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

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 185

RIN 3206–AN39

Program Fraud Civil Remedies: Civil Monetary Penalty Inflation Adjustment

AGENCY: Office of Personnel Management (OPM).

ACTION: Final rule.

SUMMARY: This rule adjusts the level of civil monetary penalties contained in U.S. Office of Personnel Management regulations implementing the Program Fraud Civil Remedies Act of 1986.

DATES: Effective August 13, 2020.

FOR FURTHER INFORMATION CONTACT: Alan Miller, Office of the General Counsel, Office of Personnel Management, 1900 E St. NW, Washington, DC 20415, *Matthew.Donohue@opm.gov,* (202) 606–1700.

SUPPLEMENTARY INFORMATION:

Background

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114–74) (''the Act''). The Act required agencies to: (1) Adjust the level of civil monetary penalties with an initial ''catch-up'' adjustment through an interim final rulemaking, and (2) make subsequent annual adjustments for inflation. The purpose of these adjustments is to maintain the deterrent effect of civil penalties. OPM has updated the agency's monetary penalties annually since the passage of the 2015 Act.

This rule takes into account adjustments for the year 2020 based on inflation for that year. These calculations were made based on guidance contained in Office of Management and Budget Memorandum M–20–05:

CFR citation	Description of the penalty	Current penalty	2020 inflation adjustment
5 CFR 185.103(a)	Civil Penalty for False Claims	$11,463	$11,665
5 CFR 185.103(f)(2)	Civil Penalty for False Statements	11,463	11,665

This final rule is being issued without prior public notice or opportunity for public comments. The 2015 Act's amendments to the Inflation Adjustment Act required the agency to adjust penalties initially through an interim final rulemaking, which did not require the agency to complete a notice and comment process prior to promulgating the interim final rule. The amendments also explicitly required the agency to make subsequent annual adjustments notwithstanding 5 U.S.C. 553 (the section of the Administrative Procedure Act that normally requires agencies to engage in notice and comment). The formula used for adjusting the amount of civil penalties is given by statute, with no discretion provided to OPM regarding the computation of the adjustments. OPM is charged only with performing ministerial computations to determine the amount of adjustment to the civil penalties due to increases in the Consumer Price Index for all Urban Consumers (CPI–U).

Calculation of Adjustment

The Office of Management and Budget (OMB) issues guidance annually on calculating adjustments. Under this guidance, OPM has identified applicable civil monetary penalties and calculated the annual adjustment. A civil monetary penalty is any assessment with a dollar amount that is levied for a violation of a Federal civil statute or regulation, and is assessed or enforceable through a civil action in Federal court or an administrative proceeding. A civil monetary penalty does not include a penalty levied for violation of a criminal statute, or fees for services, licenses, permits, or other regulatory review. The calculated catch-up adjustment is based on the percent change between the Consumer Price Index for all Urban Consumers (CPI–U) for the month of October in the year of the previous adjustment (or in the year of establishment, if no adjustment has been made) and the October 2015 CPI–U.

Office of Management and Budget Memorandum M–20–05 stated that the cost of living multiplier for calculating adjustments in 2020 was 1.01764. This multiplier is to be applied to the current level of civil monetary penalties for agencies. When OPM's current penalties of $11,463 are multiplied by 1.01764, the resulting penalty amount is $11,665.

Regulatory Impact Analysis: Executive Order 12866, as Supplemented by Executive Order 13563

OPM, with the concurrence of the Office of Management and Budget (OMB), has determined that this is not a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Therefore, no regulatory impact analysis is required.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. See 5 U.S.C. 603(a) and 604(a). The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 *requires* agencies to adjust civil penalties annually. No discretion is allowed. Thus, the RFA does not apply to this final rule.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2))

This rule is not a major rule under the Small Business Regulatory Enforcement Fairness Act. This rule:

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

(b) Will not cause a major increase in costs or prices for consumers,

individual industries, Federal, State, or local government agencies, or geographic regions.

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

Unfunded Mandate Reform Act of 1995 (2 U.S.C. 1532)

This rule does not involve 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 and that such rulemaking will not significantly or uniquely affect small governments.

E.O. 12630, Takings

This rule does not have takings implications.

E.O. 13132, Federalism

This rule does not have federalism implications. The rule does 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.

E.O. 12988, Civil Justice Reform

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Does not unduly burden the judicial system.

(b) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(c) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

E.O. 13175, Consultation With Indian Tribes

In accordance with Executive Order 13175, OPM has evaluated this rule and determined that it has no tribal implications.

Paperwork Reduction Act

This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13.

List of Subjects in 5 CFR Part 185

Program fraud civil remedies, Claims, Penalties, Basis for civil penalties and assessments.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

For the reasons set forth in the preamble, amend part 185 of title 5 of the Code of Federal Regulations as follows:

PART 185—PROGRAM FRAUD CIVIL REMEDIES: CIVIL MONETARY PENALTY INFLATION ADJUSTMENT

■ 1. The authority citation for part 185 continues to read:

Authority: 28 U.S.C. 2461 note; 31 U.S.C. 3801–3812.

§ 185.103 [Amended]

■ 2. Amend § 185.103 by:

■ a. In paragraph (a), revising ''$11,463'' to read as ''$11,665''.

■ b. In paragraph (f)(2), revising ''$11,463'' to read as ''$11,665''.

[FR Doc. 2020–13461 Filed 7–13–20; 8:45 am]

BILLING CODE 6325–48–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 253

[FNS–2019–0048]

RIN 0584–AE78

Food Distribution Program on Indian Reservations: Two-Year Administrative Funding Availability and Substantial Burden Waiver Signatory Requirement

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Final rule.

SUMMARY: Through this rulemaking, the U.S. Department of Agriculture's (the Department or USDA) Food and Nutrition Service (FNS) is codifying a revised statutory requirement included in the Agriculture Improvement Act of 2018. The 2018 Farm Bill at section 4003 requires FDPIR administrative funds to remain available for obligation at the Indian Tribal Organization (ITO) and State agency level for a period of two Federal fiscal years. This provision was self-executing and went into effect upon enactment of the 2018 Farm Bill in Federal fiscal year (FY) 2019. This final rulemaking will also amend the Department's previous implementation of the 2018 Farm Bill provision on the administrative match waiver requirement based on substantial burden.

DATES: This rule is effective July 14, 2020.

FOR FURTHER INFORMATION CONTACT: Barbara Lopez, Program Analyst, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, Alexandria, Virginia 22314 or email *Barbara.Lopez@usda.gov*.

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B. Implementation Memorandum
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III. Revision of State Agency/ITO Administrative Match Waiver Requirements
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IV. Procedural Matters

I. Discussion of Final Rule

In the following discussion and regulatory text, the term ''State agency,'' as defined at 7 CFR 253.2, is used to include ITOs authorized to administer FDPIR and the Food Distribution Program for Indian Households in Oklahoma (FDPIHO) in accordance with 7 CFR parts 253 and 254. The term ''FDPIR'' is used in this rulemaking to refer collectively to FDPIR and FDPIHO.

On December 20, 2018, the 2018 Farm Bill was signed into law. Section 4003 of the 2018 Farm Bill included FDPIR-specific provisions and modified Section 4(b) of the Food and Nutrition Act (FNA) (7 U.S.C. 2013(b)). This rule codifies the statutory requirement included in Section 4003(a)(3), which modifies Section 4(b)(7) of the FNA (7 U.S.C. 2013(b)(7)) to allow FDPIR administrative funds to remain available for obligation by the State agency for a period of two Federal fiscal years. Previously, funds made available to State agencies for the administration of FDPIR remained available for obligation for only one Federal fiscal year. This rule revises Federal regulation at 7 CFR 253.11(i) to conform to Section 4003(a)(3) of the 2018 Farm Bill. This provision is non-discretionary; accordingly, the Department is issuing this rule as a final rule and is not taking comments.

Section 4003 of the 2018 Farm Bill also modified Section 4(b)(4) of the FNA (7 U.S.C. 2013(b)(4)) to allow State agencies/ITOs to qualify for an administrative funding match waiver if their required match share would be a substantial burden. This provision was added to Federal regulations through a previous final rule with request for comments, *Food Distribution Program on Indian Reservations: Revisions to the Administrative Match Requirement* (84

FR 45873), published on September 3, 2019. In response to comments received, this rulemaking will revise FDPIR regulations at 7 CFR 253.11(c)(2)(ii) to change the level of signatory required on the letter that an ITO submits to FNS to request the waiver of the administrative funding match requirement based on substantial burden. The modification in the signatory requirements for the substantial burden waiver evolved from comments received in prior rulemaking (84 FR 45873). The provision has already been open to public comment; therefore, the Department is issuing this change in a final rule and is not taking comments.

The Administrative Procedures Act (APA) at 5 U.S.C. 553(a)(2) specifically exempts rules involving grants and benefits from notice-and-comment requirements, giving the Department the authority to issue final rules in grants and benefits programs, like FDPIR.

II. Two-Year Administrative Funding Availability

A. Background

Prior to FY 2017, FDPIR administrative funds had a period of availability of only one Federal fiscal year. Beginning in FY 2017, FNS received authority in the Consolidated Appropriations Act, 2017 (Pub. L. 115–31), and in appropriation bills thereafter, to allow FDPIR administrative funds to remain available for obligation at the Federal level for a period of two Federal fiscal years. This authority allowed FNS to retain any unobligated or unliquidated FDPIR administrative funds after one Federal fiscal year. Instead of returning funds to the U.S. Treasury Department, FNS could reallocate those funds to State agencies in the following Federal fiscal year. This authority did not allow State agencies to retain the funds without interruption. Federal regulations, consistent with statutory requirements, required State agencies to obligate administrative funds by September 30 of each Federal fiscal year and liquidate those funds within 90 days following the close of the Federal fiscal year (*e.g.,* by December 30). This resulted in delays in accessing any un-liquidated funds at the State agency level in the second Federal fiscal year since those funds, per federal regulation, had to be returned to FNS first.

The 2018 Farm Bill made a statutory change to allow FDPIR administrative funds to remain with the State agency for a period of two Federal fiscal years. This statutory change improves program administration by allowing for a longer period of time in which funds can be obligated and expended, allowing FDPIR program administrators to plan operations and use funds more flexibly and effectively.

B. Implementation Memorandum

The 2018 Farm Bill was signed into law during the FY 2019 FDPIR budget cycle. The Department determined that prolonging the implementation of this provision would negatively impact State agencies that administer the FDPIR by delaying their ability to utilize the new flexibility of retaining FDPIR administrative funds across two Federal fiscal years. The Department also determined that this provision was self-executing and, therefore, implemented the provision immediately in FY 2019.

On April 5, 2019, FNS released a memorandum titled, ''Food Distribution Program on Indian Reservations (FDPIR)—Agriculture Improvement Act of 2018 (Pub. L. 115–334) Two-Year Administrative Funding Provision—Information Memorandum.'' This memorandum explained that as of December 20, 2018, FDPIR administrative grants now have a period of performance of two Federal fiscal years instead of one and provided information on related FDPIR reporting and financial procedures, enabling the change to go into effect prior to this rulemaking to update program regulation at 7 CFR part 253.

C. Regulatory Changes to Two-Year Availability of Administrative Funds

FDPIR regulations at 7 CFR 253.11(i)(1) allow the Department to require State agencies to return unobligated funds or to reduce State agencies' administrative funding allocations prior to the end of the fiscal year if the Department determines any of the provisions at 7 CFR 253.11(i)(1)(i), (ii), or (iii) are met.

Consistent with the statutory change in the period of performance of FDPIR grants from one to two Federal fiscal years, this rule revises 7 CFR 253.11(i)(1) to allow the Department to require the return of unobligated funds or to reduce administrative funding allocations during the entire period of performance of the administrative grant.

This rulemaking also revises 7 CFR 253.11(i)(2), which requires State agencies to return to Department within ninety (90) days following the close of each Federal fiscal year any funds received which remained unobligated. The revised regulatory text requires unobligated funds to be returned within ninety (90) days following the close of the period of performance of the FDPIR administrative grant.

III. Revision of State Agency/ITO Administrative Match Waiver Requirement

A. Background

Section 4003 of the 2018 Farm Bill added a new provision at Section 4(b)(4)(B)(ii) of the FNA to allow State agencies and ITOs to qualify for an administrative match waiver if funding their share of the costs would be a substantial burden for the State agency/ITO. On September 3, 2019, the Department published a final rule with request for comments, *Food Distribution Program on Indian Reservations: Revisions to the Administrative Match Requirement* (84 FR 45873), to add this provision to FDPIR federal regulations at 7 CFR part 253. In that rulemaking, the Department determined that, in order to apply for a waiver of the administrative match based on substantial burden, the State agency/ITO must submit a signed letter from the leadership of a State agency or, in the case of an Indian Tribal Organization, a signed letter from the Tribal Council, describing why providing the matching funds would be a substantial burden for the State agency/ITO along with supporting documentation, as needed.

B. Comment Analysis and Regulatory Change

Five commenters on this rule, out of six total commenters, felt that getting a signature from the Tribal Council would be burdensome. Commenters expressed concern that the initial rulemaking required ITOs to obtain a signature from their Tribal Council, the highest level of political leadership in a Tribe, but did not require a State agency to obtain a signature from the highest level of their State political leadership (*e.g.,* State Governor). Thus, commenters felt that the burden imposed on ITOs was greater than the burden imposed on State agencies under the same provision. Commenters requested that the signatory of the letter not be the Tribal Council but a more appropriate entity as determined by Tribal leadership such as Tribal budget offices, departments of agriculture, health, food or nutrition.

In Tribal consultation meetings on December 10th, 2019 and February 13th, 2020, Tribal leaders in attendance expressed to the Department that they shared and supported the concerns of the commenters about obtaining a signature at the Tribal Council level. Tribal leaders shared their support for changing the signatory and specifically referenced comments made on the rule.

The comments received in response to the September 3rd rule and subsequent Tribal consultation meetings with

elected Tribal leaders have provided the Department with valuable perspective from FDPIR stakeholders on the implementation of this 2018 Farm provision and on the FDPIR community's concerns about requiring a signed letter from the Tribal Council. FNS heavily weighted comments received from the Tribal community and, through this rule, will revise federal regulation to allow the appropriate Tribal department, instead of the Tribal Council, to be the signatory. Therefore, 7 CFR 253.11(c)(2)(ii) is being revised to allow the leadership of the Tribal agency that oversees FDPIR to be the signatory when applying for an administrative match waiver based on substantial burden.

Procedural Matters

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).

Executive Order 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This final rule has been determined to be not significant and was reviewed by the Office of Management and Budget (OMB) in conformance with Executive Order 12866.

Regulatory Impact Analysis

This rule has been designated as not significant by the Office of Management and Budget, therefore, no Regulatory Impact Analysis is required.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires Agencies to analyze the impact of rulemaking on small entities and consider alternatives that would minimize any significant impacts on a substantial number of small entities. Pursuant to that review, it has been certified that this rule would not have a significant impact on a substantial number of small entities. This final rule would not have an impact on small entities because the revised requirement provides more flexibility on the period of availability of administrative funds at the local agency level. This lessens the financial administrative burden previously required by allowing ITOs and State agencies to access their funds across a two-year period versus only one year.

Executive Order 13771

Executive Order 13771 directs agencies to reduce regulation and control regulatory costs and provides that the cost of planned regulations be prudently managed and controlled through a budgeting process. This final rule is an E.O. 13771 deregulatory action. This rulemaking provides a reduction in the State agency/ITO requirement to return funds at the end of each Federal fiscal year, allowing for two Federal fiscal year availability instead.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by State, local or tribal governments, in the aggregate, or the private sector, of $146 million or more (when adjusted for inflation; GDP deflator source: Table 1.1.9 at *http://www.bea.gov/iTable)* in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This final rule does not contain Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of $146 million or more in any one year. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The program listed in the Catalog of Federal Domestic Assistance under Number 10.567 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.)

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under Section (6)(b)(2)(B) of Executive Order 13132.

The Department has determined that this rule does not have Federalism implications. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under Section 6(b) of the Executive Order, a Federalism summary impact statement is not required.

Executive Order 12988, Civil Justice Reform

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full and timely implementation.

Civil Rights Impact Analysis

FNS has reviewed this final rule in accordance with USDA Regulation 4300–4, ''Civil Rights Impact Analysis,'' to identify any major civil rights impacts the rule might have on program participants on the basis of age, race, color, national origin, sex or disability. After a careful review of the rule's intent and provisions, FNS has determined that this rule is not expected to affect the participation of protected individuals in the FDPIR.

Executive Order 13175

Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. In 2019, the Department engaged in a series of consultative and coordinated sessions with elected Tribal leaders and Tribal representatives from the FDPIR community to discuss FDPIR-specific provisions included in the 2018 Farm Bill, including the provisions included

in this rulemaking. Reports from the consultative sessions will be made part of the USDA annual reporting on Tribal Consultation and Collaboration. USDA is unaware of any current Tribal laws that could be in conflict with this rule.

FNS consulted with ITO representatives late 2019 and early 2020 to assess their opinions on comments requesting a change in obtaining a signature from Tribal council in order to submit a waiver for substantial burden. This rulemaking is in direct response to concerns Tribal leaders shared during consultation with requiring a signature from Tribal council. We are unaware of any current Tribal laws that could be in conflict with the final rule.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. Chap. 35; 5 CFR part 1320) requires the Office of Management and Budget (OMB) approve all collections of information by a Federal agency before they can be implemented. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. This rule does not contain information collection requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1994.

E-Government Act Compliance

The Department is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects in 7 CFR Part 253

Administrative practice and procedure, Food assistance programs, Grant programs, Social programs, Indians, Surplus agricultural commodities.

Accordingly, 7 CFR part 253 is amended as follows:

PART 253—ADMINISTRATION OF THE FOOD DISTRIBUTION PROGRAM FOR HOUSEHOLDS ON INDIAN RESERVATIONS

■ 1. The authority citation for 7 CFR part 253 continues to read as follows:

Authority: 91 Stat. 958 (7 U.S.C. 2011–2036).

■ 2. In § 253.11:
■ a. Revise paragraph (c)(2)(ii);
■ b. Revise paragraph (i)(1) introductory text; and
■ c. Revise paragraph (i)(2).

The revisions read as follows:

§ 253.11 Administrative funds.

* * * * *

(c) * * *

(2) * * *

(ii) For a waiver based on substantial burden, a signed letter from the leadership of the State agency or, in the case of an Indian Tribal Organization, from the leadership of the Tribal agency that oversees the Food Distribution Program, describing why meeting the 20 percent matching requirement would impose a substantial burden on the State agency, and why additional administrative funds are necessary for the effective operation of the program, along with supporting documentation, as needed.

* * * * *

(i) * * *

(1) FNS may require State agencies to return, during the period of performance of their administrative grant and after receipt of administrative funds, any or all unobligated funds received under this section, and may reduce the amount it has apportioned or agreed to pay to any State agency if FNS determines that:

* * *

(2) The State agency shall return to FNS, within ninety (90) days following the close of the period of performance of each administrative grant, any funds received under this section which are unobligated at that time.

Pamilyn Miller,

Administrator, Food and Nutrition Service.

[FR Doc. 2020–15047 Filed 7–13–20; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2020–0344]

RIN 1625–AA00

Safety Zone, Object Removal; Delaware River and Bay, Philadelphia, PA

AGENCY: Coast Guard, DHS.

ACTION: Interim final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the waters of the Delaware River and Bay within 250 yards of the bucket dredge KOKO VI, towing vessel GEORGETOWN, the deck barge BC 45, and all associated equipment while object removal, dredging, and diving operations are taking place. This safety zone is needed to protect personnel, vessels, and the marine environment from hazards created by the aforementioned operations. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Delaware Bay (COTP) or his designated representitives.

DATES: This rule is effective without actual notice from July 14, 2020 through October 15, 2020. For the purposes of enforcement, actual notice will be used from June 18, 2020, through July 14, 2020.

Comments and related material must be received by the Coast Guard on or before August 13, 2020.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2020–0344 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Edmund Ofalt, Waterways Management Branch, U.S. Coast Guard Sector Delaware Bay; telephone (215) 271–4889, email *Edmund.J.Ofalt@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this interim final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to the public interest. There is insufficient time to allow for a reasonable comment period prior to the starte date for object removal, dredging and diving operations. The rule needs to be issued and enforceable with actual notice by June 18, 2020, to serve its purpose of ensuring the safety of the general public

from hazards associated with these operations.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is needed to mitigate the potential safety hazards associated with object removal, dredging and diving operations within 250 yards of the bucket dredge KOKO VI, towing vessel GEORGETOWN, barge BC 45, and all associated equipment.

We are soliciting comments on this rulemaking. If the Coast Guard determines that changes to the rule are necessary we will publish a temporary final rule or other appropriate document.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP has determined that there are potential hazards associated with the object removal, dredging and diving operations. The purpose of this rulemaking is to ensure the safety of personnel, vessels, and the marine environment within a 250-yard radius of these operations.

IV. Discussion of the Rule

This rule establishes a safety zone from June 18, 2020, through October 15, 2020. The safety zone is necessary to facilitate the main channel deepening of the Delaware River and Bay. Object removal operations will most likely be conducted with the dredge KOKO VI, towing vessel GEORGETOWN, and deck barge BC 45, though other dredges or vessels may be used, along with associated equipment. Due to the hazards related to these operations a safety zone is being established for all navigable waters within 250 yards of the vessels conducting these operations.

Entry into, transiting or anchoring within the safety zone is prohibited unless the vessel obtains permission from the COTP or makes satisfactory passing arrangements with the operating dredge per this rule and the Rules of the Road (33 CFR subchapter E). Though the dredge KOKO VI, towing vessel GEORGETOWN, and deck barge BC 45 are the primary vessels to be used in these operations, the COTP may update the information and the vessels being utilized with these operations via Marine Safety Information Bulletin and Broadcast Notice to Mariners.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, and duration of the safety zone. The safety zone will be enforced in a manner that does not conflict with transiting commercial and recreational traffic. Vessels may transit through or around the safety zone if satisfactory passing arrangements can be agreed upon.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the 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 the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 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.

E. Unfunded Mandates Reform Act

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 $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure,

we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone to protect waterway users that would prohibit entry within 250 yards of object removal, dredging and diving operations within and around the main navigational channel. Vessels may request permission to enter or transit through the safety zone. It is categorically excluded from further review under paragraph L[60a] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

VI. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help us amend this regulation so that it provides a better solution to the problem we seek to address. We may issue a temporary final rule or other appropriate document in response to your comments. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* If your material cannot be submitted using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to *https://www.regulations.gov* and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this temporary interim rule as being available in the docket, and all public comments, will be in our online docket at *https://www.regulations.gov* and can be viewed by following that website's instructions.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05–0344, to read as follows:

§ 165.T05–0344 Safety Zone, Object Removal; Delaware River and Bay, Philadelphia, PA.

(a) *Location.* The following area is a safety zone: All navigable waters within 250 yards of the dredge KOKO VI, the towing vessel GEORGETOWN, the deck barge BC 45, and all associated equipment while conducting object removal, dredging and dive operations within the Delaware Bay and River.

(b) *Definitions.* As used in this section, *designated representative* means any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to assist with enforcement of the safety zone described in paragraph (a) of this section.

(c) *Regulations.* (1) Entry into or transiting within the safety zone identified in paragraph (a) of this section is prohibited unless vessels obtain permission from the Captain of the Port or his designated representitives via VHF–FM channel 16 or 215–271–4807, or make satisfactory passing arrangements via VHF–FM channel 13 or 8 with the operating dredge per this section and the rules of the Road (33 CFR subchapter E). To avoid transit delays, vessels requesting to transit should contact the operating dredge via VHF–FM channel 13 or 8 at least 1 hour prior to arrival.

(2) This section applies to all vessels except those engaged in the following operations: Enforcement of laws, service of aids to navigation, and emergency response.

(d) *Enforcement agencies.* The U.S. Coast Guard may be assisted by federal, state and local agencies in the patrol and enforcement of the zone.

(e) *Enforcement period.* This section will be enforced from June 18, 2020, through October 15, 2020, unless cancelled earlier by the Captain of the Port.

Dated: June 18, 2020.

Scott E. Anderson,

Captain, U.S. Coast Guard, Captain of the Port, Delaware Bay.

[FR Doc. 2020–13507 Filed 7–13–20; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter II

[Docket ID ED–2019–OESE–0142]

Final Priorities, Requirements, Definitions, and Selection Criteria—Indian Education Discretionary Grants Programs—Native American Language (NAL@ED) Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Final priorities, requirements, definitions, and selection criteria.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education announces priorities, requirements, definitions, and selection criteria under the NAL@ED program, CFDA number 84.415B. The Assistant Secretary may use one or more of these priorities, requirements, definitions, and selection criteria for competitions in fiscal year (FY) 2020 and later years. We take this action to support Native language revitalization and instruction through the development and expansion of high-quality Native language programs.

DATES: These priorities, requirements, definitions, and selection criteria are effective August 13, 2020.

FOR FURTHER INFORMATION CONTACT: Tanya Tullos, U.S. Department of Education, 400 Maryland Avenue SW,

Room 3W234, Washington, DC 20202. Telephone: (202) 453–6037. Email: *tanya.tullos@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:

Purpose of Program: The purposes of this program are to (1) support schools that use Native American and Alaska Native languages as the primary language of instruction; (2) maintain, protect, and promote the rights and freedom of Native Americans and Alaska Natives to use, practice, maintain, and revitalize their languages, as envisioned in the Native American Languages Act of 1990 (25 U.S.C. 2901, *et seq.*); and (3) support the Nation's First Peoples' efforts to maintain and revitalize their languages and cultures, and to improve educational opportunities and student outcomes within Native American and Alaska Native communities.

Program Authority: Section 6133 of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 7453).

Applicable Program Regulations: We published a notice of proposed priorities, requirements, definitions, and selection criteria (NPP) for this program in the **Federal Register** on February 27, 2020, (85 FR 11323). That notice contained background information and our reasons for proposing the particular priorities, requirements, definitions, and selection criteria.

There are four substantive differences and three technical changes between the NPP and this notice of final priorities, requirements, definitions, and selection criteria. Two substantive differences are specific to an application requirement relating to Tribal consultation; one relates to the application requirement to use ESEA title VI formula grant funds to support the project after the grant period has ended, and the related priority; and the final difference relates to the application requirement concerning pre- and post-assessments. We fully explain these changes in the *Analysis of Comments and Changes* section elsewhere in this notice.

In the NPP we solicited the public's feedback on how to interpret the statutory requirement to ensure that a diversity of languages is supported by this program and the congressional emphasis in the Explanatory Statement accompanying the Department of Education Appropriations Act, 2020, regarding the importance of geographical diversity in grantees under this program. The Department received no public comment on these topics; therefore, the Department finalizes the proposed program requirements that, in any competition year, it will fund not more than one project that uses the same Native American language and will not exclusively fund applicants from a single State, assuming there are enough high-quality applications. In addition to the final program requirement regarding diversity of languages, the Department can use two of the final priorities—one to establish and maintain new language programs, and a second to support and expand existing programs—to fund separate slates of applicants; doing so could increase the likelihood of funding applicants that support Native languages not previously funded under the NAL@ED program.

Public Comment: In response to our invitation in the NPP, one party submitted substantive comments that addressed multiple proposed application requirements.

We group major issues according to subject. Generally, we do not address technical and other minor changes. In addition, we do not address comments that raised concerns not directly related to the proposed priorities, requirements, definitions, or selection criteria.

Analysis of Comments and Changes: An analysis of the comments and of any changes in the proposed priorities, requirements, definitions, and selection criteria since publication of the NPP follows.

Proposed Application Requirement 2—Memorandum of Agreement

Comment: The commenter requested that the Department reduce the amount of time that a signed memorandum of agreement be in place prior to submitting an application, to less than four months.

Discussion: The proposed application requirement stated that the memorandum of agreement must be signed no earlier than four months prior to the date of submission of the application. We intended by this to require that the memorandum of agreement not be more than four months old. We believe that the commenter interpreted the proposed application requirement to require that the memorandum of agreement be signed more than four months prior to the application deadline. We agree that the language is not clear, and are revising the requirement to clarify our intent.

Change: We have revised the application requirement to provide that the memorandum of agreement must be signed no more than four months prior to the application deadline.

Proposed Application Requirement 3—Local Educational Agency (LEA) Consultation With Indian Tribes and Tribal Organizations

Comment: The commenter requested that the Department expand Tribal consultation requirements by requiring that—(1) non-Native applicants engage in Tribal consultation prior to applying; (2) all applicants submit a letter of support from a Tribe to signify Tribal consultation has been conducted; and (3) grantees conduct ongoing Tribal consultation throughout the grant period.

Discussion: In the NPP, proposed Application Requirement 3 only applied to LEAs that are subject to the consultation requirements of section 8538 of the ESEA. The Department agrees, however, with the recommendation that non-Tribal eligible entities be required to engage meaningfully with Tribes, both as a way of ensuring involvement of local Tribes, and in recognition of Tribal sovereignty. Therefore, we are expanding the scope of this application requirement to include all non-Tribal entities.

The Department also agrees with the commenter that providing documented evidence of Tribal support is important. To minimize the burden on applicants, in these final requirements we provide non-Tribal applicants with the option of providing evidence of either Tribal engagement or a letter of support from Tribes or Tribal organizations. This change subsequently prompted review of the proposed definition of Indian organizations (Tribal organizations). As the definition states, we would not consider a Tribal organization to be part of an institution of higher education (IHE), and we would not accept a letter from an IHE as evidence of engagement between an applicant and a Tribe or Tribal organization. Similarly, we would not accept a letter from a Tribal college or university (TCU) as evidence of engagement for the purposes of this application requirement.

The Department also agrees that ongoing Tribal engagement throughout the project period is important, given that a purpose of the NAL@ED program is to support Native culture and language revitalization. Tribes should be meaningfully involved in project development as well as in the project's implementation and continuous improvement efforts. The Memorandum of Agreement described in Application Requirement 2 is a sufficient means of ensuring meaningful, ongoing

involvement throughout the project period.

Changes: We have revised Application Requirement 3 to require all applicants that are not Tribes to engage with local Tribe(s) or a local Tribal organization prior to submitting an application, and to submit evidence of either Tribal engagement or a letter of support from the Tribe(s) or Tribal organization(s). In addition, we have revised the definition of ''Indian organization (or Tribal organization)'' to clarify that a TCU is not considered to be an Indian organization.

Proposed Application Requirement 4—Support Project Sustainability With Title VI Indian Education Formula Grant Funds

Comment: The commenter strongly opposed requiring grantees that also receive title VI funds to allocate a portion or all of their title VI funds to support sustaining the Native language program after the NAL@ED grant project period has ended. The commenter argued that this requirement would limit Tribal sovereignty and negatively affect established programs using title VI funds, which are providing crucial services for Native students, such as tutoring or college counseling.

Discussion: Our intent in proposing this application requirement was to provide a simple method of sustainability for these language projects following completion of the project period, and to emphasize the title VI formula grant program's purpose of addressing the unique academic and cultural needs of students. Formula grantees often struggle with addressing these needs, as reflected in a 2019 Department study, *Implementation of the Title VI Indian Education Formula Grants Program*,[1] that surveyed 92 percent of the 1,300 FY 2018 formula grantees. Of those surveyed, about 50 percent of grantees reported challenges with the supply of school staff knowledgeable about American Indian or Alaska Native languages.

However, to address the commenter's concerns, in keeping with our respect for Tribal sovereignty, and to provide flexibility for grantees, we are removing this application requirement, while retaining it as a priority (see Priority 3). As a priority, it may, for example, be used to award competitive preference points. In order to encourage the use of such funds for program sustainability, and to provide greater clarity, we are structuring the priority to address different percentages of title VI formula grant funds that an applicant might direct to sustainability efforts, in increments of 10 percent. We will specify in a notice inviting applications the applicable percentages for a particular competition.

Change: We have removed this application requirement. In addition, we have revised the language in Priority 3 to specify percentages of ESEA title VI funding that would be dedicated to sustaining the project.

Other Issues

Comments: None.

Discussion: After further review of the proposed priorities, we have made a technical change. In Proposed Priority 2—Expand and Improve Existing Native American Language Programs, we state that the program has to be ''currently active.'' However, this would mean that we would not consider a program that has been dormant for one or two years. Therefore, we are revising the priority to ensure that such programs can be considered under Priority 2.

Changes: We are revising this section of Priority 2 to say ''within the past three years'' so that it allows for consideration of programs not active within the last one to two years.

Comments: None.

Discussion: After further review of the proposed priorities, we have made a technical change. In Proposed Priority 4—Preference for Indian Applicants, we used the term ''Bureau of Indian Education (BIE) school.'' We are revising this term to clarify that it includes both BIE schools and Tribally-operated schools that are funded by the BIE.

Changes: We have removed references to the term ''BIE school'' and replaced them with the term ''BIE-funded'' school in Priority 4.

Comments: None.

Discussion: After further review of the proposed application requirements, we have made one additional change. In Proposed Application Requirement 1, regarding general requirements, the reference to pre- and post-assessments was meant to elicit from the applicant whether or not an assessment, as required under proposed Program Requirement 1, is already available to use for the Native language proposed, and if not, whether these grant funds will be used to support development of the required assessment. However, the language proposed in the NPP might be misinterpreted to mean that a grantee has the option to not conduct Native language pre- and post-assessments.

Changes: We have revised the language in Application Requirement 1 to require applicants to specify the percentage of grant funds that would be used to develop a Native language assessment.

Final Priorities

Priority 1—Develop and Maintain New Native American Language Programs

To meet this priority, an applicant must propose to develop and maintain a Native American language instructional program that—

(a) Will support Native American language education and development for Native American students, as well as provide professional development for teachers and, as appropriate, staff and administrators, to strengthen the overall language and academic goals of the school or schools that will be served by the project;

(b) Will take place in a school; and

(c) Does not augment or replace a program of identical scope that was active within the last three years at the school(s) to be served.

Priority 2—Expand and Improve Existing Native American Language Programs

To meet this priority, an applicant must propose to improve and expand a Native American language instructional program that—

(a) Will improve and expand Native American language education and development for Native American students, as well as provide professional development for teachers and, as appropriate, staff and administrators, to strengthen the overall language and academic goals of the school or schools that will be served by the project;

(b) Will continue to take place in a school; and

(c) Within the past three years has been offered at the school(s) to be served.

Priority 3—Support Project Sustainability With Title VI Indian Education Formula Grant Funds

To meet this priority, an applicant or a partner must receive, or be eligible to receive, a formula grant under title VI of the ESEA, and must commit to use all or part of that formula grant to help sustain this project after the conclusion of the grant period. To meet this priority, an applicant must include in its application—

(a) A statement that indicates the school year in which the entity will begin using title VI formula grant funds to help support this project;

[1] U.S. Department of Education, Office of Planning, Evaluation and Policy Development, Policy and Program Studies Service, *Implementation of the Title VI Indian Education Formula Grants Program, Volume I: Final Report.* Washington, DC, 2019. Accessed May 20, 2020 at: *https://www2.ed.gov/rschstat/eval/title-vi/title-vi-report.pdf.*

(b) The percentage of the title VI grant that will be used for the project of at least—

(i) 10 percent of the applicant's title VI formula grant;

(ii) 20 percent of the applicant's title VI formula grant;

(iii) 30 percent of the applicant's title VI formula grant;

(iv) 40 percent of the applicant's title VI formula grant;

(v) 50 percent of the applicant's title VI formula grant;

(vi) 60 percent of the applicant's title VI formula grant;

(vii) 70 percent of the applicant's title VI formula grant;

(viii) 80 percent of the applicant's title VI formula grant;

(ix) 90 percent of the applicant's title VI formula grant; or

(x) 100 percent of the applicant's title VI formula grant; and

(c) The timeline for obtaining parent committee input and approval of this action, if necessary.

Priority 4—Preference for Indian Applicants

To meet this priority, an application must be submitted by an Indian Tribe, Indian organization, Bureau of Indian Education (BIE)-funded school, or Tribal College or University (TCU) that is eligible to participate in the NAL@ED program. A consortium of eligible entities that meets the requirements of 34 CFR 75.127 through 75.129 and includes an Indian Tribe, Indian organization, BIE-funded school, or TCU will also be considered eligible to meet this priority. In order to be considered a consortium application, the application must include the consortium agreement, signed by all parties.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Requirements

Application Requirement 1—General Requirements

An applicant must include the following information in its application:

(a) Students to be served. The number of students to be served by the project and the grade level(s) of targeted students in the proposed project.

(b) Pre- and post-assessments. Whether a pre- and post-assessment of Native American language proficiency is available and, if not, the percentage of grant funds that will be used for developing such assessment.

(c) Program description. A description of how the eligible entity will support Native American language education and development, and provide professional development for staff, in order to strengthen the overall language and academic goals of the school(s) that will be served by the project; ensure the implementation of rigorous academic content that prepares all students for college and career; and ensure that students' progress toward meeting high-level fluency goals in the Native American language.

Application Requirement 2—Memorandum of Agreement

Any applicant that proposes to work with a partner to carry out the proposed project must include a signed and dated memorandum of agreement that describes the roles and responsibilities of each partner to participate in the grant, including—

(a) A description of how each partner will implement the project according to the timelines described in the grant application;

(b) The roles and responsibilities of each partner related to ensuring the data necessary to report on the Government Performance and Results Act (GPRA) indicators; and

(c) The roles and responsibilities of each partner related to ensuring that Native American language instructors can be recruited, retained, and trained, as appropriate, in a timely manner.

This memorandum of agreement must be signed no more than four months prior to the application deadline (*i.e.,* the agreement must be signed within the four months prior to the application deadline).

Application Requirement 3—Applicant Engagement With Indian Tribes or Tribal Organizations

All non-Tribal applicants must engage with appropriate officials from Tribe(s) located in the area served by the project, or with a local Tribal organization prior to submission of an application. The engagement must provide for the opportunity for officials from Tribes or Tribal organizations to meaningfully and substantively contribute to the application. Non-Tribal applicants must submit evidence of either Tribal engagement or a letter of support from one or more Tribes or Tribal organizations. This evidence can be part of the memorandum of agreement required by Application Requirement 2 or can be uploaded as a separate attachment.

Note: If an applicant is an affected LEA that is subject to ESEA section 8538, then the LEA is already required to consult with appropriate officials from Tribe(s) or Tribal organizations approved by the Tribes located in the area served by the LEA prior to its submission of an application, on the contents of the application as required under ESEA section 8538. Affected LEAs are those that have 50 percent or more of their student enrollment made up of Native American students; or received an Indian education formula grant under title VI of the ESEA in the previous fiscal year that exceeds $40,000. (ESEA sec. 8538)

Program Requirement 1—Native American Language Proficiency Assessment

Grantees must administer pre- and post-assessments of Native American language proficiency to participating students. This Native American language assessment may be any relevant tool that measures student Native American language proficiency, such as oral, written or project-based assessments, and formative or summative assessments.

Program Requirement 2—Diversity of Languages

To ensure a diversity of languages as required by statute, the Department will not fund more than one project in any competition year that proposes to use the same Native American language, assuming there are enough high-quality applications. In the event of a lack of high-quality applications in one competition year, the Department may choose to fund more than one project with the same Native American language.

Program Requirement 3—Geographic Distribution

To ensure geographic diversity, assuming there are enough high-quality applications, the Department will not exclusively fund projects that all propose to serve students in the same State in any competition year. In the event of a lack of high-quality applications in one competition year, the Department may choose to fund only applications that propose to provide services in one State.

Statutory Program Requirement—ISDEAA Statutory Hiring Preference:[2]

(a) Awards that are primarily for the benefit of Indians are subject to the provisions of section 7(b) of the Indian Self-Determination and Education Assistance Act (ISDEAA) (Pub. L. 93–638). That section requires that, to the greatest extent feasible, a grantee—

(1) Give to Indians preferences and opportunities for training and employment in connection with the administration of the grant; and

(2) Give to Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452(e)), preference in the award of contracts in connection with the administration of the grant. (25 U.S.C. 5307(b))

(b) For purposes of the ISDEAA statutory hiring preference only, an Indian is a member of any federally recognized Indian Tribe.

Final Definitions

We may apply one or more of these definitions in any year in which this program is in effect.

Indian organization (or Tribal organization) means an organization that—

(1) Is legally established—

(i) By Tribal or inter-Tribal charter or in accordance with State or Tribal law; and

(ii) With appropriate constitution, bylaws, or articles of incorporation;

(2) Includes in its purposes the promotion of the education of Indians;

(3) Is controlled by a governing board, the majority of which is Indian;

(4) If located on an Indian reservation, operates with the sanction of or by charter from the governing body of that reservation;

(5) Is neither an organization or subdivision of, nor under the direct control of, any institution of higher education or TCU; and

(6) Is not an agency of State or local government.

Tribe means either a federally recognized Tribe or a State-recognized Tribe.

Statutory Definitions: The following definitions are from statutes governing the NAL@ED program. We have indicated in parentheses the specific statutory citation for each of these definitions.

Native American means:

(1) ''Indian'' as defined in section 6151(3) of the ESEA (20 U.S.C. 7491(3)), which includes individuals who are Alaska Natives and members of federally recognized or State recognized Tribes;

(2) Native Hawaiian; or

(3) Native American Pacific Islander. (ESEA secs. 6151(3) and 8101(34))

Native American language means the historical, traditional languages spoken by Native Americans. (ESEA sec. 8101(34))

Tribal college or university means an institution that—

(1) Qualifies for funding under the Tribally Controlled Colleges and Universities Assistance Act of 1978 (25 U.S.C. 1801, *et seq.*) or the Navajo Community College Act (25 U.S.C. 640a note); or

(2) Is cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note). (ESEA sec. 6133 and section 316 of the Higher Education Act of 1965, as amended (20 U.S.C. 1059c))

Final Selection Criteria

(a) *Quality of the project design.* The Secretary considers the quality of the design of the proposed project.

In determining the quality of the design of the proposed project, the Secretary considers one or more of the following factors:

(1) The extent to which the project design will ensure that students' progress toward grade-level and developmentally appropriate fluency in the Native American language.

(2) The extent to which the proposed project will incorporate parent engagement and participation in Native American language instruction.

(3) The quality of the approach to developing and administering pre- and post-assessments of student Native American language proficiency, including consultation with individuals with assessment expertise, as needed.

(b) *Quality of project services.* The Secretary considers the quality of the services to be provided by the proposed project. In determining the quality of the services to be provided by the proposed project, the Secretary considers one or more of the following factors:

(1) The quality of the plan for supporting grade-level and developmentally appropriate instruction in a Native American language by providing instruction of or through the Native American language.

(2) The extent to which the project will provide professional development for teachers and, as appropriate, staff and administrators to strengthen the overall language proficiency and academic goals of the school(s) that will be served by the project, including cultural competence training for all staff in the school(s).

(3) The extent to which the percentage of the school day that instruction will be provided in the Native American language is ambitious and is reasonable for the grade level and population served.

(c) *Quality of project personnel.* The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

In addition, the Secretary considers the extent to which teachers of the Native American language who are identified as staff for this project have teaching experience and are fluent in the Native American language.

(d) *Adequacy of resources.* The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers the extent to which the applicant or a partner has experience in operating a Native American language program.

Note: This document does *not* solicit applications. In any year in which we choose to use one or more of these priorities, requirements, definitions, or selection criteria, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866, 13563, and 13771

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an

[2] This program requirement is directly from section 7(b) of the Indian Self-Determination and Education Assistance Act (ISDEAA) (Pub. L. 93–638).

action likely to result in a rule that may—

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

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

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

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

OMB has determined that this final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

Under Executive Order 13771, for each new rule that the Department proposes for notice and comment or otherwise promulgates that is a significant regulatory action under Executive Order 12866, and that imposes total costs greater than zero, it must identify two deregulatory actions. For FY 2020, any new incremental costs associated with a new regulation must be fully offset by the elimination of existing costs through deregulatory actions. Because this regulatory action is not significant, the requirements of Executive Order 13771 do not apply.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

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

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

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

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

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

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these final priorities, requirements, definitions, and selection criteria only on a reasoned determination that their benefits justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with these Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

We have determined that these final priorities, requirements, definitions, and selection criteria will impose minimal costs on eligible applicants. Program participation is voluntary, and the costs imposed on applicants by these final priorities, requirements, definitions, and selection criteria are limited to paperwork burden related to preparing an application. The potential benefits of implementing the programs—for example, establishing partnerships among parties with mutual interests in developing Native language programs, and planning concrete strategies for supporting Native language revitalization—will outweigh any costs incurred by applicants, and the costs of carrying out activities associated with the application will be paid for with program funds. For these reasons, we have determined that the costs of implementation will be minimal for eligible applicants, including small entities.

Paperwork Reduction Act of 1995

As part of its continuing effort to reduce paperwork and respondent burden, the Department provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information, in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps ensure that: The public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

The final program priorities, requirements, definitions, and selection criteria contain information collection requirements (ICR) for the program application package. As a result of the revisions to these sections, we are submitting the grant application package with OMB control number 1810–0731 for a reinstatement with change. In Table 1 below, we assume 50 applicants each spend 30 hours preparing their applications.

TABLE 1—NAL@ED GRANTS PROGRAM INFORMATION COLLECTION STATUS

OMB control No. current burden (total hours)	Expiration	Current burden (total hours)	Proposed burden (total hours)	Proposed action under final rules
1810–0731	July 31, 2023	1,500	1,500	Reinstatement with change of 1810–0731.

If your comments relate to the ICR for these final regulations, please specify the Docket ID number and indicate ''Information Collection Comments'' on the top of your comments.

Written requests for information or comments, submitted by postal mail or delivery, related to the information collection requirements should be addressed to the Director of the Information Collection Clearance Program, U.S. Department of Education, 550 12th Street SW, Room 9086, Washington, DC 20202.

Intergovernmental Review

This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. However, under 34 CFR 79.8(a), we waive intergovernmental review in order to make awards by the end of FY 2020.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at: *www.govinfo.gov*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe 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.

Frank T. Brogan,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2020–15221 Filed 7–13–20; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[EPA–HQ–TRI–2019–0146; FRL–10007–23]

RIN 2070–AK53

Community Right-to-Know; Corrections to Toxics Release Inventory (TRI) Reporting Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is correcting existing regulatory language for the Toxics Release Inventory (TRI) Program. EPA is making corrections that update identifiers, formulas, and names for certain TRI-listed chemicals, and updating the text that identifies which chemicals the 0.1 percent *de minimis* concentration applies to in order to remedy a cross-reference to a no-longer-accurate Occupational Safety and Health Administration (OSHA) regulatory citation. These corrections maintain previous regulatory actions and do not alter existing reporting requirements or impact compliance burdens or costs.

DATES: This final rule is effective on July 14, 2020.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–TRI–2019–0146. All documents in the docket are listed on the *http://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* 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 electronically through *http://www.regulations.gov.* Additional instructions on visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Daniel Bushman, Toxics Release Inventory Program Division, Mailcode 7410M, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–0743; email address: *bushman.daniel@epa.gov.*

For general information contact: The Emergency Planning and Community Right-to-Know Hotline; telephone numbers: toll free at (800) 424–9346 (select menu option 3) or (703) 348–5070 in the Washington, DC Area and International; or go to *https://www.epa.gov/home/epa-hotlines.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, process, or otherwise use any TRI listed chemical. 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:

- Facilities included in the following NAICS manufacturing codes (corresponding to Standard Industrial Classification (SIC) codes 20 through 39): 311*, 312*, 313*, 314*, 315*, 316, 321, 322, 323*, 324, 325*, 326*, 327, 331, 332, 333, 334*, 335*, 336, 337*, 339*, 111998*, 211130*, 212324*, 212325*, 212393*, 212399*, 488390*, 511110, 511120, 511130, 511140*, 511191, 511199, 512230*, 512250*, 519130*, 541713*, 541715* or 811490*. * Exceptions and/or limitations exist for these NAICS codes.
- Facilities included in the following NAICS codes (corresponding to SIC codes other than SIC codes 20 through 39): 212111, 212112, 212113 (corresponds to SIC code 12, Coal Mining (except 1241)); or 212221, 212222, 212230, 212299 (corresponds to SIC code 10, Metal Mining (except 1011, 1081, and 1094)); or 221111, 221112, 221113, 221118, 221121, 221122, 221330 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce) (corresponds to SIC codes 4911, 4931, and 4939, Electric Utilities); or 424690, 425110, 425120 (limited to facilities previously classified in SIC code 5169, Chemicals and Allied Products, Not Elsewhere Classified); or 424710 (corresponds to SIC code 5171, Petroleum Bulk Terminals and Plants); or 562112 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis (previously classified under SIC code 7389, Business Services, NEC)); or 562211, 562212, 562213, 562219, 562920 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 *et seq.*)

(corresponds to SIC code 4953, Refuse Systems).

- Federal facilities.

A more detailed description of the types of facilities covered by the NAICS codes subject to reporting under EPCRA section 313 can be found at: *https://www.epa.gov/toxics-release-inventory-tri-program/tri-covered-industry-sectors.* To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in part 372, subpart B, of title 40 of the Code of Federal Regulations (CFR). Federal facilities are required to report under Executive Order 13834 (*https://www.govinfo.gov/content/pkg/FR-2018-05-22/pdf/2018-11101.pdf*) as explained in the Implementing Instructions from the Council on Environmental Quality (*https://www.sustainability.gov/pdfs/eo13834_instructions.pdf*). If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What action is the Agency taking?

EPA is correcting existing regulatory language for the TRI Program. EPA is making (a) editorial corrections that update identifiers, formulas, and names for certain TRI-listed chemicals described in the CFR, and (b) updating the text to indicate for which chemicals the 0.1 percent *de minimis* concentration applies to remedy a cross-reference to a no-longer-accurate OSHA regulatory citation. This action does not change the regulatory requirements of the TRI Program. This action is a ''housekeeping'' rulemaking intended to correct inaccuracies in regulatory text.

C. What is the Agency's authority for taking these actions?

EPA is taking these actions under sections 313(g)(1) and 328 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. 11023(g)(1) and 11048. In general, EPCRA section 313 requires owners and operators of covered facilities in specified SIC codes that manufacture, process, or otherwise use listed toxic chemicals in amounts above specified threshold levels to report certain facility specific information about such chemicals, including the annual releases and other waste management quantities. EPCRA section 313(g)(1) requires EPA to publish a uniform toxic chemical release form for these reporting purposes, and it also prescribes, in general terms, the types of information that must be submitted on the form. Congress also granted EPA broad rulemaking authority to allow the Agency to fully implement the statute. EPCRA section 328 states that: ''The Administrator may prescribe such regulations as may be necessary to carry out this chapter.'' 42 U.S.C. 11048.

II. Summary of Proposed Rule

In the proposed rule (84 FR 65739, November 29, 2019) (FRL–9995–92), EPA proposed corrections that updated identifiers, formulas, and names for certain TRI-listed chemicals described in the CFR. Specifically, EPA proposed to: (i) Remove chemical names for those chemicals that have been delisted or moved to other listings; (ii) Incorporate listings in 40 CFR 372.65(b) for chemicals that are listed in 40 CFR 372.65(a) but are not listed in 40 CFR 372.65(b); (iii) Correct inaccurate Chemical Abstracts Service Registry Numbers (CASRNs); (iv) Correct errors in chemical category definitions; (v) Remedy other known errors in the CFR chemical lists; (vi) Remove leading zeros from CASRNs; (vii) Correct errors in the list of lower thresholds for chemicals of special concern; and (viii) Revise the list of chemical names to include only the TRI primary name and the EPA registry name (if different from the TRI primary name) as a synonym. In addition, EPA proposed to replace an existing outdated cross-referenced regulatory citation and modify the text of the *de minimis* exemption, without changing the substance of the exemption itself.

