State to State, and even among local jurisdictions within a State, differ in terms of the days of the week and hours of the day when transit is allowed. Because hours in which an OS/OW load can travel are restricted by permit requirements, those hours will often conflict with the timing of the required 30-minute rest break.

SC&RA specifically cites four instances demonstrating this conflict. As less space is available for parking OS/OW trucks, specialized tractor/trailer combinations transporting OS/OW loads will increasingly be parked alongside interstate or other highways and ramp shoulders, further compromising their safety and the safety of the public on the roadways.

SC&RA states that the industry has been diligent in ensuring that its drivers are safety compliant by identifying, deploying, analyzing and monitoring best practices. The effectiveness of the industry's efforts is substantiated through its safety record. By demand and due to the type and nature of the size and weight involved, these drivers tend to be more experienced and skilled than many drivers in the motor carrier industry. Safety is achieved through rigorous, mandated training for all drivers on a regular basis, in conjunction with annual safety checks, and self-imposed random safety audits. Furthermore, most specialized transportation carriers conduct weekly—or sometimes more frequent—meetings with drivers to ensure that they are current on information with regard to operating OS/OW loads in their industry.

SC&RA does not foresee any negative impact to safety from the requested exemption. It believes that granting the exemption would have a favorable impact on overall safety by reducing the frequency of drivers resorting to less than ideal parking options, thereby reducing the frequency of lanes being partially or fully blocked.

A copy of SC&RA's request is in the docket referenced at the beginning of this notice.

IV. Public Comments

On April 30, 2020, FMCSA published notice of this application, and asked for public comment (85 FR 24086). The Truckload Carriers Association and 19 individuals submitted comments in favor of the exemption renewal; there were no opposing comments.

TCA wrote:

> Inadequate truck parking already presents a problem for truckload carriers, but our members which haul OS/OW loads face even more overwhelming obstacles. As SC&RA pointed out in its request, the only option for drivers is often to park these loads on the shoulders of interstates, highways, and ramps. Drivers are required to protect and alert the motoring public by employing traffic control measures, but sometimes, the OS/OW load cannot be completely parked off the roadway. This situation clearly presents a heightened safety risk for the general motoring public, the driver, and public and emergency personnel. FMCSA agreed that these safety concerns are too significant to ignore and granted SC&RA's initial exemption request on June 18, 2015. Now, we encourage FMCSA to renew this exemption to protect safety through ensuring necessary flexibility in the federal regulations.

One individual, Dave Wittwer stated ''We encourage FMCSA to renew the 30-minute exemption that expires on June 18. The basis of this recommendation is safety for the drivers and the public at large.''

V. FMCSA Decision

FMCSA has evaluated SC&RA's application and the public comments. The Agency believes finding suitable parking for trucks with OS/OW loads is particularly difficult, as SC&RA pointed out, and the default option is likely to be parking on the shoulder of a highway, with the load sometimes extending into the lanes of traffic. No matter how well marked, trucks parked at roadside, especially at night, are too often mistaken for moving vehicles and struck, frequently with fatal consequences, before an inattentive driver can correct his or her mistake. FMCSA has therefore decided to grant the exemption, subject to the terms and conditions outlined below.

Terms of the Exemption

1. Drivers of specialized loads moving in interstate commerce that exceed normal weight and dimensional limits—oversize/overweight (OS/OW) loads—and require a permit issued by a government authority, are exempt from the requirement for a 30-minute rest break in § 395.3(a)(3)(ii). Drivers of loads not moving in interstate commerce are not eligible for this exemption.

2. Drivers must have a copy of this exemption document in their possession while operating under the terms of the exemption. The exemption document must be presented to law enforcement officials upon request.

3. All motor carriers operating under this exemption must have a ''Satisfactory'' safety rating with FMCSA, or be ''unrated.'' Motor carriers with ''Conditional'' or ''Unsatisfactory'' FMCSA safety ratings are prohibited from using this exemption.

Period of the Exemption

This exemption from the requirements of 49 CFR 395.3(a)(3)(ii) is effective June 18, 2020 through June 17, 2025, 11:59 p.m. local time.

Extent of the Exemption

This exemption is limited to the provisions of 49 CFR 395.3(a)(3)(ii). These drivers must comply with all other applicable provisions of the FMCSRs.

Preemption

In accordance with 49 U.S.C. 31315(d), during the period this exemption is in effect, no State shall enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a firm or person operating under the exemption.

Notification to FMCSA

Any motor carrier utilizing this exemption must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of the motor carrier's CMV drivers operating under the terms of this exemption. The notification must include the following information:

a. Name of Exemption: ''SC&RA'';

b. Name of operating motor carrier and USDOT number;

c. Date of the accident;

d. City or town, and State, in which the accident occurred, or closest to the accident scene;

e. Driver's name and license number and State of issuance;

f. Vehicle number and State license plate number;

g. Number of individuals suffering physical injury;

h. Number of fatalities;

i. The police-reported cause of the accident;

j. Whether the driver was cited for violation of any traffic laws or motor carrier safety regulations; and

k. The driver's total driving time and total on-duty time prior to the accident.

Reports filed under this provision shall be emailed to *MCPSD@DOT.GOV.*

Termination

FMCSA believes carriers transporting OS/OW loads under permit will continue to maintain their previous safety record while operating under this exemption. However, should problems occur, FMCSA will take all steps necessary to protect the public interest, including revocation or restriction of the exemption. The FMCSA will immediately revoke or restrict the exemption for failure to comply with its terms and conditions.

James A. Mullen,

Deputy Administrator.

[FR Doc. 2020–13597 Filed 6–23–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2019–0244]

Parts and Accessories Necessary for Safe Operation; Application for an Exemption From Lytx Inc.

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

ACTION: Notice of correction.

SUMMARY: FMCSA corrects the permissible mounting location for Lytx, Inc.'s (Lytx) advanced driver assistance systems (ADAS) in the windshield of commercial motor vehicles (CMV), as identified in a May 21, 2020, notice of final disposition granting a limited five-year exemption to motor carriers utilizing the Lytx ADAS.

DATES: This correction is applicable June 24, 2020.