The proposed changes included removing ammonium nitrate (solution) (CASRN: 6484–52–2), ammonium sulfate (solution) (CASRN: 7783–20–2), and flumetralin (CASRN: 62924–70–3) from the chemical lists. EPA also proposed to remove methylenebis(phenylisocyanate) (MDI) (CASRN: 101–68–8) as an individually listed chemical because it is part of the diisocyanates category. EPA proposed to add two chemicals, toluene-2,4-diisocyanate (2,4–TDI) (CASRN: 584–84–9) and vinyl bromide (CASRN: 593–60–2), to the CASRN ordered list at 40 CFR 372.65(b), these two were missing from 40 CFR 372.65(b) but were included in the alphabetical ordered listing at 40 CFR 372.65(a). The proposed rule included corrections to the CASRNs for phosphorus (yellow or white) and d-trans-allethrin as well as corrections to the category definitions for the cyanide compounds category and the polychlorinated alkanes category. EPA proposed to correct footnotes for 2,2-dibromo-3-nitrilopropionamide (DBNPA) (CASRN: 10222–01–2) and methyl mercaptan (74–93–1) which are on the list but not currently reportable. EPA proposed to fix the placement of the chemical structure for the polybrominated biphenyls (PBBs) category which appears out of place in the CFR. EPA proposed to remove leading zeros from the CASRNs for a number of listed chemicals. EPA proposed to fix errors in and simplify the table for lower thresholds for chemicals of special concern at 40 CFR 372.28(a)(2). EPA proposed to revise the EPCRA section 313 chemical list by including only the primary chemical name, even if it is a common trade name, and removing most secondary names (the only secondary names that would remain are the EPA registry names from EPA's Substance Registry Services (SRS)). The last proposed change was to update the text of the *de minimis* exemption at 40 CFR 372.38(a) to remove a regulatory citation that no longer exists. For details about these changes please consult the proposed rule (84 FR 65739, November 29, 2019) (FRL–9995–92).

III. What comments did EPA receive on the proposed rule?

EPA received no substantive comments.

IV. Summary of Final Rule

EPA made no substantive changes from what was included in the proposed rule, however, the final rule reflects the following corrections to what was proposed:

- In the proposed regulatory text, the polychlorinated alkanes definition included the formula as ''$C_xH_{2x-y}+2Cl_y$,'' whereas in this final rule, the ''+2'' has been changed to a subscript. Also, in the polychlorinated alkanes definition in the proposed rule, one of the molecular formulas had a typo; specifically, ''$C_{10}H_{19}C_{13}$'' has been corrected to read ''$C_{10}H_{19}Cl_3$.''
- In the proposed rule, two chemicals in the list of the chemicals included in the polycyclic aromatic compounds category, 1,6-dinitropyrene and 1,8-dinitropyrene, were missing the last digits in their CARSNs. In this final rule, those two chemicals have been corrected to read ''42397–64–8'' for 1,6-dinitropyrene and ''42397–65–9'' for 1,8-dinitropyrene.
- This final rule adds EPA registry names for the chemicals 1,4-bis(methylisocyanate)cyclohexane (CASRN 10347–54–3), benzo[a]phenanthrene (CASRN 218–01–9), benzo[j,k]fluorene (CASRN 206–44–0), benzo[r,s,t]pentaphene (CASRN 189–55–9), and dibenzo[a,h]anthracene (CASRN 53–70–3).
- This final rule corrects the name for 1,2,3,4,7,8-hexachlorodibenzofuran

(CARN 70648–26–9) which was missing the ''i'' between the ''d'' and ''b.''

- This final rule corrects some minor issues such as the removal of some extra spaces in some chemical names.
- This final rule leaves the note concerning the stay for methyl mercaptan where it is (at the bottom of 40 CFR 372.65), and does not add a footnote marker next to the listing of the chemical in 40 CFR 372.65(a) & (b).

V. References

EPA has established an official public docket for this action under Docket ID No. EPA–HQ–TRI–2019–0146. The public docket includes information considered by EPA in developing this action, including the document listed below, which is electronically or physically located in the docket.

- USEPA. Proposed Changes to the Toxic Release Inventory (TRI) Chemical List, March 18, 2019.

VI. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at *http://www2.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 not a significant regulatory action and was therefore not 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).

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

This action is not expected to be an Executive Order 13771 (82 FR 9339) regulatory action because this action is not significant under Executive Order 12866.

C. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden. Facilities that are affected by this action are already required to report for the chemicals impacted by this action under EPCRA section 313 and section 6607 of the Pollution Prevention Act (PPA), 42 U.S.C. 13101 *et seq.* OMB has previously approved the information collection requirements contained in 40 CFR part 372 under the provisions of the PRA, 44 U.S.C. 3501 *et seq.,* and has assigned OMB control number 2025–0009 (EPA ICR No. 1363.21) for Form R and Form A.

Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

D. Regulatory Flexibility Act (RFA)

Pursuant to the RFA section 605(b), 5 U.S.C. 601 *et seq.,* I certify that this action will not have a significant economic impact on a substantial number of small entities. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This rule adds no new reporting requirements, and there will be no increase in respondent burden or costs. This rule will not impose any requirements on reporting entities, including small entities.

E. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action will impose no enforceable duty on any state, local or tribal governments or the private sector.

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.

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). This rule will not impose substantial direct compliance costs on Indian tribal governments. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of Executive Order 13045 has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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)

This rulemaking does not involve technical standards that would require Agency consideration under NTTAA section 12(d), 15 U.S.C. 272 note.

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

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898 (59 FR 7629, February 16, 1994), because it does not establish an environmental health or safety standard. This action involves corrections that do not change the reporting requirements or otherwise affect the level of protection provided to human health or the environment.

L. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: May 18, 2020.

Alexandra Dapolito Dunn,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

Therefore, EPA amends 40 CFR chapter I as follows:

PART 372—[AMENDED]

■ 1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

■ 2. In § 372.28:

■ a. Add a heading for the table in paragraph (a)(1).

■ b. Revise the table in paragraph (a)(2).

The addition and revision read as follows:

§ 372.28 Lower thresholds for chemicals of special concern.

* * * * *

(a) * * *

(1) * * *

Table 1 to Paragraph (a)(1)

* * * * *

(2) * * *

TABLE 2 TO PARAGRAPH (a)(2)

Category name	Reporting threshold (in pounds unless otherwise noted)
Dioxin and dioxin-like compounds (Manufacturing; and the processing or otherwise use of dioxin and dioxin-like compounds if the dioxin and dioxin-like compounds are present as contaminants in a chemical and if they were created during the manufacturing of that chemical) (see § 372.65(c) for a list of chemicals covered by this category).	0.1 grams.
Hexabromocyclododecane (see § 372.65(c) for a list of chemicals covered by this category)	100
Lead Compounds	100
Mercury compounds	10
Polycyclic aromatic compounds (PACs) (see § 372.65(c) for a list of chemicals covered by this category)	100

* * * * *

■ 3. In § 372.38, revise paragraph (a) to read as follows:

§ 372.38 Exemptions.

(a) *De minimis concentrations of a toxic chemical in a mixture.* (1) If a toxic chemical is present in a mixture of chemicals at a covered facility and the toxic chemical is in a concentration in the mixture which is below 1 percent of the mixture, or 0.1 percent of the mixture in the case of a toxic chemical which is a carcinogen, a person is not required to consider the quantity of the toxic chemical present in such mixture when determining whether an applicable threshold has been met under § 372.25 or determining the amount of release to be reported under § 372.30. For purposes of the exemption in this paragraph (a), the following sources establish a chemical as a carcinogen or potential carcinogen:

(i) National Toxicology Program (NTP), Annual Report on Carcinogens (latest edition);

(ii) International Agency for Research on Cancer (IARC) Monographs (latest editions); or

(iii) 29 CFR part 1910, subpart Z, Toxic and Hazardous Substances, Occupational Safety and Health Administration.

(2) The exemption in this paragraph (a) applies whether the person received the mixture from another person, or the person produced the mixture, either by mixing the chemicals involved or by causing a chemical reaction which resulted in the creation of the toxic chemical in the mixture. However, this exemption applies only to the quantity of the toxic chemical present in the mixture. If the toxic chemical is also manufactured (including imported), processed, or otherwise used at the covered facility other than as part of the mixture or in a mixture at higher concentrations, in excess of an applicable threshold quantity set forth in § 372.25, the person is required to report under § 372.30. This exemption does not apply to toxic chemicals listed in § 372.28, except for purposes of § 372.45(d)(1).

* * * * *

■ 4. In § 372.65:

■ a. In the table in paragraph (a):

■ i. Add a table heading.

■ ii. Revise the entries ''Abamectin'' through ''2-Methyllactonitrile''.

■ iii. Remove the entries ''Methyl acrylate'' through ''Methyl isocyanate''.

■ iv. Revise the entries ''Methyl methacrylate'' through ''Zineb''.

■ v. Remove the notes to the table and add footnote 1.

■ b. In the table in paragraph (b):

■ i. Add a table heading.

■ ii. Revise the entries ''50–00–0'' through ''74–90–8'' and ''74–95–3'' through ''136013–79–1''.

■ iii. Remove the notes to the table and add footnote 1.

■ c. Revise the table in paragraph (c).

The additions and revisions read as follows:

§ 372.65 Chemicals and chemical categories to which this part applies.

* * * * *

(a) * * *

TABLE 1 TO PARAGRAPH (a)

Chemical name	CAS No.	Effective date
Abamectin	71751–41–2	1/1/95
Acephate	30560–19–1	1/1/95
Acetaldehyde	75–07–0	1/1/87
Acetamide	60–35–5	1/1/87
Acetonitrile	75–05–8	1/1/87
Acetophenone	98–86–2	1/1/94
2-Acetylaminofluorene	53–96–3	1/1/87
Acifluorfen, sodium salt	62476–59–9	1/1/95
Acrolein	107–02–8	1/1/87
Acrylamide	79–06–1	1/1/87

TABLE 1 TO PARAGRAPH (a)—Continued

Chemical name	CAS No.	Effective date
Acrylic acid	79–10–7	1/1/87
Acrylonitrile	107–13–1	1/1/87
Alachlor	15972–60–8	1/1/95
Aldicarb	116–06–3	1/1/95
Aldrin	309–00–2	1/1/87
d-trans-Allethrin	28434–00–6	1/1/95
Allyl alcohol	107–18–6	1/1/90
Allylamine	107–11–9	1/1/95
Allyl chloride	107–05–1	1/1/87
Aluminum (fume or dust)	7429–90–5	1/1/87
Aluminum oxide (fibrous forms) (Alumina)	1344–28–1	1/1/87
Aluminum phosphide	20859–73–8	1/1/95
Ametryn	834–12–8	1/1/95
2-Aminoanthraquinone	117–79–3	1/1/87
4-Aminoazobenzene	60–09–3	1/1/87
4-Aminobiphenyl	92–67–1	1/1/87
1-Amino-2,4-dibromoanthraquinone	81–49–2	1/1/11
1-Amino-2-methylanthraquinone	82–28–0	1/1/87
Amitraz	33089–61–1	1/1/95
Amitrole	61–82–5	1/1/94
Ammonia (includes anhydrous ammonia and aqueous ammonia from water dissociable ammonium salts and other sources; 10 percent of total aqueous ammonia is reportable under this listing)	7664–41–7	1/1/87
Anilazine	101–05–3	1/1/95
Aniline	62–53–3	1/1/87
o-Anisidine	90–04–0	1/1/87
p-Anisidine	104–94–9	1/1/87
o-Anisidine hydrochloride	134–29–2	1/1/87
Anthracene	120–12–7	1/1/87
Antimony	7440–36–0	1/1/87
Arsenic	7440–38–2	1/1/87
Asbestos (friable)	1332–21–4	1/1/87
Atrazine	1912–24–9	1/1/95
Barium	7440–39–3	1/1/87
Bendiocarb	22781–23–3	1/1/95
Benfluralin	1861–40–1	1/1/95
Benomyl	17804–35–2	1/1/95
Benzal chloride	98–87–3	1/1/87
Benzamide	55–21–0	1/1/87
Benzene	71–43–2	1/1/87
Benzidine	92–87–5	1/1/87
Benzo[g,h,i]perylene	191–24–2	1/1/00
Benzoic trichloride (Benzotrichloride)	98–07–7	1/1/87
Benzoyl chloride	98–88–4	1/1/87
Benzoyl peroxide	94–36–0	1/1/87
Benzyl chloride	100–44–7	1/1/87
Beryllium	7440–41–7	1/1/87
Bifenthrin	82657–04–3	1/1/95
Biphenyl	92–52–4	1/1/87
2,2-Bis(bromomethyl)-1,3-propanediol	3296–90–0	1/1/11
Bis(2-chloroethoxy)methane	111–91–1	1/1/94
Bis(2-chloroethyl) ether	111–44–4	1/1/87
Bis(chloromethyl) ether	542–88–1	1/1/87
Bis(2-chloro-1-methylethyl) ether	108–60–1	1/1/87
Bis(tributyltin) oxide	56–35–9	1/1/95
Boron trichloride	10294–34–5	1/1/95
Boron trifluoride	7637–07–2	1/1/95
Bromacil	314–40–9	1/1/95
Bromacil, lithium salt	53404–19–6	1/1/95
Bromine	7726–95–6	1/1/95
1-Bromo-1-(bromomethyl)-1,3-propanedicarbonitrile	35691–65–7	1/1/95
Bromochlorodifluoromethane (Halon 1211)	353–59–3	7/8/90
Bromoform (Tribromomethane)	75–25–2	1/1/87
Bromomethane (Methyl bromide)	74–83–9	1/1/87
1-Bromopropane	106–94–5	1/1/16
Bromotrifluoromethane (Halon 1301)	75–63–8	7/8/90
Bromoxynil	1689–84–5	1/1/95
Bromoxynil octanoate	1689–99–2	1/1/95
Brucine	357–57–3	1/1/95
1,3-Butadiene	106–99–0	1/1/87
Butyl acrylate	141–32–2	1/1/87
n-Butyl alcohol (1-Butanol)	71–36–3	1/1/87
sec-Butyl alcohol (2-Butanol)	78–92–2	1/1/87

TABLE 1 TO PARAGRAPH (a)—Continued

Chemical name	CAS No.	Effective date
tert-Butyl alcohol (tert-Butanol)	75–65–0	1/1/87
1,2-Butylene oxide	106–88–7	1/1/87
Butyraldehyde	123–72–8	1/1/87
C.I. Acid Green 3	4680–78–8	1/1/87
C.I. Acid Red 114	6459–94–5	1/1/95
C.I. Basic Green 4 (Malachite green)	569–64–2	1/1/87
C.I. Basic Red 1	989–38–8	1/1/87
C.I. Direct Black 38	1937–37–7	1/1/87
C.I. Direct Blue 6	2602–46–2	1/1/87
C.I. Direct Blue 218	28407–37–6	1/1/95
C.I. Direct Brown 95	16071–86–6	1/1/87
C.I. Disperse Yellow 3	2832–40–8	1/1/87
C.I. Food Red 5	3761–53–3	1/1/87
C.I. Food Red 15 (Rhodamine B)	81–88–9	1/1/87
C.I. Solvent Orange 7	3118–97–6	1/1/87
C.I. Solvent Yellow 3	97–56–3	1/1/87
C.I. Solvent Yellow 14	842–07–9	1/1/87
C.I. Solvent Yellow 34 (Auramine)	492–80–8	1/1/87
C.I. Vat Yellow 4	128–66–5	1/1/87
Cadmium	7440–43–9	1/1/87
Calcium cyanamide	156–62–7	1/1/87
Captan	133–06–2	1/1/87
Carbaryl	63–25–2	1/1/87
Carbofuran	1563–66–2	1/1/95
Carbon disulfide	75–15–0	1/1/87
Carbon tetrachloride	56–23–5	1/1/87
Carbonyl sulfide	463–58–1	1/1/87
Carboxin	5234–68–4	1/1/95
Catechol	120–80–9	1/1/87
Chinomethionate	2439–01–2	1/1/95
Chloramben	133–90–4	1/1/87
Chlordane	57–74–9	1/1/87
Chlorendic acid	115–28–6	1/1/95
Chlorimuron-ethyl	90982–32–4	1/1/95
Chlorine	7782–50–5	1/1/87
Chlorine dioxide	10049–04–4	1/1/87
Chloroacetic acid	79–11–8	1/1/87
2-Chloroacetophenone	532–27–4	1/1/87
1-(3-Chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride	4080–31–3	1/1/95
p-Chloroaniline	106–47–8	1/1/95
Chlorobenzene	108–90–7	1/1/87
Chlorobenzilate	510–15–6	1/1/87
1-Chloro-1,1-difluoroethane (HCFC-142b)	75–68–3	1/1/94
Chlorodifluoromethane (HCFC-22)	75–45–6	1/1/94
Chloroethane	75–00–3	1/1/87
Chloroform	67–66–3	1/1/87
Chloromethane	74–87–3	1/1/87
Chloromethyl methyl ether	107–30–2	1/1/87
3-Chloro-2-methyl-1-propene	563–47–3	1/1/95
p-Chlorophenyl isocyanate	104–12–1	1/1/95
Chloropicrin	76–06–2	1/1/95
Chloroprene	126–99–8	1/1/87
3-Chloropropionitrile	542–76–7	1/1/95
Chlorotetrafluoroethane	63938–10–3	1/1/94
1-Chloro-1,1,2,2-tetrafluoroethane (HCFC-124a)	354–25–6	1/1/94
2-Chloro-1,1,1,2-tetrafluoroethane (HCFC-124)	2837–89–0	1/1/94
Chlorothalonil	1897–45–6	1/1/87
p-Chloro-*o*-toluidine (4-Chloro-2-methylaniline)	95–69–2	1/1/95
2-Chloro-1,1,1-trifluoroethane (HCFC-133a)	75–88–7	1/1/95
Chlorotrifluoromethane (CFC-13)	75–72–9	1/1/95
3-Chloro-1,1,1-trifluoropropane (HCFC-253fb)	460–35–5	1/1/95
Chlorpyrifos-methyl	5598–13–0	1/1/95
Chlorsulfuron	64902–72–3	1/1/95
Chromium	7440–47–3	1/1/87
Cobalt	7440–48–4	1/1/87
Copper	7440–50–8	1/1/87
Creosote	8001–58–9	1/1/90
p-Cresidine	120–71–8	1/1/87
Cresol (mixed isomers)	1319–77–3	1/1/87
m-Cresol	108–39–4	1/1/87
o-Cresol	95–48–7	1/1/87
p-Cresol	106–44–5	1/1/87

TABLE 1 TO PARAGRAPH (a)—Continued

Chemical name	CAS No.	Effective date
Crotonaldehyde	4170–30–3	1/1/95
Cumene	98–82–8	1/1/87
Cumene hydroperoxide	80–15–9	1/1/87
Cupferron	135–20–6	1/1/87
Cyanazine	21725–46–2	1/1/95
Cycloate	1134–23–2	1/1/95
Cyclohexane	110–82–7	1/1/87
Cyclohexanol	108–93–0	1/1/95
Cyfluthrin	68359–37–5	1/1/95
Cyhalothrin	68085–85–8	1/1/95
2,4-D	94–75–7	1/1/87
Dazomet	533–74–4	1/1/95
Dazomet, sodium salt	53404–60–7	1/1/95
2,4-DB	94–82–6	1/1/95
2,4-D 2-butoxyethyl ester	1929–73–3	1/1/95
2,4-D butyl ester	94–80–4	1/1/95
2,4-D chlorocrotyl ester	2971–38–2	1/1/95
Decabromodiphenyl oxide	1163–19–5	1/1/87
Desmedipham	13684–56–5	1/1/95
2,4-D 2-ethylhexyl ester	1928–43–4	1/1/95
2,4-D 2-ethyl-4-methylpentyl ester	53404–37–8	1/1/95
Diallate	2303–16–4	1/1/87
2,4-Diaminoanisole	615–05–4	1/1/87
2,4-Diaminoanisole sulfate	39156–41–7	1/1/87
4,4′-Diaminodiphenyl ether	101–80–4	1/1/87
Diaminotoluene (mixed isomers) (Toluenediamine)	25376–45–8	1/1/87
2,4-Diaminotoluene (2,4-Toluenediamine)	95–80–7	1/1/87
Diazinon	333–41–5	1/1/95
Diazomethane	334–88–3	1/1/87
Dibenzofuran	132–64–9	1/1/87
1,2-Dibromo-3-chloropropane	96–12–8	1/1/87
2,2-Dibromo-3-nitrilopropionamide [1]	10222–01–2	1/1/95
1,2-Dibromoethane (Ethylene dibromide)	106–93–4	1/1/87
Dibromotetrafluoroethane (1,2-Dibromo-1,1,2,2-tetrafluoroethane)	124–73–2	7/8/90
Dibutyl phthalate	84–74–2	1/1/87
Dicamba	1918–00–9	1/1/95
Dichloran	99–30–9	1/1/95
Dichlorobenzene (mixed isomers)	25321–22–6	1/1/87
1,2-Dichlorobenzene (*o*-Dichlorobenzene)	95–50–1	1/1/87
1,3-Dichlorobenzene (*m*-Dichlorobenzene)	541–73–1	1/1/87
1,4-Dichlorobenzene (*p*-Dichlorobenzene)	106–46–7	1/1/87
3,3′-Dichlorobenzidine	91–94–1	1/1/87
3,3′-Dichlorobenzidine dihydrochloride	612–83–9	1/1/95
3,3′-Dichlorobenzidine sulfate	64969–34–2	1/1/95
Dichlorobromomethane	75–27–4	1/1/87
1,4-Dichloro-2-butene	764–41–0	1/1/94
trans-1,4-Dichloro-2-butene	110–57–6	1/1/95
1,2-Dichloro-1,1-difluoroethane (HCFC-132b)	1649–08–7	1/1/95
Dichlorodifluoromethane (CFC-12)	75–71–8	7/8/90
1,2-Dichloroethane	107–06–2	1/1/87
1,2-Dichloroethylene	540–59–0	1/1/87
1,1-Dichloro-1-fluoroethane (HCFC-141b)	1717–00–6	1/1/94
Dichlorofluoromethane (HCFC-21)	75–43–4	1/1/95
Dichloromethane (Methylene chloride)	75–09–2	1/1/87
Dichloropentafluoropropane	127564–92–5	1/1/95
1,1-Dichloro-1,2,2,3,3-pentafluoropropane (HCFC-225cc)	13474–88–9	1/1/95
1,1-Dichloro-1,2,3,3,3-pentafluoropropane (HCFC-225eb)	111512–56–2	1/1/95
1,2-Dichloro-1,1,2,3,3-pentafluoropropane (HCFC-225bb)	422–44–6	1/1/95
1,2-Dichloro-1,1,3,3,3-pentafluoropropane (HCFC-225da)	431–86–7	1/1/95
1,3-Dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb)	507–55–1	1/1/95
1,3-Dichloro-1,1,2,3,3-pentafluoropropane (HCFC-225ea)	136013–79–1	1/1/95
2,2-Dichloro-1,1,1,3,3-pentafluoropropane (HCFC-225aa)	128903–21–9	1/1/95
2,3-dichloro-1,1,1,2,3-pentafluoropropane (HCFC-225ba)	422–48–0	1/1/95
3,3-Dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca)	422–56–0	1/1/95
Dichlorophene	97–23–4	1/1/95
2,4-Dichlorophenol	120–83–2	1/1/87
1,2-Dichloropropane	78–87–5	1/1/87
2,3-Dichloropropene	78–88–6	1/1/90
trans-1,3-Dichloropropene	10061–02–6	1/1/95
1,3-Dichloropropylene (1,3-Dichloropropene)	542–75–6	1/1/87
Dichlorotetrafluoroethane (CFC-114)	76–14–2	7/8/90
Dichlorotrifluoroethane	34077–87–7	1/1/94

TABLE 1 TO PARAGRAPH (a)—Continued

Chemical name	CAS No.	Effective date
Dichloro-1,1,2-trifluoroethane	90454–18–5	1/1/94
1,1-Dichloro-1,2,2-trifluoroethane (HCFC-123b)	812–04–4	1/1/94
1,2-Dichloro-1,1,2-trifluoroethane (HCFC-123a)	354–23–4	1/1/94
2,2-Dichloro-1,1,1-trifluoroethane (HCFC-123)	306–83–2	1/1/94
Dichlorvos	62–73–7	1/1/87
Diclofop methyl	51338–27–3	1/1/95
Dicofol	115–32–2	1/1/87
Dicyclopentadiene	77–73–6	1/1/95
Diepoxybutane	1464–53–5	1/1/87
Diethanolamine	111–42–2	1/1/87
Diethatyl ethyl	38727–55–8	1/1/95
Di(2-ethylhexyl) phthalate	117–81–7	1/1/87
Diethyl sulfate	64–67–5	1/1/87
Diflubenzuron	35367–38–5	1/1/95
Diglycidyl resorcinol ether	101–90–6	1/1/95
Dihydrosafrole	94–58–6	1/1/94
Dimethipin	55290–64–7	1/1/95
Dimethoate	60–51–5	1/1/95
3,3′-Dimethoxybenzidine	119–90–4	1/1/87
3,3′-Dimethoxybenzidine dihydrochloride	20325–40–0	1/1/95
3,3′-Dimethoxybenzidine monohydrochloride	111984–09–9	1/1/95
Dimethylamine	124–40–3	1/1/95
Dimethylamine dicamba	2300–66–5	1/1/95
4-Dimethylaminoazobenzene	60–11–7	1/1/87
N,N-Dimethylaniline	121–69–7	1/1/87
3,3′-Dimethylbenzidine	119–93–7	1/1/87
3,3′-Dimethylbenzidine dihydrochloride	612–82–8	1/1/95
3,3′-Dimethylbenzidine dihydrofluoride	41766–75–0	1/1/95
Dimethylcarbamoyl chloride	79–44–7	1/1/87
Dimethyl chlorothiophosphate	2524–03–0	1/1/95
N,N-Dimethylformamide	68–12–2	1/1/95
1,1-Dimethylhydrazine	57–14–7	1/1/87
2,4-Dimethylphenol	105–67–9	1/1/87
Dimethyl phthalate	131–11–3	1/1/87
Dimethyl sulfate	77–78–1	1/1/87
m-Dinitrobenzene	99–65–0	1/1/90
o-Dinitrobenzene	528–29–0	1/1/90
p-Dinitrobenzene	100–25–4	1/1/90
Dinitrobutyl phenol (Dinoseb)	88–85–7	1/1/95
4,6-Dinitro-o-cresol	534–52–1	1/1/87
2,4-Dinitrophenol	51–28–5	1/1/87
2,4-Dinitrotoluene	121–14–2	1/1/87
2,6-Dinitrotoluene	606–20–2	1/1/87
Dinitrotoluene (mixed isomers)	25321–14–6	1/1/90
Dinocap	39300–45–3	1/1/95
1,4-Dioxane	123–91–1	1/1/87
Diphenamid	957–51–7	1/1/95
Diphenylamine	122–39–4	1/1/95
1,2-Diphenylhydrazine	122–66–7	1/1/87
Dipotassium endothall	2164–07–0	1/1/95
Dipropyl isocinchomeronate	136–45–8	1/1/95
Disodium cyanodithioimidocarbonate	138–93–2	1/1/95
2,4-D isopropyl ester	94–11–1	1/1/95
2,4-Dithiobiuret (Dithiobiuret)	541–53–7	1/1/95
Diuron	330–54–1	1/1/95
Dodine	2439–10–3	1/1/95
2,4-DP (Dichlorprop)	120–36–5	1/1/95
2,4-D propylene glycol butyl ether ester (2,4-D 2-butoxymethylethyl ester)	1320–18–9	1/1/95
2,4-D sodium salt	2702–72–9	1/1/95
Epichlorohydrin	106–89–8	1/1/87
Ethoprop	13194–48–4	1/1/95
2-Ethoxyethanol	110–80–5	1/1/87
Ethyl acrylate	140–88–5	1/1/87
Ethylbenzene	100–41–4	1/1/87
Ethyl chloroformate	541–41–3	1/1/87
S-Ethyl dipropylthiocarbamate	759–94–4	1/1/95
Ethylene	74–85–1	1/1/87
Ethylene glycol	107–21–1	1/1/87
Ethyleneimine (Aziridine)	151–56–4	1/1/87
Ethylene oxide	75–21–8	1/1/87
Ethylene thiourea	96–45–7	1/1/87
Ethylidene dichloride (1,1-Dichloroethane)	75–34–3	1/1/94

TABLE 1 TO PARAGRAPH (a)—Continued

Chemical name	CAS No.	Effective date
Famphur	52–85–7	1/1/95
Fenarimol	60168–88–9	1/1/95
Fenbutatin oxide	13356–08–6	1/1/95
Fenoxaprop-ethyl	66441–23–4	1/1/95
Fenoxycarb	72490–01–8	1/1/95
Fenpropathrin	39515–41–8	1/1/95
Fenthion	55–38–9	1/1/95
Fenvalerate	51630–58–1	1/1/95
Ferbam	14484–64–1	1/1/95
Fluazifop-butyl	69806–50–4	1/1/95
Fluometuron	2164–17–2	1/1/87
Fluorine	7782–41–4	1/1/95
Fluorouracil (5-Fluorouracil)	51–21–8	1/1/95
Fluvalinate	69409–94–5	1/1/95
Folpet	133–07–3	1/1/95
Fomesafen	72178–02–0	1/1/95
Formaldehyde	50–00–0	1/1/87
Formic acid	64–18–6	1/1/94
Freon 113 (CFC-113)	76–13–1	1/1/87
Furan	110–00–9	1/1/11
Glycidol	556–52–5	1/1/11
Heptachlor	76–44–8	1/1/87
Hexachlorobenzene	118–74–1	1/1/87
Hexachloro-1,3-butadiene (Hexachlorobutadiene)	87–68–3	1/1/87
alpha-Hexachlorocyclohexane	319–84–6	1/1/95
Hexachlorocyclopentadiene	77–47–4	1/1/87
Hexachloroethane	67–72–1	1/1/87
Hexachloronaphthalene	1335–87–1	1/1/87
Hexachlorophene	70–30–4	1/1/94
Hexamethylphosphoramide	680–31–9	1/1/87
n-Hexane (Hexane)	110–54–3	1/1/95
Hexazinone	51235–04–2	1/1/95
Hydramethylnon	67485–29–4	1/1/95
Hydrazine	302–01–2	1/1/87
Hydrazine sulfate (1:1)	10034–93–2	1/1/87
Hydrochloric acid (acid aerosols including mists, vapors, gas, fog, and other airborne forms of any particle size)	7647–01–0	1/1/87
Hydrogen cyanide	74–90–8	1/1/87
Hydrogen fluoride (Hydrofluoric acid)	7664–39–3	1/1/87
Hydrogen sulfide	7783–06–4	1/1/94
Hydroquinone	123–31–9	1/1/87
Imazalil	35554–44–0	1/1/95
3-Iodo-2-propynyl butylcarbamate	55406–53–6	1/1/95
Iron pentacarbonyl	13463–40–6	1/1/95
Isobutyraldehyde	78–84–2	1/1/87
Isodrin	465–73–6	1/1/95
Isofenphos	25311–71–1	1/1/95
Isoprene	78–79–5	1/1/11
Isopropyl alcohol (Isopropanol) (only persons who manufacture by the strong acid process are subject, no supplier notification)	67–63–0	1/1/87
4,4′-Isopropylidenediphenol	80–05–7	1/1/87
Isosafrole	120–58–1	1/1/90
Lactofen	77501–63–4	1/1/95
Lead	7439–92–1	1/1/87
Lindane	58–89–9	1/1/87
Linuron	330–55–2	1/1/95
Lithium carbonate	554–13–2	1/1/95
Malathion	121–75–5	1/1/95
Maleic anhydride	108–31–6	1/1/87
Malononitrile	109–77–3	1/1/94
Maneb	12427–38–2	1/1/87
Manganese	7439–96–5	1/1/87
Mecoprop	93–65–2	1/1/95
2-Mercaptobenzothiazole	149–30–4	1/1/95
Mercury	7439–97–6	1/1/87
Merphos	150–50–5	1/1/95
Methacrylonitrile	126–98–7	1/1/94
Metham sodium (Sodium methyldithiocarbamate)	137–42–8	1/1/95
Methanol	67–56–1	1/1/87
Methazole	20354–26–1	1/1/95
Methiocarb	2032–65–7	1/1/95
Methoxone (MCPA)	94–74–6	1/1/95

TABLE 1 TO PARAGRAPH (a)—Continued

Chemical name	CAS No.	Effective date
Methoxone sodium salt	3653–48–3	1/1/95
Methoxychlor	72–43–5	1/1/87
2-Methoxyethanol	109–86–4	1/1/87
Methyl acrylate	96–33–3	1/1/87
Methyl tert-butyl ether	1634–04–4	1/1/87
Methyl chlorocarbonate	79–22–1	1/1/94
4,4′-Methylenebis(2-chloroaniline)	101–14–4	1/1/87
4,4′-Methylenebis(*N,N*-dimethyl)benzenamine (4,4′-Methylenebis[*N,N*-dimethylaniline])	101–61–1	1/1/87
Methylene bromide (Dibromomethane)	74–95–3	1/1/87
4,4′-Methylenedianiline	101–77–9	1/1/87
Methyleugenol	93–15–2	1/1/11
Methyl hydrazine	60–34–4	1/1/87
Methyl iodide	74–88–4	1/1/87
Methyl isobutyl ketone	108–10–1	1/1/87
Methyl isocyanate	624–83–9	1/1/87
Methyl isothiocyanate	556–61–6	1/1/95
2-Methyllactonitrile (Acetone cyanohydrin)	75–86–5	1/1/95
* * * * * *	* * *	* * *
Methyl methacrylate	80–62–6	1/1/87
N-Methylolacrylamide	924–42–5	1/1/95
Methyl parathion	298–00–0	1/1/95
2-Methylpyridine	109–06–8	1/1/94
N-Methyl-2-pyrrolidone	872–50–4	1/1/95
Metiram	9006–42–2	1/1/95
Metribuzin	21087–64–9	1/1/95
Mevinphos	7786–34–7	1/1/95
Michler's ketone	90–94–8	1/1/87
Molinate	2212–67–1	1/1/95
Molybdenum trioxide	1313–27–5	1/1/87
Monochloropentafluoroethane (CFC-115)	76–15–3	7/8/90
Monuron	150–68–5	1/1/95
Mustard gas	505–60–2	1/1/87
Myclobutanil	88671–89–0	1/1/95
Nabam	142–59–6	1/1/95
Naled	300–76–5	1/1/95
Naphthalene	91–20–3	1/1/87
alpha-Naphthylamine (1-Naphthalenamine)	134–32–7	1/1/87
beta-Naphthylamine (2-Naphthalenamine)	91–59–8	1/1/87
Nickel	7440–02–0	1/1/87
Nitrapyrin	1929–82–4	1/1/95
Nitric acid	7697–37–2	1/1/87
Nitrilotriacetic acid	139–13–9	1/1/87
p-Nitroaniline	100–01–6	1/1/95
5-Nitro-*o*-anisidine (2-Methoxy-5-nitroaniline)	99–59–2	1/1/87
o-Nitroanisole	91–23–6	1/1/11
Nitrobenzene	98–95–3	1/1/87
4-Nitrobiphenyl	92–93–3	1/1/87
Nitrofen	1836–75–5	1/1/87
Nitrogen mustard (HN-2)	51–75–2	1/1/87
Nitroglycerin	55–63–0	1/1/87
Nitromethane	75–52–5	1/1/11
2-Nitrophenol (*o*-Nitrophenol)	88–75–5	1/1/87
4-Nitrophenol (*p*-Nitrophenol)	100–02–7	1/1/87
2-Nitropropane	79–46–9	1/1/87
N-Nitrosodi-*n*-butylamine	924–16–3	1/1/87
N-Nitrosodiethylamine	55–18–5	1/1/87
N-Nitrosodimethylamine	62–75–9	1/1/87
N-Nitrosodiphenylamine	86–30–6	1/1/87
p-Nitrosodiphenylamine	156–10–5	1/1/87
N-Nitrosodi-*n*-propylamine	621–64–7	1/1/87
N-Nitroso-*N*-ethylurea	759–73–9	1/1/87
N-Nitroso-*N*-methylurea	684–93–5	1/1/87
N-Nitrosomethylvinylamine	4549–40–0	1/1/87
N-Nitrosomorpholine	59–89–2	1/1/87
N-Nitrosonornicotine	16543–55–8	1/1/87
N-Nitrosopiperidine	100–75–4	1/1/87
o-Nitrotoluene	88–72–2	1/1/14
5-Nitro-*o*-toluidine (2-Methyl-5-nitroaniline)	99–55–8	1/1/94
Norflurazon	27314–13–2	1/1/95
Octachloronaphthalene	2234–13–1	1/1/87
Octachlorostyrene	29082–74–4	1/1/00

TABLE 1 TO PARAGRAPH (a)—Continued

Chemical name	CAS No.	Effective date
Oryzalin	19044–88–3	1/1/95
Osmium tetroxide	20816–12–0	1/1/87
Oxydemeton-methyl	301–12–2	1/1/95
Oxadiazon	19666–30–9	1/1/95
Oxyfluorfen	42874–03–3	1/1/95
Ozone	10028–15–6	1/1/95
Paraldehyde	123–63–7	1/1/94
Paraquat dichloride	1910–42–5	1/1/95
Parathion	56–38–2	1/1/87
Pebulate	1114–71–2	1/1/95
Pendimethalin	40487–42–1	1/1/95
Pentachlorobenzene	608–93–5	1/1/00
Pentachloroethane	76–01–7	1/1/94
Pentachlorophenol	87–86–5	1/1/87
Pentobarbital sodium	57–33–0	1/1/95
Peracetic acid	79–21–0	1/1/87
Perchloromethyl mercaptan	594–42–3	1/1/95
Permethrin	52645–53–1	1/1/95
Phenanthrene	85–01–8	1/1/95
Phenol	108–95–2	1/1/87
Phenolphthalein (3,3-Bis(4-hydroxyphenyl)phthalide)	77–09–8	1/1/11
Phenothrin	26002–80–2	1/1/95
p-Phenylenediamine	106–50–3	1/1/87
1,2-Phenylenediamine	95–54–5	1/1/95
1,3-Phenylenediamine	108–45–2	1/1/95
1,2-Phenylenediamine dihydrochloride	615–28–1	1/1/95
1,4-Phenylenediamine dihydrochloride	624–18–0	1/1/95
2-Phenylphenol	90–43–7	1/1/87
Phenytoin	57–41–0	1/1/95
Phosgene	75–44–5	1/1/87
Phosphine	7803–51–2	1/1/95
Phosphorus (yellow or white)	12185–10–3	1/1/87
Phthalic anhydride	85–44–9	1/1/87
Picloram	1918–02–1	1/1/95
Picric acid	88–89–1	1/1/87
Piperonyl butoxide	51–03–6	1/1/95
Pirimiphos-methyl	29232–93–7	1/1/95
Polychlorinated biphenyls	1336–36–3	1/1/87
Potassium bromate	7758–01–2	1/1/95
Potassium dimethyldithiocarbamate	128–03–0	1/1/95
Potassium *N*-methyldithiocarbamate	137–41–7	1/1/95
Profenofos	41198–08–7	1/1/95
Prometryn	7287–19–6	1/1/95
Pronamide	23950–58–5	1/1/94
Propachlor	1918–16–7	1/1/95
1,3-Propane sultone	1120–71–4	1/1/87
Propanil	709–98–8	1/1/95
Propargite	2312–35–8	1/1/95
Propargyl alcohol	107–19–7	1/1/95
Propetamphos	31218–83–4	1/1/95
Propiconazole	60207–90–1	1/1/95
beta-Propiolactone	57–57–8	1/1/87
Propionaldehyde	123–38–6	1/1/87
Propoxur	114–26–1	1/1/87
Propylene	115–07–1	1/1/87
Propyleneimine	75–55–8	1/1/87
Propylene oxide	75–56–9	1/1/87
Pyridine	110–86–1	1/1/87
Quinoline	91–22–5	1/1/87
Quinone	106–51–4	1/1/87
Quintozene (Pentachloronitrobenzene)	82–68–8	1/1/87
Quizalofop-ethyl	76578–14–8	1/1/95
Resmethrin	10453–86–8	1/1/95
Saccharin (only persons who manufacture are subject, no supplier notification)	81–07–2	1/1/87
Safrole	94–59–7	1/1/87
Selenium	7782–49–2	1/1/87
Sethoxydim	74051–80–2	1/1/95
Silver	7440–22–4	1/1/87
Simazine	122–34–9	1/1/95
Sodium azide	26628–22–8	1/1/95
Sodium dicamba	1982–69–0	1/1/95
Sodium dimethyldithiocarbamate	128–04–1	1/1/95

TABLE 1 TO PARAGRAPH (a)—Continued

Chemical name	CAS No.	Effective date
Sodium fluoroacetate	62–74–8	1/1/95
Sodium nitrite	7632–00–0	1/1/95
Sodium pentachlorophenate	131–52–2	1/1/95
Sodium *o*-phenylphenoxide	132–27–4	1/1/95
Styrene	100–42–5	1/1/87
Styrene oxide	96–09–3	1/1/87
Sulfuric acid (acid aerosols including mists, vapors, gas, fog, and other airborne forms of any particle size)	7664–93–9	1/1/87
Sulfuryl fluoride	2699–79–8	1/1/95
Sulprofos	35400–43–2	1/1/95
Tebuthiuron	34014–18–1	1/1/95
Temephos	3383–96–8	1/1/95
Terbacil	5902–51–2	1/1/95
Tetrabromobisphenol A	79–94–7	1/1/00
1,1,1,2-Tetrachloroethane	630–20–6	1/1/94
1,1,2,2-Tetrachloroethane	79–34–5	1/1/87
Tetrachloroethylene	127–18–4	1/1/87
1,1,1,2-Tetrachloro-2-fluoroethane (HCFC-121a)	354–11–0	1/1/95
1,1,2,2-Tetrachloro-1-fluoroethane (HCFC-121)	354–14–3	1/1/95
Tetrachlorvinphos	961–11–5	1/1/87
Tetracycline hydrochloride	64–75–5	1/1/95
Tetrafluoroethylene (Tetrafluoroethene)	116–14–3	1/1/11
Tetramethrin	7696–12–0	1/1/95
Tetranitromethane	509–14–8	1/1/11
Thallium	7440–28–0	1/1/87
Thiabendazole	148–79–8	1/1/95
Thioacetamide	62–55–5	1/1/87
Thiobencarb	28249–77–6	1/1/95
4,4′-Thiodianiline	139–65–1	1/1/87
Thiodicarb	59669–26–0	1/1/95
Thiophanate-ethyl	23564–06–9	1/1/95
Thiophanate-methyl	23564–05–8	1/1/95
Thiosemicarbazide	79–19–6	1/1/95
Thiourea	62–56–6	1/1/87
Thiram	137–26–8	1/1/94
Thorium dioxide	1314–20–1	1/1/87
Titanium tetrachloride	7550–45–0	1/1/87
Toluene	108–88–3	1/1/87
Toluene-2,4-diisocyanate	584–84–9	1/1/87
Toluene-2,6-diisocyanate	91–08–7	1/1/87
Toluene diisocyanate (mixed isomers)	26471–62–5	1/1/90
o-Toluidine	95–53–4	1/1/87
o-Toluidine hydrochloride	636–21–5	1/1/87
Toxaphene	8001–35–2	1/1/87
Triadimefon	43121–43–3	1/1/95
Triallate	2303–17–5	1/1/95
Triaziquone	68–76–8	1/1/87
Tribenuron-methyl	101200–48–0	1/1/95
Tributyltin fluoride	1983–10–4	1/1/95
Tributyltin methacrylate	2155–70–6	1/1/95
S,S,S-Tributyltrithiophosphate (Tribufos)	78–48–8	1/1/95
Trichlorfon	52–68–6	1/1/87
Trichloroacetyl chloride	76–02–8	1/1/95
1,2,4-Trichlorobenzene	120–82–1	1/1/87
1,1,1-Trichloroethane	71–55–6	1/1/87
1,1,2-Trichloroethane	79–00–5	1/1/87
Trichloroethylene	79–01–6	1/1/87
Trichlorofluoromethane (CFC-11)	75–69–4	7/8/90
2,4,5-Trichlorophenol	95–95–4	1/1/87
2,4,6-Trichlorophenol	88–06–2	1/1/87
1,2,3-Trichloropropane	96–18–4	1/1/95
Triclopyr-triethylammonium salt	57213–69–1	1/1/95
Triethylamine	121–44–8	1/1/95
Trifluralin	1582–09–8	1/1/87
Triforine	26644–46–2	1/1/95
1,2,4-Trimethylbenzene	95–63–6	1/1/87
2,3,5-Trimethylphenyl methylcarbamate	2655–15–4	1/1/95
Triphenyltin chloride	639–58–7	1/1/95
Triphenyltin hydroxide	76–87–9	1/1/95
Tris(2,3-dibromopropyl) phosphate	126–72–7	1/1/87
Trypan blue	72–57–1	1/1/94
Urethane	51–79–6	1/1/87
Vanadium (except when contained in an alloy)	7440–62–2	1/1/00

TABLE 1 TO PARAGRAPH (a)—Continued

Chemical name	CAS No.	Effective date
Vinclozolin	50471–44–8	1/1/95
Vinyl acetate	108–05–4	1/1/87
Vinyl bromide	593–60–2	1/1/87
Vinyl chloride	75–01–4	1/1/87
Vinyl fluoride	75–02–5	1/1/11
Vinylidene chloride (1,1-Dichloroethylene)	75–35–4	1/1/87
Xylene (mixed isomers)	1330–20–7	1/1/87
m-Xylene	108–38–3	1/1/87
o-Xylene	95–47–6	1/1/87
p-Xylene	106–42–3	1/1/87
2,6-Xylidine	87–62–7	1/1/87
Zinc (fume or dust)	7440–66–6	1/1/87
Zineb	12122–67–7	1/1/87

[1] The listing of 2,2-dibromo-3-nitrilopropionamide (CAS No. 10222–01–2) is stayed. The stay will remain in effect until further administrative action is taken.

(b) * * *

TABLE 2 TO PARAGRAPH (b)

CAS No.	Chemical name	Effective date
50–00–0	Formaldehyde	1/1/87
51–03–6	Piperonyl butoxide	1/1/95
51–21–8	Fluorouracil (5-Fluorouracil)	1/1/95
51–28–5	2,4-Dinitrophenol	1/1/87
51–75–2	Nitrogen mustard (HN-2)	1/1/87
51–79–6	Urethane	1/1/87
52–68–6	Trichlorfon	1/1/87
52–85–7	Famphur	1/1/95
53–96–3	2-Acetylaminofluorene	1/1/87
55–18–5	*N*-Nitrosodiethylamine	1/1/87
55–21–0	Benzamide	1/1/87
55–38–9	Fenthion	1/1/95
55–63–0	Nitroglycerin	1/1/87
56–23–5	Carbon tetrachloride	1/1/87
56–35–9	Bis(tributyltin) oxide	1/1/95
56–38–2	Parathion	1/1/87
57–14–7	1,1-Dimethylhydrazine	1/1/87
57–33–0	Pentobarbital sodium	1/1/95
57–41–0	Phenytoin	1/1/95
57–57–8	*beta*-Propiolactone	1/1/87
57–74–9	Chlordane	1/1/87
58–89–9	Lindane	1/1/87
59–89–2	*N*-Nitrosomorpholine	1/1/87
60–09–3	4-Aminoazobenzene	1/1/87
60–11–7	4-Dimethylaminoazobenzene	1/1/87
60–34–4	Methyl hydrazine	1/1/87
60–35–5	Acetamide	1/1/87
60–51–5	Dimethoate	1/1/95
61–82–5	Amitrole	1/1/94
62–53–3	Aniline	1/1/87
62–55–5	Thioacetamide	1/1/87
62–56–6	Thiourea	1/1/87
62–73–7	Dichlorvos	1/1/87
62–74–8	Sodium fluoroacetate	1/1/95
62–75–9	*N*-Nitrosodimethylamine	1/1/87
63–25–2	Carbaryl	1/1/87
64–18–6	Formic acid	1/1/94
64–67–5	Diethyl sulfate	1/1/87
64–75–5	Tetracycline hydrochloride	1/1/95
67–56–1	Methanol	1/1/87
67–63–0	Isopropyl alcohol (Isopropanol) (only persons who manufacture by the strong acid process are subject, no supplier notification).	1/1/87
67–66–3	Chloroform	1/1/87
67–72–1	Hexachloroethane	1/1/87
68–12–2	*N,N*-Dimethylformamide	1/1/95
68–76–8	Triaziquone	1/1/87
70–30–4	Hexachlorophene	1/1/94
71–36–3	*n*-Butyl alcohol (1-Butanol)	1/1/87

TABLE 2 TO PARAGRAPH (b)—Continued

CAS No.	Chemical name	Effective date
71–43–2	Benzene	1/1/87
71–55–6	1,1,1-Trichloroethane	1/1/87
72–43–5	Methoxychlor	1/1/87
72–57–1	Trypan blue	1/1/94
74–83–9	Bromomethane (Methyl bromide)	1/1/87
74–85–1	Ethylene	1/1/87
74–87–3	Chloromethane	1/1/87
74–88–4	Methyl iodide	1/1/87
74–90–8	Hydrogen cyanide	1/1/87
* * *	* * * * *	* * *
74–95–3	Methylene bromide (Dibromomethane)	1/1/87
75–00–3	Chloroethane	1/1/87
75–01–4	Vinyl chloride	1/1/87
75–02–5	Vinyl fluoride	1/1/11
75–05–8	Acetonitrile	1/1/87
75–07–0	Acetaldehyde	1/1/87
75–09–2	Dichloromethane (Methylene chloride)	1/1/87
75–15–0	Carbon disulfide	1/1/87
75–21–8	Ethylene oxide	1/1/87
75–25–2	Bromoform (Tribromomethane)	1/1/87
75–27–4	Dichlorobromomethane	1/1/87
75–34–3	Ethylidene dichloride (1,1-Dichloroethane)	1/1/94
75–35–4	Vinylidene chloride (1,1-Dichloroethylene)	1/1/87
75–43–4	Dichlorofluoromethane (HCFC-21)	1/1/95
75–44–5	Phosgene	1/1/87
75–45–6	Chlorodifluoromethane (HCFC-22)	1/1/94
75–52–5	Nitromethane	1/1/11
75–55–8	Propyleneimine	1/1/87
75–56–9	Propylene oxide	1/1/87
75–63–8	Bromotrifluoromethane (Halon 1301)	7/8/90
75–65–0	*tert*-Butyl alcohol (tert-Butanol)	1/1/87
75–68–3	1-Chloro-1,1-difluoroethane (HCFC-142b)	1/1/94
75–69–4	Trichlorofluoromethane (CFC-11)	7/8/90
75–71–8	Dichlorodifluoromethane (CFC-12)	7/8/90
75–72–9	Chlorotrifluoromethane (CFC-13)	1/1/95
75–86–5	2-Methyllactonitrile (Acetone cyanohydrin)	1/1/95
75–88–7	2-Chloro-1,1,1-trifluoroethane (HCFC-133a)	1/1/95
76–01–7	Pentachloroethane	1/1/94
76–02–8	Trichloroacetyl chloride	1/1/95
76–06–2	Chloropicrin	1/1/95
76–13–1	Freon 113 (CFC-113)	1/1/87
76–14–2	Dichlorotetrafluoroethane (CFC-114)	7/8/90
76–15–3	Monochloropentafluoroethane (CFC-115)	7/8/90
76–44–8	Heptachlor	1/1/87
76–87–9	Triphenyltin hydroxide	1/1/95
77–09–8	Phenolphthalein (3,3-Bis(4-hydroxyphenyl)phthalide)	1/1/11
77–47–4	Hexachlorocyclopentadiene	1/1/87
77–73–6	Dicyclopentadiene	1/1/95
77–78–1	Dimethyl sulfate	1/1/87
78–48–8	*S,S,S*-Tributyltrithiophosphate (Tribufos)	1/1/95
78–79–5	Isoprene	1/1/11
78–84–2	Isobutyraldehyde	1/1/87
78–87–5	1,2-Dichloropropane	1/1/87
78–88–6	2,3-Dichloropropene	1/1/90
78–92–2	*sec*-Butyl alcohol (2-Butanol)	1/1/87
79–00–5	1,1,2-Trichloroethane	1/1/87
79–01–6	Trichloroethylene	1/1/87
79–06–1	Acrylamide	1/1/87
79–10–7	Acrylic acid	1/1/87
79–11–8	Chloroacetic acid	1/1/87
79–19–6	Thiosemicarbazide	1/1/95
79–21–0	Peracetic acid	1/1/87
79–22–1	Methyl chlorocarbonate	1/1/94
79–34–5	1,1,2,2-Tetrachloroethane	1/1/87
79–44–7	Dimethylcarbamoyl chloride	1/1/87
79–46–9	2-Nitropropane	1/1/87
79-94-7	Tetrabromobisphenol A	1/1/00
80–05–7	4,4′-Isopropylidenediphenol	1/1/87
80–15–9	Cumene hydroperoxide	1/1/87
80–62–6	Methyl methacrylate	1/1/87
81–07–2	Saccharin (only persons who manufacture are subject, no supplier notification)	1/1/87

TABLE 2 TO PARAGRAPH (b)—Continued

CAS No.	Chemical name	Effective date
81–49–2	1-Amino-2,4-dibromoanthraquinone	1/1/11
81–88–9	C.I. Food Red 15 (Rhodamine B)	1/1/87
82–28–0	1-Amino-2-methylanthraquinone	1/1/87
82–68–8	Quintozene (Pentachloronitrobenzene)	1/1/87
84–74–2	Dibutyl phthalate	1/1/87
85–01–8	Phenanthrene	1/1/95
85–44–9	Phthalic anhydride	1/1/87
86–30–6	*N*-Nitrosodiphenylamine	1/1/87
87–62–7	2,6-Xylidine	1/1/87
87–68–3	Hexachloro-1,3-butadiene (Hexachlorobutadiene)	1/1/87
87–86–5	Pentachlorophenol	1/1/87
88–06–2	2,4,6-Trichlorophenol	1/1/87
88–72–2	*o*-Nitrotoluene	1/1/14
88–75–5	2-Nitrophenol (*o*-Nitrophenol)	1/1/87
88–85–7	Dinitrobutyl phenol (Dinoseb)	1/1/95
88–89–1	Picric acid	1/1/87
90–04–0	*o*-Anisidine	1/1/87
90–43–7	2-Phenylphenol	1/1/87
90–94–8	Michler's ketone	1/1/87
91–08–7	Toluene-2,6-diisocyanate	1/1/87
91–20–3	Naphthalene	1/1/87
91–22–5	Quinoline	1/1/87
91–23–6	*o*-Nitroanisole	1/1/11
91–59–8	*beta*-Naphthylamine (2-Naphthalenamine)	1/1/87
91–94–1	3,3′-Dichlorobenzidine	1/1/87
92–52–4	Biphenyl	1/1/87
92–67–1	4-Aminobiphenyl	1/1/87
92–87–5	Benzidine	1/1/87
92–93–3	4-Nitrobiphenyl	1/1/87
93–15–2	Methyleugenol	1/1/11
93–65–2	Mecoprop	1/1/95
94–11–1	2,4-D isopropyl ester	1/1/95
94–36–0	Benzoyl peroxide	1/1/87
94–58–6	Dihydrosafrole	1/1/94
94–59–7	Safrole	1/1/87
94–74–6	Methoxone (MCPA)	1/1/95
94–75–7	2,4-D	1/1/87
94–80–4	2,4-D butyl ester	1/1/95
94–82–6	2,4-DB	1/1/95
95–47–6	*o*-Xylene	1/1/87
95–48–7	*o*-Cresol	1/1/87
95–50–1	1,2-Dichlorobenzene (*o*-Dichlorobenzene)	1/1/87
95–53–4	*o*-Toluidine	1/1/87
95–54–5	1,2-Phenylenediamine	1/1/95
95–63–6	1,2,4-Trimethylbenzene	1/1/87
95–69–2	*p*-Chloro-*o*-toluidine (4-Chloro-2-methylaniline)	1/1/95
95–80–7	2,4-Diaminotoluene (2,4-Toluenediamine)	1/1/87
95–95–4	2,4,5-Trichlorophenol	1/1/87
96–09–3	Styrene oxide	1/1/87
96–12–8	1,2-Dibromo-3-chloropropane	1/1/87
96–18–4	1,2,3-Trichloropropane	1/1/95
96–33–3	Methyl acrylate	1/1/87
96–45–7	Ethylene thiourea	1/1/87
97–23–4	Dichlorophene	1/1/95
97–56–3	C.I. Solvent Yellow 3	1/1/87
98–07–7	Benzoic trichloride (Benzotrichloride)	1/1/87
98–82–8	Cumene	1/1/87
98–86–2	Acetophenone	1/1/94
98–87–3	Benzal chloride	1/1/87
98–88–4	Benzoyl chloride	1/1/87
98–95–3	Nitrobenzene	1/1/87
99–30–9	Dichloran	1/1/95
99–55–8	5-Nitro-*o*-toluidine (2-Methyl-5-nitroaniline)	1/1/94
99–59–2	5-Nitro-*o*-anisidine (2-Methoxy-5-nitroaniline)	1/1/87
99–65–0	*m*-Dinitrobenzene	1/1/90
100–01–6	*p*-Nitroaniline	1/1/95
100–02–7	4-Nitrophenol (*p*-Nitrophenol)	1/1/87
100–25–4	*p*-Dinitrobenzene	1/1/90
100–41–4	Ethylbenzene	1/1/87
100–42–5	Styrene	1/1/87
100–44–7	Benzyl chloride	1/1/87
100–75–4	*N*-Nitrosopiperidine	1/1/87

TABLE 2 TO PARAGRAPH (b)—Continued

CAS No.	Chemical name	Effective date
101–05–3	Anilazine	1/1/95
101–14–4	4,4′-Methylenebis(2-chloroaniline)	1/1/87
101–61–1	4,4′-Methylenebis(*N,N*-dimethyl)benzenamine (4,4′-Methylenebis[*N,N*-dimethylaniline])	1/1/87
101–77–9	4,4′-Methylenedianiline	1/1/87
101–80–4	4,4′-Diaminodiphenyl ether	1/1/87
101–90–6	Diglycidyl resorcinol ether	1/1/95
104–12–1	*p*-Chlorophenyl isocyanate	1/1/95
104–94–9	*p*-Anisidine	1/1/87
105–67–9	2,4-Dimethylphenol	1/1/87
106–42–3	*p*-Xylene	1/1/87
106–44–5	*p*-Cresol	1/1/87
106–46–7	1,4-Dichlorobenzene (*p*-Dichlorobenzene)	1/1/87
106–47–8	*p*-Chloroaniline	1/1/95
106–50–3	*p*-Phenylenediamine	1/1/87
106–51–4	Quinone	1/1/87
106–88–7	1,2-Butylene oxide	1/1/87
106–89–8	Epichlorohydrin	1/1/87
106–93–4	1,2-Dibromoethane (Ethylene dibromide)	1/1/87
106–94–5	1-Bromopropane	1/1/16
106–99–0	1,3-Butadiene	1/1/87
107–02–8	Acrolein	1/1/87
107–05–1	Allyl chloride	1/1/87
107–06–2	1,2-Dichloroethane	1/1/87
107–11–9	Allylamine	1/1/95
107–13–1	Acrylonitrile	1/1/87
107–18–6	Allyl alcohol	1/1/90
107–19–7	Propargyl alcohol	1/1/95
107–21–1	Ethylene glycol	1/1/87
107–30–2	Chloromethyl methyl ether	1/1/87
108–05–4	Vinyl acetate	1/1/87
108–10–1	Methyl isobutyl ketone	1/1/87
108–31–6	Maleic anhydride	1/1/87
108–38–3	*m*-Xylene	1/1/87
108–39–4	*m*-Cresol	1/1/87
108–45–2	1,3-Phenylenediamine	1/1/95
108–60–1	Bis(2-chloro-1-methylethyl) ether	1/1/87
108–88–3	Toluene	1/1/87
108–90–7	Chlorobenzene	1/1/87
108–93–0	Cyclohexanol	1/1/95
108–95–2	Phenol	1/1/87
109–06–8	2-Methylpyridine	1/1/94
109–77–3	Malononitrile	1/1/94
109–86–4	2-Methoxyethanol	1/1/87
110–00–9	Furan	1/1/11
110–54–3	*n*-Hexane (Hexane)	1/1/95
110–57–6	*trans*-1,4-Dichloro-2-butene	1/1/95
110–80–5	2-Ethoxyethanol	1/1/87
110–82–7	Cyclohexane	1/1/87
110–86–1	Pyridine	1/1/87
111–42–2	Diethanolamine	1/1/87
111–44–4	Bis(2-chloroethyl) ether	1/1/87
111–91–1	Bis(2-chloroethoxy)methane	1/1/94
114–26–1	Propoxur	1/1/87
115–07–1	Propylene	1/1/87
115–28–6	Chlorendic acid	1/1/95
115–32–2	Dicofol	1/1/87
116–06–3	Aldicarb	1/1/95
116–14–3	Tetrafluoroethylene (Tetrafluoroethene)	1/1/11
117–79–3	2-Aminoanthraquinone	1/1/87
117–81–7	Di(2-ethylhexyl) phthalate	1/1/87
118–74–1	Hexachlorobenzene	1/1/87
119–90–4	3,3′-Dimethoxybenzidine	1/1/87
119–93–7	3,3′-Dimethylbenzidine	1/1/87
120–12–7	Anthracene	1/1/87
120–36–5	2,4-DP (Dichlorprop)	1/1/95
120–58–1	Isosafrole	1/1/90
120–71–8	*p*-Cresidine	1/1/87
120–80–9	Catechol	1/1/87
120–82–1	1,2,4-Trichlorobenzene	1/1/87
120–83–2	2,4-Dichlorophenol	1/1/87
121–14–2	2,4-Dinitrotoluene	1/1/87
121–44–8	Triethylamine	1/1/95

TABLE 2 TO PARAGRAPH (b)—Continued

CAS No.	Chemical name	Effective date
121–69–7	*N,N*-Dimethylaniline	1/1/87
121–75–5	Malathion	1/1/95
122–34–9	Simazine	1/1/95
122–39–4	Diphenylamine	1/1/95
122–66–7	1,2-Diphenylhydrazine	1/1/87
123–31–9	Hydroquinone	1/1/87
123–38–6	Propionaldehyde	1/1/87
123–63–7	Paraldehyde	1/1/94
123–72–8	Butyraldehyde	1/1/87
123–91–1	1,4-Dioxane	1/1/87
124–40–3	Dimethylamine	1/1/95
124–73–2	Dibromotetrafluoroethane (1,2-Dibromo-1,1,2,2-tetrafluoroethane)	7/8/90
126–72–7	Tris(2,3-dibromopropyl) phosphate	1/1/87
126–98–7	Methacrylonitrile	1/1/94
126–99–8	Chloroprene	1/1/87
127–18–4	Tetrachloroethylene	1/1/87
128–03–0	Potassium dimethyldithiocarbamate	1/1/95
128–04–1	Sodium dimethyldithiocarbamate	1/1/95
128–66–5	C.I. Vat Yellow 4	1/1/87
131–11–3	Dimethyl phthalate	1/1/87
131–52–2	Sodium pentachlorophenate	1/1/95
132–27–4	Sodium *o*-phenylphenoxide	1/1/95
132–64–9	Dibenzofuran	1/1/87
133–06–2	Captan	1/1/87
133–07–3	Folpet	1/1/95
133–90–4	Chloramben	1/1/87
134–29–2	*o*-Anisidine hydrochloride	1/1/87
134–32–7	*alpha*-Naphthylamine (1-Naphthalenamine)	1/1/87
135–20–6	Cupferron	1/1/87
136–45–8	Dipropyl isocinchomeronate	1/1/95
137–26–8	Thiram	1/1/94
137–41–7	Potassium *N*-methyldithiocarbamate	1/1/95
137–42–8	Metham sodium (Sodium methyldithiocarbamate)	1/1/95
138–93–2	Disodium cyanodithioimidocarbonate	1/1/95
139–13–9	Nitrilotriacetic acid	1/1/87
139–65–1	4,4′-Thiodianiline	1/1/87
140–88–5	Ethyl acrylate	1/1/87
141–32–2	Butyl acrylate	1/1/87
142–59–6	Nabam	1/1/95
148–79–8	Thiabendazole	1/1/95
149–30–4	2-Mercaptobenzothiazole	1/1/95
150–50–5	Merphos	1/1/95
150–68–5	Monuron	1/1/95
151–56–4	Ethyleneimine (Aziridine)	1/1/87
156–10–5	*p*-Nitrosodiphenylamine	1/1/87
156–62–7	Calcium cyanamide	1/1/87
191–24–2	Benzo[g,h,i]perylene	1/1/00
298–00–0	Methyl parathion	1/1/95
300–76–5	Naled	1/1/95
301–12–2	Oxydemeton-methyl	1/1/95
302–01–2	Hydrazine	1/1/87
306–83–2	2,2-Dichloro-1,1,1-trifluoroethane (HCFC-123)	1/1/94
309–00–2	Aldrin	1/1/87
314–40–9	Bromacil	1/1/95
319–84–6	*alpha*-Hexachlorocyclohexane	1/1/95
330–54–1	Diuron	1/1/95
330–55–2	Linuron	1/1/95
333–41–5	Diazinon	1/1/95
334–88–3	Diazomethane	1/1/87
353–59–3	Bromochlorodifluoromethane (Halon 1211)	7/8/90
354–11–0	1,1,1,2-Tetrachloro-2-fluoroethane (HCFC-121a)	1/1/95
354–14–3	1,1,2,2-Tetrachloro-1-fluoroethane (HCFC-121)	1/1/95
354–23–4	1,2-Dichloro-1,1,2-trifluoroethane (HCFC-123a)	1/1/94
354–25–6	1-Chloro-1,1,2,2-tetrafluoroethane (HCFC-124a)	1/1/94
357–57–3	Brucine	1/1/95
422–44–6	1,2-Dichloro-1,1,2,3,3-pentafluoropropane (HCFC-225bb)	1/1/95
422–48–0	2,3-dichloro-1,1,1,2,3-pentafluoropropane (HCFC-225ba)	1/1/95
422–56–0	3,3-Dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca)	1/1/95
431–86–7	1,2-Dichloro-1,1,3,3,3-pentafluoropropane (HCFC-225da)	1/1/95
460–35–5	3-Chloro-1,1,1-trifluoropropane (HCFC-253fb)	1/1/95
463–58–1	Carbonyl sulfide	1/1/87
465–73–6	Isodrin	1/1/95

TABLE 2 TO PARAGRAPH (b)—Continued

CAS No.	Chemical name	Effective date
492–80–8	C.I. Solvent Yellow 34 (Auramine)	1/1/87
505–60–2	Mustard gas	1/1/87
507–55–1	1,3-Dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb)	1/1/95
509–14–8	Tetranitromethane	1/1/11
510–15–6	Chlorobenzilate	1/1/87
528–29–0	*o*-Dinitrobenzene	1/1/90
532–27–4	2-Chloroacetophenone	1/1/87
533–74–4	Dazomet	1/1/95
534–52–1	4,6-Dinitro-*o*-cresol	1/1/87
540–59–0	1,2-Dichloroethylene	1/1/87
541–41–3	Ethyl chloroformate	1/1/87
541–53–7	2,4-Dithiobiuret (Dithiobiuret)	1/1/95
541–73–1	1,3-Dichlorobenzene (*m*-Dichlorobenzene)	1/1/87
542–75–6	1,3-Dichloropropylene (1,3-Dichloropropene)	1/1/87
542–76–7	3-Chloropropionitrile	1/1/95
542–88–1	Bis(chloromethyl) ether	1/1/87
554–13–2	Lithium carbonate	1/1/95
556–52–5	Glycidol	1/1/11
556–61–6	Methyl isothiocyanate	1/1/95
563–47–3	3-Chloro-2-methyl-1-propene	1/1/95
569–64–2	C.I. Basic Green 4 (Malachite green)	1/1/87
584–84–9	Toluene-2,4-diisocyanate	1/1/87
593–60–2	Vinyl bromide	1/1/87
594–42–3	Perchloromethyl mercaptan	1/1/95
606–20–2	2,6-Dinitrotoluene	1/1/87
608-93-5	Pentachlorobenzene	1/1/00
612–82–8	3,3′-Dimethylbenzidine dihydrochloride	1/1/95
612–83–9	3,3′-Dichlorobenzidine dihydrochloride	1/1/95
615–05–4	2,4-Diaminoanisole	1/1/87
615–28–1	1,2-Phenylenediamine dihydrochloride	1/1/95
621–64–7	*N*-Nitrosodi-*n*-propylamine	1/1/87
624–18–0	1,4-Phenylenediamine dihydrochloride	1/1/95
624–83–9	Methyl isocyanate	1/1/87
630–20–6	1,1,1,2-Tetrachloroethane	1/1/94
636–21–5	*o*-Toluidine hydrochloride	1/1/87
639–58–7	Triphenyltin chloride	1/1/95
680–31–9	Hexamethylphosphoramide	1/1/87
684–93–5	*N*-Nitroso-*N*-methylurea	1/1/87
709–98–8	Propanil	1/1/95
759–73–9	*N*-Nitroso-*N*-ethylurea	1/1/87
759–94–4	*S*-Ethyl dipropylthiocarbamate	1/1/95
764–41–0	1,4-Dichloro-2-butene	1/1/94
812–04–4	1,1-Dichloro-1,2,2-trifluoroethane (HCFC-123b)	1/1/94
834–12–8	Ametryn	1/1/95
842–07–9	C.I. Solvent Yellow 14	1/1/87
872–50–4	*N*-Methyl-2-pyrrolidone	1/1/95
924–16–3	*N*-Nitrosodi-*n*-butylamine	1/1/87
924–42–5	*N*-Methylolacrylamide	1/1/95
957–51–7	Diphenamid	1/1/95
961–11–5	Tetrachlorvinphos	1/1/87
989–38–8	C.I. Basic Red 1	1/1/87
1114–71–2	Pebulate	1/1/95
1120–71–4	1,3-Propane sultone	1/1/87
1134–23–2	Cycloate	1/1/95
1163–19–5	Decabromodiphenyl oxide	1/1/87
1313–27–5	Molybdenum trioxide	1/1/87
1314–20–1	Thorium dioxide	1/1/87
1319–77–3	Cresol (mixed isomers)	1/1/87
1320–18–9	2,4-D propylene glycol butyl ether ester (2,4-D 2-butoxymethylethyl ester)	1/1/95
1330–20–7	Xylene (mixed isomers)	1/1/87
1332–21–4	Asbestos (friable)	1/1/87
1335–87–1	Hexachloronaphthalene	1/1/87
1336–36–3	Polychlorinated biphenyls	1/1/87
1344–28–1	Aluminum oxide (fibrous forms) (Alumina)	1/1/87
1464–53–5	Diepoxybutane	1/1/87
1563–66–2	Carbofuran	1/1/95
1582–09–8	Trifluralin	1/1/87
1634–04–4	Methyl *tert*-butyl ether	1/1/87
1649–08–7	1,2-Dichloro-1,1-difluoroethane (HCFC-132b)	1/1/95
1689–84–5	Bromoxynil	1/1/95
1689–99–2	Bromoxynil octanoate	1/1/95
1717–00–6	1,1-Dichloro-1-fluoroethane (HCFC-141b)	1/1/94

TABLE 2 TO PARAGRAPH (b)—Continued

CAS No.	Chemical name	Effective date
1836–75–5	Nitrofen	1/1/87
1861–40–1	Benfluralin	1/1/95
1897–45–6	Chlorothalonil	1/1/87
1910–42–5	Paraquat dichloride	1/1/95
1912–24–9	Atrazine	1/1/95
1918–00–9	Dicamba	1/1/95
1918–02–1	Picloram	1/1/95
1918–16–7	Propachlor	1/1/95
1928–43–4	2,4-D 2-ethylhexyl ester	1/1/95
1929–73–3	2,4-D 2-butoxyethyl ester	1/1/95
1929–82–4	Nitrapyrin	1/1/95
1937–37–7	C.I. Direct Black 38	1/1/87
1982–69–0	Sodium dicamba	1/1/95
1983–10–4	Tributyltin fluoride	1/1/95
2032–65–7	Methiocarb	1/1/95
2155–70–6	Tributyltin methacrylate	1/1/95
2164–07–0	Dipotassium endothall	1/1/95
2164–17–2	Fluometuron	1/1/87
2212–67–1	Molinate	1/1/95
2234–13–1	Octachloronaphthalene	1/1/87
2300–66–5	Dimethylamine dicamba	1/1/95
2303–16–4	Diallate	1/1/87
2303–17–5	Triallate	1/1/95
2312–35–8	Propargite	1/1/95
2439–01–2	Chinomethionate	1/1/95
2439–10–3	Dodine	1/1/95
2524–03–0	Dimethyl chlorothiophosphate	1/1/95
2602–46–2	C.I. Direct Blue 6	1/1/87
2655–15–4	2,3,5-Trimethylphenyl methylcarbamate	1/1/95
2699–79–8	Sulfuryl fluoride	1/1/95
2702–72–9	2,4-D sodium salt	1/1/95
2832–40–8	C.I. Disperse Yellow 3	1/1/87
2837–89–0	2-Chloro-1,1,1,2-tetrafluoroethane (HCFC-124)	1/1/94
2971–38–2	2,4-D chlorocrotyl ester	1/1/95
3118–97–6	C.I. Solvent Orange 7	1/1/87
3296–90–0	2,2-Bis(bromomethyl)-1,3-propanediol	1/1/11
3383–96–8	Temephos	1/1/95
3653–48–3	Methoxone sodium salt	1/1/95
3761–53–3	C.I. Food Red 5	1/1/87
4080–31–3	1-(3-Chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride	1/1/95
4170–30–3	Crotonaldehyde	1/1/95
4549–40–0	*N*-Nitrosomethylvinylamine	1/1/87
4680–78–8	C.I. Acid Green 3	1/1/87
5234–68–4	Carboxin	1/1/95
5598–13–0	Chlorpyrifos-methyl	1/1/95
5902–51–2	Terbacil	1/1/95
6459–94–5	C.I. Acid Red 114	1/1/95
7287–19–6	Prometryn	1/1/95
7429–90–5	Aluminum (fume or dust)	1/1/87
7439–92–1	Lead	1/1/87
7439–96–5	Manganese	1/1/87
7439–97–6	Mercury	1/1/87
7440–02–0	Nickel	1/1/87
7440–22–4	Silver	1/1/87
7440–28–0	Thallium	1/1/87
7440–36–0	Antimony	1/1/87
7440–38–2	Arsenic	1/1/87
7440–39–3	Barium	1/1/87
7440–41–7	Beryllium	1/1/87
7440–43–9	Cadmium	1/1/87
7440–47–3	Chromium	1/1/87
7440–48–4	Cobalt	1/1/87
7440–50–8	Copper	1/1/87
7440–62–2	Vanadium (except when contained in an alloy)	1/1/00
7440–66–6	Zinc (fume or dust)	1/1/87
7550–45–0	Titanium tetrachloride	1/1/87
7632–00–0	Sodium nitrite	1/1/95
7637–07–2	Boron trifluoride	1/1/95
7647–01–0	Hydrochloric acid (acid aerosols including mists, vapors, gas, fog, and other airborne forms of any particle size).	1/1/87
7664–39–3	Hydrogen fluoride (Hydrofluoric acid)	1/1/87
7664–41–7	Ammonia (includes anhydrous ammonia and aqueous ammonia from water dissociable ammonium salts and other sources; 10 percent of total aqueous ammonia is reportable under this listing).	1/1/87

TABLE 2 TO PARAGRAPH (b)—Continued

CAS No.	Chemical name	Effective date
7664–93–9	Sulfuric acid (acid aerosols including mists, vapors, gas, fog, and other airborne forms of any particle size)	1/1/87
7696–12–0	Tetramethrin	1/1/95
7697–37–2	Nitric acid	1/1/87
7726–95–6	Bromine	1/1/95
7758–01–2	Potassium bromate	1/1/95
7782–41–4	Fluorine	1/1/95
7782–49–2	Selenium	1/1/87
7782–50–5	Chlorine	1/1/87
7783–06–4	Hydrogen sulfide	1/1/94
7786–34–7	Mevinphos	1/1/95
7803–51–2	Phosphine	1/1/95
8001–35–2	Toxaphene	1/1/87
8001–58–9	Creosote	1/1/90
9006–42–2	Metiram	1/1/95
10028–15–6	Ozone	1/1/95
10034–93–2	Hydrazine sulfate (1:1)	1/1/87
10049–04–4	Chlorine dioxide	1/1/87
10061–02–6	*trans*-1,3-Dichloropropene	1/1/95
10222–01–2	2,2-Dibromo-3-nitrilopropionamide[1]	1/1/95
10294–34–5	Boron trichloride	1/1/95
10453–86–8	Resmethrin	1/1/95
12122–67–7	Zineb	1/1/87
12185–10–3	Phosphorus (yellow or white)	1/1/87
12427–38–2	Maneb	1/1/87
13194–48–4	Ethoprop	1/1/95
13356–08–6	Fenbutatin oxide	1/1/95
13463–40–6	Iron pentacarbonyl	1/1/95
13474–88–9	1,1-Dichloro-1,2,2,3,3-pentafluoropropane (HCFC-225cc)	1/1/95
13684–56–5	Desmedipham	1/1/95
14484–64–1	Ferbam	1/1/95
15972–60–8	Alachlor	1/1/95
16071–86–6	C.I. Direct Brown 95	1/1/87
16543–55–8	*N*-Nitrosonornicotine	1/1/87
17804–35–2	Benomyl	1/1/95
19044–88–3	Oryzalin	1/1/95
19666–30–9	Oxadiazon	1/1/95
20325–40–0	3,3′-Dimethoxybenzidine dihydrochloride	1/1/95
20354–26–1	Methazole	1/1/95
20816–12–0	Osmium tetroxide	1/1/87
20859–73–8	Aluminum phosphide	1/1/95
21087–64–9	Metribuzin	1/1/95
21725–46–2	Cyanazine	1/1/95
22781–23–3	Bendiocarb	1/1/95
23564–05–8	Thiophanate-methyl	1/1/95
23564–06–9	Thiophanate-ethyl	1/1/95
23950–58–5	Pronamide	1/1/94
25311–71–1	Isofenphos	1/1/95
25321–14–6	Dinitrotoluene (mixed isomers)	1/1/90
25321–22–6	Dichlorobenzene (mixed isomers)	1/1/87
25376–45–8	Diaminotoluene (mixed isomers) (Toluenediamine)	1/1/87
26002–80–2	Phenothrin	1/1/95
26471–62–5	Toluene diisocyanate (mixed isomers)	1/1/90
26628–22–8	Sodium azide	1/1/95
26644–46–2	Triforine	1/1/95
27314–13–2	Norflurazon	1/1/95
28249–77–6	Thiobencarb	1/1/95
28407–37–6	C.I. Direct Blue 218	1/1/95
28434–00–6	*d-trans*-Allethrin	1/1/95
29082–74–4	Octachlorostyrene	1/1/00
29232–93–7	Pirimiphos-methyl	1/1/95
30560–19–1	Acephate	1/1/95
31218–83–4	Propetamphos	1/1/95
33089–61–1	Amitraz	1/1/95
34014–18–1	Tebuthiuron	1/1/95
34077–87–7	Dichlorotrifluoroethane	1/1/94
35367–38–5	Diflubenzuron	1/1/95
35400–43–2	Sulprofos	1/1/95
35554–44–0	Imazalil	1/1/95
35691–65–7	1-Bromo-1-(bromomethyl)-1,3-propanedicarbonitrile	1/1/95
38727–55–8	Diethatyl ethyl	1/1/95
39156–41–7	2,4-Diaminoanisole sulfate	1/1/87
39300–45–3	Dinocap	1/1/95

TABLE 2 TO PARAGRAPH (b)—Continued

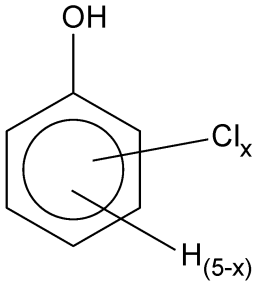
CAS No.	Chemical name	Effective date
39515–41–8 ...	Fenpropathrin	1/1/95
40487–42–1 ...	Pendimethalin	1/1/95
41198–08–7 ...	Profenofos	1/1/95
41766–75–0 ...	3,3′-Dimethylbenzidine dihydrofluoride	1/1/95
42874–03–3 ...	Oxyfluorfen	1/1/95
43121–43–3 ...	Triadimefon	1/1/95
50471–44–8 ...	Vinclozolin	1/1/95
51235–04–2 ...	Hexazinone	1/1/95
51338–27–3 ...	Diclofop methyl	1/1/95
51630–58–1 ...	Fenvalerate	1/1/95
52645–53–1 ...	Permethrin	1/1/95
53404–19–6 ...	Bromacil, lithium salt	1/1/95
53404–37–8 ...	2,4-D 2-ethyl-4-methylpentyl ester	1/1/95
53404–60–7 ...	Dazomet, sodium salt	1/1/95
55290–64–7 ...	Dimethipin	1/1/95
55406–53–6 ...	3-Iodo-2-propynyl butylcarbamate	1/1/95
57213–69–1 ...	Triclopyr-triethylammonium salt	1/1/95
59669–26–0 ...	Thiodicarb	1/1/95
60168–88–9 ...	Fenarimol	1/1/95
60207–90–1 ...	Propiconazole	1/1/95
62476–59–9 ...	Acifluorfen, sodium salt	1/1/95
63938–10–3 ...	Chlorotetrafluoroethane	1/1/94
64902–72–3 ...	Chlorsulfuron	1/1/95
64969–34–2 ...	3,3′-Dichlorobenzidine sulfate	1/1/95
66441–23–4 ...	Fenoxaprop-ethyl	1/1/95
67485–29–4 ...	Hydramethylnon	1/1/95
68085–85–8 ...	Cyhalothrin	1/1/95
68359–37–5 ...	Cyfluthrin	1/1/95
69409–94–5 ...	Fluvalinate	1/1/95
69806–50–4 ...	Fluazifop-butyl	1/1/95
71751–41–2 ...	Abamectin	1/1/95
72178–02–0 ...	Fomesafen	1/1/95
72490–01–8 ...	Fenoxycarb	1/1/95
74051–80–2 ...	Sethoxydim	1/1/95
76578–14–8 ...	Quizalofop-ethyl	1/1/95
77501–63–4 ...	Lactofen	1/1/95
82657–04–3 ...	Bifenthrin	1/1/95
88671–89–0 ...	Myclobutanil	1/1/95
90454–18–5 ...	Dichloro-1,1,2-trifluoroethane	1/1/94
90982–32–4 ...	Chlorimuron-ethyl	1/1/95
101200–48–0	Tribenuron-methyl	1/1/95
111512–56–2	1,1-Dichloro-1,2,3,3,3-pentafluoropropane (HCFC-225eb)	1/1/95
111984–09–9	3,3′-Dimethoxybenzidine monohydrochloride	1/1/95
127564–92–5	Dichloropentafluoropropane	1/1/95
128903–21–9	2,2-Dichloro-1,1,1,3,3-pentafluoropropane (HCFC-225aa)	1/1/95
136013–79–1	1,3-Dichloro-1,1,2,3,3-pentafluoropropane (HCFC-225ea)	1/1/95

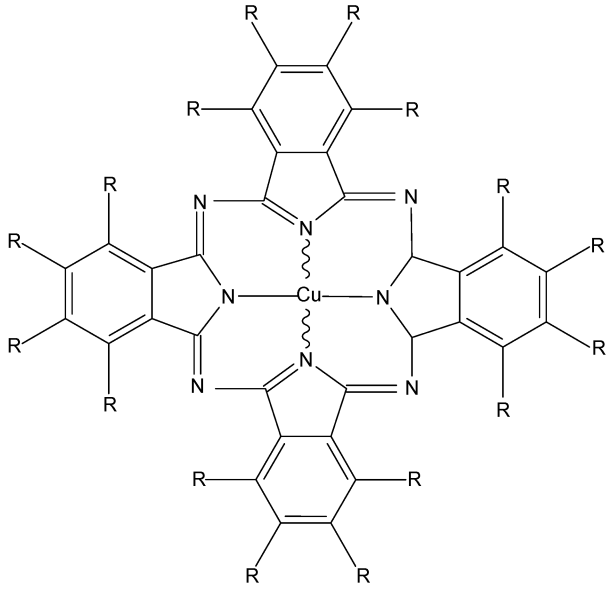
[1] The listing of 2,2-dibromo-3-nitrilopropionamide (CAS No. 10222–01–2) is stayed. The stay will remain in effect until further administrative action is taken.

(c) * * *

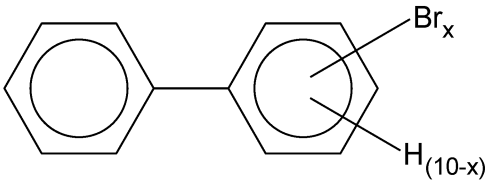
BILLING CODE 6560–50–P

Table 3 to Paragraph (c)

Category name	**Effective Date**
Antimony compounds: Includes any unique chemical substance that contains antimony as part of that chemical's infrastructure	1/1/87
Arsenic compounds: Includes any unique chemical substance that contains arsenic as part of that chemical's infrastructure	1/1/87
Barium compounds: Includes any unique chemical substance that contains barium as part of that chemical's infrastructure (except for barium sulfate (CAS No. 7727-43-7))	1/1/87
Beryllium compounds: Includes any unique chemical substance that contains beryllium as part of that chemical's infrastructure	1/1/87
Cadmium compounds: Includes any unique chemical substance that contains cadmium as part of that chemical's infrastructure	1/1/87
Certain glycol ethers $R\text{-}(OCH_2CH_2)_n\text{-}OR'$ Where: n = 1, 2, or 3; R = alkyl C7 or less; or R = phenyl or alkyl substituted phenyl; R′ = H or alkyl C7 or less; or OR′ consisting of carboxylic acid ester, sulfate, phosphate, nitrate, or sulfonate.	1/1/95
Chlorophenols  Where x = 1 to 5	1/1/87
Chromium compounds: Includes any unique chemical substance that contains chromium as part of that chemical's infrastructure (except for chromite ore mined in the Transvaal Region of South Africa and the unreacted ore component of the chromite ore processing residue (COPR). COPR is the solid waste remaining after aqueous extraction of oxidized chromite ore that has been combined with soda ash and kiln roasted at approximately 2,000 °F.)	1/1/87
Cobalt compounds: Includes any unique chemical substance that contains cobalt as part of that chemical's infrastructure	1/1/87
Copper compounds: Includes any unique chemical substance that contains copper as part of that chemical's infrastructure (except for C.I. Pigment Blue 15 (PB-15, CAS No. 147-14-8), C.I. Pigment Green 7 (PG-7, CAS No. 1328-53-6), and C.I. Pigment Green 36 (PG-36, CAS No. 14302-13-7)) and except copper phthalocyanine compounds that are substituted with only hydrogen and/or	1/1/87

bromine and/or chlorine that meet the following molecular structure definition:  Where R = H and/or Br and/or Cl only	
Cyanide compounds: X^+CN^- where X^+ = any group (except H^+) where a formal dissociation can be made. For example, KCN or $Ca(CN)_2$	1/1/87
Diisocyanates (This category includes only those chemicals listed below) 38661-72-2 1,3-Bis(methylisocyanate)cyclohexane 10347-54-3 1,4-Bis(methylisocyanate)cyclohexane (1,4-Bis(isocyanatomethyl)cyclohexane) 2556-36-7 1,4-Cyclohexane diisocyanate 134190-37-7 Diethyldiisocyanatobenzene 4128-73-8 4,4'-Diisocyanatodiphenyl ether 75790-87-3 2,4'-Diisocyanatodiphenyl sulfide 91-93-0 3,3'-Dimethoxybenzidine-4,4'-diisocyanate 91-97-4 3,3'-Dimethyl-4,4'-diphenylene diisocyanate 139-25-3 3,3'-Dimethyldiphenylmethane-4,4'-diisocyanate 822-06-0 Hexamethylene-1,6-diisocyanate 4098-71-9 Isophorone diisocyanate 75790-84-0 4-Methyldiphenylmethane-3,4-diisocyanate 5124-30-1 1,1-Methylene bis(4-isocyanatocyclohexane) 101-68-8 4,4'-Methylenedi(phenyl isocyanate) 3173-72-6 1,5-Naphthalene diisocyanate 123-61-5 1,3-Phenylene diisocyanate 104-49-4 1,4-Phenylene diisocyanate 9016-87-9 Polymeric diphenylmethane diisocyanate 16938-22-0 2,2,4-Trimethylhexamethylene diisocyanate 15646-96-5 2,4,4-Trimethylhexamethylene diisocyanate	1/1/95
Dioxin and dioxin-like compounds (Manufacturing; and the processing or otherwise use of dioxin and dioxin like compounds if the dioxin and dioxin like compounds are present as contaminants in a chemical and if they were created during the manufacturing of that chemical.) (This category includes only those	1/1/00

chemicals listed below) 67562-39-4 1,2,3,4,6,7,8-Heptachlorodibenzofuran 55673-89-7 1,2,3,4,7,8,9-Heptachlorodibenzofuran 35822-46-9 1,2,3,4,6,7,8-Heptachlorodibenzo-*p*-dioxin 39227-28-6 1,2,3,4,7,8-Hexachlorodibenzo-*p*-dioxin 57653-85-7 1,2,3,6,7,8-Hexachlorodibenzo-*p*-dioxin 19408-74-3 1,2,3,7,8,9-Hexachlorodibenzo-*p*-dioxin 70648-26-9 1,2,3,4,7,8-Hexachlorodibenzofuran 57117-44-9 1,2,3,6,7,8-Hexachlorodibenzofuran 72918-21-9 1,2,3,7,8,9-Hexachlorodibenzofuran 60851-34-5 2,3,4,6,7,8-Hexachlorodibenzofuran 39001-02-0 1,2,3,4,6,7,8,9-Octachlorodibenzofuran 3268-87-9 1,2,3,4,6,7,8,9-Octachlorodibenzo-*p*-dioxin 57117-41-6 1,2,3,7,8-Pentachlorodibenzofuran 57117-31-4 2,3,4,7,8-Pentachlorodibenzofuran 40321-76-4 1,2,3,7,8-Pentachlorodibenzo-*p*-dioxin 51207-31-9 2,3,7,8-Tetrachlorodibenzofuran 1746-01-6 2,3,7,8-Tetrachlorodibenzo-*p*-dioxin	
Ethylenebisdithiocarbamic acid, salts and esters	1/1/94
Hexabromocyclododecane (This category includes only those chemicals covered by the CAS numbers listed here) 3194-55-6 1,2,5,6,9,10-Hexabromocyclododecane 25637-99-4 Hexabromocyclododecane	1/1/17
Lead compounds: Includes any unique chemical substance that contains lead as part of that chemical's infrastructure	1/1/87
Manganese compounds: Includes any unique chemical substance that contains manganese as part of that chemical's infrastructure	1/1/87
Mercury compounds: Includes any unique chemical substance that contains mercury as part of that chemical's infrastructure	1/1/87
Nickel compounds: Includes any unique chemical substance that contains nickel as part of that chemical's infrastructure	1/1/87
Nicotine and salts	1/1/95
Nitrate compounds (water dissociable; reportable only when in aqueous solution)	1/1/95
Nonylphenol (This category includes only those chemicals listed below) 104-40-5 4-Nonylphenol (*p*-Nonylphenol) 11066-49-2 Isononylphenol 25154-52-3 Nonylphenol 26543-97-5 4-Isononylphenol 84852-15-3 4-Nonylphenol, branched (Branched *p*-nonylphenol) 90481-04-2 Nonylphenol, branched	1/1/15
Nonylphenol Ethoxylates (This category includes only those chemicals covered by the CAS numbers listed here) 7311-27-5 Ethanol, 2-[2-[2-[2-(4-nonylphenoxy)ethoxy]ethoxy]ethoxy]- 9016-45-9 Poly(oxy-1,2-ethanediyl), α-(nonylphenyl)-ω-hydroxy-; (Polyethylene glycol nonylphenyl ether) 20427-84-3 Ethanol, 2-[2-(4-nonylphenoxy)ethoxy]-;	1/1/19

	(2-[2-(4-Nonylphenoxy)ethoxy]ethanol)	
26027-38-3	Poly(oxy-1,2-ethanediyl), α-(4-nonylphenyl)-ω-hydroxy-; (*p*-Nonylphenol polyethylene glycol ether)	
26571-11-9	3,6,9,12,15,18,21,24-Octaoxahexacosan-1-ol, 26-(nonylphenoxy)-	
27176-93-8	Ethanol, 2-[2-(nonylphenoxy)ethoxy]-; (Diethylene glycol nonylphenol ether)	
27177-05-5	3,6,9,12,15,18,21-Heptaoxatricosan-1-ol, 23-(nonylphenoxy)-	
27177-08-8	3,6,9,12,15,18,21,24,27-Nonaoxanonacosan-1-ol, 29-(nonylphenoxy)-	
27986-36-3	Ethanol, 2-(nonylphenoxy)-; (2-(Nonylphenoxy)ethanol)	
37205-87-1	Poly(oxy-1,2-ethanediyl), α-(isononylphenyl)-ω-hydroxy-	
51938-25-1	Poly(oxy-1,2-ethanediyl), α (2-nonylphenyl)-ω-hydroxy-	
68412-54-4	Poly(oxy-1,2-ethanediyl), α-(nonylphenyl)-ω-hydroxy-, Branched; (Polyethylene glycol mono(branched nonylphenyl) ether)	
127087-87-0	Poly(oxy-1,2-ethanediyl), α-(4-nonylphenyl)-ω-hydroxy-, branched; (Polyethylene glycol mono(branched *p*-nonylphenyl) ether)	
Polybrominated biphenyls (PBBs)  Where x = 1 to 10		1/1/87
Polychlorinated alkanes (C_{10} to C_{13}): Includes those chemicals defined by the following formula: $C_xH_{2x-y+2}Cl_y$ where x = 10 to 13; y = 3 to 12; and where the average chlorine content ranges from 40-70% with the limiting molecular formulas $C_{10}H_{19}Cl_3$ and $C_{13}H_{16}Cl_{12}$		1/1/95
Polycyclic aromatic compounds (PACs): (This category includes only those chemicals listed below)		1/1/95
56-55-3	Benz[a]anthracene	
218-01-9	Benzo[a]phenanthrene (Chrysene)	
50-32-8	Benzo[a]pyrene	
205-99-2	Benzo[b]fluoranthene	
205-82-3	Benzo[j]fluoranthene	
207-08-9	Benzo[k]fluoranthene	
206-44-0	Benzo[j,k]fluorene (Fluoranthene)	1/1/00
189-55-9	Benzo[r,s,t]pentaphene (Dibenzo[a,i]pyrene)	
226-36-8	Dibenz[a,h]acridine	
224-42-0	Dibenz[a,j]acridine	
53-70-3	Dibenzo[a,h]anthracene (Dibenz[a,h]anthracene)	
5385-75-1	Dibenzo[a,e]fluoranthene	

192-65-4	Dibenzo[a,e]pyrene	
189-64-0	Dibenzo[a,h]pyrene	
191-30-0	Dibenzo[a,l]pyrene	
194-59-2	7H-Dibenzo[c,g]carbazole	
57-97-6	7,12-Dimethylbenz[a]anthracene	
42397-64-8	1,6-Dinitropyrene	1/1/11
42397-65-9	1,8-Dinitropyrene	1/1/11
193-39-5	Indeno[1,2,3-cd]pyrene	
56-49-5	3-Methylcholanthrene	1/1/00
3697-24-3	5-Methylchrysene	
7496-02-8	6-Nitrochrysene	1/1/11
5522-43-0	1-Nitropyrene	
57835-92-4	4-Nitropyrene	1/1/11
Selenium compounds: Includes any unique chemical substance that contains selenium as part of that chemical's infrastructure		1/1/87
Silver compounds: Includes any unique chemical substance that contains silver as part of that chemical's infrastructure		1/1/87
Strychnine and salts		1/1/95
Thallium compounds: Includes any unique chemical substance that contains thallium as part of that chemical's infrastructure		1/1/87
Vanadium compounds		1/1/00
Warfarin and salts		1/1/94
Zinc compounds: Includes any unique chemical substance that contains zinc as part of that chemical's infrastructure		1/1/87

* * * * *

[FR Doc. 2020–11013 Filed 7–13–20; 8:45 am]

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Proposed Rules

Federal Register
Vol. 85, No. 135
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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 52 and 81

[EPA–R05–OAR–2019–0590; FRL–10011–76–Region 5]

Designation of Areas for Air Quality Planning Purposes; Indiana; Redesignation of the Morgan County Sulfur Dioxide Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In accordance with the Clean Air Act (CAA), the Environmental Protection Agency (EPA) is proposing to redesignate the Morgan County nonattainment area, which consists of Clay and Washington Townships in Morgan County, IN, to attainment for the 2010 sulfur dioxide (SO_2) National Ambient Air Quality Standards (NAAQS). EPA is also proposing to approve Indiana's maintenance plan for the Morgan County SO_2 nonattainment area. Indiana submitted the request for approval of the Morgan County area's redesignation and maintenance plan on October 10, 2019, and a clarification letter on May 5, 2020. EPA has previously approved Indiana's attainment plan for Morgan County.

DATES: Comments must be received on or before August 13, 2020.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2019–0590 at *http://www.regulations.gov* or via email to *compher.michael@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Anthony Maietta, Environmental Protection Specialist, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8777, *maietta.anthony@epa.gov.* The EPA Region 5 office 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.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. Background and Redesignation Requirements
II. Determination of Attainment
III. Indiana's State Implementation Plan (SIP)
IV. Permanent and Enforceable Emission Reductions
V. Requirements for the Area Under Section 110 and Part D
VI. Maintenance Plan
VII. What action is EPA taking?
VIII. Statutory and Executive Order Reviews

I. Background and Redesignation Requirements

In 2010, EPA established a revised primary SO_2 NAAQS of 75 parts per billion (ppb) (75 FR 35520, June 22, 2010). EPA designated portions of the Morgan County area as nonattainment for the 2010 SO_2 NAAQS on August 5, 2013 (78 FR 47191) based upon air quality monitoring data for calendar years 2009–2011. The Morgan County nonattainment area is comprised of Clay and Washington Townships. Indiana submitted a plan to provide for attainment of the 2010 SO_2 NAAQS on October 2, 2015, and supplemented it on June 7, 2017, November 5, 2017, February 8, 2019, and February 12, 2019. EPA approved the Morgan County attainment plan on September 23, 2019 (84 FR 49659). Indiana submitted its request to redesignate Morgan County on October 10, 2019. On May 5, 2020, the Indiana Department of Environmental Management (IDEM) sent a letter to EPA with clarifying information about the previously submitted monitoring data. More specifically, IDEM stated that the Eagle Valley—High Street monitor was no longer in operation as of June 12, 2019. IDEM noted that the monitor had been operated for the purposes of determining the impacts of the largest sources of SO_2 emissions and subsequent attainment of the SO_2 standard, and in assisting with the determination of the background concentration for purposes of modeled SO_2 impacts in attainment and maintenance areas. IDEM provided further details about the hybrid monitoring and modeling approach it used, as permitted by EPA's April 23, 2014 guidance titled ''Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions''. The May 5, 2020 letter is included in the docket for this action.

Under CAA section 107(d)(3)(E), there are five criteria which must be met before a nonattainment area may be redesignated to attainment.

1. EPA has determined that the relevant NAAQS has been attained in the area.

2. The applicable implementation plan has been fully approved by EPA under section 110(k).

3. EPA has determined that improvement in air quality is due to permanent and enforceable reductions in emissions resulting from the SIP, Federal regulations, and other permanent and enforceable reductions.

4. The State has met all applicable requirements for the area under section 110 and part D.

5. EPA has fully approved a maintenance plan, including a contingency plan, for the area under section 175A of the CAA.

II. Determination of Attainment

The first requirement for redesignation is to demonstrate that the NAAQS has been attained in the area. As stated in EPA's April 2014 ''Guidance for 1-Hour SO_2

Nonattainment Area SIP Submissions,'' for SO_2, there are two components needed to support an attainment determination: A review of representative air quality monitoring data, and a further analysis, generally requiring air quality modeling, to demonstrate that the entire area is attaining the applicable NAAQS, based on current actual emissions or the fully implemented control strategy. Indiana has addressed both components.

Under EPA regulations at 40 CFR 50.17, the SO_2 NAAQS is met at an ambient air quality monitoring site when the three-year average of the annual 99th percentile of one-hour daily maximum concentrations is less than or equal to 75 ppb, as determined in accordance with appendix T of 40 CFR part 50 at all relevant monitoring sites in the subject area. The Morgan County nonattainment area had a single SO_2 monitoring site (Eagle Valley—High Street; Site ID# 18–109–1001), located in Centerton (unincorporated) in southern Clay Township, Morgan County. EPA has reviewed the ambient air monitoring data for this site focusing on air quality data collected from 2012 through June 12, 2019. These data considered are complete, quality-assured, certified and recorded in EPA's Air Quality System database.

Table 1 shows the 99th percentile results and three-year average design value for the Morgan County nonattainment area monitor for 2012–2018. The 2016–2018 design value for Morgan County is 42 ppb, which is below the SO_2 NAAQS. Therefore, Indiana has demonstrated that Morgan County's SO_2 monitor shows attainment. As discussed above, the Eagle Valley—High Street monitor was shut down on June 12, 2019. However, using the partial year data from the Eagle Valley—High Street monitor for 2019, partial 2019 data from the monitor indicates that the area continues to attain the SO_2 NAAQS. As discussed further below, Indiana utilized an approach based on computer modeling which relied on allowable emissions to additionally characterize the attainment status of the SO_2 NAAQS and to provide for maintaining SO_2 emissions in Morgan County below the SO_2 NAAQS through 2030.

TABLE 1—MONITORING DATA FOR THE MORGAN COUNTY NONATTAINMENT AREA FOR 2012–2018

Site ID	Location	Year and 99th percentile value (ppb)						
		2012	2013	2014	2015	2016	2017	2018
18–109–1001	AES/IPL-Eagle Valley/CENT	82	64	90	56	23	47	55
Three-year design value and 2019 partial-year monitor data (ppb)								
2009–2011	2010–2012	2011–2013	2012–2014	2013–2015	2014–2016	2015–2017	2016–2018	2019*
100	94	81	79	70	56	42	42	48

*99th percentile value from data recorded by the monitor through June 12, 2019.