FOR FURTHER INFORMATION CONTACT: Mr. José R. Cestero, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, MC–PSV, (202) 366–5541, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC, 20590–0001. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION: On May 21, 2020 (85 FR 31021), FMCSA published a notice granting a limited 5-year exemption to allow motor carriers to mount the Lytx ADAS lower in the windshield than is currently permitted by the Agency's regulations. In its exemption application, Lytx stated that the ADAS needs to be mounted approximately 204 mm (8 inches) below the upper edge of the windshield wipers to utilize a mounting location that allows optimal functionality of the camera system. In evaluating the Lytx application and the public comments received, FMCSA agreed that the camera system needs to be mounted in this location because the size of the camera system precludes mounting it (1) higher in the windshield, and (2) within 4 inches from the top of the area swept by the windshield wipers to comply with the regulations.

However, in the ''Terms and Conditions for the Exemption'' section of the May 21 notice of final disposition, FMCSA inadvertently stated that during the temporary exemption period, motor carriers using the Lytx ADAS must ensure that the bottom edge of the camera housing is mounted such that it is approximately 8 inches below the upper edge of the windshield, instead of 8 inches below the upper edge of the area swept by the windshield wipers.

The corrected text should read ''During the temporary exemption period, motor carriers will be allowed to operate CMVs equipped with Lytx's ADAS in the approximate center of the top of the windshield and such that the bottom edge of the camera housing is approximately 8 inches below the upper edge of the area swept by the windshield wipers, outside of the driver's and passenger's normal sight lines to the road ahead, highway signs and signals, and all mirrors.''

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–13600 Filed 6–23–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more individuals, entities, and vessels that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List (SDN List). OFAC has determined that one or more applicable legal criteria were satisfied to place the individuals and entities on the SDN List. All property and interests in property subject to U.S. jurisdiction of these individuals and entities are blocked, and U.S. persons are generally prohibited from engaging in transactions with them. The vessels placed on the SDN List have been identified as property in which a blocked person has an interest.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: *OFAC:* Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490; Assistant Director for Licensing, tel.:

202–622–2480; or Assistant Director for Regulatory Affairs, tel.: 202–622–4855.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Action[s]

On June 18, 2020, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following individuals and entities are blocked pursuant to the relevant sanctions authorities below.

Individuals

1. ESPARZA GARCIA, Veronica; DOB 16 Jan 1973; POB Mexico; citizen Mexico; C.U.R.P. EAGV730116MSLSRR04 (individual) [VENEZUELA–EO13850].

Designated pursuant to section 1(a)(i) and 1(a)(iii) of Executive Order 13850 of November 1, 2018, ''Blocking Property of Additional Persons Contributing to the Situation in Venezuela,'' 83 FR 55243, 3 CFR, 2019 Comp., p. 881 (E.O. 13850), as amended by Executive Order 13857 of January 25, 2019, ''Taking Additional Steps To Address the National Emergency With Respect to Venezuela,'' 84 FR 509 (E.O. 13857), for operating in the oil sector of the Venezuelan economy and for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of Petróleos de Venezuela, S.A. (PdVSA), a person whose property and interests in property are blocked pursuant to the Order.

2. LEAL JIMENEZ, Joaquin; DOB 17 Jul 1992; POB Mexico; citizen Mexico; C.U.R.P. LEJJ920717HGTLMQ01 (individual) [VENEZUELA–EO13850].

Designated pursuant to section 1(a)(i) and 1(a)(iii) of E.O. 13850, as amended by E.O. 13857, for operating in the oil sector of the Venezuelan economy and for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of PdVSA, a person whose property and interests in property are blocked pursuant to the Order.

3. ZEPEDA ESPARZA, Olga Maria; DOB 29 Jul 1996; POB Sinaloa, Mexico; citizen Mexico; Passport G16310107 (Mexico); C.U.R.P. ZEEO960729MSLPSL09 (individual) [VENEZUELA–EO13850].

Designated pursuant to section 1(a)(i) and 1(a)(iii) of E.O. 13850, as amended by E.O. 13857, for operating in the oil sector of the Venezuelan economy and for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of PdVSA, a person whose property and interests in property are blocked pursuant to the Order.

Entities

4. DELOS VOYAGER SHIPPING LTD, Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, Marshall Islands; Registered Owner Number IMO 6019130 [VENEZUELA–EO13850].

Designated pursuant to section 1(a)(i) of E.O. 13850, as amended by E.O. 13857, for operating in the oil sector of the Venezuelan economy.

5. ROMINA MARITIME CO INC, 5th Floor, 99, Akti Miaouli, 185 38, Piraeus, Greece; Registered Owner Number IMO 5967632 [VENEZUELA–EO13850].

Designated pursuant to section 1(a)(i) of E.O. 13850, as amended by E.O. 13857, for operating in the oil sector of the Venezuelan economy.

6. ALEL TECHNOLOGIES LLC, 778 Boylston Street, Unit 6B, Boston, MA 02199, United States; DE, United States; TX, United States; CA, United States; Tax ID No. 32071216470 (Texas) (United States); File Number 7136946 (Delaware) (United States) [VENEZUELA–EO13850].

Designated pursuant to section 1(a)(iv) of E.O. 13850, as amended by E.O. 13857, for being owned or controlled by LEAL JIMENEZ, Joaquin, a person whose property and interests in property are blocked pursuant to the Order.

7. COSMO RESOURCES PTE. LTD., 6 Raffles Quay #14–04/05, Singapore; Registration Number 202004238H (Singapore) [VENEZUELA–EO13850].

Designated pursuant to section 1(a)(iv) of E.O. 13850, as amended by E.O. 13857, for being owned or controlled by LEAL JIMENEZ, Joaquin, a person whose property and interests in property are blocked pursuant to the Order.

8. LIBRE ABORDO, S.A. DE C.V., Av. Constituyentes 345 Oficina 208, Colonia Daniel Garza, Alcaldia Miguel Hidalgo, C.P 11830, Mexico City, Mexico; RFC LAB100708RW2 (Mexico) [VENEZUELA–EO13850].

Designated pursuant to section 1(a)(i) and 1(a)(iii) of E.O. 13850, as amended by E.O. 13857, for operating in the oil sector of the Venezuelan economy and for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of PdVSA, a person whose property and interests in property are blocked pursuant to the Order.