Regarding the requirement for Indiana to demonstrate that the entire area is attaining the SO_2 NAAQS, Indiana also referred to the dispersion modeling analysis which was submitted as part of its attainment plan for Morgan County. This analysis demonstrated that revised SO_2 emission limits for the Hydraulic Press Brick facility located in Bethany (Clay Township) and concurrent permanent SO_2 emission reductions resulting from permanent retirement of coal-fired units and replacement to natural gas-fired units at the Indianapolis Power and Light (IPL)—Eagle Valley Generating Station in Martinsville (Washington Township) would provide for attainment. Indiana has confirmed that the modeled facilities are currently in full compliance with their emission limits, so that current actual emissions are at or below the levels Indiana used in its modeling analysis. The modeling analysis was discussed in detail in the July 8, 2019 (84 FR 32672) notice of proposed rulemaking for the Morgan County SO_2 attainment SIP. As previously noted, EPA approved the Morgan County attainment plan on September 23, 2019 (84 FR 49659). EPA proposes to find that this modeling analysis and the monitored air quality data demonstrate that the Morgan County area has attained the 2010 SO_2 NAAQS.

III. Indiana's State Implemenation Plan (SIP)

EPA's approval of Indiana's attainment SIP for Morgan County included revised emission limits for two emission sources in Morgan County. In that action, EPA found that Indiana had satisfied requirements for providing for attainment of the SO_2 NAAQS in Morgan County. Indiana has adopted its SO_2 SIP regulations, including those which cover Morgan County, at Indiana Administrative Code Title 326, Rule 7–4–11.1 (326 IAC 7–4–11.1, entitled ''Morgan County sulfur dioxide emission limitations), 326 IAC 7–1.1–3 (''Compliance date''), and 326 IAC 7–2–1 (''Reporting requirements; methods to determine compliance''). Indiana has shown that it maintains an active enforcement program to ensure ongoing compliance. Indiana's new source review/prevention of significant deterioration program will address emissions from new sources.

IV. Permanent and Enforceable Emission Reductions

For an area to be redesignated, the State must be able to reasonably attribute the improvement in air quality to emission reductions which are permanent and enforceable. The IPL—Eagle Valley Generating Station in Morgan County permanently shut down its coal-fired boilers in 2016 and has switched its boiler operations to natural gas. The coal-fired boiler retirement provided a decrease of 10,875 tons per year (tpy) of SO_2 from 2011 actual emissions. The Indiana SIP requirement for IPL—Eagle Valley Generating Station to solely burn natural gas is located at 326 IAC 7–4–11.1 ''Morgan County sulfur dioxide emission limitations'' and was approved by EPA on September 23, 2019 (84 FR 49659).

Indiana has also established operational limits for the Hydraulic Press Brick facility to reduce the amount of SO_2 emitted. The operational limits include a ''do not operate condition'' for Kiln 3. In addition, Hydraulic Press Brick is required to operate a sorbent injection system to achieve a 50 percent control or 2.5 pounds of SO_2 per million British Thermal Units in Kilns 4 and 5. In 2018, these measures resulted in a 343 tpy decrease of SO_2 from 2011 actual emissions. EPA approved these new limits into Indiana's SIP on September 23, 2019 (84 FR 49659), which renders the limits federally enforceable. Indiana has confirmed that

Hydraulic Press Brick is currently complying with the limits.

As shown in Table 1, the monitored design value in Morgan County at the time of its nonattainment designation was 100 ppb. Subsequent monitoring data in Morgan County indicate that ambient SO_2 levels improved after the IPL—Eagle Valley Generating Station's fuel switch from coal to natural gas and the imposition of enforceable limits at Hydraulic Press Brick. The most current valid design value for Morgan County at the time of Indiana's submittal (2016–2018) is 42 ppb. Reviewing the partial year data collected in 2019 before the High Street—Eagle Valley monitor was shut down on June 12, 2019, the 99th percentile value of 48 ppb recorded by the monitor remained below the NAAQS. EPA proposes to find that the improvement in air quality in Morgan County can be attributed to permanent and enforceable emission reductions at the IPL—Eagle Valley Generating Station and Hydraulic Press Brick facilities.

V. Requirements for the Area Under Section 110 and Part D

Indiana has submitted information demonstrating that it meets the requirements of the CAA for the Morgan County nonattainment area. EPA approved Indiana's infrastructure SIP for SO_2 on August 14, 2015 (80 FR 48733). This infrastructure SIP approval confirms that Indiana's SIP meets the requirements of CAA section 110(a)(1) and 110(a)(2) to contain the basic program elements, such as an active enforcement program and permitting program.

Section 191 of the CAA requires Indiana to submit a part D SIP for the Morgan County nonattainment area by April 4, 2015. Indiana submitted its part D SIP on October 2, 2015 and supplemented it on June 7, 2017, November 15, 2017, February 8, 2019, and on February 12, 2019. The SIP included a demonstration of attainment and the emissions limits for IPL—Eagle Valley Generating Station and operational controls and limits for Hydraulic Press Brick. EPA approved the Morgan County attainment plan on September 23, 2019 (84 FR 49659). In that rulemaking, EPA concluded that Indiana had satisfied the various requirements under CAA section 110 and part D for the Morgan County SO_2 nonattainment area. For example, EPA concluded that Indiana satisfied requirements for an attainment inventory of the SO_2 emissions from sources in the nonattainment area (required under section 173(c)(3)), reasonably available control measures (required under section 173(c)(1)), and reasonable further progress (required under section 173(c)(2)).

Indiana chose 2011 for its base year emissions inventory, as comprehensive emissions data was available and updated that year, which satisfies the 172(c)(3) requirements. Two facilities (IPL—Eagle Valley Generating Station and Hydraulic Press Brick) were the main sources, Electrical Generating Unit (EGU) and contributing non-EGU, in the nonattainment area.

Table 2 compares SO_2 emissions for EGU and contributing non-EGU sources for 2015 (the attainment year identified by Indiana), 2016 (an attainment year as well as the year that all coal-fired operations ceased at IPL—Eagle Valley Generating Station and is therefore representative of the allowable emissions-based attainment inventory supplied by Indiana), 2018 (the most recent certified attainment year), and the maintenance year of 2030. It should be noted that for the 2015 attainment year inventory of EGU and contributing non-EGU sources, Hydraulic Press Brick reports to Indiana on a three-year cycle. As a result, its actual emissions from 2010 are listed in the 2011 base year inventory, and its 2016 actual emissions are listed in the 2015 attainment year inventory. By providing actual emissions from the two main SO_2 sources from a time period when the area was not meeting the SO_2 NAAQS, and for times when the area was attaining the NAAQS (both before and after the complete cessation of all coal-fired units at IPL—Eagle Valley Generating Station and the use of a sorbent injection system to achieve a 50% SO_2 emission reduction at Hydraulic Press Brick to comply with the permanent and enforceable limits on these facilities), Indiana demonstrates a 99.94% reduction in actual SO_2 emissions. Indiana's submittal shows that actual 2018 EGU and contributing non-EGU SO_2 emissions in Morgan County were 0.06% of the actual emissions in 2011. With the addition of allowable emissions-based attainment and maintenance inventories provided, Indiana shows that attainment of the SO_2 NAAQS was achieved through permanent and enforceable actions on EGU and contributing non-EGU sources. Indiana also shows that modeled allowable operational-based limits on the remaining contributing SO_2 source mean that the area is expected to maintain attainment of the SO_2 NAAQS.

TABLE 2—ACTUAL AND ALLOWABLE EGU AND CONTRIBUTING NON-EGU POINT SOURCES IN MORGAN COUNTY, IN

[Tons per year]

Affected source	Type of reduction	2011 nonattainment year (actual)	2015 attainment year (actual)	2011–2015 change (actual)	2016 attainment (allowable)	2018 (actual)	2011–2018 change (actual)	2030 maintenance (allowable)
IPL—Eagle Valley	Emission Limit/Unit Retirement and Fuel Switch.	10,875	2,756	−8119	0	0	−10,875	0
Hydraulic Press Brick	Sorbent Injection (50% SO_2 Reduction).	350	15	−335	2,628	7	−343	2,628
Total		11,225	2,771	−8,454	2,628	7	−11,218	2,628

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure that federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs, and projects that are developed, funded, or approved under title 23 of the United States Code (U.S.C.) and the Federal Transit Act (transportation conformity) as well as to all other federally supported or funded projects (general conformity). State transportation conformity SIP revisions must be consistent with Federal conformity regulations relating to consultation, enforcement, and enforceability that EPA promulgated pursuant to its authority under the CAA. On June 4, 2010, Indiana submitted documentation establishing transportation conformity procedures in its SIP. EPA approved these procedures on August 17, 2010 (75 FR 50708). EPA is proposing to find that Indiana has satisfied the applicable

requirements for the redesignation of the Morgan County nonattainment area under section 110 and part D of title I of the CAA.

VI. Maintenance Plan

CAA section 175A sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the nonattainment area is redesignated to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan demonstrating that attainment will continue to be maintained for the ten years following the initial ten-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures as EPA deems necessary to assure prompt correction of any future one-hour violations. Specifically, the maintenance plan should address five requirements: The attainment emissions inventory, maintenance demonstration, monitoring, verification of continued attainment, and a contingency plan. Indiana's October 10, 2019 redesignation request and May 5, 2020 clarification letter contains its maintenance plan, which Indiana has committed to review eight years after redesignation.

In its October 2, 2015 and November 15, 2017 submittals, Indiana provided an attainment emission inventory which addresses the 2011 base year emissions of 11,225 tpy for EGU and non-EGU contributing sources. In their October 10, 2019 redesignation request, Indiana chose 2015 as an attainment year in order to demonstrate actual emissions reductions that have occurred in an attaining year and because 2015 was one of the years contributing to the 2013–2015, 2014–2016, and 2015–2017 design values which demonstrate attainment of the SO_2 NAAQS. In the same request Indiana chose 2016 as a year to demonstrate an allowable emissions-based inventory for EGU and non-EGU contributing sources, because in 2016 all coal-fired units ceased operation at IPL—Eagle Valley Generating Station, and 2016 was one of the years contributing to the 2014–2016, 2015–2017, and 2016–2018 design values which demonstrate Morgan County's attainment of the SO_2 NAAQS. The 2015 attainment year inventory included actual reductions due to the (at the time, ongoing) retirement of coal-fired units at IPL—Eagle Valley Generating Station. Total SO_2 emissions in Morgan County for the attainment year were 2,771 tpy. Indiana's 2016 allowable emissions-based attainment inventory includes the complete retirement of all coal-fired units at IPL—Eagle Valley Generating Station, as well as the modeled allowable SO_2 emissions from Hydraulic Press Brick that would result in attainment of the SO_2 NAAQS. Total allowable SO_2 emissions in Indiana's 2016 attainment inventory are 2,628 tpy, all allowable from Hydraulic Press Brick. Indiana provided the same allowable emissions-based emissions for the maintenance year, 2030.

Indiana projected that total allowable SO_2 emissions in Morgan County in the applicable years could be up to 2,628 tpy from Hydraulic Press Brick. Indiana also demonstrated a 75.3% reduction in actual emissions between 2011 and 2015 (the year before the complete cessation of coal-fired activity at IPL—Eagle Valley Generating Station), and a 99.94% reduction in actual emissions between 2011 and 2018. This large reduction in actual emissions since the 2011 base year is expected to be sufficient to maintain the SO_2 NAAQS in Morgan County.

Indiana's maintenance demonstration consists of the nonattainment SIP air quality analysis showing that the emission reductions now in effect in Morgan County will provide for attainment of the SO_2 NAAQS. The permanent and enforceable SO_2 emission reductions described above ensure that Morgan County emissions will be equal to or less than the emission levels which were evaluated in the air quality analysis, and Indiana's enforceable emission requirements will ensure that the Morgan County SO_2 emission limits are met continuously.

For continuing verification, Indiana has committed to track the emissions and compliance status of the major facilities in Morgan County so that future emissions will not exceed the allowable emissions-based 2016 attainment inventory. All major sources in Indiana are required to submit annual emissions data, which the State uses to update its emission inventories as required by the CAA.

The requirement to submit contingency measures in accordance with section 172(c)(9) can be adequately addressed for SO_2 by the operation of a comprehensive enforcement program which can quickly identify and address sources that might be causing exceedances of the NAAQS level. Indiana's enforcement program is active and capable of prompt action to remedy compliance issues. In particular, Indiana's October 10, 2019 redesignation request and May 5, 2020 clarification letter discusses its two-tiered plan to respond to reported emissions that would cause modeled exceedances of the SO_2 NAAQS in the maintenance area. Indiana commits to study SO_2 emission trends and identify areas of concern and potential additional measures and if necessary, Indiana will consider additional control measures which can be implemented quickly. Indiana has the authority to expeditiously adopt, implement and enforce any subsequent emissions control measures deemed necessary to correct any future SO_2 violations. Indiana commits to adopt and implement such corrective actions as necessary to address trends of increasing emissions or modeled ambient impacts. The public will have the opportunity to participate in the contingency measure implementation process. EPA proposes to find that Indiana has addressed the contingency measure requirement. Further, EPA proposes to find that Indiana's maintenance plan adequately addresses the five basic components necessary to maintain the SO_2 NAAQS in the Morgan County nonattainment area.

VII. What action is EPA taking?

In accordance with Indiana's October 10, 2019 request and May 5, 2020 clarification letter, EPA is proposing to redesignate the Morgan County nonattainment area from nonattainment to attainment of the 2010 SO_2 NAAQS. Indiana has demonstrated that the area is attaining the 2010 SO_2 NAAQS and that the improvement in air quality is due to permanent and enforceable SO_2 emission reductions in the nonattainment area. EPA is also proposing to approve Indiana's maintenance plan, which is designed to ensure that the area will continue to maintain the SO_2 NAAQS.

VIII. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by state law. A redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations.

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

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

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on tribes, impact any existing sources of air pollution on tribal lands, nor impair the maintenance of ozone national ambient air quality standards in tribal lands.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

40 CFR Part 81

Environmental protection, Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: July 1, 2020.

Kurt Thiede,

Regional Administrator, Region 5.

[FR Doc. 2020–14689 Filed 7–13–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1986–005; FRL–10010–01–Region 10]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Deletion of the Northside Landfill Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of intent.

SUMMARY: The Environmental Protection Agency (EPA) Region 10 is issuing a Notice of Intent to Delete Northside Landfill Superfund Site (Site), located in Spokane, Spokane County, Washington, 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 Washington, through the Department of Ecology, have determined that all appropriate response actions under CERCLA, other than operation and maintenance and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

DATES: Comments must be received by August 13, 2020.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1986–0005, by one of the following methods:

- *https://www.regulations.gov.* Follow 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://www2.epa.gov/dockets/commenting-epa-dockets.*
- *Email:* Jeremy Jennings, Remedial Project Manager, at *jennings.jeremy@epa.gov*.
- Written comments submitted by mail are temporarily suspended and no hand deliveries will be accepted. We encourage the public to submit comments via *https://www.regulations.gov.*

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–1986–0005. 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 the hard copy. Publicly available docket materials are available electronically in *https://www.regulations.gov.*

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.

FOR FURTHER INFORMATION CONTACT: Jeremy Jennings, Remedial Project Manager, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Suite 155, 12–D12–1, Seattle, WA 98101, (206)553–2724, email: *jennings.jeremy@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

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

I. Introduction

EPA Region 10 announces its intent to delete the Northside Landfill Superfund Site from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. 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). As described in 40 CFR 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions if future conditions warrant such actions.

EPA will accept comments on the proposal to delete this site for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this preamble explains the criteria for deleting sites from the NPL. Section III of this preamble discusses procedures that EPA is using for this action. Section IV of this preamble discusses where to access and review information that demonstrates how the deletion criteria have been met at the Northside Landfill Superfund Site.

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 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 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. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) EPA consulted with the State before developing this Notice of Intent to Delete.

(2) EPA has provided the state 30 working days for review of this action prior to publication of it today

(3) In accordance with the criteria discussed above, EPA has determined that no further response is appropriate;

(4) The State of Washington, through the Department of Ecology, has concurred with deletion of the Site from the NPL.

(5) Concurrently with the publication of this Notice of Intent to Delete in the **Federal Register**, a notice is being published in a major local newspaper, The Spokesman Review. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent to Delete the site from the NPL.

(6) The EPA placed copies of documents supporting the proposed deletion in the deletion docket and made these items available for public inspection and copying at the Site information repositories identified above.

If comments are received within the 30-day public comment period on this action, EPA will evaluate and respond appropriately to the comments before making a final decision to delete. If necessary, EPA will prepare a Responsiveness Summary to address any significant public comments received. After the public comment period, if EPA determines it is still appropriate to delete the Site, the Regional Administrator will publish a final Notice of Deletion in the **Federal Register**. Public notices, public submissions and copies of the Responsiveness Summary, if prepared, will be made available to interested parties and in the site information repositories listed above.

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion 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 future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The EPA placed copies of documents supporting the proposed deletion in the deletion docket. The material provides explanation of EPA's rationale for the deletion and demonstrates how it meets the deletion criteria. This information is made available for public inspection in the docket identified above.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1251 *et seq.*

Dated: June 25, 2020.

Christopher Hladick,

Regional Administrator, Region 10.

[FR Doc. 2020–14137 Filed 7–13–20; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–2005–0011; FRL–10010–02–Region 10]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List: Partial Deletion of the Surface and Subsurface Soils of the Queen City Farms Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of intent.

SUMMARY: The Environmental Protection Agency (EPA) Region 10 is issuing a Notice of Intent to Delete the surface and subsurface soils of the Queen City Farms Superfund Site (Site) located in Maple Valley, King County, Washington, 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 Washington, through the Department of Ecology, have determined that all appropriate response actions at these identified parcels under CERCLA, other than operation and maintenance, monitoring and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

This partial deletion pertains to surface and subsurface soils. The groundwater will remain on the NPL and is not being considered for deletion as part of this action.

DATES: Comments must be received by August 13, 2020.

ADDRESSES: Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–2005–0011, by one of the following methods:

- *https://www.regulations.gov*. Follow 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://www2.epa.gov/dockets/commenting-epa-dockets.*
- *Email:* Jeremy Jennings, Remedial Project Manager, *jennings.jeremy@epa.gov*.
- Written comments submitted by mail are temporarily suspended and no hand deliveries will be accepted. We encourage the public to submit comments via *https://www.regulations.gov*.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–2005–0011. 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 the hard copy. Publicly available docket materials are available electronically in *https://www.regulations.gov.*

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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.

FOR FURTHER INFORMATION CONTACT: Jeremy Jennings, Remedial Project Manager, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Suite 155, Mailcode 12–D12–1, Seattle, WA 98101, (206)553–2724, email: *jennings.jeremy@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

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

I. Introduction

EPA Region 10 announces its intent to delete the surface and subsurface soils of the Queen City Farms Superfund Site (Site) from the National Priorities List (NPL) and request public comment on this proposed action. The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as those 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 surface and subsurface soils of the Queen City Farms Superfund 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 (November 1, 1995). As described in 300.425(e)(3) of the NCP, a portion of a site deleted from the NPL remains eligible for Fund-financed remedial action if future conditions warrant such actions.

EPA will accept comments on the proposal to partially delete this site for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this preamble explains the criteria for deleting sites from the NPL. Section III of this preamble discusses procedures that EPA is using for this action. Section IV of this preamble discusses where to access and review information that demonstrates how the deletion criteria have been met for surface and subsurface soils of the Queen City Farms Superfund Site.

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 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 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. Deletion Procedures

The following procedures apply to deletion of surface and subsurface soils of the Site:

(1) EPA consulted with the State before developing this Notice of Intent for Partial Deletion.

(2) EPA has provided the state 30 working days for review of this action prior to publication of it today.

(3) In accordance with the criteria discussed above, EPA has determined that no further response is appropriate.

(4) The State of Washington, through the Department of Ecology, has concurred with the deletion of the surface and subsurface soils of the Queen City Farms Superfund Site from the NPL.

(5) Concurrently, with the publication of this Notice of Intent for Partial Deletion in the **Federal Register**, a notice is being published in a major local newspaper, the Covington Reporter. The newspaper announces the 30-day public comment period concerning the Notice of Intent for Partial Deletion of the Site from the NPL.

(6) The EPA placed copies of documents supporting the proposed partial deletion in the deletion docket, made these items available for public inspection, and copying at the Site information repositories identified above.

If comments are received within the 30-day comment period on this action, EPA will evaluate and respond accordingly to the comments before making a final decision to delete the surface and subsurface soils. If necessary, EPA will prepare a Responsiveness Summary to address any significant public comments received. After the public comment period, if EPA determines it is still appropriate to delete the the surface and subsurface soils of the Queen City Farms Superfund Site, the Regional Administrator will publish a final Notice of Partial Deletion in the **Federal Register**. Public notices, public submissions and copies of the Responsiveness Summary, if prepared, will be made available to interested parties and included in the site information repositories listed above.

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 future response actions, should future conditions warrant such actions.

IV. Basis for Partial Site Deletion

The EPA placed copies of documents supporting the proposed partial deletion in the deletion docket. The material provides explanation of EPA's rationale for the partial deletion and demonstrates how it meets the deletion criteria. This information is made available for public inspection in the docket identified above.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1251 *et seq.*

Dated: June 25, 2020.

Christopher Hladick,

Regional Administrator, Region 10.

[FR Doc. 2020–14138 Filed 7–13–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 18–295 and GN Docket No. 17–183; Report No. 3152; FRS 16906]

Petitions for Reconsideration of Action in Proceedings

AGENCY: Federal Communications Commission.

ACTION: Petitions for Reconsideration.

SUMMARY: Petitions for Reconsideration (Petitions) have been filed in the Commission's proceeding by Jeffrey S. Cohen, on behalf of APCO International, Jennifer L. Oberhausen, on behalf of CTIA, Donald J. Evans, on behalf Fixed Wireless Communications Coalition, and Tara L. Preiss, on behalf of Verizon.

DATES: Oppositions to the Petitions must be filed on or before July 29, 2020. Replies to an opposition must be filed on or before August 10, 2020.

ADDRESSES: Federal Communications Commission, 445 12th Street SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nicholas Oros, Office of Engineering and Technology, Policy and Rules Division, (202) 418–0636.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document, Report No. 3152, released June 29, 2020. Petitions may be accessed online via the Commission's Electronic Comment Filing System at: *http://apps.fcc.gov/ecfs/.* The Commission will not send a Congressional Review Act (CRA) submission to Congress or the Government Accountability Office pursuant to the CRA, 5 U.S.C. because no rules are being adopted by the Commission.

Subject: Unlicensed Use of the 6 GHz Band, Expanding Flexible Use in Mid-Band Spectrum Between 3.7 and 24 GHz, FCC 20–51, published 85 FR 31390, May 26, 2020 in GN ET Docket No. 18–295 and GN Docket No. 17–183. This document is being published pursuant to 47 CFR 1.429(e). *See also* 47 CFR 1.4(b)(1) and 1.429(f), (g).

Number of Petitions Filed: 4.

Federal Communications Commission.

Cecilia Sigmund,

Federal Register Liaison Officer.

[FR Doc. 2020–14711 Filed 7–13–20; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 85, No. 135
Tuesday, July 14, 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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2020–0054]

Petition To Manufacture Foot-and-Mouth Disease Vaccine in the United States

AGENCY: Animal and Plant Health Inspection Service, Agriculture (USDA).

ACTION: Notice of petition and request for information.

SUMMARY: We are notifying the public that the Animal and Plant Health Inspection Service has received a petition from Zoetis, Inc. to approve the manufacture within the continental United States of a vaccine derived from a leaderless strain of the foot-and-mouth disease (FMD) virus. While introduction of live FMD virus into the United States is prohibited by law, the petition states that this attenuated strain of the virus is incapable of causing FMD symptoms or infection in animals. We are soliciting comments from the public regarding the petition and requesting information that will aid us in determining how best to respond to the petition.

DATES: We will consider all comments that we receive on or before September 14, 2020.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2020-0054.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2020–0054, 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-2020-0054* 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: Dr. Byron Rippke, Director, Center for Veterinary Biologics, APHIS, Veterinary Services, Diagnostics and Biologics, 1920 Dayton Ave., Ames, IA 50010; (515) 337–6101; *Byron.e.rippke@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Foot-and-mouth disease, or FMD, is a severe, highly contagious viral illness of cows, pigs, sheep, goats, deer, and other animals with divided hooves. The virus weakens affected animals and permanently reduces their ability to produce meat and milk. While FMD has been eradicated from the United States since 1929, the disease is currently found in parts of Africa, Asia, Europe, and South America.

Federal regulations restrict or prohibit the importation of live ruminants and swine, or fresh meat and certain products of ruminants or swine, from any region where FMD exists. In addition, the Federal Select Agent Program, managed jointly by the U.S. Department of Health and Human Services and the U.S. Department of Agriculture (USDA), oversees the possession, use, and transfer of biological select agents and toxins. Within USDA, APHIS regulates those agents that can cause disease in animals under 9 CFR part 121. As FMD has the potential to pose a severe threat to animal health and animal products, it is listed in § 121.3 of the regulations as a Tier 1 select agent.

Under 21 U.S.C. 113a, the Secretary of Agriculture is authorized to establish laboratories and make contracts for research and study, in the United States or elsewhere, of FMD or other diseases that constitute a threat to the livestock industry of the United States. No live virus of FMD may be introduced for any purpose into any part of the mainland of the United States unless the Secretary determines that it is necessary and in the public interest for the conduct of research and study in the United States and issues a permit under such rules so as to protect animal health.

APHIS has received a petition from Zoetis, Inc. to approve the manufacture of a vaccine derived from an attenuated, leaderless strain of the FMD virus. In accordance with the regulations in 9 CFR part 122, USDA issued a permit to the petitioner to bring attenuated live FMD virus into the mainland United States for the purpose of developing a vaccine.

The FMD virus strain brought into the United States under permit was genetically modified by removing the leader protease gene, rendering the strain incapable of becoming infectious, pathogenic, contagious, or of producing clinical or subclinical signs of FMD. This modification makes the virus unable to reacquire its infectious abilities through mutation. The petitioner also introduced unique restriction enzyme sites into the genome for emerging vaccine strain development, as well as markers that allow for differentiation of infected from vaccinated animals.

Based on these modifications, the petitioner asserts that manufacturing FMD vaccine using the modified FMD virus as the master seed should not be considered within the scope of prohibitions in 21 U.S.C. 113a on the grounds that their virus strain is no longer a live virus of FMD.

This request for information (RFI) seeks public comment on this interpretation, as well as whether public support exists for the development of an FMD vaccine within the United States. Comments received on this RFI will inform our determination whether to authorize the petitioner to manufacture the vaccine for possible commercial distribution.[1]

As we review the petition, we are soliciting public comments on the following questions:

- Are there possible risks to livestock associated with the commercial manufacture of FMD vaccine in the United States? If so, are these offset by possible benefits associated with such development, assuming appropriate safeguarding?
- If there are possible risks, do these risks differ depending on the location and method of development? If so, how?

[1] To view the petition, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2020-0054.*

• What safeguards should surround the commercial manufacture of FMD vaccine, if authorized?

• How should the overall language of 21 U.S.C. 113a be interpreted in light of significant technical developments in the field of virology since its enactment?

• APHIS notes that ''introduced'' is not defined within 21 U.S.C. 113a. How should ''introduced . . . into the mainland United States'' be interpreted?

• Based on the information supplied, should the modified virus (master seed) be considered a ''live virus of foot-and-mouth disease''? Specifically, should its inability to express as FMD be considered to place it outside the scope of 21 U.S.C. 113a?

We welcome all comments on the petition and the issues outlined above.

Authority: 7 U.S.C. 1633, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 8th day of July 2020.

Mark Davidson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2020–15031 Filed 7–13–20; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2020–0041]

Notice of Request for Extension of Approval of an Information Collection; National Veterinary Accreditation Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: 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 an extension of approval of an information collection associated with the National Veterinary Accreditation Program application form.

DATES: We will consider all comments that we receive on or before September 14, 2020.

ADDRESSES: You may submit comments by either of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2020-0041*.

• *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2020–0041, 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-2020-0041* 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 National Veterinary Accreditation Program application form, contact Dr. Todd Behre, Veterinary Medical Officer, National Veterinary Accreditation Program, VS, APHIS, 4700 River Road, Unit 64, Riverdale, MD 20737; (301) 851–3401. For additional information about the information collection process, contact Mr. Joseph Moxey, APHIS' Information Collection Coordinator, at (301) 851–2483.

SUPPLEMENTARY INFORMATION:

Title: National Veterinary Accreditation Program.

OMB Control Number: 0579–0297.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Secretary of Agriculture is authorized to protect the health of U.S. livestock by preventing the introduction and interstate spread of serious diseases and pests of livestock and for eradicating such diseases from the United States when feasible. This authority has been delegated to the Animal and Plant Health Inspection Service (APHIS). In connection with this mission, the U.S. Department of Agriculture established the National Veterinary Accreditation Program (NVAP) so that accredited private practitioners can assist Federal veterinarians in controlling animal diseases and facilitating the movement of animals. Regulations concerning the accreditation of veterinarians and the suspension and revocation of accreditation are in 9 CFR parts 160 through 162.

NVAP is a voluntary program that is administered by APHIS. As part of this program, APHIS uses an NVAP application form to collect information regarding an applicant's eligibility for accreditation and, among other things, to update an individual's contact information and renew or revise his or her accreditation status.

We are asking the Office of Management and Budget (OMB) to approve our use of this information collection activity 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 0.50 hours per response.

Respondents: Veterinarians.

Estimated annual number of respondents: 23,800.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 23,801.

Estimated total annual burden on respondents: 11,901 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 8th day of July 2020.

Mark Davidson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2020–15103 Filed 7–13–20; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

[Docket #: RBS–CO–OP–0026]

Inviting Applications for Rural Cooperative Development Grants; Correction

AGENCY: Rural Business-Cooperative Service, Agriculture (USDA).

ACTION: Notice of funding availability; correction.

SUMMARY: The Rural Business-Cooperative Service, USDA published a notice in the **Federal Register** on July 2, 2020, that the Agency is accepting fiscal year (FY) 2020 applications for the Rural Cooperative Development Grant (RCDG). This document inadvertently referenced an incorrect application submission deadline in the *Submission Date and Time* and the *Application Review Information* sections and corrected references to an Office of Budget Memorandum.

FOR FURTHER INFORMATION CONTACT: Natalie Melton, Program Management Division, Rural Business-Cooperative Service, United States Department of Agriculture, 1400 Independence Avenue SW, Mail Stop–3226, Room 4204–South, Washington, DC 20250–3226, (202) 720–1400 or email *CPgrants@usda.gov.*

SUPPLEMENTARY INFORMATION:

Correction

(1) In the **Federal Register** of July 2, 2020, in FR Doc. 2020–14286, on page 39875, in the third column, section ''4. Submission Date and Time'', correct the first sentence to read:

4. Submission Date and Time

Explanation of Deadline: Completed applications must be submitted electronically by no later than midnight Eastern Time, August 3, 2020, through *Grants.gov*, to be eligible for grant funding.

(2) In the **Federal Register** of July 2, 2020, in FR Doc. 2020–14286, on page 39877, in the second column, correct the first sentence to read:

A panel of USDA employees will evaluate your demonstrated past performance in establishing legal cooperative business entities and other legal business entities during October 1, 2015–August 3, 2020.

(3) In the **Federal Register** of July 2, 2020, in FR Doc. 2020–14286, on page 39871, in the first column, section ''*COVID–19 Administrative Relief Exceptions*'', correct the first sentence to read:

COVID–19 Administrative Relief Exceptions: The Agency reviewed the Office of Budget and Management's (OMB) M–20–26 memorandum ''Extension of Administrative Relief for Recipients and Applicants of Federal Financial Assistance Directly Impacted by the Novel Coronavirus (COVID–19) due to Loss of Operations'', and OMB M–20–11, ''Administrative Relief for Recipients and Applicants of Federal Financial Assistance directly impacted by the novel coronavirus (COVID–19)'', cited and referenced by M–20–26 and has made every attempt to reduce administrative burden within our authority. Any reduction in burden will be discussed within the requirement.

(4) In the **Federal Register** of July 2, 2020, in FR Doc. 2020–14286, on page 39873, first column, second paragraph, replace the reference to OMB Memoranda M–20–17 with OMB Memoranda M–20–26.

(5) In the **Federal Register** of July 2, 2020, in FR Doc. 2020–14286, on page 39873, second column, first paragraph, replace the reference to OMB Memoranda M–20–17 with OMB Memoranda M–20–26.

(6) In the **Federal Register** of July 2, 2020, in FR Doc. 2020–14286, on page 39873, third column, section ''c. Clarifications on Forms'', in the fourth sentence, replace the reference to OMB Memoranda M–20–17 with OMB Memoranda M–20–26.

(7) In the **Federal Register** of July 2, 2020, in FR Doc. 2020–14286, on page 39875, third column, section (c), second paragraph, replace the reference to OMB Memoranda M–20–17 with OMB Memoranda M–20–26.

Mark Brodziski,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. 2020–14848 Filed 7–13–20; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Oregon Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that the meeting of the Oregon Advisory Committee (Committee) to the Commission will be held at 12:00 p.m. (Pacific Time) Thursday, July 23, 2020. The purpose of this meeting is for the committee to review statement of concern and begin planning for webhearings on civil rights concerns with Oregon bail practices.

DATES: The meeting will be held on Thursday, July 23, 2020 at 12:00 p.m. PT.

Public call information:
Dial: 800–353–6461.
Conference ID: 6401933.

FOR FURTHER INFORMATION CONTACT: Ana Victoria Fortes, Designated Federal Officer (DFO) at *afortes@usccr.gov* or (202) 681–0857

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the following toll-free call-in number: 800–353–6461, conference ID number: 6401933. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be mailed to the Western Regional Office, U.S. Commission on Civil Rights, 300 North Los Angeles Street, Suite 2010, Los Angeles, CA 90012. You may also email Ana Victoria Fortes at *afortes@usccr.gov.*

Records and documents discussed during the meeting will be available for public viewing prior to and after the meetings at *https://www.facadatabase.gov/FACA/apex/FACAPublicCommittee?id=a10t0000001gzlwAAA.*

Please click on the ''Committee Meetings'' tab. Records generated from these meetings may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meetings. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcome
II. Review Statement of Concern
III. Vote on Statement of Concern
IV. Implementation Stage Presentation
V. Planning Discussion for Web Hearings
VI. Public Comment
VII. Adjournment

Dated: July 8, 2020.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2020–15093 Filed 7–13–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–18–2020]

Foreign-Trade Zone (FTZ) 158—Jackson, Mississippi; Authorization of Production Activity; Traxys Cometals USA, LLC (Manganese and Aluminum Alloying Agents); Burnsville, Mississippi

On March 11, 2020, Traxys Cometals USA, LLC submitted a notification of proposed production activity to the FTZ Board for its facility within FTZ 158, in Burnsville, Mississippi.

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 16326, March 23, 2020). On July 9, 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: July 9, 2020.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2020–15185 Filed 7–13–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Sensors and Instrumentation Technical Advisory Committee; Notice of Partially Closed Meeting

The Sensors and Instrumentation Technical Advisory Committee (SITAC) will meet on July 28, 2020, at 1:00 p.m., Eastern Daylight Time. The meeting will be available via teleconference. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

Agenda

Open Session

1. Welcome and Introductions.
2. Remarks from the Bureau of Industry and Security Management.
3. Industry Presentations.
4. New Business.

Closed Session

5. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov,* no later than July 21, 2020.

A limited number of seats will be available during the public session of the meeting.

Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the materials be forwarded before the meeting to Ms. Springer.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on October 10, 2019 pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § 10(d), that the portion of this meeting dealing with pre-decisional changes to the Commerce Control List and U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information contact Yvette Springer on (202) 482–2813.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2020–15169 Filed 7–13–20; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Information Systems Technical Advisory Committee; Notice of Partially Closed Meeting

The Information Systems Technical Advisory Committee (ISTAC) will meet on July 29 and 30, 2020, at 1:00 p.m., Eastern Daylight Time. The meetings will be available via teleconference. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to information systems equipment and technology.

Wednesday, July 29

Open Session

1. Welcome and Introductions
2. Comments from BIS
3. Working Group Reports
4. AI and Export Controls
5. Wassenaar Proposals for 2021
6. APP and Top 500
7. Old Business

Thursday, July 30

Closed Session

8. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and 10(a)(3).

The open session will be accessible via teleconference. To join the conference, submit inquiries to Ms. Yvette Springer at *Yvette.Springer@bis.doc.gov,* no later than July 22, 2020.

A limited number of seats will be available for the public session. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that public presentation materials or comments be forwarded before the meeting to Ms. Springer.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on December 18, 2019, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. app. 2 § (l0)(d))), that the portion of the meeting concerning trade secrets and commercial or financial information deemed privileged or confidential as described in 5 U.S.C. 552b(c)(4) and the portion of the meeting concerning matters the

disclosure of which would be likely to frustrate significantly implementation of an agency action as described in 5 U.S.C. 552b(c)(9)(B) shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 §§ 10(a)(1) and l0(a)(3). The remaining portions of the meeting will be open to the public.

For more information, call Yvette Springer at (202) 482–2813.

Yvette Springer,

Committee Liaison Officer.

[FR Doc. 2020–15168 Filed 7–13–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–848]

Certain Stilbenic Optical Brightening Agents From Taiwan: Final Results of Antidumping Duty Administrative Review; 2018–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On May 8, 2020, the Department of Commerce (Commerce) published the preliminary results of the administrative review of the antidumping duty order on certain stilbenic optical brightening agents (stilbenic OBAs) from Taiwan. The period of review (POR) is May 1, 2018 through April 30, 2019. For the final results of this review, we continue to find that Teh Fong Ming International Co., Ltd. (TFM) has made sales of subject merchandise at less than normal value during the POR.

DATES: Applicable July 14, 2020.

FOR FURTHER INFORMATION CONTACT: Bryan Hansen, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3683.

SUPPLEMENTARY INFORMATION:

Background

On May 8, 2020, Commerce published the *Preliminary Results* of the administrative review of the antidumping duty order on stilbenic OBAs from Taiwan.[1] The administrative review covers one producer/exporter of the subject merchandise, TFM. We gave interested parties an opportunity to comment on the *Preliminary Results.* We received no comments. Hence, these final results are unchanged from the *Preliminary Results.* Commerce conducted this review in accordance with sections 751(a)(1)(B) and (2) of the Tariff Act of 1930, as amended (the Act).

On January 14, 2020, we extended the due date for the preliminary results of this review from January 31, 2020 to May 22, 2020. On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days. As a result of Commerce's tolling of deadlines, the deadline for the preliminary results of this review was revised to July 13, 2020, and the current deadline for the final results of this review is now October 13, 2020.[2]

Scope of the Order

The stilbenic OBAs covered by this order are all forms (whether free acid or salt) of compounds known as triazinylaminostilbenes (*i.e.,* all derivatives of 4,4′-bis [1,3,5-triazin-2-yl] [3] amino- 2,2′-stilbenedisulfonic acid), except for compounds listed in the following paragraph. The stilbenic OBAs covered by this order include final stilbenic OBA products, as well as intermediate products that are themselves triazinylaminostilbenes produced during the synthesis of stilbenic OBA products.

Excluded from this order are all forms of 4,4′-bis[4-anilino-6-morpholino-1,3,5-triazin-2-yl] [4] amino-2,2′-stilbenedisulfonic acid, C40H40N12O8S2 (''Fluorescent Brightener 71''). This order covers the above-described compounds in any state (including but not limited to powder, slurry, or solution), of any concentrations of active stilbenic OBA ingredient, as well as any compositions regardless of additives (*i.e.,* mixtures or blends, whether of stilbenic OBAs with each other, or of stilbenic OBAs with additives that are not stilbenic OBAs), and in any type of packaging.

These stilbenic OBAs are classifiable under subheading 3204.20.8000 of the Harmonized Tariff Schedule of the United States (HTSUS), but they may also enter under subheadings 2933.69.6050, 2921.59.4000 and 2921.59.8090. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Final Results of the Administrative Review

As a result of this administrative review, we determine that a weighted-average dumping margin exists for the POR.

Producer/exporter	Weighted-average dumping margin (percent)
Teh Fong Min International Co., Ltd	4.61

Assessment

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. For TFM, we calculated importer-specific assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for each importer's examined sales and the total entered value of the sales in accordance with 19 CFR 351.212(b)(1).[5]

For entries of subject merchandise during the period of review produced by TFM for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate companies involved in the transaction. We intend to issue assessment instructions to CBP 15 days after the date of publication of the final results of review.

Cash Deposit Requirements

The following cash deposit requirements for estimated antidumping duties will be effective upon publication of the notice of final results of this review for all shipments of stilbenic OBAs from Taiwan entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section

[1] *See Stilbenic Optical Brightening Agents from Taiwan: Preliminary Results of Antidumping Duty Administrative Review; 2018–2019,* 85 FR 27361 (May 8, 2020) (*Preliminary Results*).

[2] *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. All deadlines in this segment of the proceeding have been extended by 50 days. Commerce's practice dictates that, where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day (in this instance, October 13, 2020). *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

[3] The brackets in this sentence are part of the chemical formula.

[4] *Id.*

[5] In these final results, Commerce applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

751(a)(2) of the Act: (1) The cash deposit rate for TFM will be 4.61 percent, the weighted-average dumping margin established in the final results of this administrative review; (2) for merchandise exported by companies not covered in this review but covered in a prior segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the producer is, then the cash deposit rate will be the rate established for the most recently completed segment for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 6.19 percent, the all-others rate established in the less-than-fair-value investigation, adjusted for the export-subsidy rate in the companion countervailing duty investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this period of review. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

Notification to Interested Parties

Commerce is issuing and publishing these results in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.221(b)(5).

Dated: July 8, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–15152 Filed 7–13–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–523–812]

Circular Welded Carbon-Quality Steel Pipe From Oman: Partial Rescission of Antidumping Duty Administrative Review; 2018–2019

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is partially rescinding the administrative review of the antidumping duty order on circular welded carbon-quality steel pipe from Oman for the period of review (POR) December 1, 2018 through November 30, 2019.

DATES: Applicable July 14, 2020.

FOR FURTHER INFORMATION CONTACT: Dennis McClure or Robert Palmer, 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) 482–5973 or (202) 482–9068, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 6, 2019, Commerce published a notice of opportunity to request an administrative review of the antidumping duty order on circular welded carbon-quality steel pipe from Oman.[1] Pursuant to requests from interested parties, Commerce initiated an administrative review with respect to four companies, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).[2] Subsequent to the initiation of the administrative review, the domestic interested parties [3] timely withdrew their request for an administrative review of three companies, as discussed below. No other party requested an administrative review of these companies.

Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the party that requested a review withdraws its request within 90 days of the date of publication of the notice of initiation.[4] The request for an administrative review was withdrawn by the established deadline for the following companies: Al Samna Metal Manufacturing & Trading Company LLC; Bollore Logistics (Oman) LLC; and Transworld Shipping Trading & Logistics Services LLC.[5] As a result, Commerce is rescinding this review with respect to these three companies, in accordance with 19 CFR 351.213(d)(1). The review will continue with respect to Al Jazeera Steel Products Co. SAOG.[6]

Assessment

Commerce will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on all appropriate entries. For the companies for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse for consumption, in accordance with 19 CFR 351.212(c)(l)(i). Commerce intends to issue appropriate assessment instructions to CBP 15 days after publication of this notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues

[1] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 84 FR 66880 (December 6, 2019).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 6896 (February 6, 2020) (*Initiation Notice*).

[3] Collectively, the domestic interested parties are Nucor Tubular Products Inc., Wheatland Tube Company, and Bull Moose Tube.

[4] On April 24, 2020, Commerce decided to toll all deadlines in administrative reviews by 50 days. *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. Therefore, Commerce tolled the deadline for the withdrawal of the request for this administrative review until June 25, 2020.

[5] *See* Domestic Interested Parties' Letter, ''Circular Welded Carbon-Quality Steel Pipe from Oman: Partial Withdrawal of Request for Administrative Review,'' dated June 25, 2020.

[6] *See Initiation Notice,* 85 FR at 6898.

to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(l) of the Act, and 19 CFR 351.213(d)(4).

Dated: July 8, 2020.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2020–15163 Filed 7–13–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–890]

Emulsion Styrene-Butadiene Rubber From Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) finds that the producers/exporters subject to this administrative review made sales of emulsion styrene-butadiene rubber (ESB rubber) from the Republic of Korea (Korea) at less than normal value during the period of review (POR) February 24, 2017 through August 31, 2018.

DATES: Applicable July 14, 2020.

FOR FURTHER INFORMATION CONTACT: Eliza Siordia, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3878.

SUPPLEMENTARY INFORMATION:

Background

This review covers seven producers and/or exporters of the subject merchandise. Commerce selected one mandatory respondent for individual examination: LG Chem, Ltd. (LG Chem). The producers/exporters which were not selected for individual examination are listed in the ''Final Results of the Administrative Review'' section of this notice.

On November 15, 2018, we published our initiation of an administrative review of the antidumping duty order on ESB rubber from Korea.[1] On November 26, 2019, we published the *Preliminary Results* of this administrative review.[2] On December 30, 2019, Lion Elastomers, LLC (the petitioner) submitted a case brief.[3] On January 6, 2020, LG Chem submitted a rebuttal brief.[4]

On March 2, 2020, we extended the deadline for the final results of this review to May 21, 2020.[5] On April 24, 2020, Commerce tolled all deadlines in administrative reviews by 50 days, thereby extending the deadline for these final results until July 10, 2020.[6] Commerce conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise covered by this order is cold-polymerized emulsion styrene-butadiene rubber.[7] The subject merchandise is currently classifiable under subheadings 4002.19.0015 and 4002.19.0019 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised by the parties in their case and rebuttal briefs are listed in the appendix to this notice and are addressed in the Issues and Decision Memorandum. The Issues and Decision Memorandum is a public document and is on-file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Changes to the Preliminary Results

In the *Preliminary Results,* we found that LG Chem was entitled to a constructed export price (CEP) offset.[8] After further review, we find that a CEP offset is not warranted for LG Chem.[9] Additionally, we have incorporated several minor changes in the margin program.[10] For a discussion of the above-referenced changes, *see* the ''Changes to the Preliminary Results'' section of the Issues and Decision Memorandum.

Rates for Non-Examined Companies

As a result of this review, we calculated a weighted-average dumping margin for LG Chem. Accordingly, Commerce has assigned to the companies not selected for individual examination the margin calculated for LG Chem.

Final Results of the Administrative Review

The weighted-average dumping margins for the final results of this administrative review are as follows:

Exporter/producer	Weighted-average dumping margin (percent)
LG Chem, Ltd	4.19
Daewoo International Corporation[11]	4.19
Kumho Petrochemical Co. Ltd	4.19
Sungsan International Co, Ltd	4.19
WE International Co., Ltd	4.19
Kukje Trading Corp	4.19
Hyundai Glovis Co., Ltd	4.19

Disclosure

We will disclose to interested parties the calculations performed in

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 83 FR 57411 (November 15, 2018).

[2] *See Emulsion Styrene-Butadiene Rubber from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018,* 84 FR 65114 (November 26, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[3] *See* Petitioner's Letter, ''Case Brief,'' dated December 30, 2019.

[4] *See* LG Chem's Letter, ''LG Chem's Rebuttal Brief,'' dated January 6, 2020; *see also* LG Chem's Letter, ''Errata to LG Chem's Rebuttal Brief,'' dated January 7, 2020.

[5] *See* Memorandum, ''Emulsion Styrene-Butadiene Rubber from the Republic of Korea: Extension of Deadline for Final Results of Antidumping Duty Administrative Review, 2017–2018,'' dated March 2, 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] For a full description of the scope, *see* Memorandum, ''Decision Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Order: Emulsion Styrene-Butadiene Rubber from the Republic of Korea; 2017–2018,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[8] *See* PDM at VII.C.

[9] *See* Issues and Decision Memorandum at Comment 1.

[10] *See* Memorandum, ''Final Results Analysis Memorandum for LG Chem, Ltd.,'' dated concurrently with this notice.

[11] We note that in the *Initiation Notice,* we spelled the name of Daewoo International Corporation as ''Daewoo International Corporatin.'' However, the spelling should have been ''Daewoo

connection with these final results within five days of the publication of this notice, consistent with 19 CFR 351.224(b).

Assessment Rate

Pursuant to section 751(a)(2)(C) of the Act, and 19 CFR 212(b)(1), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.

For LG Chem, because its weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.5 percent), Commerce has calculated importer-specific antidumping duty assessment rates. We calculated importer-specific antidumping duty assessment rates by aggregating the total amount of dumping calculated for the examined sales of each importer and dividing each of these amounts by the total sales value associated with those sales. We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review where an importer-specific assessment rate is not zero or *de minimis.* Pursuant to 19 CFR 351.106(c)(2), we will instruct CBP to liquidate without regard to antidumping duties any entries for which the importer-specific assessment rate is zero or *de minimis.*

Consistent with Commerce's assessment practice, for entries of subject merchandise during the POR produced by LG Chem, for which LG Chem did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[12]

For the companies which were not selected for individual review, we will assign an assessment rate equal to LG Chem's dumping margin identified above.[13] The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[14]

Commerce intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for each specific company listed above will be equal to the rate established in the final results of this administrative review; (2) for merchandise exported by producers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the producer is, then the cash deposit rate will be the rate established for the most recently-completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 9.66 percent, the all-others rate established in the investigation.[15] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties has occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5). Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until July 17, 2020, unless extended.[16]

Dated: July 8, 2020.

Jeffrey I. Kessler,

Assistant Secretary, for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Changes to the Preliminary Results
V. Discussion of the Issues
Comment 1: Constructed Export Price (CEP) Offset Treatment
Comment 2: Cost of Production (COP) Adjustment
Comment 3: Value Added Tax (VAT) Adjustment
VI. Recommendation

[FR Doc. 2020–15153 Filed 7–13–20; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–819]

Steel Concrete Reinforcing Bar From the Republic of Turkey: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

International Corporation.'' *See* Lion Elastomers LLC's Letter, ''Antidumping Duty Order on Emulsion Styrene Butadiene Rubber from Korea (A–580–890): Request for First Administrative Review,'' dated September 28, 2018.

[12] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[13] The Act does not specify how to calculate a dumping margin for a respondent that is not selected for individual review in an administrative review. Therefore, we look to section 735(c)(5)(A) of the Act, which explains how to calculate the ''all others'' rate in an investigation, for guidance. Consistent with how we would calculate the ''all others'' rate in an investigation, we are basing the dumping margin for non-selected companies on the weighted-average dumping margin calculated for the selected respondent, LG Chem.

[14] *See* section 751(a)(2)(C) of the Act.

[15] *See Emulsion Styrene-Butadiene Rubber from the Republic of Korea: Final Affirmative Determination of Sales at Less Than Fair Value, and Final Affirmative Determination of Critical Circumstances, in Part,* 82 FR 33045 (July 19, 2017).

[16] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 29615 (May 18, 2020).

SUMMARY: The Department of Commerce (Commerce) determines that Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. (Icdas), and Kaptan Demir Celik Endustrisi ve Ticaret A.S. and Kaptan Metal Dis Ticaret Ve Nakliyat A.S. (collectively, Kaptan), producers/exporters of steel concrete reinforcing bar (rebar) from the Republic of Turkey (Turkey), each received *de minimis* net countervailable subsidies during the period of review (POR) January 1, 2017 through December 31, 2017. This review also includes 15 companies not individually examined, which Commerce determines received net countervailable subsidies during the POR. Additionally, we are rescinding the review for six companies with no shipments of subject merchandise to the United States during the POR.

DATES: Applicable July 14, 2020.

FOR FURTHER INFORMATION CONTACT: Nancy Decker, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0196.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Results* of this administrative review on January 17, 2020.[1] On April 24, 2020, Commerce exercised its discretion to toll all deadlines in administrative reviews by 50 days, thereby extending the deadline for these results until July 6, 2020.[2] For a history of all events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[3]

Scope of the Order [4]

The merchandise covered by the *Order* is steel concrete reinforcing bar (rebar). For a complete description of the scope, *see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in interested parties' briefs are addressed in the Issues and Decision Memorandum. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov,* and to all parties in the Central Records Unit, Room B8024 of the main Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/.* The signed and electronic versions of the Preliminary Decision Memorandum are identical in content. A list of the issues raised by interested parties, and to which we responded in the Issues and Decision Memorandum, is provided in the Appendix to this notice.

Methodology

Commerce conducted this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we determine that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[5] For a full description of the methodology underlying Commerce's conclusions, *see* the Issues and Decision Memorandum.

Partial Rescission of Review

Agir Haddecilik A.S. (Agir), Asil Celik Sanayi ve Ticaret A.S. (Asil), Ege Celik Endustrisi Sanayi ve Ticaret A.S. (Ege), Ekinciler Demir ve Celik Sanayi Anonim Sirketi (Ekinciler), and Kocaer Haddecilik Sanayi ve Ticar (Kocaer) each timely filed a no-shipments certification.[6] U.S. Customs and Border Protection (CBP) did not provide to Commerce any information that contradicted these no-shipments certifications. Consequently, in the *Preliminary Results,* Commerce announced its intent to rescind the reviews of these companies. No interested party submitted comments on Commerce's intent to rescind the reviews of these companies. Because there is no evidence on the record to indicate that Agir, Asil, Ege, Ekinciler, or Kocaer had entries, exports, or sales of subject merchandise to the United States during the POR, pursuant to 19 CFR 351.213(d)(3), we are rescinding the review with respect to these companies.

Entries of merchandise produced and exported by Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas) are not subject to countervailing duties under this *Order* because Commerce's final determination of the investigation with respect to this producer/exporter combination was negative.[7] However, any entries of merchandise produced by any other entity and exported by Habas, or produced by Habas and exported by another entity, are subject to this *Order.*

No interested party submitted comments on Commerce's intent to rescind the review of Habas. Because there is no evidence on the record of entries of merchandise produced by another entity and exported by Habas, or entries of merchandise produced by Habas and exported by another entity, we determine that Habas is not subject to this administrative review. Therefore, pursuant to 19 CFR 351.213(d)(3), we are rescinding the review with respect to Habas.

Companies Not Selected for Individual Review

To determine the rate for companies not selected for individual examination, Commerce's practice is to weight-average the net countervailable subsidy rates for the selected mandatory companies, excluding rates that are

[1] *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Preliminary Results of Countervailing Duty Administrative Review and Intent To Rescind the Review in Part; 2017,* 85 FR 3030 (January 17, 2020) (*Preliminary Results*) and accompanying Preliminary Decision Memorandum.

[2] *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. The final results were initially due on May 16, 2020 (120 days after publication of the *Preliminary Results*). In this case, 50 days after the original May 16, 2020, deadline falls on July 5, 2020, a Sunday. Commerce's practice dictates that where a deadline falls on a weekend or federal holiday, the appropriate deadline is the next business day. *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

[3] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Countervailing Duty Administrative Review of Steel Concrete Reinforcing Bar from the Republic of Turkey; 2017,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[4] *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Countervailing Duty Order,* 79 FR 65926 (November 6, 2014) (*Order*).

[5] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[6] *See* Agir's Letter, ''Steel Concrete Reinforcing Bar from Turkey (C–489–819): Countervailing Duty Administrative Review (1/1/17–12/31/17),'' dated February 22, 2019; *see also* Asil's Letter, ''Steel Concrete Reinforcing Bar from Turkey (C–489–819): Countervailing Duty Administrative Review (1/1/17–12/31/17),'' dated February 22, 2019; Ege's Letter, ''Steel Concrete Reinforcing Bar from Turkey (C–489–819), Countervailing Duty Administrative Review (1/1/17–12/31/17), Certification Of No Sales,'' dated March 5 2019; Ekinciler's Letter, ''Steel Concrete Reinforcing Bar from Turkey (C–489–819): Countervailing Duty Administrative Review (1/1/17–12/31/17),'' dated February 21, 2019; and Kocaer's Letter, '' 2017 Countervailing Duty Administrative Review Involving Steel Concrete Reinforcing Bar from the Republic of Turkey: Notice of No Sales,'' dated February 21, 2019.

[7] *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination,* 79 FR 54963, 54964 (September 15, 2014).

zero, *de minimis,* or based entirely on facts available.[8] In this review, we calculated *de minimis* net countervailable subsidy rates for each of the mandatory respondents (*i.e.,* Icdas and Kaptan) during the POR. In countervailing duty proceedings, where the number of respondents individually examined has been limited, Commerce has determined that a ''reasonable method'' to use to determine the rate applicable to companies not individually examined when all the rates of selected mandatory respondents are zero or *de minimis* is to assign to the non-selected respondents the average of the most recently determined rates that are not zero, *de minimis,* or based entirely on facts available.[9] However, if a non-selected respondent has its own calculated rate that is contemporaneous with or more recent than such previous rates, Commerce has found it appropriate to apply that calculated rate to that non-selected respondent, even when that rate is zero or *de minimis.*[10]

In the most recently completed administrative review of the *Order,* we calculated a net countervailable subsidy rate of 1.82 percent *ad valorem* for Colakoglu Dis Ticaret A.S. and Colakoglu Metalurji A.S, which were not individually examined in this review.[11] Therefore, consistent with Commerce's practice, described above, we are assigning the rate of 1.82 percent a*d valorem* to Colakoglu Dis Ticaret A.S. and Colakoglu Metalurji A.S., based on the companies' rate calculated in the prior review.

With regard to the 13 remaining non-selected companies, for which no individual rates have been calculated previously, we are assigning the rate of 2.29 percent *ad valorem,* which is the average of the above *de minimis* rates calculated in the last review.[12]

Final Results of the Review

We find that the net countervailable subsidy rates for the period January 1, 2017 through December 31, 2017 are as follows:

Company	Subsidy rate *ad valorem* (percent)
Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. and its cross-owned affiliates[13]	* 0.41
Kaptan Demir Celik Endustrisi ve Ticaret A.S. and Kaptan Metal Dis Ticaret ve Nakliyat A.S. and their cross-owned affiliates[14]	* 0.19
Acemar International Limited	2.29
A G Royce Metal Marketing	2.29
As Gaz Sinai ve Tibbi Gazlar A.S	2.29
Bastug Metalurji Sanayi AS	2.29
Colakoglu Dis Ticaret A.S	1.82
Colakoglu Metalurji A.S	1.82
Demirsan Haddecilik Sanayi Ve Ticaret AS	2.29
Diler Dis Ticaret AS	2.29
Duferco Investment Services SA	2.29
Duferco Celik Ticaret Limited	2.29
Izmir Demir Celik Sanayi A.S	2.29
Mettech Metalurji Madencilik Muhendislik Uretim Danismanlik ve Ticaret Limited Sirketi	2.29
MMZ Onur Boru Profil A.S	2.29
Ozkan Demir Celik Sanayi A.S	2.29
Wilmar Europe Trading BV	2.29

* (*de minimis*).

Disclosure

We will disclose to the parties in this proceeding the calculations performed for these final results within five days of the date of publication of this notice in the **Federal Register**.[15]

Assessment and Cash Deposit Requirements

In accordance with 19 CFR 351.212(b)(2), Commerce intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review to liquidate shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after January 1, 2017 through December 31, 2017, for the above-listed companies at the *ad valorem* assessment rates listed, except for those companies to which a *de minimis* rate is assigned. Concerning those companies with a *de minimis* rate, Commerce intends to issue assessment instructions to CBP to liquidate shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after January 1, 2017 through December 31, 2017, without regard to countervailing duties.

Commerce also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for each of the respective companies listed above, except, where the rate calculated in

[8] *See, e.g., Certain Pasta from Italy: Final Results of the 13th (2008) Countervailing Duty Administrative Review,* 75 FR 37386, 37387 (June 29, 2010).

[9] *See, e.g., Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2012 and Rescission of Countervailing Duty Administrative Review, in Part,* 79 FR 51140, 51141 (August 27, 2014); and *Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2012,* 79 FR 46770 (August 11, 2014), and accompanying Issues and Decision Memorandum at ''Non-Selected Rate.''

[10] *See, e.g., Circular Welded Carbon Steel Pipes and Tubes from Turkey: Final Results of Countervailing Duty Administrative Review; Calendar Year 2012 and Rescission of Countervailing Duty Administrative Review, in Part,* 79 FR 51140, 51141 (August 27, 2014); and *Cut-to-Length Carbon-Quality Steel Plate from the Republic of Korea: Final Results of Countervailing Duty Administrative Review; 2012,* 79 FR 46770 (August 11, 2014), and accompanying Issues and Decision Memorandum at ''Non-Selected Rate.''

[11] *See Steel Concrete Reinforcing Bar from the Republic of Turkey: Final Results and Partial Rescission of Countervailing Duty Administrative Review; 2016,* 84 FR 36051, 36052 (July 26, 2019).

[12] *Id.* The average of the two calculated rates that were above *de minimis* equals 2.29 percent.

[13] Commerce finds the following companies to be cross-owned with Icdas: Mardas Marmara Deniz Isletmeciligi A.S., Oraysan Insaat Sanayi ve Ticaret A.S., Artmak Denizcilik Ticaret ve Sanayi A.S., Artım Demir Inşaat Turizm Sanayi Ticaret Ltd. Sti., Anka Entansif Hayvancılık Gıda Tarım Sanayi ve Ticaret A.S., and Eras Taşımacılık Taahhut Insaat ve Ticaret A.S. *See Preliminary Results* and accompanying Preliminary Decision Memorandum at 10.

[14] Commerce finds the following companies to be cross-owned with Kaptan: Kaptan Is Makinalari Hurda Alim Satim Ltd. Sti, and Efesan Demir San. Ve Tic. A.S. *See Preliminary Results* and accompanying Preliminary Decision Memorandum at 10–11.

[15] *See* 19 CFR 351.224(b).

these final results is *de minimis,* no cash deposit will be required on shipments of the subject merchandise entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, CBP will continue to collect cash deposits of estimated countervailing duties at the all-others rate or the most recent company-specific rate applicable to the company, as appropriate. These cash deposit requirements, effective upon publication of these final results, shall remain in effect until further notice.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

These final results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213(d)(4) and 19 CFR 351.221(b)(5).

Dated: July 6, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

APPENDIX

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Partial Rescission of the 2017 Administrative Review
V. Non-Selected Rate
VI. Subsidies Valuation Information
VII. Analysis of Programs
VIII. Discussion of the Issues
  Comment 1: Provision of Natural Gas for Less than Adequate Remuneration (LTAR)—Non-Government Suppliers
  Comment 2: New Subsidy Allegation—Super Incentive Scheme
  Comment 3: Renewable Energy Sources Support Mechanism (YEKDEM) Program Calculation
  Comment 4: Investment Incentive Certificates Calculation
  Comment 5: Non-Selected Company Rate for Colakoglu Dis Ticaret A.S. and Colakoglu Metalurji A.S. (collectively, Colakoglu)
IX. Recommendation

[FR Doc. 2020–15062 Filed 7–13–20; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–832]

Carbon and Alloy Steel Wire Rod From the Republic of Turkey: Notice of Court Decision Not in Harmony With Final Countervailing Duty Determination, and Notice of Amended Final Countervailing Duty Determination

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On June 25, 2020, the United States Court of International Trade (CIT) sustained the final results of redetermination pertaining to the countervailing duty (CVD) investigation of carbon and alloy steel wire rod (wire rod) from the Republic of Turkey (Turkey) for the period of investigation (POI), January 1, 2016 through December 31, 2016. The Department of Commerce (Commerce) is notifying the public that the final judgment in this case is not in harmony with the final determination in the CVD investigation, and that Commerce is amending the final determination and resulting CVD order with respect to the subsidy rates assigned to Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas) and all other producers/exporters not individually investigated.

DATES: Applicable July 5, 2020.

FOR FURTHER INFORMATION CONTACT: Justin Neuman, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0486.

SUPPLEMENTARY INFORMATION:

Background

On March 28, 2018, Commerce published its *Final Determination* in the CVD investigation of wire rod from Turkey for the POI of January 1, 2016 through December 31, 2016.[1] In the *Final Determination,* Commerce applied a rate based on adverse facts available to one program used by the respondents after discovering unreported information related to the Government of Turkey's (GOT's) ''Assistance to Offset Costs Related to AD/CVD Investigations'' program, which confers a countervailable subsidy.[2] In the *Final Determination,* Commerce also evaluated whether the GOT sold natural gas to Turkish wire rod producers for less-than-adequate remuneration (LTAR), and relied on Russian Eurostat (Eurostat) data for the tier two benchmark in the LTAR analysis. On May 21, 2018, Commerce published the *Amended Final Determination and Order.*[3]

On December 3, 2018, Habas, Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S. (Icdas), and the Nucor Corporation (Nucor) challenged various aspects of Commerce's *Final Determination.* Habas and Icdas contested Commerce's application of adverse facts available as unsupported by evidence and contrary to law. Nucor separately argued that Commerce's selection of Eurostat data as a tier two benchmark to calculate benefits from the provision of natural gas at LTAR was inadequately explained, the data did not represent the best available information, and the decision was unsupported by evidence and contrary to law. On November 19, 2019, the CIT sustained Commerce's application of adverse facts available against Habas and Icdas. However, the CIT remanded the *Final Determination* to Commerce with instructions for Commerce to reconsider benchmark data relating to the natural gas for LTAR program.[4]

On February 11, 2020, Commerce issued its Final Results of Redetermination in accordance with the CIT's order.[5] As part of its analysis, Commerce placed new factual information on the record relating to natural gas prices. Commerce then reconsidered its reliance on Russian Eurostat data as a tier two benchmark, and instead relied on data from an International Energy Administration (IEA) report, as adjusted by Commerce, to construct a tier three benchmark.[6] On June 25, 2020, the CIT sustained

[1] *See Carbon and Alloy Steel Wire Rod from the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination, in Part,* 83 FR 13239 (March 28, 2018) (*Final Determination*) accompanying Issues and Decision Memorandum (IDM).

[2] *See* IDM at section VII; *see also* Memorandum, ''Carbon and Alloy Steel Wire Rod from the Republic of Turkey: Calculations for the Final Countervailing Duty Determination,'' dated March 19, 2018.

[3] *See Carbon and Alloy Steel Wire Rod from Italy and the Republic of Turkey: Amended Final Affirmative Countervailing Duty Determination for the Republic of Turkey and Countervailing Duty Orders for Italy and the Republic of Turkey,* 83 FR 23420 (May 21, 2018) (*Amended Final Determination and Order*).

[4] *See Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi AS et al.* v. *United States,* Court No. 18–00144, Slip Op. 19–144 (CIT November 19, 2019).

[5] *See Final Results of Redetermination Pursuant to Remand Order, Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi AS et al.* v. *United States,* Court No. 18–00144, Slip Op. 19–144 (CIT November 19, 2019), dated February 11, 2020 (Final Results of Redetermination).

[6] *Id.*

Commerce's Final Results of Redetermination.[7]

Timken Notice

In its decision in *Timken,*[8] as clarified by *Diamond Sawblades,*[9] the Court of Appeals for the Federal Circuit (CAFC) held that, pursuant to section 516A 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 June 25, 2020, judgment sustaining the Final Results of Redetermination constitutes a final decision of the CIT that is not in harmony with Commerce's *Final Determination,* as modified by the *Amended Final Determination and Order.* This notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Determination

Because there is now a final court decision, Commerce is amending its *Final Determination* with respect to the countervailing duty rate calculated for Habas and the companies covered by the all-others rate. The revised rates are as follows:

Exporter or producer	Subsidy rate
Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S[10]	6.09
Icdas Celik Enerji Tersane ve Ulasim Sanayi A.S[11]	3.81
All Others	4.95

Cash Deposit Requirements

Because Habas does not have a superseding cash deposit rate, *i.e.,* there have been no final results published in a subsequent administrative review for the Habas, Commerce will issue revised cash deposit instructions to CBP. Commerce will instruct CBP to collect a cash deposit for estimated countervailing duties at *ad valorem* rates equal to the estimated weighted-average subsidy rates listed above for Habas and all other producers and exporters of the subject merchandise, effective July 5, 2020.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c)(1) and (e), and 777(i)(1) of the Act.

Dated: July 7, 2020.

Jeffrey I. Kessler,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2020–15061 Filed 7–13–20; 8:45 am]

BILLING CODE 3510–DS–P

[7] *See Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi AS, et al.* v. *United States,* Court No. 18–00144, Slip Op. 20–87 (CIT June 25, 2020).

[8] *See Timken Co.* v. *United States,* 893 F.2d 337, 341 (Fed. Cir. 1990) (*Timken*).

[9] *See Diamond Sawblades Mfrs. Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

[10] *See Final Results of Redetermination.*

[11] The rate for Icdas did not change as a result of litigation. *See Carbon and Alloy Steel Wire Rod From the Republic of Turkey: Final Affirmative Countervailing Duty Determination and Final Affirmative Critical Circumstances Determination, in Part,* 83 FR 13239 (March 28, 2018); *see also Order,* 83 FR at 23421.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA238]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Marine Site Characterization Surveys Offshore of Massachusetts, Rhode Island, Connecticut, and New York

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

ACTION: Notice; issuance of incidental harassment authorization.

SUMMARY: NMFS has received a request from Vineyard Wind, LLC (Vineyard Wind) for the re-issuance of a previously issued incidental harassment authorization (IHA) with the only change being effective dates. The initial IHA authorized take of 14 species of marine mammals, by Level B harassment, incidental to incidental to marine site characterization survey activities off the coast of Massachusetts in the areas of the Commercial Lease of Submerged Lands for Renewable Energy Development on the Outer Continental Shelf (OCS–A 0501 and OCS–A 0522) and along potential submarine cable routes to a landfall location in Massachusetts, Rhode Island, Connecticut, and New York. The project has been delayed and none of the work covered in the initial IHA has been conducted. The initial IHA was effective from June 1, 2020 through May 31, 2021. Due to delays, Vineyard Wind has requested re-issuance with new effective dates of June 21, 2020 through June 20, 2021. The scope of the activities and anticipated effects remain the same, authorized take numbers are not changed, and the required mitigation, monitoring, and reporting remains the same as included in the initial IHA. NMFS is, therefore, issuing a second identical IHA to cover the incidental take analyzed and authorized in the initial IHA.

DATES: This authorization is effective from June 21, 2020, through June 2020, 2021.

ADDRESSES: An electronic copy of the final 2020 IHA previously issued to Vineyard Wind, Vineyard Wind's application, and the **Federal Register** notices proposing and issuing the initial IHA may be obtained by visiting *https://www.fisheries.noaa.gov/action/incidental-take-authorization-vineyard-wind-llc-marine-site-characterization-surveys.* In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Rob Pauline, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

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

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The MMPA states that the term ''take'' means to harass, hunt, capture, kill or attempt to harass, hunt, capture, or kill any marine mammal.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine

mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On May 6, 2020 NMFS published final notice of our issuance of an IHA for the take of small numbers of marine mammals incidental to site characterization surveys with effective dates of June 1, 2020 through May 31, 2021 (85 FR26962). On May 27, 2020 Vineyard Wind requested that the effective dates of the IHA be revised to June 21, 2020 through June 20, 2021 due to operational delays. With up to 365 vessel days planned for survey activities, Vineyard Wind wants to be most efficient with the one-year duration of the IHA. The re-issued IHA would be identical to the previously issued IHA. Therefore, re-issuance of the IHA is appropriate

Summary of Specified Activity and Anticipated Impacts

The planned activities (including mitigation, monitoring, and reporting), authorized incidental take, and anticipated impacts on the affected stocks are the same as those analyzed and authorized through the previously issued IHA.

The purpose of Vineyard Wind's marine site characterization surveys is to obtain a baseline assessment of seabed/sub-surface soil conditions in the Lease Area and cable route corridors to support the siting of potential future offshore wind projects. Underwater sound resulting from Vineyard Wind's proposed site characterization surveys, including the use of high-resolution geophysical (HRG) equipment, are expected to produce sound in the marine environment that may result in the behavioral harassment of marine mammals. The location, timing, and nature of the activities, including the types of equipment planned for use, are within scope of those described in the initial IHA. The mitigation and monitoring are also as prescribed in the initial IHA.

Fourteen marine mammal species are expected to be taken by Level B harassment. A description of the methods and inputs used to estimate take anticipated to occur and, ultimately, the take that was authorized is found in the previous documents referenced above. The data inputs and methods of estimating take are identical to those used in the initial IHA. NMFS has reviewed recent Stock Assessment Reports, information on relevant Unusual Mortality Events, and recent scientific literature, and determined that no new information affects our original analysis of impacts or take estimate under the initial IHA.

We refer to the documents related to the previously issued IHA, which include the **Federal Register** notice of the issuance of the initial 2020 IHA for Vineyard Wind's site characterization survey work (85 FR 26962), Vineyard Wind's application, the **Federal Register** notice of the proposed IHA (85 FR 7952), and all associated references and documents.

Determinations

Vineyard Wind will conduct activities as analyzed in the initial 2020 IHA. As described above, the number of authorized takes of the same species and stocks of marine mammals are identical to the numbers that were found to meet the negligible impact and small numbers standards and authorized under the initial IHA and no new information has emerged that would change those findings. The re-issued 2020 IHA includes identical required mitigation, monitoring, and reporting measures as the initial IHA, and there is no new information suggesting that our analysis or findings should change.

Based on the information contained here and in the referenced documents, NMFS has determined the following: (1) The required mitigation measures will effect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; and (4) Vineyard Wind's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action with respect to environmental consequences on the human environment.

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

Endangered Species Act (ESA)

Section 7(a)(2) of the Endangered Species Act of 1973 (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 Office of Protected Resources Permits and Conservation Division is authorizing the incidental take of four species of marine mammals which are listed under the ESA: The North Atlantic right, fin, sei and sperm whale. We requested initiation of consultation under Section 7 of the ESA with NMFS GARFO on February 12, 2020, for the issuance of this IHA. BOEM consulted with NMFS GARFO under section 7 of the ESA on commercial wind lease issuance and site assessment activities on the Atlantic Outer Continental Shelf in Massachusetts, Rhode Island, New York and New Jersey Wind Energy Areas. The NMFS GARFO issued a Biological Opinion concluding that these activities may adversely affect but are not likely to jeopardize the continued existence of the North Atlantic right, fin, sei and sperm whale. Upon request from the NMFS Office of Protected Resources, NMFS GARFO issued an amended incidental take statement associated with this Biological Opinion to include the take of the ESA-listed marine mammal species authorized through this IHA in April, 2020.

Authorization

NMFS has issued an IHA to Vineyard Wind for marine site characterization surveys associated with the specified activity from June 21, 2020, through June 20, 2021. All previously described mitigation, monitoring, and reporting requirements from the initial 2020 IHA are incorporated.

Dated: July 8, 2020.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–15105 Filed 7–13–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA276]

Endangered Species; File No. 23148

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that NMFS has issued an Incidental Take Permit (ITP) (No. 23148) to Exelon Generating Company, LLC, pursuant to the Endangered Species Act (ESA) of 1973, as amended, for the incidental take of shortnose (*Acipenser brevirostrum*) and Atlantic (*Acipenser oxyrinchus*) sturgeon associated with the otherwise lawful operation of the Eddystone Generating Station in Eddystone, PA. The permit is issued for a duration of 10 years.

ADDRESSES: The incidental take permit, final environmental assessment, and other related documents are available on the NMFS Office of Protected Resources website at *https://www.fisheries.noaa.gov/action/incidental-take-permit-eddystone-generating-station.*

FOR FURTHER INFORMATION CONTACT: Celeste Stout, phone: (301) 427–8436; email: *Celeste.Stout@noaa.gov.*

SUPPLEMENTARY INFORMATION: Section 9 of the ESA and Federal regulations prohibits the 'taking' of a species listed as endangered or threatened. The ESA defines ''take'' to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits, under limited circumstances to take listed species when the takes are incidental to, and not the purpose of, otherwise lawful activities. Section 10(a)(1)(B) of the ESA provides for authorizing incidental take of listed species. The regulations for issuing incidental take permits for threatened and endangered species are promulgated at 50 CFR 222.307.

Background

Exelon Generating Company, LLC, owns Eddystone Generating Station (the facility), a natural gas/fuel oil-fired electric power generating facility that operates as a peaking plant, (*i.e.,* typically running at higher levels of generation capacity during the summer and winter periods). The facility is located at 1 Industrial Highway Eddystone, PA 19022. The facility presently consists of two natural gas/fuel oil-fired electric generating units that are steam-electric generators. Cooling water for each unit is withdrawn from the Delaware River through a cooling water intake structure (CWIS), which is located along the west shore of the River, directly in front of the facility. Exelon conducted entrainment sampling at the facility in 2005–2006, 2016, and 2017. One Atlantic sturgeon yolk-sac larva was collected in May 2017. Thus, Exelon determined it was necessary to apply for an ITP in accordance with the requirements under Section 10(a)(1)(B) of the ESA.

NMFS received a draft permit application from Exelon on June 28, 2018. Based on our review of the draft application, we requested further information and clarification. On December 21, 2018, Exelon submitted an application. Based on review of the updated application, NMFS and Exelon held further discussions regarding what needed to be incorporated in the Conservation Plan. On June 21, 2019, Exelon submitted a revised application and Conservation Plan. This application was considered complete and on July 16, 2019, NMFS published a notice of receipt of the Exelon application for the Eddystone facility in the **Federal Register** (84 FR 33924). The comment period ended on August 15, 2019. No comments were received. An additional notice was published in the **Federal Register** (84 FR 65970) and was published on December 2, 2019 to allow other agencies and the public the opportunity to review and comment on the draft Environmental Assessment (EA). The comment period closed on January 2, 2020. Two comments were received on the EA. One commenter was opposed to the killing of any sturgeon. This is not consistent with the ESA, which allows for the incidental take of listed species if certain criteria are met and a permit is issued by NMFS. The other commenter seemed confused regarding the requirements of the ITP and advised the Agency to select the no action alternative in the draft EA, so that Eddystone could continue to monitor interactions with sturgeon. However, it is the issuance of the ITP that will require Eddystone to monitor interactions with sturgeon, not the no action alternative.

Conservation Plan

Section 10 of the ESA specifies that no permit may be issued unless an applicant submits an adequate conservation plan. The conservation plan prepared by Exelon Generation Company, LLC, describes measures to monitor, minimize and mitigate the impacts of incidental takes of ESA-listed shortnose and Atlantic sturgeon. To avoid and minimize take of sturgeon, Exelon will only operate Eddystone's circulating water pumps (CWPs): When the station is generating electricity; for incidental maintenance or testing (generally once per month) (referred to collectively as ''Essential Station Operations''); or as required by a governmental agency or other entity with jurisdiction to require operations. Depending on station generation and ambient water temperatures, Exelon will also limit operations to one CWP per unit when possible. In addition, Exelon will rely on the river water pumps (RWPs), which intakes less water than Eddystone's other CWP, to provide cooling water for other critical station operations outside of Essential Station Operations. These measures will avoid and minimize the incidental take of sturgeon due to entrainment or impingement by eliminating or reducing water withdrawals at times when such withdrawals are not specifically required for Essential Station Operations or for governmental agency-mandated use. Additionally, Exelon will make all reasonable efforts to schedule fuel oil deliveries outside March 15–July 15. Continued monitoring related to the take of shortnose and Atlantic sturgeon will be ongoing and funding will be provided through the facility's annual operating budget.

Permit 23148

NMFS authorizes the following lethal incidental takes:

New York Bight DPS Atlantic Sturgeon

Vessel Strike: 1 sub-adult/adult over 10 years.

Entrainment: 27,000 larvae per year, which is equivalent to 2 age-1 equivalents per year.

Impingement: 5 young of the year (YOY)/sub-adults per year.

Total: 1 sub-adult/adult, 270,000 larvae, and 50 YOY/sub-adults over 10 years.

Shortnose Sturgeon

Impingement: 5 YOY/sub-adults per year.

Total: 50 YOY/sub-adults over 10 years.

The first 3-years of monitoring data collected under the permit will be analyzed to verify the requested total annual incidental take. As data are gathered and analyzed through monitoring, NMFS may amend the permit to reflect any changes in the take estimate, if appropriate.

National Environmental Policy Act

Issuing an ESA section 10(a)(1)(B) permit constitutes a Federal action requiring NMFS to comply with the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*) as implemented by 40 CFR parts 1500–1508 and NOAA Administrative Order 216–6, Environmental Review Procedures for Implementing the National Policy Act (1999). NMFS prepared an EA to consider a range of reasonable alternatives and fully evaluate the direct, indirect, and cumulative impacts likely to result from the authorization of this permit. NMFS found that issuing the ITP would have no significant impacts on the quality of the environment.

Dated: July 9, 2020.

Angela Somma,

Chief, Endangered Species Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–15140 Filed 7–13–20; 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; Davidson Fellowship

The Department of Commerce will submit the following information collection request 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. We invite 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. Public comments were previously requested via the **Federal Register** on April 2, 2020, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic and Atmospheric Administration.

Title: Davidson Fellowship.

OMB Control Number: 0648–XXXX.

Form Number(s): None.

Type of Request: Regular submission, new information collection.

Number of Respondents: 519.

Average Hours per Response: 8 minutes per survey.

Total Annual Burden Hours: 25 hours.

Needs and Uses: The Office for Coastal Management (OCM) in the National Ocean Service, National Oceanic and Atmospheric Administration, Department of Commerce is funding a new, two-year fellowship program called the ''FY20–21 Margaret A. Davidson Graduate Fellowship for the National Estuarine Research Reserve System'' (Davidson Fellowship). Funding is being made available through a competitive process to master's and doctoral students actively enrolled in a graduate program at an accredited university, through the use of a cooperative agreement to the university. The goals of the Davidson Fellowship are to build the next generation of leaders in estuarine science and coastal management by affording qualified graduate students the opportunity to conduct collaborative science within the National Estuarine Research Reserve System; partake in professional development opportunities; and receive mentoring to support professional growth.

The National Estuarine Research Reserve System is a national program administered by the Office for Coastal Management. The National Estuarine Reserve System has an interest in balancing the needs of the natural environment and coastal economies and is one of the primary programs responsible for implementing the Coastal Zone Management Act. All Davidson Fellowship projects must be conducted in a research reserve and should be designed to contribute to one of the reserve's priority management areas, and thus enhance the scientific understanding of the natural or social science aspects of the research subject matter. One fellow was selected in Spring 2020 for each of the 29 reserves for a two-year duration. Mentoring and professional development activities will be provided to build knowledge and skills needed to successfully contribute to the workforce responsible for the coast. These opportunities are also designed to create a strong network among the fellows during their tenure and into the early portion of their careers.

The purpose of this information collection is to gather information on the effectiveness of the Davidson Fellowship program in reaching the desired outcomes, so that we can adaptively manage and make continuous improvements to the program. This information collection will take place initially in Fall 2020, as the first cohort of fellows begins their program, and will gather information from selected fellows, their faculty advisors, contacts from each university's sponsored program office, reserve staff, and NOAA federal and contract staff supporting the Davidson Fellowship program. It will take place again in Fall 2022, as the second cohort of fellows begins their program and the first cohort of fellows finishes, and will gather information from selected fellows, their faculty advisors, contacts from each university's sponsored program office, reserve staff, and NOAA federal and contract staff supporting the Davidson Fellowship program.

More information on the fellowship can be found at this link: *Davidson Fellowship website.*

Affected Public: Not-for-profit institutions; State government; Federal government.

Frequency: Incoming Fellows, Outgoing Fellows, and Introductory surveys: once; Full surveys: Biennially.

Respondent's Obligation: Voluntary.

Legal Authority: Section 315 of the Coastal Zone Management Act of 1972, as amended CZMA, 16 U.S.C. 1461, establishes the National Estuarine Research Reserve System (NERRS). 16 U.S.C. 1461 (e)(1)(B) authorizes the Secretary of Commerce to make grants to any coastal state or public or private person for purposes of supporting research and monitoring within a National Estuarine Research Reserve that are consistent with the research guidelines developed under subsection (c).

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *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 and entering the title of the collection.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2020–15132 Filed 7–13–20; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA246]

Marine Mammals; File No. 23966

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Christopher Cilfone, Be Blue, 193a Fleming Rd., Lahaina, HI 96761, has applied in due form for a permit to conduct commercial or educational photography on humpback whales (*Megaptera novaeangliae*).

DATES: Written, telefaxed, or email comments must be received on or before August 13, 2020.

ADDRESSES: These documents are also available upon written request via email to *NMFS.Pr1Comments@noaa.gov.*

Written comments on this application should be submitted via email to *NMFS.Pr1Comments@noaa.gov.* Please include File No. 23966 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to *NMFS.Pr1Comments@noaa.gov.* The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Carrie Hubard or Shasta McClenahan, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*) and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant proposes to film humpback whales in the waters of Maui County, Hawaii. Footage would be used to create a series of documentary films that highlight humpback whale and their conservation. Up to 100 humpback whales would be filmed annually from a boat, unmanned aircraft system, remotely operated vehicle, and by free divers. One hundred bottlenose (*Tursiops truncatus*), 100 pantropical spotted (*Stenella attenuata*), and 500 spinner (*Stenella longirostris*) dolphins may be incidentally filmed or harassed annually. The permit would expire on December 31, 2025.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: July 9, 2020.

Amy Sloan,

Acting Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–15143 Filed 7–13–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XU012 X]

Meeting of the Columbia Basin Partnership Task Force of the Marine Fisheries Advisory Committee

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

ACTION: Notice of open public meeting.

SUMMARY: This notice sets forth the proposed schedule and agenda of a forthcoming meeting of the Marine Fisheries Advisory Committee's (MAFAC's) Columbia Basin Partnership Task Force (CBP Task Force). The CBP Task Force will discuss the issues outlined in the **SUPPLEMENTARY INFORMATION** below.

DATES: The meeting will be July 29, 2020, 1 p.m.–4 p.m., Pacific Time (PT).

ADDRESSES: Meeting is by conference call and webinar.

FOR FURTHER INFORMATION CONTACT: Katherine Cheney; NFMS West Coast Region; 503–231–6730; email: *Katherine.Cheney@noaa.gov.*

SUPPLEMENTARY INFORMATION: Notice is hereby given of a meeting of MAFAC's CBP Task Force. The MAFAC was established by the Secretary of Commerce (Secretary) and, since 1971, advises the Secretary on all living marine resource matters that are the responsibility of the Department of Commerce. The MAFAC charter is located online at *https://www.fisheries.noaa.gov/topic/partners#marine-fisheries-advisory-committee-.* The CBP Task Force reports to MAFAC and is being convened to develop recommendations for long-term goals to meet Columbia Basin salmon recovery, conservation needs, and harvest opportunities, in the context of habitat capacity and other factors that affect salmon mortality. More information is available at the CBP Task Force web page: *https://www.fisheries.noaa.gov/west-coast/partners/columbia-basin-partnership-task-force.*

Matters To Be Considered

The meeting time and agenda are subject to change. Meeting topics include discussion of scenarios for achieving Columbia Basin salmon and steelhead goals; social, cultural, economic, and ecosystem considerations; options for future collaboration; and content of the Phase 2 report.

Time and Date

The meeting is scheduled for July 29, 2020, 1 p.m.–4 p.m., PT by conference call and webinar. Access information for the public will be posted by July 22, 2020 at *https://www.fisheries.noaa.gov/west-coast/partners/columbia-basin-partnership-task-force-meeting-materials-and-summaries.*

Dated: July 9, 2020.

Jennifer L. Lukens,

Federal Program Officer, Marine Fisheries Advisory Committee, National Marine Fisheries Service.

[FR Doc. 2020–15151 Filed 7–13–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA260]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that a proposed evaluation and pending determination (PEPD), draft environmental assessment (EA), and

four Hatchery and Genetic Management Plans (HGMP) are available for public comment on hatchery programs in the Touchet River, Umatilla River, Deschutes River, and Hood River Basins. The HGMPs were submitted for review and determination under the Endangered Species Act (ESA) 4(d) Rule.

DATES: Comments must be received at the appropriate address (see **ADDRESSES**) no later than 5 p.m. Pacific time on August 13, 2020. Comments received after this date may not be considered.

ADDRESSES: Written responses should be addressed to the NMFS Sustainable Fisheries Division, 1201 NE Lloyd Blvd., Portland, OR 97232. Comments may be submitted by email. The mailbox address for providing email comments is: *Hatcheries.Public.Comment@noaa.gov.* Include in the subject line of the email comment the following identifier: Mid-Columbia Hatchery Comments.

FOR FURTHER INFORMATION CONTACT: Rich Turner at (503) 736–4737 or by email at *rich.turner@noaa.gov.*

SUPPLEMENTARY INFORMATION:

ESA-Listed Species Covered in This Notice

- Lower Columbia River Chinook Salmon (*Oncorhynchus tshawytscha*): Threatened, naturally and artificially propagated
- Middle Columbia River Steelhead (*O. mykiss*): Threatened, naturally and artificially propagated
- Lower Columbia River Steelhead (*O. mykiss*): Threatened, naturally and artificially propagated
- Lower Columbia River Coho Salmon (*O. kisutch*): Threatened, naturally and artificially propagated
- Columbia River Chum Salmon (*O. keta*): Threatened, naturally and artificially propagated

Background

Section 9 of the ESA and Federal regulations prohibit the ''taking'' of a species listed as endangered or threatened. The term ''take'' is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may make exceptions to the take prohibitions in section 9 of the ESA for programs that are approved by NMFS under the 4(d) Rule (50 CFR 223.203(b)(6)).

The Confederated Tribes of the Warm Springs Reservation Oregon and the Oregon Department of Fish and Game (ODFW) have submitted HGMPs for two programs in the Hood River—spring Chinook salmon and winter steelhead—under Limit 6 of the 4(d) Rule; these programs are funded by the Bonneville Power Administration (BPA), and are evaluated in the PEPD. The United States Fish and Wildlife Service (USFWS) and the Washington Department of Fish and Wildlife submitted the Touchet River Endemic Summer Steelhead HGMP under Limit 5 of the 4(d) Rule. The ODFW submitted the Umatilla River Summer Steelhead HGMP, the Round Butte Hatchery Spring Chinook Salmon, and the Round Butte Hatchery Summer Steelhead programs in the Deschutes River under Limit 5 of the 4(d) Rule. The Umatilla Hatchery program, as well as a small proportion of the Round Butte Hatchery programs, is funded by the BPA, with the remainder of these programs funded by Portland General Electric.

Prior to making a final determination on the submitted plans, NMFS must take comments on how the HGMPs address the criteria in Limit 5 or Limit 6, as applicable, of the 4(d) Rule. NMFS is also taking comments on the evaluation in the draft EA of the effects of NMFS' pending decisions.

The submitted HGMPs describe the hatchery programs along with the associated monitoring and evaluation activities. The programs integrate natural-origin adult into the broodstock to supplement natural salmon populations (the exception is the Round Butte Spring Chinook Salmon program that only uses returning hatchery adults for broodstock). The programs are intended to provide fishing opportunities for tribes and states, mitigate for fish losses caused by the construction and operation of the dams on the Lower Snake River, mainstem Columbia River and Deschutes River and contribute to the survival and recovery of Middle Columbia River and Lower Columbia River steelhead, and Lower Columbia River spring Chinook salmon.

Authority: 16 U.S.C. 1531 *et seq.;* 16 U.S.C. 742a *et seq.*

Dated: July 7, 2020.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–15036 Filed 7–13–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA271]

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Notice; of availability of a Final Supplemental Environmental Assessment and Finding of No Significant Impact for the Wells Summer Chinook Salmon Hatchery Program for southern resident killer whales.

SUMMARY: Notice is hereby given that NMFS announces the availability of a Final Supplemental Environmental Assessment (FSEA) and Finding of No Significant Impact (FONSI) on the Washington Department of Fish and Wildlife (WDFW) and Public Utility District No. 1 of Douglas County's (Douglas PUD) Hatchery Genetic Management Plan (HGMP), in accordance with National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*). The HGMP specifies the release of one million additional subyearling summer Chinook salmon at the Wells Hatchery. This notice provides information on where to view the FSEA and FONSI.

FOR FURTHER INFORMATION CONTACT: Natasha Preston at (503) 231–2178 or by email at *natasha.preston@noaa.gov.*

SUPPLEMENTARY INFORMATION:

ESA-Listed Species Covered in This Notice

- Upper Columbia River Spring-run Chinook (*Oncorhynchus tshawytscha*): Endangered, naturally produced and artificially propagated in the Upper Columbia River Basin
- Upper Columbia River Steelhead (*O. mykiss*): Threatened, naturally produced and artificially propagated in the Upper Columbia River Basin.
- Southern Resident Killer Whales (*Orcinus orca):* Endangered.

Background and Purpose

The HGMP submitted by WDFW and Douglas PUD describes the release of one million additional subyearling summer Chinook salmon at the Wells Hatchery. The HGMP was submitted to NMFS for review under Endangered Species Act (ESA) Limit 5 of the 4(d) Rule. This production is in addition to Douglas PUD's existing production of

summer Chinook of 320,000 yearlings and 484,000 subyearling Chinook at Wells Hatchery. These two existing programs are implemented under the terms and conditions of ESA Section 10(a)(1)(B) Permit No. 23193. These programs were evaluated in a 2019 Final Environmental Assessment (FEA) for ESA Section 4(d) Approval and Section 10(a)(1)(A) Permit Issuance for Steelhead Hatchery Programs and Section 10(a)(1)(B) Permits Issuance for Summer/Fall and Fall Chinook Salmon Hatchery Programs in the Upper Columbia River Basin. The HGMP describes broodstock collection, incubation, rearing, release, and monitoring and evaluation.

The Proposed Action is for NMFS to make an ESA determination under Limit 5 of the 4(d) Rule for WDFW and Douglas PUD Wells Summer Chinook Salmon Hatchery Program for Southern Resident killer whales (SRKW).

Alternatives considered for the project include:

- A ''No Action Alternative'' where NMFS would not make a determination under the ESA 4(d) Rule;
- A ''Proposed Action Alterative'' (Preferred Alternative) where NMFS would make a determination that the submitted HGMP meets the criteria of Limit 5 of the 4(d) Rule to produce up to 1,000,000 Chinook salmon subyearlings;
- A ''Reduced Production Alternative'' where the hatchery operators would submit a revised HGMP proposing the production of 500,000 Chinook salmon smolts (*i.e.,* a 50 percent reduction) and NMFS would make a determination that the revised HGMP meets the criteria of Limit 5 of the 4(d) Rule; and
- A ''No Production Alternative'' where the proposed hatchery program would not be implemented.

Based on the information examined through the study of this project, the NMFS has determined that a Supplemental Environmental Assessment is the appropriate level of environmental documentation. The NMFS has determined that there are no significant impacts associated with the project and has issued a FONSI.

This notice is being provided for information purposes only, and as such, there is no public comment period associated with this notice. This notice is issued under the authority of 5 U.S.C. 552(a).

Summary of Comments Received in the Response to the Hatchery and Genetic Management Plan and the 2019 FEA

NMFS published notice of its HGMP for public review and comment on January 7, 2020 (85 FR 704), as required under ESA Limit 5 of the 4(d) Rule. The HGMP was available for public review and comment for 30 days. One set of comments was received by one individual during this public commenting period. NMFS considered this information as we reviewed the HGMP. WDFW and Douglas PUD did not make any changes to their HGMP, based on these comments.

The 2019 FEA that precedes the FSEA was also made available for a 30-day public comment period upon notice of availability in the **Federal Register** on April 2, 2019 (84 FR 12594). We received comments from two commenters. The comments were non-substantive and did not offer suggestions for improving the hatchery programs nor did they provide any supporting information or documentation for their critiques. None of the comments resulted in edits to the FEA.

Viewing the FSEA and FONSI

To view the FSEA and FONSI, please visit: *https://www.fisheries.noaa.gov/west-coast/laws-and-policies/west-coast-hatchery-nepa-documents.*

Authority

The FSEA and FONSI have been prepared in accordance with NEPA (42 U.S.C. 4321 *et seq.*); Council on Environmental Quality (CEQ) Regulations for Implementing NEPA (40 CFR 1500–1508) and associated CEQ guidelines: Department of Homeland Security Directive 5100.1, National Environmental Policy Act Implementing Procedures and Policy for Considering Environmental Impacts.

Dated: July 9, 2020.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–15141 Filed 7–13–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XA269]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to U.S. Navy Marine Structure Maintenance and Pile Replacement in Washington

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

ACTION: Notice of issuance of Letters of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that two Letters of Authorization (LOA) have been issued to the U.S. Navy (Navy) for the take of marine mammals incidental to maintenance construction activities at facilities in Washington.

DATES: The Letters of Authorization are effective from July 16, 2020, through January 15, 2021, and from July 16, 2020, through February 15, 2021.

ADDRESSES: The LOAs and supporting documentation are available online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-us-navy-marine-structure-maintenance-and-pile-replacement-wa.* In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

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

SUPPLEMENTARY INFORMATION:

Background

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

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i)

has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Summary of Request

On April 17, 2019, we issued a final rule upon request from the Navy for authorization to take marine mammals incidental to maintenance construction activities at six facilities in Washington (84 FR 15963). The Navy plans to conduct construction necessary for maintenance of existing in-water structures at the following facilities: Naval Base Kitsap (NBK) Bangor, NBK Bremerton, NBK Keyport, NBK Manchester, Zelatched Point, and Naval Station Everett (NS Everett). These repairs include use of impact and vibratory pile driving, including installation and removal of steel, concrete, plastic, and timber piles. The use of both vibratory and impact pile driving is expected to produce underwater sound at levels that have the potential to result in harassment of marine mammals.

For the 2020–21 in-water work season, the Navy requested issuance of LOAs for work planned at NBK Manchester and Zelatched Point. The Navy submitted site-specific monitoring plans. Following NMFS review and approval of the required plans, we have issued the requested LOAs. The approved plans are available online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-us-navy-marine-structure-maintenance-and-pile-replacement-wa.*

Authorization

We have issued two LOAs to the Navy authorizing the take of marine mammals incidental to maintenance construction activities, as described above. Take of marine mammals will be minimized through the implementation of the following planned mitigation measures: (1) Required monitoring of the construction areas to detect the presence of marine mammals before beginning construction activities; (2) shutdown of construction activities under certain circumstances to avoid injury of marine mammals; and (3) soft start for impact pile driving to allow marine mammals the opportunity to leave the area prior to beginning impact pile driving at full power. Additionally, the rule includes an adaptive management component that allows for timely modification of mitigation or monitoring measures based on new information, when appropriate. The Navy will submit reports as required.

Based on these findings and the information discussed in the preamble to the final rule, the activities described under these LOAs will have a negligible impact on marine mammal stocks and will not have an unmitigable adverse impact on the availability of the affected marine mammal stock for subsistence uses.

Dated: July 7, 2020.

Donna S. Wieting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2020–15035 Filed 7–13–20; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2020–OS–0042]

Submission for OMB Review; Comment Request

AGENCY: Defense Counterintelligence and Security Agency (DCSA), DoD.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by August 13, 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: Angela James, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Freedom of Information/Privacy Act Records Request for Background Investigations; INV Form 100; OMB Control Number 0705–0001.

Type of Request: Extension.

Number of Respondents: 10,097.

Responses per Respondent: 1.

Annual Responses: 10,097.

Average Burden per Response: 5 minutes.

Annual Burden Hours: 841.

Needs and Uses: The purpose of the collection is to enable the Defense Counterintelligence and Security Agency, Freedom of Information and Privacy (FOI/P) Office for Investigations, to locate applicable records and provide the requester responsive records pursuant to the Freedom of Information Act (5 U.S.C. 552), and/or the Privacy Act of 1974 (5 U.S.C. 552a).

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela James.

Requests for copies of the information collection proposal should be sent to Ms. James at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: July 9, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2020–15183 Filed 7–13–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2020–OS–0044]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel & Readiness, DoD.

ACTION: 30-Day information collection notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by August 13, 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: Angela James, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Overseas Citizen Population Survey; OMB Control Number 0704–0539.

Type of Request: Renewal.

Number of Respondents: 18,000.

Responses per Respondent: 1.

Annual Responses: 18,000.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 4,500 hours.

Needs and Uses: The primary objective of the Overseas Citizen Population Survey (OCPS), conducted on behalf of FVAP, is to refine FVAP's methodology for estimating the number of overseas U.S. civilians who are eligible to vote and who have registered and participated in the past. These estimates are then used to address the question of whether the registration and voting propensity of the overseas civilian population differs from that of comparable domestic or military populations. Subsequent to each Presidential election year, FVAP must report to Congress voter registration and participation rates for Uniformed Services voters and overseas citizens.

Previous attempts to collect information on the overseas citizen population to identify and measure its voter registration and participation rates in Federal elections suffered from significant bias; this effort is focused on refining a well-established method to report voter registration and participation rates from a more well-defined subgroup of overseas civilians. Conducting this research will help FVAP meet its federal and congressional mandates in terms of reporting annually on its activities and overall voter registration and participation rates after each Presidential election. The data obtained through this study is also intended to provide insights into existing barriers to UOCAVA voting and recommendations for addressing these challenges. In 2018, data from the 2016 survey was used to identify the barriers that overseas citizens face in requesting, casting and returning their ballots—and, along with the 2018 data, which is just becoming available, will help shape FVAP's outreach to these voters in 2020 and beyond. The 2020 version of the OCPS will test awareness and efficacy of these efforts. The survey also identified that overseas voters are more likely to avail themselves of electronic options when requesting their ballots (compared to active duty military, who rely more often on postal mail). These results guided changes to the 2020 survey, which further probes this difference. Finally, the 2018 survey allows for a midterm-to-midterm comparison of the overseas voting experience from 2014 to 2018—and the 2020 version will permit a similar comparison to the 2016 presidential election.

To obtain the necessary information, the OCPS will use data collected from a sample of registered overseas civilian voters in conjunction with previous country level estimates developed by FVAP research and establish a research method to assist FVAP in reporting voter registration and participation rates for the 2020 election.

Affected Public: Individuals or households.

Frequency: Biennially.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela James.

Requests for copies of the information collection proposal should be sent to Ms. James at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: July 9, 2020.

Aaron T. Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2020–15181 Filed 7–13–20; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

2020–2021 Award Year Deadline Dates for Reports and Other Records Associated With the Free Application for Federal Student Aid (FAFSA), the Federal Supplemental Educational Opportunity Grant (FSEOG) Program, the Federal Work-Study (FWS) Programs, the Federal Pell Grant (Pell Grant) Program, the William D. Ford Federal Direct Loan (Direct Loan) Program, the Teacher Education Assistance for College and Higher Education (TEACH) Grant Program, and the Iraq and Afghanistan Service Grant Program

AGENCY: Federal Student Aid, Department of Education.

ACTION: Notice.

SUMMARY: The Secretary announces deadline dates for the receipt of documents and other information from applicants and institutions participating in certain Federal student aid programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA), for the 2020–2021 award year. These programs, administered by the U.S. Department of Education (Department), provide financial assistance to students attending eligible postsecondary educational institutions to help pay their educational costs.

DATES: *Deadline and Submission Dates:* See Tables A and B at the end of this notice.