9. LUZY TECHNOLOGIES LLC, 778 Boylston Street, Unit 6B, Boston, MA 02199, United States; DE, United States; File Number 7136973 (Delaware) (United States) [VENEZUELA–EO13850].

Designated pursuant to section 1(a)(iv) of E.O. 13850, as amended by E.O. 13857, for being owned or controlled by LEAL JIMENEZ, Joaquin, a person whose property and interests in property are blocked pursuant to the Order.

10. SCHLAGER BUSINESS GROUP S. DE R.L. DE C.V., Constituyentes 345 Oficina 208, Col. Daniel Garza, Alcaldia Miguel Hidalgo, C.P 11830, Mexico City, Mexico; RFC SBG1611153R6 (Mexico) [VENEZUELA–EO13850].

Designated pursuant to section 1(a)(i) and 1(a)(iii) of E.O. 13850, as amended by E.O. 13857, for operating in the oil sector of the Venezuelan economy and for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of PdVSA, a person whose property and interests in property are blocked pursuant to the Order.

11. WASHINGTON TRADING LTD, Address: 71–75 Shelton Street, Covent Garden, London WC2H 9JQ, United Kingdom; Company Number 12447296 (United Kingdom) [VENEZUELA–EO13850].

Designated pursuant to section 1(a)(iv) of E.O. 13850, as amended by E.O. 13857, for being owned or controlled by ZEPEDA ESPARZA, Olga Maria, a person whose property and interests in property are blocked pursuant to the Order.

On June 18, 2020, OFAC also identified the following vessels as property in which a blocked person has an interest under the relevant sanctions authority listed below:

Vessels

12. DELOS VOYAGER Crude Oil Tanker Panama flag; Vessel Registration Identification IMO 9273052 (vessel) [VENEZUELA–EO13850] (Linked To: DELOS VOYAGER SHIPPING LTD).

Identified pursuant to E.O. 13850, as amended by E.O. 13857, as property in which DELOS VOYAGER SHIPPING LTD, a person whose property and interest in property are blocked pursuant to E.O. 13850, as amended by E.O. 13857, has an interest.

13. EUROFORCE Crude Oil Tanker Liberia flag; Vessel Registration Identification IMO 9251585 (vessel) [VENEZUELA–EO13850] (Linked To: ROMINA MARITIME CO INC).

Identified pursuant to E.O. 13850, as amended by E.O. 13857, as property in which DELOS VOYAGER SHIPPING LTD, a person whose property and interest in property are blocked pursuant to E.O. 13850, as amended by E.O. 13857, has an interest.

Dated: June 18, 2020.

Andrea Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2020–13587 Filed 6–23–20; 8:45 am]

BILLING CODE 4810–AL–P

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 the names of one or more persons that have been removed from OFAC's Specially Designated Nationals and Blocked Persons List (SDN List). Their property and interests in property are no longer blocked, and U.S. persons are no longer generally prohibited from engaging in transactions with them. OFAC is also removing the name of two vessels that had been identified as blocked property.

DATES: See **SUPPLEMENTARY INFORMATION** section.

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 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 June 2, 2020, OFAC determined that the persons listed below met one or more of the criteria under Executive Order (E.O.) 13850, ''Blocking Property of Additional Persons Contributing to the Situation in Venezuela,'' as amended by Executive Order 13857, ''Taking Additional Steps to Address the National Emergency with Respect to Venezuela,'' of January 25, 2019. Also on June 2, 2020, OFAC identified the two vessels listed below as blocked property pursuant to E.O. 13850. On June 16, 2020, OFAC determined that circumstances no longer warrant the inclusion of the following entities and their property on the SDN List under this authority. These entities and vessels are no longer subject to the blocking provisions of Section 1(a) of E.O. 13850.

Entities

1. AFRANAV MARITIME LTD, Trust Company Complex, Ajeltake Road, Ajeltake Island, Majuro, MH 96960, Marshall Islands; Identification Number IMO 6063849 [VENEZUELA–EO13850].

2. SEACOMBER LTD, 94 Poseidonos Avenue & 2, Nikis Street, Glyfada, Athens 166 75, Greece; Identification Number IMO 4217141 [VENEZUELA–EO13850].

Vessels

1. ATHENS VOYAGER Crude Oil Tanker Panama flag; Vessel Registration Identification IMO 9337391 (vessel) [VENEZUELA–EO13850] (Linked To: AFRANAV MARITIME LTD).

2. CHIOS I Crude Oil Tanker Malta flag; Vessel Registration Identification IMO 9792187 (vessel) [VENEZUELA–EO13850] (Linked To: SEACOMBER LTD).

Dated: June, 16, 2020.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2020–13586 Filed 6–23–20; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Information Collection Request Submitted for Public Comment; Comment Request Relating to Annual Certification for Multiemployer Defined Benefit Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the 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. Currently, the IRS is soliciting comments concerning guidance to the annual certification for Multiemployer Defined Benefit Plans.

DATES: Written comments should be received on or before August 24, 2020 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224. Requests for additional information or copies of the regulations should be directed to Ronald J. Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington DC 20224, or through the internet, at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Annual Certification for Multiemployer Defined Benefit Plans.

OMB Number: 1545–2111.

Regulation Project Number: REG–151135–07.

Abstract: Section 432(b)(3)(A) requires an actuarial certification of whether a multiemployer plan is in endangered status, and whether a multiemployer plan is or will be in critical status, for each plan year. This certification must be completed by the 90th day of the plan year and must be provided to the Secretary of the Treasury and to the plan sponsor. If the certification is with respect to a plan year that is within the plan's funding improvement period or rehabilitation period arising from a prior certification of endangered or critical status, the actuary must also certify whether the plan is making scheduled progress in meeting the requirements of its funding improvement or rehabilitation plan.

Actuaries submit certifications in various formats and lengths. The creation of an established form would limit the submissions to the information required within an annual certification, reducing the burden to all those affected.

Current Actions: This is a new request for a proposed form for actuaries to report the funding status of multiemployer defined benefit retirement plans. Actuaries have been required to submit certifications regarding plans' funding statuses since 2008 under IRC 432, but we are proposing a form to encourage consistency of the format of certifications submitted annually and to simplify the process.

Type of Review: Existing collection in use without an OMB control number.