FOR FURTHER INFORMATION CONTACT: Travis Sturlaugson, U.S. Department of Education, Federal Student Aid, 830 First Street NE, Union Center Plaza, Room 113H3, Washington, DC 20202–5345. Telephone: (202) 377–4174. Email: *travis.sturlaugson@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service, toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Federal student aid programs (title IV, HEA programs) covered by this deadline date notice are the Pell Grant, Direct Loan, TEACH Grant, Iraq and Afghanistan Service Grant, and campus-based (FSEOG and FWS) programs, Catalog of Federal Domestic Assistance numbers 84.007 FSEOG Program; 84.033 FWS Program; 84.063 Pell Grant Program; 84.268 Direct Loan Program; 84.379 TEACH Grant Program; 84.408 Iraq and Afghanistan Service Grant Program.

Table A. 2020–2021 Award Year Deadline Dates by Which a Student Must Submit the FAFSA, by Which the Institution Must Receive the Student's Institutional Student Information

Record (ISIR) or Student Aid Report (SAR), and by Which the Institution Must Submit Verification Outcomes for Certain Students.

Table A provides information and deadline dates for receipt of the FAFSA, corrections to and signatures for the FAFSA, ISIRs, and SARs, and verification documents.

The deadline date for the receipt of a FAFSA by the Department's Central Processing System is June 30, 2021, regardless of the method that the applicant uses to submit the FAFSA. The deadline date for the receipt of a signature page for the FAFSA (if required), corrections, notices of change of address or institution, or requests for a duplicate SAR is September 11, 2021.

For all title IV, HEA programs, an ISIR or SAR for the student must be received by the institution no later than the student's last date of enrollment for the 2020–2021 award year or September 18, 2021, whichever is earlier. Note that a FAFSA must be submitted and an ISIR or SAR received for the dependent student for whom a parent is applying for a Direct PLUS Loan.

Except for students selected for Verification Tracking Groups V4 and V5, verification documents must be received by the institution no later than 120 days after the student's last date of enrollment for the 2020–2021 award year or September 18, 2021, whichever is earlier. For students selected for Verification Tracking Groups V4 and V5, institutions must submit identity and high school completion status verification results no later than 60 days following the institution's first request to the student to submit the documentation.

For all title IV, HEA programs except for (1) Direct PLUS Loans that will be made to parent borrowers, and (2) Direct Unsubsidized Loans that will be made to dependent students who have been determined by the institution, pursuant to section 479A(a) of the HEA, to be eligible for such a loan without providing parental information on the FAFSA, the ISIR or SAR must have an official expected family contribution (EFC) and the ISIR or SAR must be received by the institution no later than the earlier of the student's last date of enrollment for the 2020–2021 award year or September 18, 2021. For the two exceptions mentioned above, the ISIR or SAR must be received by the institution by the same dates noted in this paragraph but the ISIR or SAR is not required to have an official EFC.

In accordance with 34 CFR 668.164(j)(4)(i), an institution may not make a late disbursement of title IV, HEA program funds later than 180 days after the date of the institution's determination that the student was no longer enrolled. Table A provides that, to make a late disbursement of Pell Grant, FSEOG, FWS, and Direct Subsidized Loans, an institution must receive a valid ISIR or valid SAR by the earlier of 180 days after its determination that the student was no longer enrolled, or September 18, 2021.

Table B. Pell Grant, Iraq and Afghanistan Service Grant, Direct Loan, and TEACH Grant Programs Deadline Dates for Disbursement Information by Institutions for the 2020–2021 Award Year or Processing Year.

For the Pell Grant, Iraq and Afghanistan Service Grant, Direct Loan, and TEACH Grant programs, Table B provides the earliest disbursement date, the earliest dates for institutions to submit disbursement records to the Department's Common Origination and Disbursement (COD) System, and deadline dates by which institutions must submit disbursement and origination records.

An institution must submit Pell Grant, Iraq and Afghanistan Service Grant, Direct Loan, and TEACH Grant disbursement records to COD, no later than 15 days after making the disbursement or becoming aware of the need to adjust a previously reported disbursement. In accordance with 34 CFR 668.164(a), title IV, HEA program funds are disbursed on the date that the institution: (a) Credits those funds to a student's account in the institution's general ledger or any subledger of the general ledger; or (b) pays those funds to a student directly. Title IV, HEA program funds are disbursed even if an institution uses its own funds in advance of receiving program funds from the Department.

An institution's failure to submit disbursement records within the required timeframe may result in the Department rejecting all or part of the reported disbursement. Such failure may also result in an audit or program review finding or the initiation of an adverse action, such as a fine or other penalty for such failure, in accordance with subpart G of the General Provisions regulations in 34 CFR part 668.

Deadline Dates for Enrollment Reporting by Institutions

In accordance with 34 CFR 674.19(f), 682.610(c), 685.309(b), and 690.83(b)(2), upon receipt of an enrollment report from the Secretary, institutions must update all information included in the report and return the report to the Secretary in a manner and format prescribed by the Secretary and within the timeframe prescribed by the Secretary. Consistent with the *National Student Loan Data System (NSLDS) Enrollment Reporting Guide,* the Secretary has determined that institutions must report at least every two months. Institutions may find the *NSLDS Enrollment Reporting Guide* on the Information for Financial Aid Professionals website at *https://ifap.ed.gov.*

Other Sources for Detailed Information

We publish a detailed discussion of the FAFSA application process in the Application and Verification Guide volume of the 2020–2021 *Federal Student Aid Handbook* and in the 2020–2021 *ISIR Guide.*

Information on the institutional reporting requirements for the Pell Grant, Iraq and Afghanistan Service Grant, Direct Loan, and TEACH Grant programs is included in the 2020–2021 *Common Origination and Disbursement (COD) Technical Reference.* Also, see the *NSLDS Enrollment Reporting Guide.*

You may access these publications by visiting the ''iLibrary'' at the Information for Financial Aid Professionals website at: *https://ifap.ed.gov/ilibrary.*

Additionally, the 2020–2021 award year reporting deadline dates for the Federal Perkins Loan, FWS, and FSEOG programs were published in the **Federal Register** on January 03, 2020 (85 FR 303).

Applicable Regulations: The following regulations apply:

(1) Student Assistance General Provisions, 34 CFR part 668.

(2) Federal Pell Grant Program, 34 CFR part 690.

(3) William D. Ford Direct Loan Program, 34 CFR part 685.

(4) Teacher Education Assistance for College and Higher Education Grant Program, 34 CFR part 686.

(5) Federal Work-Study Programs, 34 CFR part 675.

(6) Federal Supplemental Education Opportunity Grant, 34 CFR part 676.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. You may access the official edition of the **Federal Register** and the Code of Federal Regulations at *www.govinfo.gov.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in

text or 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.

Program Authority: 20 U.S.C. 1070a, 1070b–1070b–4, 1070g, 1070h, 1087a–1087j; 42 U.S.C. 2751–2756b.

Mark A. Brown,

Chief Operating Officer, Federal Student Aid.

TABLE A—2020–2021 AWARD YEAR DEADLINE DATES BY WHICH A STUDENT MUST SUBMIT THE FAFSA, BY WHICH THE INSTITUTION MUST RECEIVE THE STUDENT'S INSTITUTIONAL STUDENT INFORMATION RECORD (ISIR) OR STUDENT AID REPORT (SAR), AND BY WHICH THE INSTITUTION MUST SUBMIT VERIFICATION OUTCOMES FOR CERTAIN STUDENTS

Who submits?	What is submitted?	Where is it submitted?	What is the deadline date for receipt?
Student	FAFSA—"FAFSA on the Web" (original or renewal).	Electronically to the Department's Central Processing System (CPS).	June 30, 2021.[1]
	Signature page (if required)	To the address printed on the signature page	September 11, 2021.
Student through an Institution.	An electronic FAFSA (original or renewal)	Electronically to the Department's CPS using "Electronic Data Exchange" (EDE) or "FAA Access to CPS Online".	June 30, 2021.[1]
Student	A paper original FAFSA	To the address printed on the FAFSA	June 30, 2021.
Student	Electronic corrections to the FAFSA using "Corrections on the Web".	Electronically to the Department's CPS	September 11, 2021.[1]
	Signature page (if required)	To the address printed on the signature page.	September 11, 2021.
Student through an Institution.	Electronic corrections to the FAFSA	Electronically to the Department's CPS using EDE or "FAA Access to CPS Online".	September 11, 2021.[1]
Student	Paper corrections to the FAFSA using a SAR, including change of mailing and email addresses and change of institutions.	To the address printed on the SAR	September 11, 2021.
Student	Change of mailing and email addresses, change of institutions, or requests for a duplicate SAR.	To the Federal Student Aid Information Center by calling 1–800–433–3243.	September 11, 2021.
Student	A SAR with an official EFC calculated by the Department's CPS, except for Parent PLUS Loans and Direct Unsubsidized Loans made to a dependent student under HEA section 479A(a), for which the SAR does not need to have an official EFC.	To the institution	The earlier of: —The student's last date of enrollment for the 2020–2021 award year; or —September 18, 2021.[2]
Student through CPS	An ISIR with an official EFC calculated by the Department's CPS, except for Parent PLUS Loans and Direct Unsubsidized Loans made to a dependent student under HEA section 479A(a), for which the ISIR does not need to have an official EFC.	To the institution from the Department's CPS.	
Student	Valid SAR (Pell Grant, FSEOG, FWS, and Direct Subsidized Loans).	To the institution	Except for a student meeting the conditions for a late disbursement under 34 CFR 668.164(j), the earlier of: —The student's last date of enrollment for the 2020–2021 award year; or —September 18, 2021.[2]
Student through CPS	Valid ISIR (Pell Grant, FSEOG, FWS, and Direct Subsidized Loans).	To the institution from the Department's CPS.	
Student	Valid SAR (Pell Grant, FSEOG, FWS, and Direct Subsidized Loans).	To the institution	For a student receiving a late disbursement under 34 CFR 668.164(j)(4)(i), the earlier of: —180 days after the date of the institution's determination that the student withdrew or otherwise became ineligible; or —September 18, 2021.[2]
Student through CPS	Valid ISIR (Pell Grant, FSEOG, FWS, and Direct Subsidized Loans).	To the institution from the Department's CPS.	
Student	Verification documents	To the institution	The earlier of:[3] —120 days after the student's last date of enrollment for the 2020–2021 award year; or —September 18, 2021.[2]
Institution	Identity and high school completion verification results for a student selected for verification by the Department and placed in Verification Tracking Group V4 or V5.	Electronically to the Department's CPS using "FAA Access to CPS Online".	60 days following the institution's first request to the student to submit the required V4 or V5 identity and high school completion documentation.[4]

[1] The deadline for electronic transactions is 11:59 p.m. (Central Time) on the deadline date. Transmissions must be completed and accepted before 12:00 midnight to meet the deadline. If transmissions are started before 12:00 midnight but are not completed until after 12:00 midnight, those transmissions do not meet the deadline. In addition, any transmission submitted on or just prior to the deadline date that is rejected may not be reprocessed because the deadline will have passed by the time the user gets the information notifying him or her of the rejection.

[2] The date the ISIR/SAR transaction was processed by CPS is considered to be the date the institution received the ISIR or SAR regardless of whether the institution has downloaded the ISIR from its Student Aid Internet Gateway (SAIG) mailbox or when the student submits the SAR to the institution.

[3] Although the Secretary has set this deadline date for the submission of verification documents, if corrections are required, deadline dates for submission of paper or electronic corrections and, for Pell Grant applicants and applicants selected for verification, deadline dates for the submission of a valid SAR or valid ISIR to the institution must still be met. An institution may establish an earlier deadline for the submission of verification documents for purposes of the campus-based programs and the Direct Loan Program, but it cannot be later than this deadline date.

[4] Note that changes to previously submitted Identity Verification Results must be updated within 30 days of the institution becoming aware that a change has occurred.

TABLE B—PELL GRANT, IRAQ AND AFGHANISTAN SERVICE GRANT, DIRECT LOAN, AND TEACH GRANT PROGRAMS DEADLINE DATES FOR DISBURSEMENT INFORMATION BY INSTITUTIONS FOR THE 2020–2021 AWARD YEAR OR PROCESSING YEAR [1]

Which program?	What is submitted?	Under what circumstances is it submitted?	Where is it submitted?	What are the deadlines for disbursement and for submission of records and information?
Pell Grant, Direct Loan, TEACH Grant, and Iraq and Afghanistan Service Grant programs.	An origination or disbursement record.	The institution has made or intends to make a disbursement.	To the Common Origination and Disbursement (COD) System using the Student Aid Internet Gateway (SAIG); or to the COD System using the COD website at: *https://cod.ed.gov*.	The earliest disbursement date is January 31, 2020. The earliest submission date for anticipated disbursement information is April 26, 2020. The earliest submission date for actual disbursement information is April 26, 2020, but no earlier than: (a) 7 calendar days prior to the disbursement date under the advance payment method or the Heightened Cash Monitoring Payment Method 1 (HCM1); or (b) The disbursement date under the reimbursement or the Heightened Cash Monitoring Payment Method 2 (HCM2).
Pell Grant, Iraq and Afghanistan Service Grant, and TEACH Grant programs.	An origination or disbursement record.	The institution has made a disbursement and will submit records on or before the deadline submission date.	To COD using SAIG; or to COD using the COD website at: *https://cod.ed.gov*.	The deadline submission date [2] is the earlier of: (a) 15 calendar days after the institution makes a disbursement or becomes aware of the need to make an adjustment to previously reported disbursement data, except that records for disbursements made between January 31, 2020 and April 26, 2020 must be submitted no later than May 11, 2020; or (b) September 30, 2021.
Direct Loan Program	An origination or disbursement record.	The institution has made a disbursement and will submit records on or before the deadline submission date.	To COD using SAIG; or to COD using the COD website at: *https://cod.ed.gov*.	The deadline submission date [2] is the earlier of: (a) 15 calendar days after the institution makes a disbursement or becomes aware of the need to make an adjustment to previously reported disbursement data, except that records of disbursements made between October 1, 2019 and April 26, 2020, may be submitted no later than May 11, 2020; or (b) July 29, 2022.
Pell Grant and Iraq and Afghanistan Service Grant programs.	A downward adjustment to an origination or disbursement record.	It is after the deadline submission date.	To COD using SAIG; or to COD using the COD website at: *https://cod.ed.gov*.	No later than September 30, 2026.
Pell Grant and Iraq and Afghanistan Service Grant programs.	An origination or disbursement record.	It is after the deadline submission date and the institution has received approval of its request for an extension to the deadline submission date.	Via the COD website at: *https://cod.ed.gov*.	The earlier of: (a) When the institution is fully reconciled and is ready to submit all additional data for the program and the award year; or (b) September 30, 2026.
TEACH Grant and Direct Loan programs.		Requests for extensions to the established submission deadlines may be made for reasons including, but not limited to: (a) A program review or initial audit finding under 34 CFR 690.83; (b) A late disbursement under 34 CFR 668.164(j); or (c) Disbursements previously blocked as a result of another institution failing to post a downward adjustment.		When the institution is fully reconciled and is ready to submit all additional data for the program and the award year.

TABLE B—PELL GRANT, IRAQ AND AFGHANISTAN SERVICE GRANT, DIRECT LOAN, AND TEACH GRANT PROGRAMS DEADLINE DATES FOR DISBURSEMENT INFORMATION BY INSTITUTIONS FOR THE 2020–2021 AWARD YEAR OR PROCESSING YEAR [1]—Continued

Which program?	What is submitted?	Under what circumstances is it submitted?	Where is it submitted?	What are the deadlines for disbursement and for submission of records and information?
Pell Grant and Iraq and Afghanistan Service Grant programs.	An origination or disbursement record.	It is after the deadline submission date and the institution has received approval of its request for an extension to the deadline submission date based on a natural disaster, other unusual circumstances, or an administrative error made by the Department.	Via the COD website at: *https://cod.ed.gov.*	The earlier of: (a) A date designated by the Secretary after consultation with the institution; or (b) February 1, 2022.
Pell Grant and Iraq and Afghanistan Service Grant programs.	An origination or disbursement record.	It is after the deadline submission date and the institution has received approval of its request for administrative relief to extend the deadline submission date based on a student's reentry to the institution within 180 days after initially withdrawing [3].	Via the COD website at: *https://cod.ed.gov.*	The earlier of: (a) 15 days after the student re-enrolls; or (b) May 2, 2022.

[1] A COD Processing Year is a period of time in which institutions are permitted to submit Direct Loan records to the COD System that are related to a given award year. For a Direct Loan, the period of time includes loans that have a loan period covering any day in the 2020–2021 award year.

[2] Transmissions must be completed and accepted before the designated processing time on the deadline submission date. The designated processing time is published annually via an electronic announcement posted to the Information for Financial Aid Professionals website (*https://ifap.ed.gov*). If transmissions are started at the designated time, but are not completed until after the designated time, those transmissions will not meet the deadline. In addition, any transmission submitted on or just prior to the deadline date that is rejected may not be reprocessed because the deadline will have passed by the time the user gets the information notifying him or her of the rejection.

[3] Applies only to students enrolled in clock-hour and nonterm credit-hour educational programs.

Note: The COD System must accept origination data for a student from an institution before it accepts disbursement information from the institution for that student. Institutions may submit origination and disbursement data for a student in the same transmission. However, if the origination data is rejected, the disbursement data is rejected.

[FR Doc. 2020–15142 Filed 7–13–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Reopening; Applications for New Awards; Training and Information for Parents of Children With Disabilities—Parent Training and Information Centers

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

SUMMARY: On April 21, 2020, we published in the **Federal Register** a notice inviting applications (NIA) for the fiscal year (FY) 2020 Parent Training and Information Centers program, Catalog of Federal Domestic Assistance (CFDA) 84.328M. The NIA established a deadline date of June 22, 2020, for the transmittal of applications. This notice reopens the competition for five days.

DATES: *Deadline for Transmittal of Applications:* July 20, 2020.

Deadline for Intergovernmental Review: September 14, 2020.

FOR FURTHER INFORMATION CONTACT: Carmen Sanchez, U.S. Department of Education, 400 Maryland Avenue SW, Room 5162, Potomac Center Plaza, Washington, DC 20202–5076. Telephone: (202) 245–6595. Email: *Carmen.Sanchez@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: On April 21, 2020, we published a notice inviting applications (NIA) for the fiscal year (FY) 2020 Parent Training and Information Centers program, Catalog of Federal Domestic Assistance (CFDA) 84.328M (85 FR 22153).

We did not receive timely applications that met all of the applicable requirements in the NIA from eligible applicants to serve all States listed in the notice prior to the closing date. Therefore, we are reopening the competition to allow applicants to submit or resubmit applications that meet the requirements in the NIA, in order to ensure that parents in all States can be served by a Parent Training and Information Center.

Note: This notice does not reopen the Parent Information and Training program competition, CFDA number 84.235F, published in the same NIA.

Applicants that have already submitted applications under the FY 2020 Parent Training and Information Centers competition, CFDA 84.328M, are encouraged to review their applications and confirm that they have met all eligibility and other requirements contained in the NIA and the application package, which is available at *www.grants.gov/web/grants/view-opportunity.html?oppId=326384.*

Applicants may review two recorded webinars that discuss the application requirements at *https://osepideasthatwork.org/resources-grantees/informational-webinars-osep-funding-opportunities.*

Applicants that already submitted timely applications that meet all of the eligibility and other requirements do not have to resubmit their applications. If a new application is not submitted, the Department will use the application that was submitted before the June 22, 2020, 11:59 p.m. Eastern Time deadline.

Note: Applications that did not meet the submission deadline must be submitted to be considered for review.

Note to Applicants: The NIA provides other information that applies to this competition. Specifically, the NIA identifies the requirements for applications submitted in response to the priority titled ''Parent Training and Information Centers,'' CFDA 84.328M, including the eligible entities, the States from which we are accepting

applications, and the instructions for submitting applications.

Accessible Format: Individuals with disabilities can obtain this document, the NIA, 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.

Mark Schultz,

Commissioner, Rehabilitation Services Administration, delegated the authority to perform the functions and duties of the Assistant Secretary for the Office of Special Education and Rehabilitative Services.

[FR Doc. 2020–15202 Filed 7–9–20; 4:15 pm]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2020–SCC–0112]

Agency Information Collection Activities; Comment Request; Evaluation of the Innovative Assessment Demonstration Authority Pilot Program-Preliminary Activities

AGENCY: Institute for Education Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before September 14, 2020.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2020–SCC–0112. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208B, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Thomas Wei, (646) 428–3892.

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: Evaluation of the Innovative Assessment Demonstration Authority Pilot Program-Preliminary Activities.

OMB Control Number: 1850–NEW.

Type of Review: New information collection.

Respondents/Affected Public: State, Local and Tribal Governments.

Total Estimated Number of Annual Responses: 60.

Total Estimated Number of Annual Burden Hours: 120.

Abstract: This study will meet the Congressional mandate to evaluate the Innovative Assessment Demonstration Authority Pilot Program (IADA). The program (Title I, Section 1204 of the Every Student Succeeds Act, or ESSA) allows the U.S. Department of Education to exempt a handful of states from certain testing requirements if they agree to pilot new types of assessments. The study will produce a ''Progress Report'' and a ''Best Practices Report,'' as mandated by Congress. The Progress Report will be based on existing documents from pilot states. The subsequent Best Practices Report will add, via surveys, the perspectives of district leaders, principals, and teachers on the development, implementation, and outcomes of IADA assessments. These reports will help the Department appropriately target its technical assistance to tackle the largest barriers to adequate progress in pilot states, and provide a valuable guide for other states that may want to develop a new assessment in the future.

Dated: July 9, 2020.

Stephanie Valentine,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2020–15130 Filed 7–13–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; Indian Education Discretionary Grants Programs—Native American Language Program

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Department of Education is issuing a notice inviting applications for new awards for fiscal year (FY) 2020 for Indian Education Discretionary Grants Programs—Native American Language (NAL@ED) program, Catalog of Federal Domestic Assistance (CFDA) number 84.415B.

DATES: *Applications Available:* July 14, 2020.

Deadline for Notice of Intent to Apply: July 29, 2020.

Date of Pre-Application Meeting: July 21, 2020.

Deadline for Transmittal of Applications: August 28, 2020.

ADDRESSES: For the addresses for obtaining and submitting an application, please refer to our Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768) and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf.*

FOR FURTHER INFORMATION CONTACT: Tanya Tullos, U.S. Department of Education, 400 Maryland Avenue SW, Room 3W234, Washington, DC 20202–6335. Telephone: (202) 453–6037. Email: *NAL@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: This notice relates to the approved information collection under OMB control number 1810–0731.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of this program are to (1) support schools that use Native American and Alaska Native languages as the primary language of instruction; (2) maintain, protect, and promote the rights and freedom of Native Americans and Alaska Natives to use, practice, maintain, and revitalize their languages, as envisioned in the Native American Languages Act of 1990 (25 U.S.C. 2901, *et seq.*); and (3) support the Nation's First Peoples' efforts to maintain and revitalize their languages and cultures, and to improve educational opportunities and student outcomes within Native American and Alaska Native communities.

Background: Through this competition, the Department intends to broaden the impact of the NAL@ED program. The Department plans to accomplish this in three ways. First, under this competition, assuming there are enough high-quality applications, the Department will fund only one high-quality project per Native language, consistent with the statutory requirement that the Department ensure that a diversity of languages is represented, to the maximum extent feasible. Second, Absolute Priority 1 solicits applications supporting new Native Language instructional programs. Third, in keeping with the congressional emphasis in the Explanatory Statement accompanying the Department of Education Appropriations Act, 2020, regarding the importance of geographical diversity in grantees under this program, Program Requirement 3 ensures that, in any competition year, the Department will not exclusively fund applicants from a single State, provided there are enough high-quality applications. Together, these approaches will broaden the impact of the program by funding projects supporting a variety of Native languages.

Priorities: This competition includes two absolute priorities and two competitive preference priorities. In accordance with 34 CFR 75.105(b)(2)(ii), these priorities are from the notice of final priorities, requirements, definitions, and selection criteria for this program published elsewhere in this issue of the **Federal Register** (NFP).

Absolute Priorities: For FY 2020 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet either one of these priorities. Applicants are eligible under either Absolute Priority 1 or 2, not both.

Note: The Secretary intends to create two funding slates for NAL@ED applications—one for applications that meet Absolute Priority 1 and a separate slate for applications that meet Absolute Priority 2. As a result, the Secretary may fund applications out of the overall rank order. The Secretary anticipates awarding approximately the same amount of grants funds to applicants that meet Absolute Priority 1 as to those that meet Absolute Priority 2, but the Secretary is not bound by these estimates. Applicants must clearly identify the specific absolute priority that the proposed project addresses.

These priorities are:

Absolute Priority 1: Develop and Maintain New Native American Language Programs

To meet this priority, an applicant must propose to develop and maintain a Native American language instructional program that—

(a) Will support Native American language education and development for Native American students, as well as provide professional development for teachers and, as appropriate, staff and administrators, to strengthen the overall language and academic goals of the school or schools that will be served by the project;

(b) Will take place in a school; and

(c) Does not augment or replace a program of identical scope that was active within the last three years at the school(s) to be served.

Absolute Priority 2: Expand and Improve Existing Native American Language Programs

To meet this priority, an applicant must propose to improve and expand a Native American language instructional program that—

(a) Will improve and expand Native American language education and development for Native American students, as well as provide professional development for teachers and, as appropriate, staff and administrators, to strengthen the overall language and academic goals of the school or schools that will be served by the project;

(b) Will continue to take place in a school; and

(c) Within the past three years has been offered at the school(s) to be served.

Competitive Preference Priorities: For FY 2020 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i) we award up to an additional seven points to an application, depending on how well an application meets Competitive Preference Priority 1, and we award an additional five points to an application that meets Competitive Preference Priority 2. The maximum number of competitive preference priority points is 12.

These priorities are:

Competitive Preference Priority 1: Support Project Sustainability With Title VI Indian Education Formula Grant Funds (up to 7 Points)

To meet this priority, an applicant or a partner must receive, or be eligible to receive, a formula grant under title VI of the Elementary and Secondary Education Act of 1965, as amended (ESEA), and must commit to use all or part of that formula grant to help sustain this project after the conclusion of the grant period. To meet this priority, an applicant must include in its application—

(a) A statement that indicates the school year in which the entity will begin using title VI formula grant funds to help support this project;

(b) The percentage of the title VI grant that will be used for the project, which must be at least—

(i) 20 percent of the applicant's title VI formula grant (3 point);

(ii) 40 percent of the applicant's title VI formula grant (4 points);

(iii) 60 percent of the applicant's title VI formula grant (5 points);

(iv) 80 percent of the applicant's title VI formula grant (6 points); or

(v) 100 percent of the applicant's title VI formula grant (7 points); and

(c) The timeline for obtaining parent committee input and approval of this action, if necessary.

Competitive Preference Priority 2: Preference for Indian Applicants (0 or 5 Points)

To meet this priority, an application must be submitted by an Indian Tribe, Indian organization, Bureau of Indian Education (BIE)-funded school, or Tribal College or University (TCU) that is eligible to participate in the NAL@ED program. A consortium of eligible entities that meets the requirements of 34 CFR 75.127 through 75.129 and includes an Indian Tribe, Indian organization, BIE-funded school, or TCU will also be considered eligible to meet this priority. In order to be considered a consortium application, the application must include the consortium agreement, signed by all parties.

Application Requirements: These application requirements are from section 6133(c) of the ESEA (20 U.S.C. 7453) and from the NFP. For FY 2020 and any subsequent year in which we make awards from the list of unfunded applications from this competition, applicants must meet the following application requirements.

Each application for funds must include the following:

(1) *General Requirements.* The following requirements apply to all applicants submitted under this competition. An applicant must include in its application—

(a) A completed information form that includes:

(i) Instructional language. The name of the Native American or Alaska Native language to be used for instruction at the school(s) supported by the eligible entity.

(ii) Students to be served. The number of students to be served by the project and the grade level(s) of targeted students in the proposed project.

(iii) Instructional hours. The number of hours of instruction per week in and through one or more Native American or Alaska Native languages currently being provided to targeted students at such school(s), if any.

(iv) Pre- and post-assessments. Whether a pre- and post-assessment of Native American language proficiency is available and, if not, the percentage of grant funds that will be used for developing such assessment.

(v) Program description. A description of how the eligible entity will support Native American language education and development, and provide professional development for staff, in order to strengthen the overall language and academic goals of the school(s) that will be served by the project; ensure the implementation of rigorous academic content that prepares all students for college and career; and ensure that students' progress toward meeting high-level fluency goals in the Native American language.

(vi) Organizational information. For each school included in the project, information regarding the school's organizational governance or affiliations, specifically information about the school's governing entity (such as a local educational agency (LEA), Tribal educational agency or department, charter organization, private organization, or other governing entity); the school's accreditation status; any partnerships with institutions of higher education; and any indigenous language schooling and research cooperatives.

(b) An assurance that for each school to be included in the project—

(i) The school is engaged in meeting State or Tribally designated long-term goals for students, as may be required by applicable Federal, State, or Tribal law;

(ii) The school provides assessments of students using the Native American or Alaska Native language of instruction, where possible;

(iii) The qualifications of all instructional and leadership personnel at such school are sufficient to deliver high-quality education through the Native American or Alaska Native language used in the school; and

(iv) The school will collect and report to the public data relative to student achievement and, if appropriate, rates of high school graduation, career readiness, and enrollment in postsecondary education or workforce development programs, of students who are enrolled in the school's programs.

(2) *Memorandum of Agreement.* Any applicant that proposes to work with a partner to carry out the proposed project must include a signed and dated memorandum of agreement that describes the roles and responsibilities of each partner to participate in the grant, including—

(i) A description of how each partner will implement the project according to the timelines described in the grant application;

(ii) The roles and responsibilities of each partner related to ensuring the data necessary to report on the Government Performance and Results Act (GPRA) indicators; and

(iii) The roles and responsibilities of each partner related to ensuring that Native American language instructors can be recruited, retained, and trained, as appropriate, in a timely manner.

This memorandum of agreement must be signed no more than four months prior to the application deadline (*i.e.,* the agreement must be signed within the four months prior to the application deadline).

(3) *Applicant Engagement with Indian Tribes and Tribal Organizations.* All non-Tribal applicants must engage with appropriate officials from Tribe(s) located in the area served by the project, or with a local Tribal organization, prior to submission of an application. The engagement must provide for the opportunity for officials from Tribes or Tribal organizations to meaningfully and substantively contribute to the application. Non-Tribal applicants must submit evidence of either Tribal engagement or a letter of support from one or more Tribes or Tribal organizations. This evidence can be part of the memorandum of agreement required by Application Requirement 2 or can be uploaded as a separate attachment.

Note: If an applicant is an affected LEA that is subject to ESEA section 8538, then the LEA is required to consult with appropriate officials from Tribe(s) or Tribal organizations approved by the Tribes located in the area served by the LEA prior to its submission of an application, on the contents of the application as required under ESEA section 8538. Affected LEAs are those that have 50 percent or more of their student enrollment made up of Native American students; or received an Indian education formula grant under title VI of the ESEA in the previous fiscal year that exceeds $40,000. (ESEA sec. 8538)

(4) *Certification.* An applicant that is an LEA (including a public charter school that is an LEA under State law), a school operated by the BIE, or a nontribal for-profit or nonprofit organization must submit a certification from an entity described in application requirement (4)(a), containing the assurances described in application requirement (4)(b).

(a) The certification must be from one of the following entities, on whose land the school or program is located, or that is an entity served by the school, or whose members (as defined by that entity) are served by the school:

(i) A federally recognized Indian Tribe or Tribal organization.

(ii) A TCU.

(iii) An Alaska Native Regional Corporation or an Alaska Native nonprofit organization.

(iv) A Native Hawaiian organization.

(b) The certification must state that—

(i) The school or applicant organization has the capacity to provide education primarily through a Native American or an Alaska Native language; and

(ii) There are sufficient speakers of the target language at the school or available to be hired by the school or applicant organization.

Program Requirements: For FY 2020 and any subsequent year in which we make awards from the list of unfunded applications from this competition, grantees must adhere to the following program requirements:

(1) *Native American Language Proficiency Assessment.* Grantees must administer pre- and post-assessments of Native American language proficiency to participating students. This Native American language assessment may be any relevant tool that measures student Native American language proficiency, such as oral, written or project-based assessments, and formative or summative assessments.

(2) *Diversity of Languages.* To ensure a diversity of languages as required by statute, the Department will not fund more than one project in any competition year that proposes to use the same Native American language, assuming there are enough high-quality applications. In the event of a lack of high-quality applications in one competition year, the Department may choose to fund more than one project with the same Native American language.

(3) *Geographic Distribution.* To ensure geographic diversity, assuming there are enough high-quality applications, the Department will not exclusively fund projects that all propose to serve students in the same State in any competition year. In the event of a lack of high-quality applications in one competition year, the Department may choose to fund only applications that propose to provide services in one State.

(4) *ISDEAA Statutory Hiring Preference:*

(a) Awards that are primarily for the benefit of Indians are subject to the provisions of section 7(b) of the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638). That section requires that, to the greatest extent feasible, a grantee—

(1) Give to Indians preferences and opportunities for training and employment in connection with the administration of the grant; and

(2) Give to Indian organizations and to Indian-owned economic enterprises, as defined in section 3 of the Indian Financing Act of 1974 (25 U.S.C. 1452(e)), preference in the award of contracts in connection with the administration of the grant.

(b) For purposes of this section, an Indian is a member of any federally recognized Indian Tribe.

Definitions: The definitions of ''Indian organization (or Tribal organization)'' and ''Tribe'' are from the NFP. The definitions of ''Native American,'' ''Native American language,'' and ''Tribal college or university'' are from the ESEA.

Indian organization (or Tribal organization) means an organization that—

(1) Is legally established—

(i) By Tribal or inter-Tribal charter or in accordance with State or Tribal law; and

(ii) With appropriate constitution, bylaws, or articles of incorporation;

(2) Includes in its purposes the promotion of the education of Indians;

(3) Is controlled by a governing board, the majority of which is Indian;

(4) If located on an Indian reservation, operates with the sanction of or by charter from the governing body of that reservation;

(5) Is neither an organization or subdivision of, nor under the direct control of, any institution of higher education or TCU; and

(6) Is not an agency of State or local government.

Native American means:

(1) ''Indian'' as defined in section 6151(3) of the ESEA (20 U.S.C. 7491(3)), which includes individuals who are Alaska Natives and members of federally recognized or State recognized Tribes;

(2) Native Hawaiian; or

(3) Native American Pacific Islander. (ESEA secs. 6151(3) and 8101(34))

Native American language means the historical, traditional languages spoken by Native Americans. (ESEA sec. 8101(34))

Tribal college or university means an institution that—

(1) Qualifies for funding under the Tribally Controlled Colleges and Universities Assistance Act of 1978 (25 U.S.C. 1801, *et seq.*) or the Navajo Community College Act (25 U.S.C. 640a note); or

(2) Is cited in section 532 of the Equity in Educational Land-Grant Status Act of 1994 (7 U.S.C. 301 note). (ESEA sec. 6133 and section 316 of the Higher Education Act of 1965, as amended)

Tribe means either a federally recognized Tribe or a State-recognized Tribe.

Program Authority: 20 U.S.C. 7453.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 75, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The Office of Management and Budget Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended as regulations of the Department in 2 CFR part 3474. (d) The NFP.

Note: The open licensing requirement in 2 CFR 3474.20 does not apply to this program.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $1,546,986.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2021 from the list of unfunded applications from this competition.

Estimated Range of Awards: $300,000–$400,000.

Estimated Average Size of Awards: $350,000.

Estimated Number of Awards: 4.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

III. Eligibility Information

1. The following entities, either alone or in a consortium, that have a plan to develop and maintain, or to improve and expand, programs that support the entity's use of a Native American or Alaska Native language as the primary language of instruction in one or more elementary or secondary schools (or both) are eligible under this program:

(a) An Indian Tribe.

(b) A Tribal College or University (TCU).

(c) A Tribal education agency.

(d) An LEA, including a public charter school that is an LEA under State law.

(e) A school operated by the Bureau of Indian Education (BIE).

(f) An Alaska Native Regional Corporation (as described in section 3(g) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(g))).

(g) A private, Tribal, or Alaska Native nonprofit organization.

(h) A non-Tribal for-profit organization.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Other:* Projects funded under this competition should budget for a two-day Project Directors' meeting in Washington, DC during each year of the project period.

4. *Funding Restrictions:* Under ESEA section 6133(g), no more than five percent of funds awarded for a grant under this program may be used for administrative purposes, and for grants made using FY 2020 funds this administrative cost cap applies only to direct administrative costs, not indirect costs.

IV. Application and Submission Information

1. *Application Submission Instructions:* Applicants are required to follow the Common Instructions for Applicants to Department of Education Discretionary Grant Programs, published in the **Federal Register** on February 13, 2019 (84 FR 3768) and available at *www.govinfo.gov/content/pkg/FR-2019-02-13/pdf/2019-02206.pdf,* which contain requirements and information on how to submit an application.

2. *Submission of Proprietary Information:* Given the types of projects that may be proposed in applications for this competition, your application may include business information that you consider proprietary. In 34 CFR 5.11 we define ''business information'' and describe the process we use in determining whether any of that information is proprietary and, thus, protected from disclosure under Exemption 4 of the Freedom of Information Act (5 U.S.C. 552, as amended).

Because we plan to make successful applications available to the public by posting them on our website, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you believe is exempt from disclosure under Exemption 4. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. However, under 34 CFR 79.8(a), we waive intergovernmental review in order to make awards by the end of FY 2020.

4. *Recommended Page Limit:* The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you (1) limit the application narrative to no more than 30 pages and (2) use the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- *Use one of the following fonts:* Times New Roman, Courier, Courier New, or Arial.

The recommended page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract, the resumes, the bibliography, the letter(s) of support, or the signed consortium agreement. However, the recommended page limit does apply to all of the application narrative. An application will not be disqualified if it exceeds the recommended page limit.

5. *Notice of Intent to Apply:* The Department will be able to review grant applications more efficiently if we know the approximate number of applicants that intend to apply. Therefore, we strongly encourage each potential applicant to notify us of their intent to submit an application. To do so, please email the program contact person listed under **FOR FURTHER INFORMATION CONTACT** with the subject line ''Intent to Apply,'' and include the applicant's name and a contact person's name and email address. Applicants that do not submit a notice of intent to apply may still apply for funding; applicants that do submit a notice of intent to apply are not bound to apply or bound by the information provided.

V. Application Review Information

1. *Selection Criteria.* The selection criteria are from the NFP and 34 CFR 75.210. The source of each selection criterion, and the maximum possible score for addressing each criterion and subcriterion, is included in parentheses. The maximum possible score for addressing all of the criteria in this section is 100 points.

In evaluating an application, the Secretary considers the following criteria:

(a) *Quality of the project design (27 points).*

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(1) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (9 points) (34 CFR 75.210(c)(2)(i))

(2) The extent to which the project design will ensure that students' progress toward grade-level and developmentally appropriate fluency in the Native American language. (6 points) (NFP)

(3) The extent to which the proposed project will incorporate parent engagement and participation in Native American language instruction. (6 points) (NFP)

(4) The quality of the approach to developing and administering pre- and post-assessments of student Native American language proficiency, including consultation with individuals with assessment expertise, as needed. (6 points) (NFP)

(b) *Quality of project services (28 points).* The Secretary considers the quality of the services to be provided by the proposed project. In determining the quality of the services to be provided by the proposed project, the Secretary considers the following factors:

(1) The quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (1 point) (34 CFR 75.210(d)(2))

(2) The quality of the plan for supporting grade-level and developmentally appropriate instruction in a Native American language by providing instruction of or through the Native American language. (10 points) (NFP)

(3) The extent to which the project will provide professional development for teachers and, as appropriate, staff and administrators to strengthen the overall language proficiency and academic goals of the school(s) that will be served by the project, including cultural competence training for all staff in the school(s). (10 points) (NFP)

(4) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the

effectiveness of project services. (4 points) (34 CFR 75.210(d)(3)(ix))

(5) The extent to which the percentage of the school day that instruction will be provided in the Native American language is ambitious and is reasonable for the grade level and population served. (3 points) (NFP)

(c) *Quality of project personnel (20 points).*

The Secretary considers the quality of the personnel who will carry out the proposed project. In determining the quality of project personnel, the Secretary considers:

(1) The extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability. (1 point) (34 CFR 75.210(e)(2))

(2) The extent to which teachers of the Native American language who are identified as staff for this project have teaching experience and are fluent in the Native American language. (13 points) (NFP)

(3) The qualifications, including relevant training and experience, of key project personnel. (6 points) (34 CFR 75.210(e)(3)(ii))

(d) *Adequacy of resources (11 points).*

The Secretary considers the adequacy of resources for the proposed project. In determining the adequacy of resources for the proposed project, the Secretary considers:

(1) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project. (7 points) (34 CFR 75.210(f)(2)(iv))

(2) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support. (4 points) (34 CFR 75.210(f)(2)(vi))

(e) *Quality of the management plan (14 points).* The Secretary considers the quality of the management plan for the proposed project. In determining the quality of the management plan for the proposed project, the Secretary considers:

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (8 points) (34 CFR 75.210(g)(2)(i))

(2) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project. (6 points) (34 CFR 75.210(g)(2)(iv))

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary requires various assurances, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Risk Assessment and Specific Conditions:* Consistent with 2 CFR 200.205, before awarding grants under this program, the Department conducts a review of the risks posed by applicants. Under 2 CFR 3474.10, the Secretary may impose specific conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

4. *Integrity and Performance System:* If you are selected under this competition to receive an award that over the course of the project period may exceed the simplified acquisition threshold (currently $250,000), under 2 CFR 200.205(a)(2) we must make a judgment about your integrity, business ethics, and record of performance under Federal awards—that is, the risk posed by you as an applicant—before we make an award. In doing so, we must consider any information about you that is in the integrity and performance system (currently referred to as the Federal Awardee Performance and Integrity Information System (FAPIIS)), accessible through the System for Award Management (SAM). You may review and comment on any information about yourself that a Federal agency previously entered and that is currently in FAPIIS.

Please note that, if the total value of your currently active grants, cooperative agreements, and procurement contracts from the Federal Government exceeds $10,000,000, the reporting requirements in 2 CFR part 200, Appendix XII, require you to report certain integrity information to FAPIIS semiannually. Please review the requirements in 2 CFR part 200, Appendix XII, if this grant plus all the other Federal funds you receive exceed $10,000,000.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we will notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multiyear award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

(c) Under 34 CFR 75.250(b), the Secretary may provide a grantee with additional funding for data collection analysis and reporting. In this case the Secretary establishes a data collection period.

4. *Performance Measures:* The Department has established the

following GPRA performance measures for the NAL@ED program:

(a) The number and percentage of students who attain proficiency in a Native Language as determined by each grantee through pre- and post-assessments of Native language proficiency;

(b) The number and percentage of participating students who make progress in learning a Native language, as determined by each grantee, through pre- and post-assessments of Native language proficiency;

(c) The number and percentage of participating students who show an improvement in academic outcomes, as measured by academic assessments or other indicators; and

(d) The difference between the average daily attendance of participating students and the average daily attendance of all students in the comparison group (*e.g.,* school, LEA, Tribe or other).

These measures constitute the Department's indicators of success for this program. Consequently, we advise an applicant for a grant under this program to carefully consider these measures in conceptualizing the approach to, and evaluation for, its proposed project. Each grantee will be required to provide, in its annual performance and final reports, data about its progress in meeting these measures.

5. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: Whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application.

In making a continuation award, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Other Information

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.

Frank T. Brogan,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 2020–15222 Filed 7–13–20; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 12–32–LNG]

Jordan Cove Energy Project L.P.; Final Opinion and Order Granting Long-Term Authorization To Export Liquefied Natural Gas to Non-Free Trade Agreement Nations

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Record of decision.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of a Record of Decision (ROD) published under the National Environmental Policy Act of 1969 (NEPA) and implementing regulations. This ROD supports DOE/FE's decision in DOE/FE Order No. 3413–A, an opinion and order authorizing Jordan Cove Energy Project L.P. to export domestically-produced liquefied natural gas (LNG) to non-free trade agreement countries under section 3(a) of the Natural Gas Act (NGA).

FOR FURTHER INFORMATION CONTACT: Brian Lavoie, U.S. Department of Energy (FE–34), Office of Regulation, Analysis, and Engagement, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–2459, *Brian.Lavoie@hq.doe.gov.*

Irene V. Nemesio, U.S. Department of Energy (GC–76), Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585, (202) 586–8606, *Irene.Nemesio@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On July 6, 2020, DOE/FE issued Order No. 3413–A to Jordan Cove Energy Project L.P. (Jordan Cove) under NGA section 3(a), 15 U.S.C. 717b(a). This Order authorizes Jordan Cove to export domestically-produced LNG to any country with which the United States has not entered into a free trade agreement (FTA) requiring national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policy (non-FTA countries). Jordan Cove is authorized to export LNG in a volume equivalent to 395 billion cubic feet (Bcf) per year of natural gas (1.08 Bcf/day) from the proposed Jordan Cove LNG Terminal (Terminal) to be located in unincorporated Coos County, Oregon.

DOE/FE participated as a cooperating agency with the Federal Energy Regulatory Commission in preparing an environmental impact statement (EIS) analyzing the potential environmental impacts of the proposed Terminal (along with its associated pipeline) that would be used to support the export authorization sought from DOE/FE. DOE adopted the EIS and prepared the ROD, which is attached as an appendix to the Order. The ROD can be found here: *https://www.energy.gov/sites/prod/files/2020/07/f76/3143a.pdf.*

Signed in Washington, DC, on July 8, 2020.

Amy Sweeney,

Director, Office of Regulation, Analysis, and Engagement, Office of Oil and Natural Gas.

[FR Doc. 2020–15094 Filed 7–13–20; 8:45 am]

BILLING CODE 6450–01–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: EG20–206–000.

Applicants: Odom Solar, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Odom Solar, LLC.

Filed Date: 7/2/20.

Accession Number: 20200702–5419.

Comments Due: 5 p.m. ET 7/23/20.

Docket Numbers: EG20–207–000.

Applicants: Sugar Creek Wind One LLC.

Description: Notice of Self-Certification of Exempt Wholesale

Generator Status of Sugar Creek Wind One LLC.

Filed Date: 7/8/20.

Accession Number: 20200708–5125.

Comments Due: 5 p.m. ET 7/29/20.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1989–014.

Applicants: Sky River LLC.

Description: Notification of Change in Status of Sky River LLC.

Filed Date: 7/7/20.

Accession Number: 20200707–5179.

Comments Due: 5 p.m. ET 7/28/20.

Docket Numbers: ER10–2138–024; ER10–2139–024.

Applicants: Grand Ridge Energy III LLC, Grand Ridge Energy II LLC.

Description: Triennial Report Grand Ridge Energy II LLC, *et al.*

Filed Date: 6/30/20.

Accession Number: 20200630–5397.

Comments Due: 5 p.m. ET 8/31/20.

Docket Numbers: ER11–2154–013.

Applicants: Twin Eagle Resource Management, LLC.

Description: Triennial Market Power Update for the Northeast Region of Twin Eagle Resource Management, LLC.

Filed Date: 6/30/20.

Accession Number: 20200630–5383.

Comments Due: 5 p.m. ET 8/31/20.

Docket Numbers: ER13–1430–007; ER10–1631–016; ER10–1854–016 ER10–1859–008; ER10–1872–008; ER10–1892–014 ER10–2678–017; ER10–2729–011; ER10–2739–027; ER10–2744–017; ER11–3320–016; ER11–3321–010; ER12–995–006; ER13–1561–007; ER13–2316–014; ER14–1219–011;ER14–19–015; ER14–2548–008; ER16–1652–015; ER16–1732–010; ER16–2405–010; ER16–2406–011; ER17–1494–002; ER17–1946–009; ER17–1947–004; ER17–1948–004; ER17–989–009; ER17–990–009; ER17–992–009; ER17–993–009; ER18–95–006; ER19–170–002; ER20–1440–002; ER20–660–002.

Applicants: Arlington Valley Solar Energy II, LLC, Armstrong Power, LLC, Aurora Generation, LLC, Bath County Energy, LLC, Bolt Energy Marketing, LLC, Buchanan Energy Services Company, LLC, Buchanan Generation, LLC, Centinela Solar Energy, LLC, Chambersburg Energy, LLC, Cherokee County Cogeneration Partners, LLC, Columbia Energy LLC, Doswell Limited Partnership, Gans Energy, LLC, Gateway Energy Storage, LLC, Helix Ironwood, LLC, Helix Maine Wind Development, LLC, Helix Ravenswood, LLC, LifeEnergy, LLC, LS Power Marketing, LLC, LSP University Park, LLC, Mobile Energy L L C, Ocean State Power LLC, Riverside Generating Company, L.L.C., Rockford Power, LLC, Rockford Power II, LLC, Santa Rosa Energy Center, LLC, Seneca Generation, LLC, Springdale Energy, LLC, Troy Energy, LLC, University Park Energy, LLC, Vista Energy Storage, LLC, Wallingford Energy LLC, Yards Creek Energy, LLC.

Description: Notification of Change in Status of the LS MBR Sellers.

Filed Date: 7/7/20.

Accession Number: 20200707–5178.

Comments Due: 5 p.m. ET 7/28/20.

Docket Numbers: ER20–1453–001.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Tariff Amendment: 2020–06–29_Deficiency Response for Schedule 17 Revisions to be effective 6/1/2020.

Filed Date: 6/29/20.

Accession Number: 20200629–5403.

Comments Due: 5 p.m. ET 7/20/20

Docket Numbers: ER20–2028–000.

Applicants: Bitter Ridge Wind Farm, LLC.

Description: Supplement to June 11, 2020 Bitter Ridge Wind Farm, LLC tariff filing.

Filed Date: 7/6/20.

Accession Number: 20200706–5210.

Comments Due: 5 p.m. ET 7/16/20.

Docket Numbers: ER20–2060–000.

Applicants: MPH Rockaway Peakers, LLC.

Description: Supplement to June 15, 2020 MPH Rockaway Peakers, LLC.

Filed Date: 7/7/20.

Accession Number: 20200707–5175.

Comments Due: 5 p.m. ET 7/28/20.

Docket Numbers: ER20–2098–000.

Applicants: Titan Solar 1, LLC.

Description: Supplement to June 18, 2020 Titan Solar 1, LLC.

Filed Date: 7/7/20.

Accession Number: 20200707–5176.

Comments Due: 5 p.m. ET 7/28/20.

Docket Numbers: ER20–2123–000.

Applicants: Hardin Solar Energy LLC.

Description: Supplement to June 22, 2020 Hardin Solar Energy LLC.

Filed Date: 7/1/20.

Accession Number: 20200701–5554.

Comments Due: 5 p.m. ET 7/22/20.

Docket Numbers: ER20–2337–000.

Applicants: New York Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 205: NYISO Tailored Availability Metric (TAM) tariff revisions to be effective 3/1/2021.

Filed Date: 7/7/20.

Accession Number: 20200707–5133.

Comments Due: 5 p.m. ET 7/28/20.

Docket Numbers: ER20–2338–000.

Applicants: National Grid Generation LLC.

Description: § 205(d) Rate Filing: Annual Reset of Pension and OPEB Expenses to be effective 1/1/2020.

Filed Date: 7/7/20.

Accession Number: 20200707–5146.

Comments Due: 5 p.m. ET 7/28/20.

Docket Numbers: ER20–2339–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Compliance filing: 2020–07–08_SA 3015 CED Red Lake Falls-OTP 1st Rev GIA (R101) to be effective 7/1/2020.

Filed Date: 7/8/20.

Accession Number: 20200708–5014.

Comments Due: 5 p.m. ET 7/29/20.