Affected Public: Not-for-profit institutions, business or other for-profit organizations.

Estimated Number of Respondents: 1,600.

Estimated Time per Respondent: 45 min.

Estimated Total Annual Burden Hours: 1,200.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: June 16, 2020.

Ronald J. Durbala,

IRS Tax Analyst.

[FR Doc. 2020–13519 Filed 6–23–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request on Burden Related to the Quarterly Federal Excise Tax Return

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the 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. Currently, the IRS is soliciting comments concerning the burden associated with the quarterly federal excise tax return.

DATES: Written comments should be received on or before August 24, 2020 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224. Requests for additional information or copies of the regulations should be directed to Ronald J. Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington DC 20224, or through the internet, at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Quarterly Federal Excise Tax Return.

OMB Number: 1545–0023.

Form Number: 720.

Abstract: Excise taxes are taxes paid when purchases are made on a specific good, such as gasoline. 26 U.S.C. 4081 imposes tax for miscellaneous excise taxes, manufacturers excise taxes, automotive and related items, petroleum products and motor and aviation fuel. Form 720, Quarterly Federal Excise Tax Return, is used to report liability by IRS number and to pay the excise taxes listed on the form.

Current Actions: Updated filing estimates will result in a decrease to the estimated annual respondents by 225,744 responses per year. This decrease will lower the burden by an estimated 2,302,176 hours. This request is being submitted for renewal purposes.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 180,000.

Estimated Time per Respondent: 12 hours 4 min.

Estimated Total Annual Burden Hours: 2,173,641.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: June 18, 2020.

Ronald J. Durbala,

IRS Tax Analyst.

[FR Doc. 2020–13648 Filed 6–23–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Privacy Act of 1974, as amended

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed modification to Privacy Act system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the Department of the Treasury, Internal Revenue Service, gives notice of proposed modifications to system of records entitled: Treasury/IRS 60.000 Employee Protection System Records.

DATES: Submit comments on or before July 24, 2020. The new and modified routine uses will be applicable on July 24, 2020. This altered system of records will be effective October 1, 2020, unless the IRS receives comments that would result in a contrary determination.

ADDRESSES: Comments should be sent to the Office of Privacy, Governmental Liaison and Disclosure, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224. Members of the public desiring specific information concerning this notice may request information at the address provided above.

FOR FURTHER INFORMATION CONTACT: John J. Walker, Associate Director, Incident Management & Employee Protection, IRS Office of Privacy, Governmental Liaison and Disclosure, (267) 466–2416 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The proposed revisions will enable better awareness of potential risks and will increase safety and security for current and former IRS employees. The Potentially Dangerous Taxpayer (PDT) designation improves the Service's ability to identify individuals who represent a potential danger to employees, including individuals who have physically assaulted, threatened, or intimidated employees or are of members of groups that advocate violence against IRS employees or other federal employees. The Caution Upon Contact (CAU) designation is used when the threat is less severe, the taxpayer threatens suicide, or when the taxpayer files or threatens to file a frivolous lien or a frivolous criminal or civil legal action. Continual program introspection and the current landscape for IRS staff having contact with the public, including self-radicalization, prompted the IRS to reevaluate the Office of Employee Protection (OEP) program and institute a higher level of protection for its employees. To accomplish this the IRS is planning to (1) add information about individuals who threaten former IRS employees related to their prior work performing official IRS duties, (2) add information about individuals who are advocating violence against U.S. Government employees in general or demonstrating violent tendencies against U.S. Government employees of other federal agencies, (3) remove the ''active'' qualifier, as it applies to membership in group(s) advocating violence, and (4) add a specific time-period during which the individual's activity will be considered (within the past 10 years) to ensure an accurate, comprehensive, and complete analysis is completed before a potentially dangerous taxpayer (PDT) or caution upon contact (CAU) designation is assigned. The purpose statement is amended to reflect these revisions. Pursuant to Office of Management and Budget (OMB) Memorandum M–17–12, an additional routine use is added to ensure that IRS can assist another agency in responding to a confirmed or suspected breach, as appropriate. As required by the Privacy Act of 1974, 5 U.S.C. 552a(r), a report of altered system of records has been provided to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Office of Management and Budget. The proposed modifications to the system of records are published below.

Ryan Law,

Deputy Assistant Secretary for Privacy, Transparency, and Records.

SYSTEM NAME AND NUMBER:

Department of the Treasury, IRS 60.000—Employee Protection System Records

SECURITY CLASSIFICATION:

Information contained in this system is unclassified.

SYSTEM LOCATION:

Records are maintained at the Internal Revenue Service Headquarters in Washington, DC and field and campus offices at the following addresses, 1111 Constitution Avenue NW, Washington, DC 20224; 500 Woodward Avenue, Detroit, MI 48226; and 2970 Market Street, Philadelphia, PA 19104.

SYSTEM MANAGER(S):

Chief, Office of Employee Protection, 500 Woodward Avenue, Detroit, MI 48226, (313) 628–3742.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 26 U.S.C. 7801.

PURPOSE(S) OF THE SYSTEM:

This system of records maintains records that reflect attempts or intention to obstruct or impede current or former IRS employees or contractors in the performance of their official duties, including records of investigations into the individual's actions and records of conclusions as to whether an individual should be considered potentially dangerous to any such employee, contractor, or their immediate family members, or should otherwise be approached with caution.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals attempting to interfere with the administration of internal revenue laws through assaults, threats, suicide threats, filing or threats of filing frivolous criminal or civil legal actions against Internal Revenue Service (IRS) employees, (current for former) or IRS contractors or the employees' or contractors' immediate family members, or through forcible interference against any officer, government contractor or employee while discharging the official duties at his/her position. An individual is designated as a PDT based on reliable information furnished to the IRS or Treasury Inspector General for Tax Administration (TIGTA), that fits any of the criteria (1) through (6) below: (1) Individuals who, within the past 10 years, have physically assaulted an IRS employee, a former employee, a contractor, or an immediate family member of an IRS employee, a former employee or a contractor; (2) Individuals who, within the past 10 years, have intimidated or threatened an IRS employee, a former employee, a contractor, or an immediate family member of an IRS employee, a former employee, or a contractor through specific threats of bodily harm, a show of weapons, the use of animals, or through other specific threatening behavior (*e.g.,* stalking, etc.); (3) Individuals who, within the past 10 years, have advocated violence against IRS employees where advocating such violence could reasonably be understood to threaten the safety of Service employees and/or impede the performance of Service duties; (4) Individuals who, within the past 10 years, have been members of, or affiliated with groups that advocate violence against IRS employees, where advocating such violence could reasonably be understood to threaten the safety of Service employees or impede the performance of Service duties; (5) Individuals who, within the past 10 years, have committed the acts set forth in any of the preceding criteria, but whose acts have been directed against employees or contractors of other governmental agencies; (6) Individuals who are not classified as PDTs through application of the above criteria, but whose acts within the past 10 years have demonstrated a propensity for violence. An individual is designated as an individual who should be approached with caution (CAU) based on reliable information furnished to the IRS or the TIGTA that fits any of the criteria (1) through (3) below: (1) Individuals who, within the

past 10 years, have threatened physical harm that is less severe or immediate than necessary to satisfy PDT criteria. (2) Individuals who, within the past 10 years, have threatened suicide, (3) Individuals who, within the past 10 years, have filed or threatened to file a frivolous lien or a frivolous civil or criminal legal action against an IRS employee, a former employee, a contractor, or an immediate family member of an IRS employee, a former employee, or contractor.

PDT and CAU designations will be reviewed at or near every five years from the date of the initial or the last renewal of the designation to determine whether the circumstances leading to the designation, and any new relevant information about the individual's conduct, continue to indicate potential danger to IRS employees, former employees, contractors, or their family members. If these facts and circumstances continue to indicate potential danger, the designation will be renewed for, and subject to review after, an additional five years.

CATEGORIES OF RECORDS IN THE SYSTEM:

- Individual's name;
- Business name;
- Date of birth;
- Date of death;
- Gender;
- Taxpayer Identification Number (TIN) (*e.g.,* Social Security Number (SSN), Employer Identification Number (EIN), or similar number assigned by the IRS);
- Centralized Authorization Files (CAF) numbers;
- Addresses;
- Documentary evidence of the incident (*e.g.,* threatening correspondence, copies of liens and legal actions, and contact recording transcripts);
- Documentation of investigation of incident (report of investigation, statements, affidavits, and related tax information);
- Records of any legal action resulting from the incident;
- FBI or Police records of individual named in the incident;
- Newspaper or periodical items or information from other sources provided to the IRS or TIGTA for investigation of individuals who have demonstrated a clear propensity toward violence;
- Correspondence regarding the reporting of the incident, referrals for investigation, investigation of the incident; and result of investigation (*i.e.* designation as PDT or CAU).

RECORD SOURCE CATEGORIES:

Records are obtained from other IRS offices and the Treasury Inspector General for Tax Administration (TIGTA).

ROUTINE USES: OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Material covered by rule 6(e) of the Federal Rules of Criminal Procedure may be disclosed only as permitted by that rule. All other records may be used as described below if the IRS deems that the purpose of the disclosure is compatible with the purpose for which IRS collected the records, and no privilege is asserted.

(1) Disclose information to the Department of Justice (DOJ) when seeking legal advice, or for use in any proceeding, or in preparation for any proceeding, when: (a) The IRS or any component thereof; (b) any IRS employee in his or her official capacity; (c) any IRS employee in his or her individual capacity if the IRS or the DOJ has agreed to provide representation for the employee; or (d) the United States is a party to, has an interest in, or is likely to be affected by the proceeding, and the IRS determines that the records are relevant and useful.

(2) Disclose information in a proceeding (including discovery) before a court, administrative tribunal, or other adjudicative body when: (a) The IRS or any component thereof; (b) any IRS employee in his or her official capacity; (c) any IRS employee in his or her personal capacity if the IRS or DOJ has agreed to provide representation for the employee; or (d) the United States is a party to, has an interest in, or is likely to be affected by, the proceeding and the IRS or DOJ determines that the information is relevant and necessary to the proceeding. Information may be disclosed to the adjudicative body to resolve issues of relevancy, necessity, or privilege pertaining to the information.

(3) Disclose information to a Federal, state, local, or tribal agency, or other public authority, which has requested information relevant or necessary to hiring or retaining an employee, or issuing or continuing a contract, security clearance, license, grant, or other benefit.

(4) Disclose information to an appropriate Federal, state, local, tribal, or foreign agency, or other public authority, responsible for implementing or enforcing, or for investigating or prosecuting the violation of, a statute, rule, regulation, order, or license, when a record on its face, or in conjunction with other records, indicates a potential violation of law or regulation and the information disclosed is relevant to any regulatory, enforcement, investigative, or prosecutorial responsibility of the receiving authority.

(5) Disclose information to the news media as described in the IRS Policy Statement P–1–183, News Coverage to Advance Deterrent Value of Enforcement Activities Encouraged, IRM 1.2.1.2.41.

(6) Disclose information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation.

(7) To appropriate agencies, entities, and persons when (1) the Department of the Treasury and/or Treasury bureau suspects or has confirmed that there has been a breach of the system of records; (2) the Department of the Treasury and/or Treasury bureau has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department of the Treasury and/or Treasury bureau (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department of the Treasury's and/or Treasury bureau's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(8) To another Federal agency or Federal entity, when the Department of the Treasury and/or Treasury bureau determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records in this system are stored electronically or on paper in secure facilities in a locked drawer behind a locked door.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by name or Social Security Number (SSN) of individual with respect to whom the PDT or CAU designation is being considered and by administrative case control number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are managed in accordance with National Archives and Records Administration (NARA) General Records Schedule 5.6 item 170 & 171.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable Treasury automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer system containing the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' below.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' below.

NOTIFICATION PROCEDURES:

The Secretary of Treasury has exempted this system from the notification, access, and amendment procedures of the Privacy Act because it is a law enforcement system. However, Treasury, IRS will consider individual requests to determine whether information may be released. Thus, individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendices A–M. Requests for information and requests for records should be marked ''Privacy Act Request'' on the outside and mailed to the following address: Internal Revenue Service, Disclosure Scanning Operation—Stop 93A, Post Office Box 621506, Atlanta, GA 30362–3006.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 31 CFR 1.36. You must first verify your identity, meaning that you must provide your full name, current address and date and place of birth. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. No specific form is required. In addition you should provide the following:

- An explanation of why you believe the Department would have information on you;
- Identify which bureau(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created;
- Provide any other information that will help the Bureau or Freedom Of Information Act staff determine which Treasury Bureau may have responsive records; and
- If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records.