Docket Numbers: ER20–2340–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Compliance filing: 2020–07–08 SA 2955 ITC Midwest-Interstate Power and Light 2nd Rev GIA (J416) to be effective 7/1/2020.

Filed Date: 7/8/20.

Accession Number: 20200708–5016.

Comments Due: 5 p.m. ET 7/29/20.

Docket Numbers: ER20–2341–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Compliance filing: 2020–07–08 SA 3518 ITC Midwest-Interstate Power and Light FSA (J416) to be effective 7/1/2020.

Filed Date: 7/8/20.

Accession Number: 20200708–5018.

Comments Due: 5 p.m. ET 7/29/20.

Docket Numbers: ER20–2342–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Compliance filing: 2020–07–08_SA 3515 OTP–CED Red Lake Falls FSA (R101) to be effective 8/1/2020.

Filed Date: 7/8/20.

Accession Number: 20200708–5019.

Comments Due: 5 p.m. ET 7/29/20.

Docket Numbers: ER20–2343–000.

Applicants: Upstream Wind Energy LLC.

Description: Request for Waiver and Remedial Relief of Upstream Wind Energy LLC.

Filed Date: 7/7/20.

Accession Number: 20200707–5177.

Comments Due: 5 p.m. ET 7/28/20.

Docket Numbers: ER20–2344–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 2236R13 Golden Spread Electric Cooperative, Inc. NITSA NOA to be effective 8/1/2019.

Filed Date: 7/8/20.

Accession Number: 20200708–5093.

Comments Due: 5 p.m. ET 7/29/20.

Docket Numbers: ER20–2345–000.

Applicants: Gulf Power Company.

Description: § 205(d) Rate Filing: Affected System Agreement to be effective 4/15/2020.

Filed Date: 7/8/20.
Accession Number: 20200708–5097.
Comments Due: 5 p.m. ET 7/29/20.
Docket Numbers: ER20–2346–000.
Applicants: California Independent System Operator Corporation.
Description: Tariff Cancellation: 2020–07–08 Notice of Termination of Pseudo PGA with CCFC Sutter Energy to be effective 7/1/2020.
Filed Date: 7/8/20.
Accession Number: 20200708–5098.
Comments Due: 5 p.m. ET 7/29/20.
Docket Numbers: ER20–2347–000.
Applicants: Avista Corporation.
Description: § 205(d) Rate Filing: Avista Corp Section 206 Docket EL20–39 LGIP to be effective 12/31/9998.
Filed Date: 7/8/20.
Accession Number: 20200708–5122.
Comments Due: 5 p.m. ET 7/29/20.
Docket Numbers: ER20–2348–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to ISA, SA No. 5619; Queue No. AC1–221/AD1–058 (amend) to be effective 4/2/2020.
Filed Date: 7/8/20.
Accession Number: 20200708–5123.
Comments Due: 5 p.m. ET 7/29/20.
Docket Numbers: ER20–2349–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: Tariff Cancellation: Notice of Cancellation of Rate Schedule FERC No. 128 to be effective 7/9/2020.
Filed Date: 7/8/20.
Accession Number: 20200708–5128.
Comments Due: 5 p.m. ET 7/29/20.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH20–13–000.
Applicants: LS Power Development, LLC.
Description: LS Power Development, LLC submits FERC–65–B Notice of Change in Fact to Waiver Notification.
Filed Date: 7/7/20.
Accession Number: 20200707–5170.
Comments Due: 5 p.m. ET 7/28/20.

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: July 8, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–15166 Filed 7–13–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–2153–000]

Sanford Airport Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Sanford Airport Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 28, 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: July 8, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–15161 Filed 7–13–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not

be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending 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 toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket Nos.	File date	Presenter or requester
Prohibited:		
CP15–554–000.	7–2–2020	FERC Staff.[1]
CP15–554–001.		
CP15–555–000.		
Exempt:		
1. P–14795–002.	7–2–2020	FERC Staff.[2]
2. EL20–42–000.	7–7–2020	U.S. Congress.[3]
3. CP20–48–000.	7–7–2020	FERC Staff.[4]

[1] Memorandum dated July 2, 2020 reporting voicemail message from Victoria from Asheville, North Carolina.

[2] External communication dated March 29, 2020 between Washington State Department of Natural Resources and Shell Energy North America.

[3] Representatives Joe Wilson and Ralph Norman.

[4] Forwarding email dated July 6, 2020 with U.S. Fish and Wildlife Service.

Dated: July 8, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–15160 Filed 7–13–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–2316–000]

Hillcrest Solar 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 proceeding of Hillcrest Solar 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 28, 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: July 8, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–15159 Filed 7–13–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP20–1012–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Secondary Scheduling Priority Modification GT&C 48.3(a) to be effective 9/1/2020.

Filed Date: 7/6/20.

Accession Number: 20200706–5028.

Comments Due: 5 p.m. ET 7/20/20.

Docket Numbers: RP20–1013–000.

Applicants: East Tennessee Natural Gas, LLC.

Description: § 4(d) Rate Filing: ETNG Cleanup Filing eff 8–6–20 to be effective 8/6/2020.

Filed Date: 7/6/20.

Accession Number: 20200706–5046.

Comments Due: 5 p.m. ET 7/20/20.

Docket Numbers: RP20–1014–000.

Applicants: Algonquin Gas Transmission, LLC.

Description: § 4(d) Rate Filing: Negotiated Rates—July 2020 Cleanup Filing to be effective 8/6/2020.

Filed Date: 7/6/20.

Accession Number: 20200706–5073.

Comments Due: 5 p.m. ET 7/20/20.

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: July 8, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–15158 Filed 7–13–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. PL19–4–000; RM20–14–000]

Inquiry Regarding the Commission's Policy for Determining Return on Equity; Five-Year Review of the Oil Pipeline Index

Notice Establishing Date for Filing Updated Data

On May 21, 2020, the Commission issued a Policy Statement adopting a revised methodology for determining return on equity for natural gas and oil pipelines (ROE Policy Statement).[1] In light of the impending five-year review of the oil pipeline index, the Commission encouraged oil pipelines to file updated FERC Form No. 6, page 700 data for 2019 reflecting the revised ROE methodology [2] and explained that following Office of Management and Budget (OMB) approval of this voluntary information collection, the Commission would issue a notice affording pipelines two weeks to file such updated page 700 data.[3]

On June 29, 2020, the Commission submitted a request to OMB for approval of the voluntary information collection FERC–6(PL).[4] On July 6, 2020, OMB granted the Commission's request and approved the voluntary information collection FERC–6(PL).

Notice is hereby given that oil pipelines choosing to file updated FERC Form No. 6, page 700 data consistent with the ROE Policy Statement [5] should file such data on or before July 21, 2020.

Dated: July 7, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–15045 Filed 7–13–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 405–125]

Exelon Generating Company, LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands and waters for dredging.

b. *Project No:* 405–125.

c. *Date Filed:* June 18, 2020.

d. *Applicant:* Exelon Generating Company, LLC.

e. *Name of Project:* Conowingo Hydroelectric Project.

f. *Location:* Cecil County, Maryland.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Andrea Danucalov, FERC License Compliance Manager, Exelon Generation, 2569 Shures Landing Road, Darlington, MD 21034, *andrea.danucalov@exeloncorp.com,* (267) 533–1125.

i. *FERC Contact:* Mark Carter, (678) 245–3083, *mark.carter@ferc.gov.*

j. *Deadline for filing comments, motions to intervene, and protests:* August 7, 2020.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests 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). The first page of any filing should include docket number P–405–125. Comments emailed to Commission staff are not considered part of the Commission record.

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 whose name appears 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. *Description of Request:* Exelon Generating Company, LLC is requesting Commission approval to authorize the Maryland Environmental Service (applicant) to implement a dredging pilot project approximately 5 miles upstream from the Conowingo Dam. The applicant proposes to mobilize the dredging barge at Dorsey Park Boat Launch, mechanically dredge 1,000 cubic yards of sediment from project waters, stockpile the stored sediment at Peach Bottom Road Boat Launch, then transport dried material outside the project boundary for beneficial use within the state of Maryland. The dredging pilot project would result in limited availability of the Dorsey Park Boat Launch to half capacity for 3 weeks and closure of the Peach Bottom Road Boat Launch for up to two months. The proposed dredging pilot project would occur outside the recreational boating season.

l. *Locations of the Application:* 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

[1] *Inquiry Regarding the Commission's Policy for Determining Return on Equity,* 171 FERC ¶ 61,155 (2020) (ROE Policy Statement).

[2] *Id.* P 92. The Commission explained in the ROE Policy Statement that pipelines that previously filed Form No. 6 for 2019 and choose to submit updated page 700 data should, in a footnote on the updated page 700, either (a) confirm that their previously filed Form No. 6 was based solely upon the Discounted Cash Flow (DCF) model or (b) provide the real ROE and resulting cost of service based solely upon the DCF model as it was applied to oil pipelines prior to the ROE Policy Statement. *Id.*

[3] *Id.* P 93.

[4] OMB Control No. 1902–0318, Expiration Date 01/31/2021.

[5] ROE Policy Statement, 171 FERC ¶ 61,155 at PP 92–93.

the ''elibrary'' link. Enter the docket number excluding the last three digits in the document 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) 208–3673 or TYY, (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: July 8, 2020.

Kimberly D. Bose,

Secretary.

[FR Doc. 2020–15164 Filed 7–13–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting Notice

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

TIME AND DATE: July 16, 2020, 10:00 a.m.

PLACE: Open to the public via audio Webcast only.[1]

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda, * NOTE—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's website at *http://ferc.capitolconnection.org/* using the eLibrary link.

1069TH MEETING—OPEN MEETING

[July 16, 2020, 10:00 a.m.]

Item No.	Docket No.	Company
	Administrative	
A–1	AD20–1–000	Agency Administrative Matters.
A–2	AD20–2–000	Customer Matters, Reliability, Security and Market Operations.
	Electric	
E–1	RM19–15–000, AD16–16–000	Qualifying Facility Rates and Requirements Implementation Issues Under the Public Utility Regulatory Policies Act of 1978.
E–2	EL20–42–000	New England Ratepayers Association.
E–3	ER18–1639–001	Constellation Mystic Power, LLC.
E–4	ER18–1639–002	Constellation Mystic Power, LLC.
E–5	ER18–1639–003	Constellation Mystic Power, LLC.
E–6	EL14–37–000	PJM Interconnection, L.L.C.
E–7	RM05–5–029, RM05–5–030	Standards for Business Practices and Communication Protocols for Public Utilities.
E–8	ER17–998–001, EL17–61–001	DATC Path 15, LLC.
E–9	ER19–1864–003, ER19–1864–004	Public Service Company of Colorado.
E–10	ER09–1256–006, ER12–2708–008	Potomac-Appalachian Highline Transmission, LLC PJM Interconnection, L.L.C.
E–11	ER19–1902–002	Deseret Generation & Transmission Co-operative, Inc.
E–12	ER19–1950–001	California Independent System Operator Corporation.

[1] Join FERC online to listen live at *http://ferc.capitolconnection.org/.*

1069TH MEETING—OPEN MEETING—Continued

[July 16, 2020, 10:00 a.m.]

Item No.	Docket No.	Company
E–13	ER19–468–002	California Independent System Operator Corporation.
E–14	ER17–801–006, ER17–801–008, ER17–801–009, EL20–34–000.	Constellation Power Source Generation, LLC.
E–15	ER18–1247–001	Entergy Arkansas, Inc.
E–16	ER20–1762–000	Duke Energy Carolinas, LLC.
E–17	ER20–1580–000	Alcoa Power Generating Inc.
E–18	ER19–460–005	Southwest Power Pool, Inc.
E–19	ER20–1617–000	Southwest Power Pool, Inc.
E–20	ER19–2522–002	Southwest Power Pool, Inc.
E–21	ER20–644–000	Southwest Power Pool, Inc.
E–22	ER19–469–003	PJM Interconnection, L.L.C.
E–23	ER19–1661–002	PJM Interconnection, L.L.C. and Virginia Electric and Power Company.
E–24	ER20–1414–000	PJM Interconnection, L.L.C.
E–25	EL19–80–000	*Kansas Corporation Commission* v. *ITC Great Plains, LLC.*
E–26	EL19–50–001	*Louisiana Public Service Commission* v. *Entergy Corporation, Entergy Services, LLC, Entergy Louisiana, LLC Entergy Arkansas, LLC, Entergy Mississippi, LLC, Entergy New Orleans, LLC, and Entergy Texas, Inc.*
E–27	EL20–4–000	*North Carolina Eastern Municipal Power Agency* v. *Duke Energy Progress, LLC.*
E–28	EL20–27–000	*Liberty Power Holdings LLC* v. *Eversource Energy Service Company and ISO New England, Inc.*
E–29	EL20–40–000	Brookfield Asset Management Inc.
E–30	EL20–15–000	North Carolina Eastern Municipal Power Agency.
E–31	EL19–70–000	Indicated Generation Owners.
E–32	ER19–2582–001	Pacific Gas and Electric Company.
E–33	ER20–1441–000	PSEG Energy Resources & Trade LLC.
E–34	OMITTED.	
E–35	OMITTED.	
E–36	ER20–1120–001, ER20–1120–002	Paper Birch Energy, LLC.
E–37	ER16–1404–001, ER16–1404–002	New York Independent System Operator, Inc.
Micellaneous		
M–1	RM19–12–000	Revisions to the Filing Process for Commission Forms.
Gas		
G–1	RP20–779–001	Transcontinental Gas Pipe Line Company, LLC.
Hydro		
H–1	RM20–9–000	Safety of Water Power Projects and Project Works.
H–2	P–2082–062, P–2082–066, P–14803–000	PacifiCorp.
	P–14803–003	Klamath River Renewal Corporation.
H–3	P–2035–099	City and County of Denver, Colorado.
H–4	P–2105–126	Pacific Gas and Electric Company.
H–5	P–606–040	Pacific Gas and Electric Company.
H–6	P–67–135, P–120–029, P–2085–021, P–2086–040, P–2174–018, P–2175–022.	Southern California Edison Company.
Certificates		
C–1	CP19–491–000	National Fuel Gas Supply Corporation.
	CP19–494–000	Transcontinental Gas Pipe Line Company, LLC.
C–2	CP20–37–000	Texas Eastern Transmission, LP.
C–3	CP20–49–000	Transcontinental Gas Pipe Line Company, LLC.

Issued: July 9, 2020.

Kimberly D. Bose,

Secretary.

The public is invited to listen to the meeting live at *http://ferc.capitolconnection.org/.* Anyone with internet access who desires to hear this event can do so by navigating to *www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its audio webcast. The Capitol Connection provides technical support for this free audio webcast. It will also offer access to this event via phone bridge for a fee. If you have any questions, visit *http://ferc.capitolconnection.org/* or contact Shirley Al-Jarani at 703–993–3104.

[FR Doc. 2020–15265 Filed 7–10–20; 11:15 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF20–2–000]

Bonneville Power Administration; Notice of Filing

Take notice that on June 30, 2020, Bonneville Power Administration submitted tariff filing per: Bonneville Power Administration BP–20E Expedited Rate Filing, to be effective July 1, 2020.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

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.

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.

Comment Date: 5:00 p.m. Eastern Time on July 14, 2020.

Dated: July 7, 2020..

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–15044 Filed 7–13–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP20–486–000]

Tuscarora Gas Transmission Company; Notice of Application

Take notice that on June 24, 2020, Tuscarora Gas Transmission Company (Tuscarora), 700 Louisiana Street, Suite 700, Houston, TX 77002–2700, filed an application in the above referenced docket pursuant to sections 7(c) and 7(b) of the Natural Gas Act (NGA) and part 157 of the Commission's regulations requesting authorization to (1) increase its certificated capacity on the pipeline by 15,000 dekatherms per day of firm capacity from Malin, Oregon to the Wadsworth Compressor Station (CS) in Washoe County, Nevada, effectuated through modifications to the original design assumption within Tuscarora's engineering models, and (2) replace 600 horsepower (HP) reciprocating compressor unit with a new 1,380 HP reciprocating compressor unit along with related piping and appurtenant facilities at its existing Wadsworth CS (Tuscarora XPress Project). Tuscarora estimates the total cost of the project to be $13.4 million and proposes a new incremental recourse rate to apply to the project capacity, all as more fully set forth in the application 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 concerning this application may be directed to John Ryan, Legal Counsel, Tuscarora Gas Transmission Company, 700 Louisiana Street, Suite 700, Houston, Texas 77002, by phone (832) 320–5879, or email *john_ryan@tcenergy.com.*

Pursuant to § 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 will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the

Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit five copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek court review of the Commission's final order.

As of the February 27, 2018 date of the Commission's order in Docket No. CP16–4–001, the Commission will apply its revised practice concerning out-of-time motions to intervene in any new NGA section 3 or section 7 proceeding.[1] Persons desiring to become a party to a certificate proceeding are to intervene in a timely manner. If seeking to intervene out-of-time, the movant is required to ''show good cause why the time limitation should be waived,'' and should provide justification by reference to factors set forth in Rule 214(d)(1) of the Commission's Rules and Regulations.[2]

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically 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 U.S. Department of Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5:00 p.m. Eastern Time on July 28, 2020.

Dated: July 7, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–15043 Filed 7–13–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER20–2179–000]

Baldwin 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 proceeding of Baldwin 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 28, 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: July 8, 2020.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2020–15157 Filed 7–13–20; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Pick-Sloan Missouri Basin Program—Eastern Division-Rate Order No. WAPA–188

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of rate order concerning transmission and ancillary services formula rates.

SUMMARY: The Assistant Secretary for Electricity confirms, approves, and places into effect, on an interim basis, the formula rates for the Pick-Sloan Missouri Basin Program—Eastern Division (P–SMBP—ED) transmission

[1] *Tennessee Gas Pipeline Company, L.L.C.,* 162 FERC ¶ 61,167 at ¶ 50 (2018).

[2] 18 CFR 385.214(d)(1).

and ancillary services (Provisional Formula Rates). These rates will be used by Western Area Power Administration's (WAPA) Upper Great Plains Region (UGP) to provide rate data to Southwest Power Pool, Inc. (SPP), the Regional Transmission Organization of which UGP is a member. These new formula rates replace the existing transmission and ancillary services formula rates under Rate Order No. WAPA–170 that expire on September 30, 2020.

DATES: The Provisional Formula Rates under Rate Schedules WAUGP–ATRR, WAUGP–AS1, WAUW–AS3, WAUW–AS4, WAUW–AS5, WAUW–AS6 and WAUW–AS7 are effective October 1, 2020, and will remain in effect through September 30, 2025, pending confirmation and approval by the Federal Energy Regulatory Commission (FERC) on a final basis or until superseded.

FOR FURTHER INFORMATION CONTACT: Mr. Jody Sundsted, Regional Manager, Upper Great Plains Region, Western Area Power Administration, 2900 4th Avenue North, Billings, MT 59101–1266; (406) 255–2801; email: *sundsted@wapa.gov,* or Linda Cady-Hoffman, Rates Manager, Upper Great Plains Region, telephone: (406) 255–2920; email: *cady@wapa.gov.*

SUPPLEMENTARY INFORMATION: On November 19, 2015, FERC confirmed and approved Rate Schedules WAUGP–ATRR, WAUGP–AS1, WAUW–AS3, WAUW–AS4, WAUW–AS5, WAUW–AS6 and WAUW–AS7 under Rate Order No. WAPA–170 on a final basis effective for a 5-year period through September 30, 2020.[1] Those schedules consisted of separate formula-based rates for transmission and ancillary services for the transmission facilities in the P–SMBP—ED that UGP transferred to the functional control of SPP. The new rates continue the formula-based methodology that includes an annual update to the financial data in the rate formulas. The charges under these rates will be annually updated January 1 of each year beginning 2021 and thereafter. The formula rates provide sufficient revenue to recover annual expenses, including interest expense, and repay capital investments within the cost recovery criteria set forth in Department of Energy (DOE) Order RA 6120.2.

Legal Authority

By Delegation Order No. 00–037.00B, effective November 19, 2016, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to WAPA's Administrator; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve on a final basis, remand, or disapprove such rates to FERC. In Delegation Order No. 00–002.00S, effective January 15, 2020, the Secretary of Energy also delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Under Secretary of Energy. By Redelegation Order No. 00–002.10E, effective February 14, 2020, the Under Secretary of Energy further delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Assistant Secretary for Electricity. This rate action is issued under the Redelegation Order and DOE's procedures for public participation in rate adjustments set forth at 10 CFR part 903.[2]

Following DOE's review of WAPA's proposal, I hereby confirm, approve, and place Rate Order No. WAPA–188, which provides the formula rates for transmission and ancillary services, into effect on an interim basis. WAPA will submit Rate Order No. WAPA–188 to FERC for confirmation and approval on a final basis.

Signing Authority

This document of the Department of Energy was signed on July 9, 2020, by Bruce J. Walker, Assistant Secretary for Electricity, pursuant to delegated authority from the Secretary of Energy. That document, with the original signature and date, is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on July 9, 2020.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

DEPARTMENT OF ENERGY

In the matter of:

Western Area Power Administration Rate Adjustment for the Pick-Sloan Missouri Basin Program—Eastern Division Transmission and Ancillary Services Formula Rates;

[Rate Order No. WAPA–188]

Order Confirming, Approving, and Placing the Transmission and Ancillary Services Formula Rates for the Pick-Sloan Missouri Basin Program—Eastern Division Into Effect on an Interim Basis

The formula rates in Rate Order No. WAPA–188 are established following section 302 of the Department of Energy (DOE) Organization Act (42 U.S.C. 7152).[3]

By Delegation Order No. 00–037.00B, effective November 19, 2016, the Secretary of Energy delegated: (1) The authority to develop power and transmission rates to the Western Area Power Administration's (WAPA) Administrator; (2) the authority to confirm, approve, and place into effect such rates on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve on a final basis, remand, or disapprove such rates to the Federal Energy Regulatory Commission (FERC). In Delegation Order No. 00–002.00S, effective January 15, 2020, the Secretary of Energy also delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Under Secretary of Energy. By Redelegation Order No. 00–002.10E, effective February 14, 2020, the Under Secretary of Energy further delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Assistant Secretary for Electricity. This rate action is issued under the Redelegation Order and DOE's procedures for public participation in rate adjustments set forth at 10 CFR part 903.[4]

[1] Order Confirming and Approving Rate Schedules on a Final Basis, FERC Docket No. EF15–8–000, 153 FERC ¶ 61213 (2015). FERC also accepted the inclusion of UGP's revenue requirements for transmission and ancillary services under the SPP Open Access Transmission Tariff, FERC Docket No. ER15–2354–000, 152 FERC ¶ 61257 (2015).

[2] 50 FR 37835 (September 18, 1985) and 84 FR 5347 (February 21, 2019).

[3] This Act transferred to, and vested in, the Secretary of Energy the power marketing functions of the Secretary of the Department of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent laws, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)) and section 5 of the Flood Control Act of 1944 (16 U.S.C. 825s); and other acts that specifically apply to the projects involved.

[4] 50 FR 37835 (September 18, 1985) and 84 FR 5347 (February 21, 2019).

Acronyms, Terms, and Definitions

As used in this Rate Order, the following acronyms, terms, and definitions apply:

$/MW-year: Annual charge for capacity (*i.e.,* $ per megawatt (MW) per year).

ATRR: Annual Transmission Revenue Requirement is the net revenue requirement for the Transmission Services calculated in accordance with the Formula Rate.

BA: Balancing Authority—The responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a designated area, and supports interconnection frequency in real-time.

Balancing Authority Area: An electric system or systems, bounded by interconnection metering and telemetry, capable of controlling generation to maintain its interchange schedule with other Balancing Authorities and contributing to frequency regulation of the Interconnection.

Capacity: The electric capability of a generator, transformer, transmission circuit, or other equipment. It is expressed in kilowatts (kW).

Corps: U.S. Army Corps of Engineers.

DOE: United States Department of Energy.

Energy: Power produced or delivered over a period of time. Measured in terms of the work capacity over a period of time. Electric energy is expressed in kilowatt-hours.

Energy Imbalance Service: A service that provides energy correction for any hourly mismatch between a Southwest Power Pool Transmission Customer's energy supply and the demand served.

FERC: Federal Energy Regulatory Commission.

FRN: **Federal Register** notice.

Generator Imbalance Service: A service that provides energy correction for any hourly mismatch between generator output and a delivery schedule from that generator to another Balancing Authority Area or to a load within the same Balancing Authority Area.

kW: Kilowatt—the electrical unit of capacity that equals 1,000 watts.

kWh: Kilowatt-hour—the electrical unit of energy that equals 1,000 watts in 1 hour.

Load: The amount of electric power or energy delivered or required at any specified point(s) on a system.

MW: Megawatt—the electrical unit of capacity that equals 1 million watts or 1,000 kilowatts.

NEPA: National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347).

OASIS: Open Access Same-Time Information System—An electronic posting system that a service provider maintains for transmission access data that allows all customers to view information simultaneously.

P–SMBP: Pick-Sloan Missouri Basin Program.

P–SMBP—ED: Pick-Sloan Missouri Basin Program—Eastern Division.

Provisional Formula Rate: A formula rate that has been confirmed, approved, and placed into effect on an interim basis by the Assistant Secretary for Electricity.

Rate Brochure: A document prepared for public distribution explaining the rationale and background for the rate proposal contained in this rate order.

Regulation and Frequency Response Service: A service that provides for following the moment-to-moment variations in the demand or supply in a Balancing Authority Area and maintaining scheduled interconnection frequency.

Reserve Services: Spinning Reserve Service and Supplemental Reserve Service.

Revenue Requirement: The revenue required to recover annual expenses (such as operation and maintenance, purchase power, transmission service expenses, interest expense, and deferred expenses) and repay Federal investments, and other assigned costs.

Schedule: An agreed-upon transaction size (megawatts), beginning and ending ramp times and rate, and type of service required for delivery and receipt of power between the contracting parties and the Balancing Authority(ies) involved in the transaction.

Scheduling, System Control and Dispatch Service: A service that provides for (a) scheduling, (b) confirming and implementing an interchange schedule with other balancing authorities, including intermediary balancing authorities providing transmission service, and (c) ensuring operational security during the interchange transaction.

Southwest Power Pool, Inc. (SPP): A Regional Transmission Organization.

SPP's Integrated Marketplace (Integrated Marketplace): The SPP Energy and Operating Reserve Markets and the Transmission Congestion Rights Markets.

Spinning Reserve Service: Generation capacity needed to serve load immediately in the event of a system contingency. Spinning Reserve Service may be provided by generating units that are on-line and loaded at less than maximum output.

Supplemental Reserve Service: Generation capacity needed to serve load in the event of a system contingency; however, it is not available immediately to serve load but rather within a short period of time. Supplemental Reserve Service may be provided by generation units that are on-line but unloaded, by quick start generation or by interruptible load.

SPP Tariff: Southwest Power Pool, Open Access Transmission Tariff, approved by FERC.

SPP Transmission Customer: Any eligible customer (or its designated agent) that receives transmission service under the SPP Tariff.

Transmission Provider: Any utility that owns, operates, or controls facilities used to transmit electric energy in interstate commerce. SPP is the Transmission Provider under the SPP Tariff.

Transmission System: The facilities owned, controlled, or operated by the transmission owner or Transmission Provider that are used by the Transmission Provider to provide transmission service.

UMZ: Upper Missouri Zone—Multi-owner zone in SPP in which WAPA–UGP participates as a Transmission Owner; also defined as Zone 19 under the SPP Tariff. The UMZ includes transmission facilities located in both the Eastern and Western Interconnections.

WAUW: Western Area Power Administration, Upper Great Plains West Balancing Authority Area. WAUW is located in the Western Interconnection.

WAPA: United States Department of Energy, Western Area Power Administration.

Western Interconnection: A major alternating current power grid in North America. The Western Interconnection stretches from Western Canada south to Baja California in Mexico, reaching eastward over the Rockies to the Great Plains. Western Interconnection is comprised of the states of Washington, Oregon, California, Idaho, Nevada, Utah, Arizona, Colorado, Wyoming, portions of Montana, South Dakota, Nebraska, New Mexico and Texas in the United States, the Provinces of British Columbia and Alberta in Canada, and a portion of the Comisión Federal de Electricidad's system in Baja California in Mexico.

WAPA–UGP: United States Department of Energy, Western Area Power Administration, Upper Great Plains Region. Western-UGP is the definition for WAPA's Upper Great Plains Region in the SPP Tariff.

Effective Date

The Provisional Formula Rate Schedules WAUGP–ATRR, WAUGP–AS1, WAUW–AS3, WAUW–AS4,

WAUW–AS5, WAUW–AS6 and WAUW–AS7 are effective October 1, 2020, and will remain in effect through September 30, 2025, pending approval by FERC on a final basis or until superseded.

Public Notice and Comment

WAPA followed the Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions, 10 CFR part 903, in developing these formula rates. Following are the steps WAPA took to involve interested parties in the rate process:

1. On August 22, 2019, a **Federal Register** notice (84 FR 43803) (Proposal FRN) announced the proposed formula rates and launched the 90-day public consultation and comment period.

2. On August 23, 2019, WAPA notified all P–SMBP—ED customers and interested parties of the proposed rates and provided a copy of the Proposal FRN.

3. On September 24, 2019, WAPA held a public information forum in Omaha, Nebraska, and on September 25, 2019, WAPA held a public information forum in Bismarck, North Dakota. WAPA representatives explained the proposed formula rates, answered questions, and gave notice that more information was available in the customer Rate Brochure.

4. On September 24, 2019, WAPA held a public comment forum in Omaha, Nebraska, and on September 25, 2019, WAPA held a public comment forum in Bismarck, North Dakota. This provided customers and other interested parties with opportunity to comment for the record.

5. WAPA posted information about this rate process that contains all dates, customer letters, presentations, FRNs, customer Rate Brochure, and other information about this rate process at the following locations: (a) WAPA–UGP's OASIS at: *http://www.oasis.oati.com/wapa/index.html;* (b) WAPA–UGP's Rates web page at: *https://www.wapa.gov/regions/UGP/rates/Pages/rates.aspx;* and (c) the ''Western Area Power Administration UGP Information'' link on SPP's Member Related Postings website at: *http://opsportal.spp.org/OASIS/Directory/Member%20Related%20Postings.*

6. During the 90-day consultation and comment period, which ended on November 20, 2019, WAPA received one oral comment (at the September 24th public comment forum) and one written set of comments. The comments and WAPA's responses are addressed below. All comments have been considered in the preparation of this Rate Order.

One representative of the following organization made oral comments: Missouri River Energy Services (MRES).

Written comments were received from the following interested parties: Missouri River Energy Services (MRES).

Project Description

The initial stages of the Missouri River Basin Project were authorized by section 9 of the Flood Control Act of 1944 (58 Stat. 887, 890, Pub. L. 78–534). It was later renamed the P–SMBP. The P–SMBP is a comprehensive program with the following authorized functions: Flood control, navigation improvement, irrigation, municipal and industrial water development, and hydroelectric production for the entire Missouri River Basin.

WAPA–UGP owns and operates an extensive system of high-voltage transmission facilities that it uses to market significant quantities of Federally-generated hydroelectric power from the P–SMBP—ED.

WAPA–UGP is a Transmission Owner member of SPP pursuant to negotiated provisions in its SPP Membership Agreement and the SPP Bylaws and SPP Open Access Transmission Tariff (SPP OATT). Transmission and ancillary services are provided by SPP under the SPP OATT for WAPA–UGP's facilities transferred to the functional control of SPP. WAPA–UGP has transmission facilities in both the Eastern and Western Interconnections separated by the Miles City direct current tie and the Fort Peck Power Plant substation. WAPA–UGP operates its Western Area Power Administration, Upper Great Plains West (WAUW) Balancing Authority Area in the Western Interconnection as the Balancing Authority (BA), and has not placed the portion of its transmission system located in the Western Interconnection into SPP's Integrated Marketplace. WAPA–UGP still provides ancillary services associated with its WAUW in the Western Interconnection as the BA.

WAPA–UGP's formula rates for transmission and ancillary services will be applied so WAPA–UGP's costs can continue to be recovered under the SPP OATT. WAPA–UGP's revenue requirements are added to the annual revenue requirements of other transmission owners in the multi-owner SPP pricing Zone 19, also identified as the Upper Missouri Zone (UMZ), for transmission service billed by SPP within the UMZ. WAPA–UGP's revenue requirements under these proposed rates also impact other costs for transmission service within the broader SPP footprint. The formula rates provide WAPA–UGP sufficient revenue to pay all annual costs, including interest expenses, and repay investment.

P–SMBP—ED Transmission and Ancillary Services Rate Studies

Existing Rate Schedules WAUGP–ATRR, WAUGP–AS1, WAUW–AS3, WAUW–AS4, WAUW–AS5, WAUW–AS6 and WAUW–AS7 were approved under Rate Order No. WAPA–170 for a 5-year period beginning on October 1, 2015, and ending September 30, 2020. Those rate schedules consisted of separate formula-based rates for transmission service and ancillary services for the transmission facilities in the P–SMBP—ED that WAPA–UGP transferred to the functional control of SPP. The new rates continue the formula-based methodology that includes an annual update to the financial data in the rate formulas with only limited changes to: (1) The Formula Rate Templates (Templates) to increase transparency through addition of financial data source detail; (2) the Formula Rate Implementation Protocols (Protocols) to clarify WAPA–UGP's rate implementation and annual update procedures; (3) the Operating Reserves formula rates to incorporate costs associated with WAPA–UGP's current reserve sharing group membership; and (4) the rate schedules for Energy Imbalance and Generator Imbalance to accommodate participation in a Western Interconnection energy imbalance service market.

WAPA prepared Transmission and Ancillary Services rates studies to ensure that the formula rates are based on the cost of service of the WAPA–UGP eligible transmission facilities that are included in the UMZ and the associated operation of the WAUW. These studies included all applicable expenses and associated offsetting revenues.

Provisional Rates

The revenue requirements for 2020 for the individual services are outlined in the following table.

PROVISIONAL WAPA–UGP TRANSMISSION AND ANCILLARY SERVICES FORMULA RATES

Service	Rate schedule No.	Provisional 2020 annual revenue requirement
Transmission	WAUGP–ATRR	$136,325,626—SPP Sched 9; $666,093—SPP Sched 11 (Zonal); $111,344—SPP Sched 11 (Regional).
Scheduling, System Control, and Dispatch	WAUGP–AS1	$11,534,163.
Regulation and Frequency Response	WAUW–AS3	$291,973.
Operating Reserves—Spinning and Supplemental Reserves.	WAUW–AS5 and WAUW–AS6.	$409,789.
Energy Imbalance	WAUW–AS4	N/A.
Generator Imbalance	WAUWA–AS7	N/A.

Transmission and Ancillary Rate Discussion

WAPA–UGP includes facilities in the UMZ ATRR calculation that meet Transmission Facility criteria as identified in Attachment AI to SPP's OATT. WAPA–UGP identifies any portion of the ATRR eligible for recovery under SPP Schedule 11 pursuant to the SPP OATT in its Rate Formula Template submitted under Attachment H of the SPP OATT.

WAPA–UGP will true-up the cost estimates with actual costs. Revenue collected in excess of WAPA–UGP's actual net revenue requirement will be returned to customers through a credit against a revenue requirement in a subsequent year. Actual revenues that are less than the net revenue requirement would likewise be recovered in a subsequent year. The true-up procedure will ensure that WAPA–UGP will recover no more and no less than the actual transmission costs for the year.

Data used in the annual recalculation of the formula rate effective on January 1 each year will be made available for review and comment on or around September 1 each year as described in the Protocols. WAPA–UGP will provide customers the opportunity to discuss and comment on the recalculated rates on or before November 15, 2020, and annually by November 15 of subsequent years as described in the Protocols. The Protocols that describe the meetings where customers have opportunity to discuss and comment are available online at the following locations: (1) WAPA–UGP's OASIS at: *http://www.oasis.oati.com/wapa/index.html;* (2) WAPA–UGP's Rates web page at: *https://www.wapa.gov/regions/UGP/rates/Pages/rates.aspx;* and (3) the ''Western Area Power Administration UGP Information'' link on SPP's Member Related Postings website at: *http://opsportal.spp.org/OASIS/Directory/Member%20Related%20Postings.* This procedure ensures that interested parties are aware of the data used to calculate the rates. This also provides interested parties the opportunity to comment before the costs are collected through the formula rate.

Formula Transmission Rate

WAPA–UGP will continue to use its current formula rate calculation methodology for its ATRR, provided under Rate Schedule WAUGP–ATRR. This rate schedule includes WAPA–UGP's transmission facilities in both the Eastern and Western Interconnections that are transferred to the functional control of SPP and used by SPP in order to provide transmission service in the UMZ under the SPP OATT. Consistent with WAPA–UGP's existing formula rate, WAPA–UGP will continue recovering transmission system expenses and investments on a forward-looking basis by using projections to estimate transmission costs for the upcoming year, with a true-up of incurred costs in a subsequent year. Transmission-related annual costs include operation and maintenance, interest, administrative and general costs, and depreciation. Cost data is submitted to SPP in standard revenue requirement templates and classified as either ''Zonal'' or ''Regional'' costs as defined under the SPP OATT. ''Zonal'' costs are recovered within the local pricing zone while ''Regional'' costs are recovered across the entire SPP footprint. The ATRR Formula Rate Template includes breakouts of the annual revenue requirement for each individual Base Plan Upgrade, as defined under the SPP OATT, assigned to and funded by WAPA–UGP, along with ''Regional'' and ''Zonal'' allocation of the total net annual revenue requirement for each Project.

Formula Rate Implementation Protocols

For transmission and ancillary services provided under the SPP OATT, WAPA–UGP will continue to provide information relating to WAPA–UGP's rate implementation and annual updates in Formula Rate Implementation Protocols (Protocols), which together with the Formula Rate Templates (Templates), comprise the Formula Rates that are submitted to SPP to be incorporated in the SPP OATT. WAPA–UGP changed its Protocols to clarify and include additional detail regarding WAPA–UGP's rate implementation and annual update procedures. WAPA–UGP was one of the first transmission owners in the UMZ to develop Protocols. Therefore, WAPA–UGP updated its Protocols to be more consistent with the protocols of other transmission owners in the UMZ that were developed and approved after WAPA–UGP joined SPP.

Formula Rate for Scheduling, System Control, and Dispatch Service

WAPA–UGP will continue to use a formula-based rate methodology to calculate its annual revenue requirement for Scheduling, System Control, and Dispatch Service (SSCD), provided under Rate Schedule WAUGP–AS1 for the SPP UMZ. This rate schedule also includes transmission facilities in the WAUW.

SSCD is required to schedule the movement of power through, out of, within, or into the SPP and/or WAUW Balancing Authority Area(s). WAPA–UGP's annual revenue requirement for SSCD is utilized by SPP to calculate the regional SPP Schedule 1 rate for the UMZ. WAPA–UGP's annual revenue requirement for SSCD is derived by annualizing WAPA–UGP's applicable transmission-related annual costs associated with the provision of SSCD service, including operation and maintenance, interest, administrative and general costs, and depreciation. Estimates are calculated on a forward-looking basis by using projections to determine applicable transmission-related costs associated with SSCD for the upcoming year, with a true-up in a subsequent year, to be provided to SPP for inclusion in Schedule 1 under the SPP Tariff.

WAPA–UGP will true-up the cost estimates with WAPA–UGP's actual costs. Revenue collected in excess of WAPA–UGP's actual net revenue requirement will be returned to customers through a credit against a

revenue requirement in a subsequent year. Actual revenues that are less than the net revenue requirement would likewise be recovered in a subsequent year. The true-up procedure will ensure that WAPA–UGP will recover no more and no less than the actual costs for the year. WAPA–UGP included additional information regarding implementation and annual updates for SSCD in its revised Protocols.

Formula Rate for Regulation and Frequency Response Service

WAPA–UGP will continue to use a formula-based rate methodology for Regulation and Frequency Response Service (Regulation) for the WAUW, provided under Rate Schedule WAUW–AS3. WAPA–UGP provides Regulation and Frequency Response Service in the WAUW as the BA. Regulation and Frequency Response Service in the WAUW is provided primarily by Corps facilities. Under the formula rate methodology, the Corps' generation fixed charge rate (in percent) is applied to the net plant investment of the Corps generation to derive an annual Corps generation cost. This cost is divided by the capacity at the plants to derive a dollar-per-megawatt amount for Corps-installed capacity ($/MW-year). This dollar-per-megawatt amount is applied to the capacity of Corps generation reserved for Regulation and Frequency Response Service in the WAUW, producing the annual Corps generation cost for this service. WAPA–UGP's annual revenue requirement is recovered under the SPP Tariff under Rate Schedule WAUW–AS3.

Regulation and Frequency Response Service is necessary to provide for the continuous balancing of resources, generation, and interchange with load and for maintaining scheduled interconnection frequency at 60 cycles per second (60 Hz). Regulation is accomplished by committing on-line generation whose output is raised or lowered, predominantly through the use of automatic generating control equipment, as necessary, to follow the moment-by-moment changes in load. The obligation to maintain this balance between resources and load lies with the WAPA–UGP as the WAUW operator. The SPP Transmission Customer must either purchase this service from SPP or make alternative comparable arrangements pursuant to the SPP Tariff to satisfy its Regulation obligation. WAPA–UGP's annual revenue requirement for Regulation will be used by SPP to calculate the WAUW charges for Regulation. WAPA–UGP included additional information regarding implementation and annual updates for Regulation in its revised Protocols.

WAPA–UGP will true-up the cost estimates with WAPA–UGP's actual costs. Revenue collected in excess of WAPA–UGP's actual net revenue requirement will be returned through a credit in a subsequent year. Actual revenues that are less than the net revenue requirement would likewise be recovered in a subsequent year. The true-up procedure will ensure that WAPA–UGP will recover no more and no less than the actual costs for the year.

WAPA–UGP supports the installation of renewable sources of energy but recognizes that certain operational constraints exist in managing the significant fluctuations that are a normal part of their operation. When WAPA–UGP purchases power resources to provide Regulation to intermittent resources serving load within WAPA–UGP's WAUW, costs for these regulation resources will become part of WAPA's Regulation revenue requirement, which will be billed by SPP, as the Transmission Provider, to a SPP Transmission Customer along with the associated transmission service provided by SPP under the SPP Tariff. However, WAPA–UGP will not regulate for the difference between the output of an intermittent resource located within WAPA–UGP's WAUW and a delivery schedule from that generator serving load located outside of WAPA–UGP's WAUW. Intermittent resources serving load outside WAPA–UGP's WAUW will be required to be pseudo-tied or dynamically scheduled to another Balancing Authority Area.

An intermittent resource, for the limited purpose of this rate schedule, is an electric generator that is not dispatchable and cannot store its fuel source and, therefore, cannot respond to changes in demand or respond to transmission security constraints.

Formula Rate for Energy Imbalance Service

WAPA–UGP will continue to use its current formula rate calculation methodology for Energy Imbalance Service (Energy Imbalance), which is provided under Rate Schedule WAUW–AS4. This rate schedule addresses Energy Imbalance associated with UGP's WAUW in the Western Interconnection. WAPA–UGP also revised Rate Schedule WAUW–AS4 to accommodate participation in a Western Interconnection energy imbalance service market by WAPA–UGP as the BA. WAPA–UGP is providing additional information regarding implementation and annual updates for Energy Imbalance in its revised Protocols.

Energy Imbalance Service is provided when a difference occurs between the scheduled and the actual delivery of energy to a load located within WAPA–UGP's WAUW over a single hour (or different dispatch interval for energy imbalance service market, if applicable). Given the SPP Integrated Marketplace does not extend into the Western Interconnection, WAPA–UGP as the BA, will offer to provide Energy Imbalance Service in the WAUW at the request of SPP, if it is capable of doing so, from its own resources or from resources available to it including possible participation in a Western Interconnection energy imbalance market. SPP is the Transmission Provider for the eligible WAPA–UGP facilities transferred to the functional control of SPP in the WAUW. Energy Imbalance Service is needed when transmission service is provided by SPP and used to serve load within the WAUW, or when a difference occurs between the expected and actual delivery of energy to/from the WAUW over a single hour (or different dispatch interval for energy imbalance service market, if applicable) in the event that WAPA–UGP participates in a Western Interconnection energy imbalance service market in the WAUW as the BA. Energy Imbalance Service in the WAUW will be billed by SPP to the SPP Transmission Customer along with the associated transmission service provided by SPP. The SPP Transmission Customer must either purchase this service from SPP, or make alternative comparable arrangements pursuant to the SPP Tariff to satisfy its Energy Imbalance Service Obligation.

The SPP Transmission Customer will incur a charge for either hourly energy imbalances under this Schedule, WAUW–AS4, or hourly generator imbalances under Rate Schedule WAUW–AS7 for imbalances occurring during the same hour, but not both, unless the imbalances aggravate rather than offset each other.

This Rate Order puts in place two options for how Energy Imbalance Service in the WAUW may be provided:

(A) In the event that WAPA–UGP does not participate in a Western Interconnection energy imbalance market in the WAUW as the BA, or such energy imbalance market is unable to provide the total energy imbalance requirements for certain loads and generation within the Balancing Authority Area:

The rate for service will be based up deviation bands as follows: (i) Deviations within +/− 1.5 percent (with a minimum of 2 MW) of the scheduled transaction to be applied hourly to any

energy imbalance that occurs as a result of the SPP Transmission Customer's scheduled transaction(s) will be netted on a monthly basis and settled financially, at the end of the month, at 100 percent of the average incremental cost for the month; (ii) deviations greater than +/−1.5 percent up to 7.5 percent (or greater than 2 MW up to 10 MW) of the scheduled transaction(s) to be applied hourly to any energy imbalance that occurs as a result of the SPP Transmission Customer's scheduled transaction(s) will be settled financially, at the end of each month, at a charge of 110 percent of incremental cost when energy taken by the SPP Transmission Customer in a schedule hour is greater than the energy scheduled or a credit of 90 percent of incremental cost when energy taken by a SPP Transmission Customer in a schedule hour is less than the scheduled amount; and (iii) deviations greater than +/−7.5 percent (or 10 MW) of the scheduled transaction to be applied hourly to any energy imbalance that occurs as a result of the SPP Transmission Customer's scheduled transaction(s) will be settled at 125 percent of WAPA–UGP's incremental cost when energy taken by the SPP Transmission Customer in a schedule hour that is greater than the energy scheduled, or 75 percent of WAPA–UGP's incremental cost when energy taken by a SPP Transmission Customer is less than the scheduled amount.

WAPA–UGP's incremental cost will be based on a representative hourly energy index or combination of indexes. The index to be used, or any change to the index, will be posted on the applicable SPP website and WAPA–UGP's OASIS at least 30 days before use for determining the WAPA–UGP incremental cost and will not be changed more often than once per year unless WAPA–UGP determines that the existing index is no longer a reliable price index.

(B) In the event that WAPA–UGP participates in a Western Interconnection energy imbalance market in the WAUW as the BA: Charges to the SPP Transmission Customer will reflect only the pass-through of the applicable charges associated with the Western Interconnection energy imbalance service market assessed to WAPA–UGP as the WAUW BA for embedded load and/or generation in the WAUW of such SPP Transmission Customer that does not make adequate alternate arrangements in such Western Interconnection energy imbalance service market or other alternative comparable arrangements pursuant to the SPP Tariff to satisfy its Energy Imbalance Service obligation.

WAPA–UGP will post notice on the applicable SPP website and WAPA–UGP's OASIS, and also notify existing SPP Transmission Customers, at least 30 days before WAPA–UGP participates in a Western Interconnection energy imbalance service market, as the BA. WAPA–UGP will also post information related to the charges assessed by the market operator for Energy Imbalance Service in the WAUW under such Western Interconnection energy imbalance service market.

WAPA–UGP will follow Option A above beginning on October 1, 2020. WAPA–UGP will follow Option B above in the event that WAPA–UGP participates in a Western Interconnection energy imbalance market.

Formula Rate for Generator Imbalance Service

WAPA–UGP will continue to use its current formula rate calculation methodology for Generator Imbalance Service (Generator Imbalance), which is provided under Rate Schedule WAUW–AS7. This rate schedule addresses Generator Imbalance associated with WAPA–UGP's WAUW in the Western Interconnection. WAPA–UGP also changed Rate Schedule WAUW–AS7 to accommodate participation in a Western Interconnection energy imbalance market by WAPA–UGP as the BA. WAPA–UGP is providing additional information regarding implementation and annual updates for Generator Imbalance in its revised Protocols.

Generator Imbalance Service is provided when a difference occurs between the output of a generator located within WAPA–UGP's WAUW and a delivery schedule from that generator to: (1) Another Balancing Authority Area or (2) a load within WAPA–UGP'S WAUW over a single hour (or different dispatch interval for energy imbalance service market, if applicable). Given the SPP Integrated Marketplace does not extend into the Western Interconnection, WAPA–UGP, as the BA, will offer to provide this service at the request of SPP, if it is capable of doing so, from its own resources or resources available to it, including possible participation in a Western Interconnection energy imbalance service market. SPP is the Transmission Provider for the eligible WAPA–UGP facilities transferred to the functional control of SPP in the WAUW. Generator Imbalance Service is needed when transmission service is provided by SPP and used to deliver energy from a generator located within the WAUW, or when a difference occurs between the expected and actual delivery of energy to/from the WAUW over a single hour (or different dispatch interval for energy imbalance service market, if applicable) in the event that WAPA–UGP participates in a Western Interconnection energy imbalance service market in the WAUW as the BA. Generator Imbalance Service in the WAUW will be billed by SPP to the SPP Transmission Customer along with the associated transmission service. The SPP Transmission Customer must either purchase this service from SPP, or make alternative comparable arrangements pursuant to the SPP Tariff, to satisfy its Generator Imbalance Service obligation. The SPP Transmission Customer will incur a charge for either hourly generator imbalances under this rate schedule, WAUW–AS7, or hourly energy imbalances under Rate Schedule WAUW–AS4 for imbalances occurring during the same hour, but not both, unless the imbalances aggravate rather than offset each other.

WAPA–UGP supports the installation of renewable sources of energy but recognizes that certain operational constraints exist in managing the significant fluctuations that are a normal part of their operation. WAPA–UGP has marketed the maximum practical amount of power from each of its projects, leaving little or no flexibility for provision of additional power services. Consequently, WAPA–UGP will not regulate for the difference between the output of an intermittent generator located within the WAUW and a delivery schedule from that generator serving load located outside of the WAUW. Intermittent resources serving load outside WAPA–UGP's WAUW will be required to be pseudo-tied or dynamically scheduled to another Balancing Authority Area.

An intermittent resource, for the limited purpose of this rate schedule, is an electric generator that is not dispatchable and cannot store its fuel source and, therefore, cannot respond to changes in system demand or respond to transmission security constraints.