Without this bulleted information the Bureau(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

The Secretary of Department of the Treasury has exempted this system from the following provisions of the Privacy Act, subject to the limitations set forth in 5 U.S.C. 552a(c)(3), (d)(1)–(4), (e)(1), (e)(4)(G)–(I) and (f) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). (See 31 CFR 1.36.).

HISTORY:

Notice of this system of records was last published in full in the **Federal Register** on Sept. 8, 2015 (80 FR 54063) as the Department of the Treasury, IRS 60.000—Employee Protection System Records.

[FR Doc. 2020–12898 Filed 6–23–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request on Burden Related to the Enhanced Oil Recovery Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the 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. Currently, the IRS is soliciting comments concerning the burden associated with a qualified enhanced oil recovery project.

DATES: Written comments should be received on or before August 24, 2020 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6529, 1111 Constitution Avenue NW, Washington, DC 20224. Requests for additional information or copies of the regulations should be directed to Ronald J. Durbala, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW, Washington DC 20224, or through the internet, at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Enhanced Oil Recovery Project.

OMB Number: 1545–1292.

Regulation Project Number: TD 8448.

Abstract: For purpose of section 43 of the Code, this document provides final regulations relating to the enhanced oil recovery credit for certain costs that are paid or incurred in connection with a qualified enhanced oil recovery project. Changes to the applicable law were made by the Omnibus Budget Reconciliation Act of 1990. These final regulations provide the public with guidance in determining the costs that are subject to the credit, the circumstances under which the credit is available, and the procedures whereby a project is certified as a qualified enhanced oil recovery project.

Current Actions: As of September 20, 2019, Form 8830 has been made a historical product since the enhanced oil recovery claimed on this form is completely phased out. This will decrease the number of responses by 1,550 and annual burden by 11,067 hours. This request is being submitted for renewal purposes.

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 20.

Estimated Time per Respondent: 73 hours.

Estimated Total Annual Burden Hours: 1,460.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be

retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: June 18, 2020.

Ronald J. Durbala,

IRS Tax Analyst.

[FR Doc. 2020–13649 Filed 6–23–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Internal Revenue Service Research Applied Analytics & Statistics (RAAS) Comprehensive Taxpayer Attitude Survey

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on these requests.

DATES: Comments should be received on or before July 24, 2020 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Molly Stasko by emailing *PRA@treasury.gov,* calling (202) 622–8922, or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

Internal Revenue Service (IRS)

Title: Comprehensive Taxpayer Attitude Survey.

OMB Control Number: 1545–2288.

Type of Review: Reinstatement of a previously approved information collection.

Description: The Internal Revenue Service (IRS) conducts the Comprehensive Taxpayer Attitude Survey as part of the Service-wide effort to maintain a system of balanced organizational performance measures mandated by the IRS Restructuring and Reform Act (RRA) of 1998. This is also a result of Executive Order 12862 that requires all government agencies to survey their customers.

The IRS' office of Research Applied Analytics & Statistics (RAAS) is sponsoring this annual survey (formerly conducted by the IRS Oversight Board) with the objective of better understanding what influences taxpayers' tax compliance, their opinions of the IRS, and their customer service preferences, as well as how these taxpayer views change over time.

Affected Public: Individuals or households.

Estimated Number of Respondents: 39,273.

Frequency of Response: Annually.

Estimated Total Number of Annual Responses: 39,273.

Estimated Time per Response: 0.5 minutes (screenings), 23 minutes (surveyed participants).

Estimated Total Annual Burden Hours: 1,111.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: June 18, 2020.

Spencer W. Clark,

Treasury PRA Clearance Officer.

[FR Doc. 2020–13562 Filed 6–23–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0613]

Agency Information Collection Activity Under OMB Review: Record Keeping at Flight Schools

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Refer to ''OMB Control No. 2900–0613.

FOR FURTHER INFORMATION CONTACT: Danny S. Green, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 421–1354 or email *danny.green2@va.gov.* Please refer to ''OMB Control No. 2900–0613'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 3690(c); 38 CFR 21.4263(h)(3).

Title: Record Keeping at Flight Schools.

OMB Control Number: 2900–0613.

Type of Review: Revision of a currently approved collection.

Abstract: The State approving agencies that approve courses for VA training use these records to determine if courses offered by flight schools should be approved. VA representatives use the records to determine the accuracy of payments made to VA students at flight schools.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on APR 17, 2020, at page 21512–21513.

Affected Public: Businesses or other for Profit or Not for Profit Schools.

Estimated Annual Burden: 557 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: Annual.

Actual Number of Respondents: 1,672.

By direction of the Secretary.

Danny S. Green,

VA PRA Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2020–13598 Filed 6–23–20; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0797]

Agency Information Collection Activity Under OMB Review: Principles of Excellence Complaint System Intake

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Refer to ''OMB Control No. 2900–0797''.

FOR FURTHER INFORMATION CONTACT: Danny S. Green, Enterprise Records Service (005R1B) Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 421–1354 or email *danny.green2@va.gov.* Please refer to ''OMB Control No. 2900–0797'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 13607.

Title: Principles of Excellence Complaint System Intake.

OMB Control Number: 2900–0797.

Type of Review: Revision of a currently approved collection.

Abstract: The respondent submits a complaint about an educational institution online through either the GI Bill website or the eBenefit portal. The information gathered can only be obtained from the individual respondents. Valid complaints will be accepted from third parties. The intake process for both DoD's and VA's complaint system share common data elements, but have some modifications specific to each agency's complaint handling process:

VA:

- *Institution/Employer:* There are over 36,000 educational institutions that are approved for VA education benefits, while DoD has less than 7,000.
- *Anonymous Complaints:* PoECS allows for a user to file anonymous complaints. Based on working group discussions with CFPB and FTC, VA believes that allowing anonymous complaints will garner more ground truth on what is happening with veterans using their education benefits at different schools.
- *Required fields:* As a result of allowing anonymous complaints, many of the fields that DoD requires a user to fill will not be required by VA.

DoD:

- *Education Centers:* DoD requires education center information that does not fall within the purview of VA.
- *Military Branch/Rank:* DoD requires a user to select a service affiliation and pay grade.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 85 FR 65 on April, 3, 2020, pages 19075 and 19076.

Affected Public: Individuals or Households.

Estimated Annual Burden: 399 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,596.

By direction of the Secretary.

Danny S. Green,

VA Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2020–13602 Filed 6–23–20; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 85 Wednesday,

No. 122 June 24, 2020

Part II

The President

Proclamation 10051—Father's Day, 2020

Federal Register
Vol. 85, No. 122
Wednesday, June 24, 2020

Presidential Documents

Title 3—

The President

Proclamation 10051 of June 19, 2020

Father's Day, 2020

By the President of the United States of America

A Proclamation

Fathers are instrumental in helping prepare children for life, instilling in them the values essential to one day becoming responsible, grounded, and successful adults. As a Nation, we are grateful to the men dedicated to raising well-rounded children. On Father's Day, we honor and celebrate our fathers and father figures for their daily contributions to thriving families and communities.

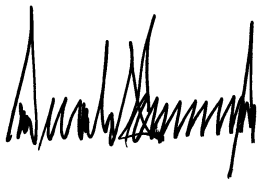
The presence of fathers in the lives of our Nation's children is important to their growth, development, and well-being. Fathers serve as role models to their children, exemplifying hard work, devotion to family, self-confidence, and faith. Through their character, determination, strength, and direction, they guide our futures toward happiness. Thus, it is no surprise that research increasingly shows involved fathers can help foster self-esteem, success in school, empathy, and positive behavior in their children.

By raising children to be happy, productive, and responsible adults, fathers play a critical role in shaping our society. Our fathers set an example for us of how to be our best in every aspect of our lives. The lessons they teach us guide us as we strive to care for our families, succeed at school and at work, serve others, and contribute to our communities. They are integral to raising future generations of Americans who will continue to build an ever-stronger Nation. That is why my Administration continues to provide grant funding to organizations across our country that work to strengthen relationships between fathers and their children, foster responsible parenting, and help fathers find and keep gainful employment.

Our Nation is indebted to the men who have embraced the great blessing and solemn duty of fatherhood. Every day, they make sacrifices to ensure their children, whether by birth, adoption, or foster care, receive the care and affection they deserve. Today, we express our everlasting gratitude to our fathers and father figures for their love and commitment, and for all they have done to shape our lives.

NOW, THEREFORE, I, DONALD J. TRUMP, President of the United States of America, in accordance with a joint resolution of the Congress approved April 24, 1972, as amended (36 U.S.C. 109), do hereby proclaim June 21, 2020, as Father's Day. I call on United States Government officials to display the flag of the United States on all Government buildings on Father's Day and invite State and local governments and the people of the United States to observe Father's Day with appropriate ceremonies.

IN WITNESS WHEREOF, I have hereunto set my hand this nineteenth day of June, in the year of our Lord two thousand twenty, and of the Independence of the United States of America the two hundred and forty-fourth.



[FR Doc. 2020–13776
Filed 6–23–20; 11:15 am]
Billing code 3295–F0–P

Reader Aids

Federal Register

Vol. 85, No. 122

Wednesday, June 24, 2020

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations

General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6050**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.govinfo.gov.**

Federal Register information and research tools, including Public Inspection List and electronic text are located at: **www.federalregister.gov.**

E-mail

FEDREGTOC (Daily Federal Register Table of Contents Electronic Mailing List) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new**, enter your email address, then follow the instructions to join, leave, or manage your subscription.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html and select** *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

FEDERAL REGISTER PAGES AND DATE, JUNE

32977–33526 1
33527–34084 2
34085–34352 3
34353–34492 4
34493–34956 5
34957–35164 8
35165–35372 9
35373–35544 10
35545–35796 11
35797–36138 12
36139–36306 15
36307–36466 16
36467–36714 17
36715–36994 18
36995–37330 19
37331–37546 22
37547–37730 23
37731–38030 24

CFR PARTS AFFECTED DURING JUNE

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

910 32977

3 CFR

Proclamations:
9496 (amended by Proc. 10049) 35793
10043 34353
10044 34941
10045 34943
10046 34945
10047 34947
10048 34949
10049 35793
10050 36467
10051 38029

Executive Orders:
13925 34079
13926 34951
13927 35165
13928 36139
13929 37325

Administrative Orders:
Memorandums:
Memorandum of April 14, 2020 35797
Memorandum of June 2, 2020 34955
Memorandum of June 4, 2020 35171
Notices:
Notice of June 11, 2020 36137
Notice of June 17, 2020 37329
Presidential Determinations:
No. 2020–06 of June 5, 2020 36995

5 CFR

2634 36715
2635 36715

6 CFR

27 36469

Proposed Rules:
27 37393

7 CFR

1 34085
3 36670
9 35799
400 36670
761 36670
765 36670
766 36670
772 36670
792 36670
985 35545
1403 36670
1951 36670
1956 36670

Proposed Rules:
205 34651
301 34537
966 35222

8 CFR

208 37502
270 36469
274a 36469
280 36469

Proposed Rules:
208 36264
235 36264
1003 36264
1208 36264
1235 36264

9 CFR

Proposed Rules:
7 35812
310 33031
352 33034

10 CFR

9 33527
34 36307
35 33527
36 36307
39 36307
50 34087
72 36307
170 37250
171 37250

Proposed Rules:
9 33581
35 33581
72 33582
170 34370
429 35700
430 ..... 35382, 35700, 36512
431 ..... 33036, 34111, 34541, 35382, 35383, 35394, 36517

12 CFR

3 32980
6 32980
7 ..... 33530, 35373
8 37731
25 34734
30 32991
160 33530
195 34734
208 ..... 32980, 32991
217 32980
324 32980
364 32991
741 32991
Ch. X 37331
1005 34870

Proposed Rules:
745 34545

Ch. X....37394
1026....36938

13 CFR

120....33004, 33010, 35550, 36308, 36717, 36997
121....35550

14 CFR

29....34493
39....34088, 34090, 34597, 34599, 35175, 35177, 35553, 35555, 36143, 36145, 36312, 36318, 37000, 37333, 37547, 37549, 37551
71....33536, 34602, 34604, 36320, 37003, 37551, 37556, 37558, 37559, 37560
97....35800, 35803

Proposed Rules:

25....36351
39....33043, 33046, 33583, 34118, 34121, 34136, 34139, 34141, 34371, 34375, 34655, 34656, 34658, 34661, 34664, 35227, 35602, 35604, 35812, 35814, 35816, 36352, 36519, 36816, 37031, 37591
71....33587, 33589, 33590, 34144, 34146, 34148, 34666, 35229, 35231, 35818, 36172, 36174, 36355, 37033, 37593, 37595, 37596, 37598

15 CFR

4a....35374
744....34495, 34503, 36719
748....36483
772....36719
774....34306, 36483

16 CFR

1253....33015

Proposed Rules:

317....34548

17 CFR

1....37734
39....35805
229....33290
230....33290
232....33290
239....33290
240....33020, 33290
243....33290
249....33290
270....33290
274....33290

Proposed Rules:

1....36000
3....35820
4....36000
41....36000
190....36000

18 CFR

Ch. 1....36321

19 CFR

Ch. 1....37744, 37745
4....36469

Proposed Rules:

24....34549, 34836
111....34549, 34836
360....37397

21 CFR

112....34508
573....33538
1308....34607, 36148

Proposed Rules:

1308....36819

22 CFR

42.34....36323
120....35376
122....35376
123....35376
124....35376
129....35376
531....36150

25 CFR

63....37562
293....37747

26 CFR

1....35557

Proposed Rules:

1....34050, 35233, 35398, 35606, 35746, 35835, 37599
53....35746

27 CFR

9....34095
18....33539
19....33539
24....33539
25....33539
26....33539
27....33539
28....33539
30....33539
70....33539

28 CFR

16....37748
85....37004
540....37335

29 CFR

541....34609
778....34610
1614....35558
4022....36153
4044....36153

Proposed Rules:

1614....33049

30 CFR

550....34912

31 CFR

569....34510

32 CFR

104....34518
199....34101
321....37751

Proposed Rules:

507....35846

33 CFR

27....36469
100....33543, 33547, 34633, 34634, 37337, 37339
117....33550
165....33553, 33561, 33566, 33568, 33570, 34104, 34519, 34520, 34639, 34641, 35806, 36328, 36492, 37011
165.151....37564
207....34643
326....34643

Proposed Rules:

100....33592, 35404
165....34668, 37397
166....37034

34 CFR

361....33021
668....36494
Ch. III....36329

Proposed Rules:

Ch. III....34554

36 CFR

13....35181

Proposed Rules:

251....34378

37 CFR

1....36335
201....37341
202....37341
360....37752

Proposed Rules:

2....37040
7....37040
201....34150, 37399

38 CFR

9....35562
21....37753
71....34522

39 CFR

3030....35807

Proposed Rules:

551....35404
3050....37403

40 CFR

9....35191
52....33021, 33023, 33571, 34106, 34108, 34357, 34524, 35198, 35377, 35809, 36154, 36161, 36342, 36343, 36504, 36748, 37565
62....37568
63....34326
70....33023
81....35377, 37756
174....34646
180....34359, 36752, 36755, 37013, 37760
228....35564
271....33026
282....34361, 37347
300....37571, 37763
372....37354
721....35191

Proposed Rules:

52....33049, 33052, 34379, 34381, 34559, 34671, 34673, 34675, 34677, 34681, 34686, 35607, 35852, 36359, 36823, 37405, 37411
80....34688
81....34381
82....35874
83....35612, 37057
174....37806
180....33059, 37806
282....34395, 37413
300....36368, 37615, 37617, 37619, 37808
721....36175
745....37810

41 CFR

51–8....37778

Proposed Rules:

102–35....35236
102–36....35236
102–37....35236
102–38....35236
102–39....35236
102–40....35236

42 CFR

417....33796
422....33796
423....33796
438....37160
440....37160
460....37160

Proposed Rules:

136....36182
136a....37414
433....37286
438....37286
447....37286
456....37286

43 CFR

Proposed Rules:

5000....34689
5400....34689
5410....34689
5420....34689
5430....34689
5440....34689
5450....34689
5460....34689
5470....34689
5500....34689

44 CFR

64....36507, 37019
67....34648

45 CFR

86....37160
92....37160
147....37160
155....37160
156....37160
302....35201
303....35201
305....35201
307....35201
309....35201
1168....35566

Proposed Rules:

153....33595

47 CFR

0....34525
1....33578, 36758, 37364
2....33578
11....35567
51....35208
54....33578, 34525, 36758, 37022
73....35567, 36786
74....35567
76....36798

Proposed Rules:

1....35405, 36522

2 35405
18 35405
54 ....35627, 36522
64 35406

48 CFR

201 34527
206 34528
208 34530
210 34530
212 34530
215 ....34530, 34532
218 34527
219 34528
225 34533
234 34530
249 34535
252 ....34535, 34536
804 36348
805 36348
849 36348
852 36348
Proposed Rules:
2 34561
9 34561
15 34561
19 ....34155, 34561
42 34155
52 ....34155, 34561
204 34569
212 34569
239 34576
252 ....34569, 34576
825 35238

49 CFR

29 33494
350 37785
355 37785
385 33396
388 37785
395 33396
1503 36469
Proposed Rules:
191 35240
192 35240
572 33617

50 CFR

17 ....35574, 37576
216 35379
300 ....35379, 37023, 37376
622 ....36164, 36165, 36166
635 37390
648 ....33027, 33579, 35209, 36802
660 ....35210, 35594, 36803, 37027
679 ....35381, 36509
Proposed Rules:
17 ....33060, 35510
21 34578
36 35628
218 33914

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List June 19, 2020

Public Laws Electronic Notification Service (PENS)

PENS is a free email notification service of newly enacted public laws. To subscribe, go to *https://listserv.gsa.gov/cgi-bin/wa.exe?SUBED1=PUBLAWS-L&A=1*

Note: This service is strictly for email notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.