This Rate Order puts in place two options for how Generator Imbalance Service in the WAUW may be provided:

(A) In the event that WAPA–UGP does not participate in a Western Interconnection energy imbalance service market in the WAUW as the BA, or such energy imbalance market is unable to provide the total energy imbalance requirements for certain loads and generation within the Balancing Authority Area:

The rate for service will be based on deviation bands as follows: (i) For

deviations within +/−1.5 percent (with a minimum of 2 MW) of the scheduled transaction to be applied hourly to any generator imbalance that occurs as a result of the SPP Transmission Customer's scheduled transaction(s) will be netted on a monthly basis and settled financially, at the end of the month, at 100 percent of the average incremental cost; (ii) deviations greater than +/−1.5 percent up to 7.5 percent (or greater than 2 MW up to 10 MW) of the scheduled transaction to be applied hourly to any generator imbalance that occurs as a result of the SPP Transmission Customer's scheduled transaction(s) will be settled financially, at the end of each month, as a charge of 110 percent of incremental cost when energy delivered in a schedule hour from the generation resource is less than the energy scheduled or a credit of 90 percent of the incremental cost when energy delivered from the generation resource is greater than the scheduled amount; and (iii) deviations greater than +/−7.5 percent (or 10 MW) of the scheduled transaction to be applied hourly to any generator imbalance that occurs as a result of the SPP Transmission Customer's scheduled transaction(s) will be settled at 125 percent of WAPA–UGP's highest incremental cost for the day when energy delivered in a schedule hour is less than the energy scheduled or 75 percent of WAPA–UGP's lowest daily incremental cost when energy delivered from the generation resource is greater than the scheduled amount. An intermittent resource will be exempt from this deviation band and will pay the deviation band charges for all deviations greater than the larger of 1.5 percent or 2 MW.

Deviations from scheduled transactions responding to directives by the Transmission Provider, a BA, or a reliability coordinator will not be subject to the deviation bands identified above and, instead, will be settled financially at the end of the month at 100 percent of incremental cost. Such directives may include instructions to correct frequency decay, respond to a reserve sharing event, or change output to relieve congestion.

WAPA–UGP's incremental cost will be based on a representative hourly energy index or combination of indexes. The index to be used, or any change to the index, will be posted on the applicable SPP website and WAPA–UGP's OASIS at least 30 days before use for determining the WAPA–UGP incremental cost and will not be changed more often than once per year unless WAPA–UGP determines that the existing index is no longer a reliable price index.

(B) In the event that WAPA–UGP participates in a Western Interconnection energy imbalance service market in the WAUW as the BA: Charges to the SPP Transmission Customer will reflect only the pass-through of the applicable charges associated with the Western Interconnection energy imbalance service market assessed to WAPA–UGP as the WAUW BA for embedded load and/or generation in the WAUW of such SPP Transmission Customer that does not make adequate alternate arrangements in such Western Interconnection energy imbalance service market or other alternative comparable arrangements pursuant to the SPP Tariff to satisfy its Generator Imbalance Service Obligation.

WAPA–UGP will post notice on the applicable SPP website and WAPA–UGP's OASIS, and also notify existing Transmission Customers, at least 30 days before WAPA–UGP participates in a Western Interconnection energy imbalance service market, as the BA. WAPA–UGP will also post information related to the charges assessed by the market operator for Generator Imbalance Service in the WAUW under such Western Interconnection energy imbalance service market.

WAPA–UGP will follow Option A above beginning on October 1, 2020. WAPA–UGP will follow Option B above in the event that WAPA–UGP participates in a Western Interconnection energy imbalance service market.

Formula Rates for Operating Reserves Service—Spinning and Supplemental

WAPA–UGP will continue to use its current formula rate calculation methodologies for Operating Reserve—Spinning Reserve Service and Operating Reserve—Supplemental Reserve Service (collectively, Operating Reserves) provided under Rate Schedules WAUW–AS5 and WAUW–AS6, respectively, with changes to the rate formulas to incorporate costs associated with its current reserve sharing group membership. These rate schedules address Operating Reserves associated with WAPA–UGP's WAUW in the Western Interconnection. WAPA–UGP changed the rate formulas to incorporate costs associated with its current reserve sharing group membership. In addition, WAPA–UGP included additional information regarding implementation and annual updates for Operating Reserves in its revised Protocols. Given the SPP Integrated Marketplace does not extend into the Western Interconnection, WAPA–UGP will continue to provide Operating Reserves in the WAUW as the BA. WAPA–UGP utilizes the reserve requirement of the reserve sharing group of which WAPA–UGP is currently a member for its transmission system in the Western Interconnection.

WAPA–UGP's annual cost of generation for Reserve Services is determined by multiplying the Corps' generation fixed charge rate (in percent) by the net plant investment of the Corps generation producing an annual Corps generation cost. This cost is divided by the capacity at the plants to derive a dollar-per-megawatt amount for Corps installed capacity ($/MW-year). This dollar-per-megawatt amount is then applied to the capacity of Corps generation reserved for Reserve Services in the WAUW, producing the annual Corps generation cost to provide this service. WAPA–UGP's annual revenue requirement for Reserve Services is then determined by taking the annual Corps generation cost to provide this service and adding costs associated with the current reserve sharing group, if applicable. WAPA–UGP's annual revenue requirement will be recovered under the SPP Tariff. This rate design recovers only WAPA–UGP's revenue requirement associated with Reserve Services. The Reserve Services will apply to both load and generation in the WAUW (*i.e.,* transmission service for loads in the WAUW and transmission service for generation deliveries out of the WAUW).

WAPA–UGP will true-up the cost estimates with WAPA–UGP's actual costs. Revenue collected in excess of WAPA–UGP's actual net revenue requirement will be returned through a credit in a subsequent year. Actual revenues that are less than the net revenue requirement would likewise be recovered in a subsequent year. The true-up procedure will ensure that WAPA–UGP will recover no more and no less than the actual costs for the year.

Spinning Reserves

Operating Reserve-Spinning Reserve Service (Spinning Reserves) is needed to serve load immediately in the event of a system contingency. Spinning Reserves may be provided by generating units that are on-line and loaded at less than maximum output. Given the SPP Integrated Marketplace does not extend into the Western Interconnection, WAPA–UGP, as the BA, will offer to provide Spinning Reserves, if available, at the request of SPP as the Transmission Provider in the WAUW. Spinning Reserves in the WAUW will be billed by SPP to the SPP

Transmission Customer along with the associated transmission service provided by SPP. The SPP Transmission Customer must either purchase this service from SPP or make alternative comparable arrangements pursuant to the SPP Tariff to satisfy its Spinning Reserves obligation. WAPA–UGP's annual revenue requirement for Spinning Reserves will be utilized by SPP to calculate the WAUW charges for Spinning Reserves.

If resources are not available from a WAPA–UGP resource, WAPA–UGP, at the request of SPP as the Transmission Provider, will offer to purchase the Spinning Reserves and pass through the costs, plus an amount for administration, to SPP for the SPP Transmission Customer.

In the event that Spinning Reserves are called upon for emergency use, the SPP Transmission Customer will be assessed a charge for energy used at the prevailing market energy rate in the WAUW. The prevailing market energy rate will be based upon a representative hourly energy index or combination of indexes. The index to be used, or any change to the index, will be posted on the applicable SPP website and WAPA–UGP's OASIS at least 30 days before use for determining the prevailing market energy rate and will not be changed more often than once per year unless WAPA–UGP determines that the existing index is no longer a reliable price index. The SPP Transmission Customer would be responsible for providing transmission service to get the Spinning Reserves to its destination.

Supplemental Reserves

Operating Reserve-Supplemental Reserve Service (Supplemental Reserves) is needed to serve load in the event of a system contingency; however, it is not available immediately to serve load but rather within a short period of time.

Supplemental Reserves may be provided by generating units that are on-line but unloaded, by quick-start generation, or by interruptible load. Given the SPP Integrated Marketplace does not extend into the Western Interconnection, WAPA–UGP, as the BA, will offer to provide Supplemental Reserves, if available, at the request of SPP as the Transmission Provider, in the WAUW. Operating Reserve-Supplemental Reserve Service in the WAUW will be billed by SPP to the SPP Transmission Customer along with the associated transmission service provided by SPP. The SPP Transmission Customer must either purchase this service from SPP or make alternative comparable arrangements pursuant to the SPP Tariff to satisfy its Supplemental Reserves obligation. WAPA–UGP's annual revenue requirement for Supplemental Reserves will be utilized by SPP to calculate the WAUW charges for Supplemental Reserves.

Comments

WAPA received one oral comment and one comment letter during the public consultation and comment period. The comments have been paraphrased, where appropriate, without compromising the meaning of the comments.

Comment: The customer notes its appreciation of the efforts WAPA is making to increase transparency of the formula rate template, and that its comments are generally centered on transparency. As such, the customer requests WAPA adjust the formula rate template to ensure transparency for all stakeholders. Specifically, this includes financial and source document data transparency and transparency on the website.

Response: WAPA has reviewed the Formula Rate Templates and all suggestions provided by the customer regarding transparency. WAPA has updated the Formula Rate Templates to address the customer's comments. These template changes include additional footnotes, links, references, and other suggestions provided by the customer. WAPA has included the additional financial and source document data on OASIS at: *http://www.oasis.oati.com/wapa/index.html.*

Certification of Rates

WAPA's Administrator certified that the Provisional Formula Rates for P–SMB—ED under Rate Schedules WAUGP–ATRR, WAUGP–AS1, WAUW–AS3, WAUW–AS4, WAUW–AS5, WAUW–AS6, and WAUW–AS7 are the lowest possible rates, consistent with sound business principles. The Provisional Formula Rates were developed following administrative policies and applicable laws.

Availability of Information

Information about this rate adjustment, including the customer Rate Brochure, comments, letters, memorandums, and other supporting materials that were used to develop the Provisional Formula Rates, is available for inspection and copying at the Upper Great Plains Regional Office, located at 2900 4th Avenue North, Billings, Montana. Many of these documents are also available online at the following locations: (1) WAPA–UGP's OASIS at: *http://www.oasis.oati.com/wapa/index.html;* (2) WAPA–UGP's Rates web page at: *https://www.wapa.gov/regions/UGP/rates/Pages/rates.aspx;* and (3) the ''Western Area Power Administration UGP Information'' link on SPP's Member Related Postings website at: *http://opsportal.spp.org/OASIS/Directory/Member%20Related%20Postings.*

RATEMAKING PROCEDURE REQUIREMENTS

Environmental Compliance

WAPA has determined that this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement.[5] A copy of the categorical exclusion determination is available on WAPA's website at: *https://www.wapa.gov/regions/UGP/Environment/Pages/environment.aspx.*

Determination Under Executive Order 12866

WAPA has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Submission to the Federal Energy Regulatory Commission

The Provisional Formula Rates herein confirmed, approved, and placed into effect on an interim basis, together with supporting documents, will be submitted to FERC for confirmation and final approval.

ORDER

In view of the above and under the authority delegated to me, I hereby confirm, approve, and place into effect, on an interim basis, Rate Order No. WAPA–188. The rates will remain in effect on an interim basis until: (1) FERC confirms and approves them on a final basis; (2) subsequent rates are confirmed and approved; or (3) such rates are superseded.

Dated: July 9, 2020.

Bruce J. Walker,
Assistant Secretary for Electricity.

Rate Schedule WAUGP–ATRR

October 1, 2020

(Supersedes Rate Schedule WAUGP–ATRR dated October 1, 2015, through September 30, 2020)

[5] The determination was done in compliance with the National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4321–4347; the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500–1508); and DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021).

UNITED STATES DEPARTMENT OF ENERGY WESTERN AREA POWER ADMINISTRATION

UPPER GREAT PLAINS REGION PICK-SLOAN MISSOURI BASIN PROGRAM—EASTERN DIVISION

ANNUAL TRANSMISSION REVENUE REQUIREMENT FOR TRANSMISSION SERVICE

Effective

Beginning on October 1, 2020, and remaining in effect through September 30, 2025, or until superseded by another rate schedule, whichever occurs earlier. Notification of the effective date of the formula rates will be published in the **Federal Register**.

Applicable

Western Area Power Administration-Upper Great Plains Region's (Western-UGP) formula based Annual Transmission Revenue Requirement (ATRR) for its eligible transmission related facilities included under the Southwest Power Pool, Inc. (SPP) Tariff will be calculated using the formula outlined below.

Formula Rate

Define:

A = Operation & Maintenance allocated to transmission ($)
B = Depreciation allocated to transmission ($)
C = Interest Expense allocated to transmission ($)
D = Revenue Credits ($)
E = Scheduling, System Control, and Dispatch costs ($)
F = Prior Period True-up ($)

ATRR = A + B + C − D − E + F

Note: Western-UGP will identify any portion(s) of the ATRR eligible for recovery under SPP Schedule 11 pursuant to the SPP Tariff in its Rate Formula Template submitted under Attachment H of the SPP Tariff.

A recalculated annual revenue requirement will go into effect every January 1 based on the above formula and updated financial data. Western-UGP will annually notify SPP and make data and information available to interested parties for review and comment related to the recalculated annual revenue requirement on or shortly after September 1 of the preceding year. Data used and the charges resulting from using this formula will be posted on the applicable SPP website and Western-UGP's Open Access Same-Time Information System (OASIS).

Rate Schedule WAUGP–AS1
October 1, 2020
(Supersedes Rate Schedule WAUGP–AS1 dated October 1, 2015, through September 30, 2020)

UNITED STATES DEPARTMENT OF ENERGY WESTERN AREA POWER ADMINISTRATION

UPPER GREAT PLAINS REGION PICK-SLOAN MISSOURI BASIN PROGRAM—EASTERN DIVISION

SCHEDULING, SYSTEM CONTROL, AND DISPATCH SERVICE

Effective

Beginning on October 1, 2020, and remaining in effect through September 30, 2025, or until superseded by another rate schedule, whichever occurs earlier. Notification of the effective date of the formula rates will be published in the **Federal Register**.

Applicable

Scheduling, System Control, and Dispatch Service (SSCD) is required to schedule the movement of power through, out of, within, or into the Southwest Power Pool, Inc. (SPP) Balancing Authority Area and/or the Western Area Power Administration, Upper Great Plains West Balancing Authority Area (WAUW). Western Area Power Administration-Upper Great Plains Region's (Western-UGP) annual revenue requirement for SSCD will be used by SPP to calculate the regional SPP Schedule 1 rate for SPP through and out transactions, and also to calculate the zonal SPP Schedule 1 rate for the Upper Missouri Zone (UMZ or Zone 19). This rate will also be charged by SPP for SPP Transmission Service provided within the UMZ in the Western Interconnection.

Formula Rate

Define:

A = Operation & Maintenance for SSCD ($)
B = Administrative and General Expense for SSCD ($)
C = Depreciation for SSCD ($)
D = Taxes Other than Income Taxes for Transmission ($)
E = Allocation of General Plant for SSCD ($)
F = Cost of Capital for SSCD ($)
G = SSCD Revenue from non-Transmission facilities ($)
H = Prior Period True-up ($)

SSCD Annual Revenue Requirement = A + B + C + D + E + F − G + H

A recalculated annual revenue requirement will go into effect every January 1 based on the above formula and updated financial data. Western-UGP will annually notify SPP and make data and information available to interested parties for review and comment related to the recalculated annual revenue requirement on or shortly after September 1 of the preceding year. Data used and the charges resulting from using this formula will be posted on the applicable SPP website and Western-UGP's Open Access Same-Time Information System (OASIS).

Rate Schedule WAUW–AS3
October 1, 2020
(Supersedes Rate Schedule WAUW–AS3 dated October 1, 2015, through September 30, 2020)

UNITED STATES DEPARTMENT OF ENERGY WESTERN AREA POWER ADMINISTRATION

UPPER GREAT PLAINS REGION PICK-SLOAN MISSOURI BASIN PROGRAM—EASTERN DIVISION

REGULATION AND FREQUENCY RESPONSE SERVICE—WAUW

Effective

Beginning on October 1, 2020, and remaining in effect through September 30, 2025, or until superseded by another rate schedule, whichever occurs earlier. Notification of the effective date of the formula rates will be published in the **Federal Register**.

Applicable

This Rate Schedule applies to the Western Area Power Administration, Upper Great Plains West Balancing Authority Area (WAUW). Regulation and Frequency Response Service (Regulation) is necessary to provide for the continuous balancing of resources, generation, and interchange with load and for maintaining scheduled interconnection frequency at 60 cycles per second (60 Hz). Regulation is accomplished by committing on-line generation whose output is raised or lowered, predominantly through the use of automatic generating control equipment, as necessary, to follow the moment-by-moment changes in load. The obligation to maintain this balance between resources and load lies with the Western Area Power Administration-Upper Great Plains Region (Western-UGP) as the WAUW operator. The SPP Transmission Customer must either purchase this service from SPP or make alternative comparable arrangements pursuant to the SPP Tariff to satisfy its Regulation obligation. Western-UGP's annual revenue requirement for Regulation (outlined below) will be used by SPP to calculate the WAUW charges for Regulation.

Western-UGP supports the installation of renewable sources of energy but recognizes that certain operational constraints exist in managing the significant fluctuations that are a normal part of their operation. When Western-UGP purchases power resources to provide Regulation to

intermittent resources serving load within Western-UGP's WAUW, costs for these regulation resources will become part of Western's Regulation revenue requirement, which will be billed by SPP, as the Transmission Provider, to a SPP Transmission Customer along with the associated transmission service provided by SPP under the SPP Tariff. However, Western-UGP will not regulate for the difference between the output of an intermittent resource located within Western-UGP's WAUW and a delivery schedule from that generator serving load located outside of Western-UGP's WAUW. Intermittent resources serving load outside Western-UGP's WAUW will be required to be pseudo-tied or dynamically scheduled to another Balancing Authority Area.

An intermittent resource, for the limited purpose of this Rate Schedule, is an electric generator that is not dispatchable and cannot store its fuel source and, therefore, cannot respond to changes in demand or respond to transmission security constraints.

Formula Rate

Define:

A = U.S. Army Corps of Engineers (Corps) Fixed Charge Rate (%)
B = Corps Generation Net Plant Costs ($)
C = Plant Capacity (kW)
D = Capacity Used for Regulation (kW-year)
E = Capacity Purchases for Regulation ($)
F = Prior Period True-up

Regulation Annual Revenue Requirement = (A * B / C) * D + E + F

A recalculated revenue requirement will go into effect every January 1 based on the above formula and updated financial data. Western-UGP will annually notify SPP and make data and information available to interested parties for review and comment related to the recalculated annual revenue requirement on or shortly after September 1 of the preceding year. Data used and the charges resulting from using this formula will be posted on the applicable SPP website and Western-UGP's Open Access Same-Time Information System (OASIS).

Rate Schedule WAUW–AS4

October 1, 2020

(Supersedes Rate Schedule WAUW–AS4 dated October 1, 2015, through September 30, 2020)

UNITED STATES DEPARTMENT OF ENERGY WESTERN AREA POWER ADMINISTRATION

UPPER GREAT PLAINS REGION PICK-SLOAN MISSOURI BASIN PROGRAM—EASTERN DIVISION

ENERGY IMBALANCE SERVICE—WAUW

Effective

Beginning on October 1, 2020, and remaining in effect through September 30, 2025, or until superseded by another rate schedule, whichever occurs earlier. Notification of the effective date of the formula rates will be published in the **Federal Register**.

Applicable

This Rate Schedule applies to the Western Area Power Administration, Upper Great Plains West Balancing Authority Area (WAUW). Energy Imbalance Service is provided when a difference occurs between scheduled and actual delivery of energy to a load located within Western Area Power Administration-Upper Great Plains Region's (Western-UGP) WAUW over a single hour (or different dispatch interval for energy imbalance service market, if applicable). Given the Southwest Power Pool, Inc. (SPP) Integrated Marketplace does not extend into the Western Interconnection, Western-UGP, as the Balancing Authority, will offer to provide Energy Imbalance Service in the WAUW at the request of SPP, if it is capable of doing so, from its own resources or from resources available to it including possible participation in a Western Interconnection energy imbalance service market. SPP is the Transmission Provider for the eligible Western-UGP facilities transferred to the functional control of SPP in the WAUW. Energy Imbalance Service is needed when transmission service is provided by SPP and used to serve load within the WAUW, or when a difference occurs between the expected and actual delivery of energy to/from the WAUW over a single hour (or different dispatch interval for energy imbalance service market, if applicable) in the event that Western-UGP participates in a Western Interconnection energy imbalance service market in the WAUW as the Balancing Authority. Energy Imbalance Service in the WAUW will be billed by SPP to the SPP Transmission Customer along with the associated transmission service provided by SPP. The SPP Transmission Customer must either purchase this service from SPP, or make alternative comparable arrangements pursuant to the SPP Tariff to satisfy its Energy Imbalance Service obligation.

The SPP Transmission Customer will incur a charge for either hourly energy imbalances under this Schedule, WAUW–AS4, or hourly generator imbalances under Rate Schedule WAUW–AS7 for imbalances occurring during the same hour, but not both, unless the imbalances aggravate rather than offset each other.

Formula Rate

(A) In the event that Western-UGP does not participate in a Western Interconnection energy imbalance service market in the WAUW as the Balancing Authority, or such energy imbalance market is unable to provide the total energy imbalance requirements for certain loads and generation within the Balancing Authority Area:

For deviations within +/−1.5 percent (with a minimum of 2 MW) of the scheduled transaction to be applied hourly to any energy imbalance that occurs as a result of the SPP Transmission Customer's scheduled transaction(s) will be netted on a monthly basis and settled financially, at the end of the month, at 100 percent of the average incremental cost.

Deviations greater than +/−1.5 percent up to 7.5 percent (or greater than 2 MW up to 10 MW) of the scheduled transaction to be applied hourly to any energy imbalance that occurs as a result of the SPP Transmission Customer's scheduled transaction(s) will be settled financially, at the end of each month. When energy taken in a schedule hour is greater than the energy scheduled, the charge is 110 percent of incremental cost. When energy taken is less than the scheduled amount, the credit is 90 percent of the incremental cost.

Deviations greater than +/−7.5 percent (or 10 MW) of the scheduled transaction to be applied hourly to any energy imbalance that occurs as a result of the SPP Transmission Customer's scheduled transaction(s) will be settled at 125 percent of Western-UGP's incremental cost when energy taken in a schedule hour is greater than the energy scheduled or 75 percent of Western- UGP's incremental cost when energy taken by a SPP Transmission Customer is less than the scheduled amount.

Western-UGP's incremental cost will be based upon a representative hourly energy index or combination of indexes. The index to be used will be posted on the applicable SPP website and Western-UGP's Open Access Same-Time Information System (OASIS) at least 30 days before use for determining the

Western-UGP incremental cost and will not be changed more often than once per year unless Western-UGP determines that the existing index is no longer a reliable price index.

The pricing and charge for deviations in the above deviation bandwidths is as specified above. Data used and the charges resulting from using this formula will be posted on the applicable SPP website and Western-UGP's OASIS.

(B) In the event that Western-UGP participates in a Western Interconnection energy imbalance service market in the WAUW as the Balancing Authority:

Charges to the SPP Transmission Customer will reflect only the pass-through of the applicable charges associated with the Western Interconnection energy imbalance service market assessed to Western-UGP as the WAUW Balancing Authority for embedded load and/or generation in the WAUW of such SPP Transmission Customer that does not make adequate alternate arrangements in such Western Interconnection energy imbalance service market or other alternative comparable arrangements pursuant to the SPP Tariff to satisfy its Energy Imbalance Service obligation.

Western-UGP will post notice on the applicable SPP website and Western-UGP's OASIS, and also notify existing SPP Transmission Customers, at least 30 days before Western-UGP participates in a Western Interconnection energy imbalance service market, as the Balancing Authority. Western-UGP will also post information related to the charges assessed by the market operator for Energy Imbalance Service in the WAUW under such Western Interconnection energy imbalance service market.

Data used and the charges resulting from using this formula will be posted on the applicable SPP website and Western-UGP's OASIS.

Rate Schedule WAUW–AS5
October 1, 2020
(Supersedes Rate Schedule WAUW–AS5 dated October 1, 2015, through September 30, 2020)

UNITED STATES DEPARTMENT OF ENERGY WESTERN AREA POWER ADMINISTRATION

UPPER GREAT PLAINS REGION PICK-SLOAN MISSOURI BASIN PROGRAM—EASTERN DIVISION

OPERATING RESERVE—SPINNING RESERVE SERVICE—WAUW

Effective

Beginning on October 1, 2020, and remaining in effect through September 30, 2025, or until superseded by another rate schedule, whichever occurs earlier. Notification of the effective date of the formula rates will be published in the **Federal Register**.

Applicable

This Rate Schedule applies to the Western Area Power Administration, Upper Great Plains West Balancing Authority Area (WAUW). Operating Reserve-Spinning Reserve Service (Spinning Reserves) is needed to serve load immediately in the event of a system contingency. Spinning Reserves may be provided by generating units that are on-line and loaded at less than maximum output. Given the Southwest Power Pool, Inc. (SPP) Integrated Marketplace does not extend into the Western Interconnection, Western Area Power Administration-Upper Great Plains Region (Western-UGP), as the Balancing Authority, will offer to provide Spinning Reserves, if available, at the request of SPP as the Transmission Provider in the WAUW. Operating Reserve-Spinning Reserve Service in the WAUW will be billed by SPP to the SPP Transmission Customer along with the associated transmission service provided by SPP. The SPP Transmission Customer must either purchase this service from SPP or make alternative comparable arrangements pursuant to the SPP Tariff to satisfy its Spinning Reserves obligation. Western-UGP's annual revenue requirement for Spinning Reserves (outlined below) will be utilized by SPP to calculate the WAUW charges for Spinning Reserves.

Formula Rate

Define:

A = U.S. Army Corps of Engineers (Corps) Fixed Charge Rate (%)
B = Corps Generation Net Plant Costs ($)
C = Plant Capacity (kW)
D = Maximum Load in the WAUW (kW)
E = Maximum Generation in the WAUW (kW)
F = Reserve Sharing Program Requirement based upon Load (%)—See Note 1
G = Reserve Sharing Program Requirement based upon Generation (%)—See Note 2
H = Prior Period True-up
I = Annual cost associated with Western-UGP's current reserve sharing group membership

Note 1: Currently 3% in the Northwest Power Pool (NWPP) Reserve Sharing Program.

Note 2: Currently 3% in the NWPP Reserve Sharing Program.

Spinning Reserves Annual Revenue Requirement = (A * B/C) * ((D * F) + (E * G)) + H + I

A recalculated revenue requirement will go into effect every January 1 based on the above formula and updated financial, load/generation, and Reserve Sharing Program requirements data. Western-UGP will annually notify SPP and make data and information available to interested parties for review and comment related to the recalculated annual revenue requirement on or shortly after September 1 of the preceding year. Data used and the charges resulting from using this formula will be posted on the applicable SPP website and Western-UGP's Open Access Same-Time Information System (OASIS).

If resources are not available from a Western-UGP resource, Western-UGP, at the request of SPP as the Transmission Provider, will offer to purchase the Spinning Reserves and pass through the costs, plus an amount for administration, to SPP for the SPP Transmission Customer.

In the event that Spinning Reserves are called upon for emergency use, the SPP Transmission Customer will be assessed a charge for energy used at the prevailing market energy rate in the WAUW. The prevailing market energy rate will be based upon a representative hourly energy index or combination of indexes. The index to be used will be posted on the applicable SPP website and Western UGP's OASIS at least 30 days before use for determining the prevailing market energy rate and will not be changed more often than once per year unless Western-UGP determines that the existing index is no longer a reliable price index. The SPP Transmission Customer would be responsible for providing transmission service to get the Spinning Reserves to its destination.

Rate Schedule WAUW–AS6
October 1, 2020
(Supersedes Rate Schedule WAUW–AS6 dated October 1, 2015, through September 30, 2020)

UNITED STATES DEPARTMENT OF ENERGY WESTERN AREA POWER ADMINISTRATION

UPPER GREAT PLAINS REGION PICK-SLOAN MISSOURI BASIN PROGRAM—EASTERN DIVISION

OPERATING RESERVE—SUPPLEMENTAL RESERVE SERVICE—WAUW

Effective

Beginning on October 1, 2020, and remaining in effect through September 30, 2025, or until superseded by another rate schedule, whichever occurs earlier. Notification of the effective date of the formula rates will be published in the **Federal Register**.

Applicable

This Rate Schedule applies to the Western Area Power Administration, Upper Great Plains West Balancing Authority Area (WAUW). Operating Reserve-Supplemental Reserve Service (Supplemental Reserves) is needed to serve load in the event of a system contingency; however, it is not available immediately to serve load but rather within a short period of time.

Supplemental Reserves may be provided by generating units that are on-line but unloaded, by quick-start generation, or by interruptible load. Given the Southwest Power Pool, Inc. (SPP) Integrated Marketplace does not extend into the Western Interconnection, Western Area Power Administration-Upper Great Plains Region (Western-UGP), as the Balancing Authority, will offer to provide Supplemental Reserves, if available, at the request of SPP as the Transmission Provider, in the WAUW. Operating Reserve-Supplemental Reserve Service in the WAUW will be billed by SPP to the SPP Transmission Customer along with the associated transmission service provided by SPP. The SPP Transmission Customer must either purchase this service from SPP or make alternative comparable arrangements pursuant to the SPP Tariff to satisfy its Supplemental Reserves obligation. Western-UGP's annual revenue requirement for Supplemental Reserves (outlined below) will be utilized by SPP to calculate the WAUW charges for Supplemental Reserves.

Formula Rate

Define:

A = U.S. Army Corps of Engineers (Corps) Fixed Charge Rate (%)
B = Corps Generation Net Plant Costs ($)
C = Plant Capacity (kW)
D = Maximum Load in the WAUW (kW)
E = Maximum Generation in the WAUW (kW)
F = Reserve Sharing Program Requirement based upon Load (%)—See Note 1
G = Reserve Sharing Program Requirement based upon Generation (%)—See Note 2
H = Prior Period True-up
I = Annual cost associated with Western-UGP's current reserve sharing group membership

Note 1: Currently 3% in the Northwest Power Pool (NWPP) Reserve Sharing Program.

Note 2: Currently 3% in the NWPP Reserve Sharing Program.

Supplemental Reserves Annual Revenue Requirement = (A * B/C) * ((D * F) + (E * G)) + H + I

A recalculated revenue requirement will go into effect every January 1 based on the above formula and updated financial, load/generation, and Reserve Sharing Program requirements data. Western-UGP will annually notify SPP and make data and information available to interested parties for review and comment related to the recalculated annual revenue requirement on or shortly after September 1 of the preceding year. Data used and the charges resulting from using this formula will be posted on the applicable SPP website and Western-UGP's Open Access Same-Time Information System (OASIS).

If resources are not available from a Western-UGP resource, Western-UGP, at the request of SPP as the Transmission Provider, will offer to purchase the Supplemental Reserves and pass through the costs, plus an amount for administration, to SPP for the SPP Transmission Customer.

In the event Supplemental Reserves are called upon for emergency use, the SPP Transmission Customer will be assessed a charge for energy used at the prevailing market energy rate in the WAUW. The prevailing market energy rate will be based upon a representative hourly energy index or combination of indexes. The index to be used will be posted on the applicable SPP website and Western-UGP's OASIS at least 30 days before use for determining the prevailing market energy rate and will not be changed more often than once per year unless Western-UGP determines that the existing index is no longer a reliable price index. The SPP Transmission Customer would be responsible for providing transmission service to get the Supplemental Reserves to its destination.

Rate Schedule WAUW–AS7

October 1, 2020

(Supersedes Rate Schedule WAUW–AS7 dated October 1, 2015, through September 30, 2020)

UNITED STATES DEPARTMENT OF ENERGY WESTERN AREA POWER ADMINISTRATION

UPPER GREAT PLAINS REGION PICK-SLOAN MISSOURI BASIN PROGRAM—EASTERN DIVISION

GENERATOR IMBALANCE SERVICE—WAUW

Effective

Beginning on October 1, 2020, and remaining in effect through September 30, 2025, or until superseded by another rate schedule, whichever occurs earlier. Notification of the effective date of the formula rates will be published in the **Federal Register**.

Applicable

This Rate Schedule applies to the Western Area Power Administration, Upper Great Plains West Balancing Authority Area (WAUW). Generator Imbalance Service is provided when a difference occurs between the output of a generator located within Western Area Power Administration-Upper Great Plains Region's (Western-UGP) WAUW and a delivery schedule from that generator to (1) another Balancing Authority Area or (2) a load within Western-UGP's WAUW over a single hour (or different dispatch interval for energy imbalance service market, if applicable). Given the Southwest Power Pool, Inc. (SPP) Integrated Marketplace does not extend into the Western Interconnection, Western-UGP, as the Balancing Authority, will offer to provide this service at the request of SPP, if it is capable of doing so, from its own resources or from resources available to it including possible participation in a Western Interconnection energy imbalance service market. SPP is the Transmission Provider for the eligible Western-UGP facilities transferred to the functional control of SPP in the WAUW. Generator Imbalance Service is needed when transmission service is provided by SPP and used to deliver energy from a generator located within the WAUW, or when a difference occurs between the expected and actual delivery of energy to/from the WAUW over a single hour (or different dispatch interval for energy imbalance service market, if applicable) in the event that Western-UGP participates in a Western Interconnection energy imbalance service market in the WAUW as the Balancing Authority. Generator Imbalance Service in the WAUW will be billed by SPP to the SPP Transmission Customer along with the associated transmission service provided by SPP. The SPP Transmission Customer must either purchase this service from SPP or make alternative comparable arrangements pursuant to the SPP Tariff, to satisfy its Generator Imbalance Service obligation. The SPP Transmission Customer will incur a charge for either hourly generator imbalances under this Schedule, WAUW–AS7, or hourly energy imbalances under Rate Schedule WAUW–AS4 for imbalances occurring during the same hour, but not both, unless the imbalances aggravate rather than offset each other.

Western-UGP supports the installation of renewable sources of energy but recognizes that certain operational constraints exist in

managing the significant fluctuations that are a normal part of their operation. Western-UGP has marketed the maximum practical amount of power from each of its projects, leaving little or no flexibility for provision of additional power services. Consequently, Western-UGP will not regulate for the difference between the output of an intermittent resource located within the WAUW and a delivery schedule from that generator serving load located outside of the WAUW. Intermittent resources serving load outside Western-UGP's WAUW will be required to be pseudo-tied or dynamically scheduled to another Balancing Authority Area.

An intermittent resource, for the limited purpose of this Rate Schedule, is an electric generator that is not dispatchable and cannot store its fuel source and, therefore, cannot respond to changes in demand or respond to transmission security constraints.

Formula Rate

(A) In the event that Western-UGP does not participate in a Western Interconnection energy imbalance service market in the WAUW as the Balancing Authority, or such energy imbalance market is unable to provide the total energy imbalance requirements for certain loads and generation within the Balancing Authority Area:

For deviations within +/−1.5 percent (with a minimum of 2 MW) of the scheduled transaction to be applied hourly to any generator imbalance that occurs as a result of the SPP Transmission Customer's scheduled transaction(s) will be netted on a monthly basis and settled financially, at the end of the month, at 100 percent of the average incremental cost.

Deviations greater than +/−1.5 percent up to 7.5 percent (or greater than 2 MW up to 10 MW) of the scheduled transaction to be applied hourly to any generator imbalance that occurs as a result of the SPP Transmission Customer's scheduled transaction(s) will be settled financially, at the end of each month. When energy delivered in a schedule hour from the generation resource is less than the energy scheduled, the charge is 110 percent of incremental cost. When energy delivered from the generation resource is greater than the scheduled amount, the credit is 90 percent of the incremental cost.

Deviations greater than +/−7.5 percent (or 10 MW) of the scheduled transaction to be applied hourly to any generator imbalance that occurs as a result of the SPP Transmission Customer's scheduled transaction(s) will be settled at 125 percent of Western-UGP's highest incremental cost for the day when energy delivered in a schedule hour is less than the energy scheduled or 75 percent of Western-UGP's lowest daily incremental cost when energy delivered from the generation resource is greater than the scheduled amount. As an exception, an intermittent resource will be exempt from this deviation band and will pay the deviation band charges for all deviations greater than the larger of 1.5 percent or 2 MW.

Deviations from scheduled transactions responding to directives by the Transmission Provider, a Balancing Authority, or a reliability coordinator will not be subject to the deviation bands identified above and, instead, will be settled financially, at the end of the month, at 100 percent of incremental cost. Such directives may include instructions to correct frequency decay, respond to a reserve sharing event, or change output to relieve congestion.

Western-UGP's incremental cost will be based upon a representative hourly energy index or combination of indexes. The index to be used will be posted on the applicable SPP website and Western-UGP's Open Access Same-Time Information System (OASIS) at least 30 days before use for determining the Western-UGP incremental cost and will not be changed more often than once per year unless Western-UGP determines that the existing index is no longer a reliable price index.

The pricing and charge for deviations in the deviation bandwidths is as specified above. Data used and the charges resulting from using this formula will be posted on the applicable SPP website and Western-UGP's OASIS.

(B) In the event that Western-UGP participates in a Western Interconnection energy imbalance service market in the WAUW as the Balancing Authority:

Charges to the SPP Transmission Customer will reflect only the pass-through of the applicable charges associated with the Western Interconnection energy imbalance service market assessed to Western-UGP as the WAUW Balancing Authority for embedded load and/or generation in the WAUW of such SPP Transmission Customer that does not make adequate alternate arrangements in such Western Interconnection energy imbalance service market or other alternative comparable arrangements pursuant to the SPP Tariff to satisfy its Generator Imbalance Service obligation.

Western-UGP will post notice on the applicable SPP website and Western-UGP's OASIS, and also notify existing Transmission Customers, at least 30 days before Western-UGP participates in a Western Interconnection energy imbalance service market, as the Balancing Authority. Western-UGP will also post information related to the charges assessed by the market operator for Generator Imbalance Service in the WAUW under such Western Interconnection energy imbalance service market.

Data used and the charges resulting from using this formula will be posted on the applicable SPP website and Western-UGP's OASIS.

[FR Doc. 2020–15173 Filed 7–13–20; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10010–06–Region 9]

El Centro Residential Lead Removal Site, El Centro, CA; Notice of Proposed CERCLA Settlement Agreement for Recovery of Past Response Costs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), notice is hereby given of a proposed administrative settlement for recovery of response costs concerning the El Centro Residential Lead Removal Site in El Centro, California. The settlement is entered into pursuant to Section 122(h)(1) of CERCLA, and it requires the settling party to reimburse the Environmental Protection Agency (EPA) $50,000 in response costs that EPA incurred at the Site.

DATES: EPA will receive written comments relating to this proposed settlement until 30 days after publication in the **Federal Register**.

ADDRESSES: Please contact Craig Whitenack at *whitenack.craig@epa.gov* or (213) 244–1820 to request a copy of the Settlement Agreement. Comments on the Settlement Agreement should be submitted in writing to Mr. Whitenack at *whitenack.craig@epa.gov.* Comments should reference the El Centro Residential Lead Removal Site, El Centro, California and the EPA Docket Number for the Settlement Agreement, EPA R9–20–004. If for any reason you are not able to submit a comment by email, please contact Mr. Whitenack at (213) 244–1820 to make alternative arrangements for submitting your comment.

FOR FURTHER INFORMATION CONTACT: Craig Whitenack, Civil Investigator (SEMD–CSCEB–CES), Southern California Field Office, U.S. EPA Region IX, 600 Wilshire Blvs., Suite 1460; phone: (213) 244–1820; fax: email: *whitenack.craig@epa.gov.*

SUPPLEMENTARY INFORMATION: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of response costs concerning the El Centro Residential Lead Removal Site in El Centro, California. The settlement is entered into pursuant to Section 122(h)(1) of CERCLA, 42 U.S.C. 9622(h)(1), and it requires the settling party to reimburse EPA $50,000 in response costs that EPA incurred at the Site. The settlement includes a covenant not to sue the settling party pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. 9606 or 9607(a). For thirty (30) days following the date of publication of this Notice in the **Federal Register**, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations that indicate the proposed settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at 75 Hawthorne Street, San Francisco, CA 94105.

Party to the Proposed Settlement: City of El Centro.

Enrique Manzanilla,

Director, Superfund Division, U.S. EPA, Region IX.

[FR Doc. 2020–15131 Filed 7–13–20; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1054, OMB 3060–1056, OMB 3060–1057; FRS 16920]

Information Collections Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

DATES: Written comments should be submitted on or before September 14, 2020. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: 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.

As part of its continuing effort to reduce paperwork burdens, and as required by the PRA of 1995 (44 U.S.C. 3501–3520), the FCC 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.

OMB Control No.: 3060–1054.

Title: Application for Renewal of an International Broadcast Station License.

Form No.: Form 422–IB.

Type of Review: Extension of a currently approved information collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 10 respondents; 50 responses.

Estimated Time per Response: 1–8 hours per response.

Frequency of Response: On occasion reporting requirement; Recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in 47 U.S.C. 154, 303, 334, 336 and 339.

Total Annual Burden: 160 hours.

Annual Cost Burden: $36,000.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information.

Needs and Uses: This collection will be submitted to the Office of Management and Budget (OMB) as an extension following the 60-day comment period in order to obtain the full three-year clearance from OMB.

The Commission plans to implement and release to the public an ''Application for Renewal of an International Broadcast Station License (FCC Form 422–IB).'' After the FCC Form 422–IB has been implemented and the Commission receives final approval from OMB, applicants will complete the FCC Form 422–IB in lieu of the ''Application for Renewal of an International or Experimental Broadcast Station License,'' (FCC Form 311). In the interim, applicants will continue to file the FCC Form 311 with the Commission. (*Note:* The OMB approved the FCC Form 311 under OMB Control No. 3060–1035).

The Commission stated previously that it plans to develop a Consolidated Licensing System (CLS). However, the Commission discontinued its plan to develop CLS. Instead, the Commission plans to make the FCC Form 422–IB available to the public in the International Bureau Filing System (''IBFS''). It is anticipated that this form will be available in IBFS on or before December 2021.

The information collected pursuant to the rules set forth in 47 CFR part 73,

subpart F, is used by the Commission to assign frequencies for use by international broadcast stations, to grant authority to operate such stations and to determine if interference or adverse propagation conditions exist that may impact the operation of such stations. If the Commission did not collect this information, it would not be in a position to effectively coordinate spectrum for international broadcasters or to act for entities in times of frequency interference or adverse propagation conditions. The orderly nature of the provision of international broadcast service would be in jeopardy without the Commission's involvement.

OMB Control No.: 3060–1056.

Title: Application for International Broadcast Station License.

Form No.: FCC Form 421–IB.

Type of Review: Extension of a currently approved information collection.

Respondents: Business or other for-profit.

Number of Respondents: 10 respondents; 10 responses.

Estimated Time per Response: 6 hour per response.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Section 325(c) of the Communications Act of 1934, as amended.

Total Annual Burden: 60 hours.

Annual Cost Burden: $40,500.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information.

Needs and Uses: This collection will be submitted to the Office of Management and Budget (OMB) as an extension following the 60-day comment period in order to obtain the full three-year clearance from OMB.

The Federal Communications Commission (''Commission'') plans to implement and release to the public an ''Application for an International Broadcast Station License'' (FCC Form 421–IB). The FCC Form 421–IB will be used by applicants to request licenses to operate international broadcast stations. It is anticipated that the FCC Form 421–IB will be completed by December 2021.

After the form has been implemented and the Commission has obtained final approval from the OMB, applicants will file the FCC Form 421–IB with the Commission in lieu of the ''Application for an International, Experimental Television, Experimental Facsimile, or a Developmental Broadcast Station,'' (FCC Form 310.)

The Commission stated previously that it plans to develop a Consolidated Licensing System (CLS). However, the Commission discontinued its plan to develop CLS. Instead, the Commission plans to make the FCC Form 421–IB available to the public in the International Bureau Filing System (''IBFS'').

(*Note:* The Commission received approval from the OMB for the FCC Form 310 under OMB Control No 3060–1035.) In the interim, applicants will continue to file the FCC Form 310 with the Commission.

The information collected is used by the Commission to assign frequencies for use by international broadcast stations, to grant authority to operate such stations and to determine if interference or adverse propagation conditions exist that may impact the operation of such stations. If the Commission did not collect this information, it would not be in a position to effectively coordinate spectrum for international broadcasters or to act for entities in times of frequency interference or adverse propagation conditions. The orderly nature of the provision of international broadcast service would be in jeopardy without the Commission's involvement.

OMB Control No.: 3060–1057.

Title: Application for Authority to Construct or Make Changes in an International Broadcast Station.

Form No.: FCC Form 420–IB.

Type of Review: Extension of a currently approved information collection.

Respondents: Business or other for-profit.

Number of Respondents: 10 respondents; 10 responses.

Estimated Time per Response: 6 hours per response.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in Section 325(c) of the Communications Act of 1934, as amended, and in 47 CFR part 73, subpart F.

Total Annual Burden: 60 hours.

Annual Cost Burden: $46,050.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: In general, there is no need for confidentiality with this collection of information.

Needs and Uses: This collection will be submitted to the Office of Management and Budget (OMB) as an extension following the 60-day comment period in order to obtain the full three-year clearance from OMB.

The Federal Communications Commission (''Commission'') received approval from the OMB to develop a new application titled, ''Application for Authority to Construct or Make Changes in an International Broadcast Station (FCC Form 420–IB)'' to request authority from the Commission to construct or make changes in an international broadcast station. This application has not been implemented and released to the public yet due to a lack of budget resources and technical staff. After the FCC Form 420–IB has been implemented and the Commission has obtained final approval from the OMB, it will be completed by international broadcasters in lieu of the ''Application for Authority to Construct or Make Changes in an International, Experimental Television, Experimental Facsimile, or a Developmental Broadcast Station,'' (FCC Form 309). In the interim, applicants will continue to file the FCC Form 309 with the Commission. (*Note:* The OMB approved the FCC Form 309 under OMB Control No. 3060–1035.)

The Commission stated previously that it plans to develop a Consolidated Licensing System (CLS). However, the Commission discontinued its plan to develop CLS. Instead, the Commission plans to make the FCC Form 420–IB available to the public in the International Bureau Filing System (''IBFS''). It is anticipated that this form will be available in IBFS on or before December 2021.

The information collected pursuant to the rules set forth in 47 CFR part 73, subpart F, is used by the Commission to assign frequencies for use by international broadcast stations, to grant authority to operate such stations and to determine if interference or adverse propagation conditions exist that may impact the operation of such stations. If the Commission did not collect this information, it would not be in a position to effectively coordinate spectrum for international broadcasters or to act for entities in times of frequency interference or adverse propagation conditions. The orderly nature of the provision of international broadcast service would be in jeopardy without the Commission's involvement.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2020–15097 Filed 7–13–20; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Agency Information Collection Activities: 60-Day Public Comment Request

AGENCY: Federal Maritime Commission.

ACTION: Notice and request for comments.

SUMMARY: The Federal Maritime Commission (Commission) will be submitting an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The ICR is for an extension with change of a previously approved information collection. Prior to submitting the ICR to OMB, the Commission invites comments on the information collection listed below in this notice.

DATES: Written comments must be submitted on or before September 14, 2020.

ADDRESSES: Comments should be addressed to: Karen V. Gregory, Managing Director, Office of the Managing Director, Federal Maritime Commission, *omd@fmc.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the information collection and instructions, or copies of any comments received, may be obtained by contacting Donna Lee at (202) 523–5800 or email: *omd@fmc.gov.*

REQUEST FOR COMMENTS: The Commission, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the information collection extension with change listed in this notice, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Comments submitted in response to this notice will be included or summarized in our request for OMB approval of the relevant information collection. All comments are part of the public record and subject to disclosure. Please do not include any confidential or inappropriate material in your comments. We invite comments on: (1) The necessity and utility of the information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Information Collection Open for Comment

Title: 46 CFR part 515—Licensing, Registration, Financial Responsibility Requirements and General Duties for Ocean Transportation Intermediaries.

OMB Control Number: 3072–0018 (Expires Dec 31, 2022).

Abstract: The Shipping Act of 1984 (the Act), 46 U.S.C. 40101–41309, as amended, provides that no person in the United States may advertise, hold oneself out, or act as an ocean transportation intermediary (OTI) unless that person holds a license issued by the Commission. The Commission shall issue an OTI license to any person that the Commission determines to be qualified by experience and character to act as an OTI. Further, no person may act as an OTI unless that person furnishes a bond, proof of insurance, or other surety in a form and amount determined by the Commission to insure financial responsibility. The Commission has implemented the Act's OTI requirements in regulations contained in 46 CFR part 515, including financial responsibility Forms FMC–48, FMC–67, FMC–68, and FMC–69, Optional Rider Forms FMC–48A and FMC–69A, its related license application Form FMC–18, and the related foreign-based unlicensed NVOCC registration/renewal Form FMC–65.

Type of Request: Extension with change.

Proposed Changes: Through a Final Rule published in Docket No 19–06, the Commission revised its regulations to implement the provisions of the Frank LoBiondo Coast Guard Authorization Act of 2018. The revisions included amendments to the regulations governing OTIs to reflect statutory changes to the types of persons that are required to be licensed and maintain a bond, insurance, or other surety. The Final Rule also revised the regulations governing the general duties of non-vessel-operating common carriers (NVOCCs) to reflect amendments to several prohibited acts. In particular, the Final Rule eliminated the requirement that registered NVOCCs use only licensed OTIs as agents in the United States. Consistent with this change, the Commission proposes to remove that portion of the certification in the Form FMC–65 that requires applicants to certify that they will only use licensed OTIs for any OTI activities performed on their behalf in the United States.

Purpose: The Commission uses information obtained under this part and through Form FMC–18 to determine the qualifications of OTIs and their compliance with the Act and regulations, and to enable the Commission to discharge its duties under the Act by ensuring that OTIs maintain acceptable evidence of financial responsibility. If the collection of information were not conducted, there would be no basis upon which the Commission could determine if applicants are qualified for licensing. The Commission would also not be able to effectively assess the compliance of foreign-based, unlicensed NVOCCs without the required registration information.

Frequency: This information is collected when applicants apply for a license or submit a registration, complete the triennial renewal, or when existing licensees or registrants change their application forms.

Type of Respondents: The types of respondents are persons desiring to obtain or maintain a license or registration to advertise, hold themselves out as, or act as an OTI. Under the Act, OTIs may be either an ocean freight forwarder, an NVOCC, or both.

Number of Annual Respondents: The Commission estimates a potential annual respondent universe of 6,475 entities.

Estimated Time per Response: The time per response to complete application Form FMC–18 averages 2 hours and to complete the triennial renewal is 10 minutes. The time to complete a financial responsibility form averages 20 minutes. The time to complete Form FMC–65 to submit or renew a registration as a foreign-based, unlicensed NVOCC averages 10 minutes.

Total Annual Burden: The Commission estimates the total annual burden at 3,918 hours.

By the Commission.

Rachel Dickon,

Secretary.

[FR Doc. 2020–15092 Filed 7–13–20; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL RESERVE SYSTEM

Solicitation of Statements of Interest for Membership on the Insurance Policy Advisory Committee

AGENCY: Board of Governors of the Federal Reserve System (Board).

SUMMARY: The Economic Growth, Regulatory Relief, and Consumer Protection Act established at the Board an Insurance Policy Advisory Committee (IPAC). This announcement advises individuals who wish to serve

as IPAC members of the opportunity to be considered for the IPAC.

DATES: Statements of Interest received on or before September 14, 2020 will be given consideration for selection to the IPAC for appointment in 2020.

ADDRESSES: Individuals who are interested in being considered for the IPAC may submit a Statement of Interest to *IPAC@frb.gov.* The Statement of Interest collects only contact information. Candidates may also choose to provide additional information for consideration as part of their interest in serving on the IPAC. Any such supplemental materials may also be emailed to *IPAC@frb.gov.* The Privacy Act Statement for IPAC Member Selection, which describes the purposes, authority, effects of nondisclosure, and uses of this information, can be found at *https://www.federalreserve.gov/aboutthefed/ipac-privacy.htm.*

Submissions may also be mailed to the Board of Governors of the Federal Reserve System, Attn: Insurance Policy Advisory Committee, 20th Street and Constitution Ave. NW, Washington, DC 20551.

FOR FURTHER INFORMATION CONTACT: Thomas Sullivan, Associate Director, (202) 475–7656; Linda Duzick, Manager, (202) 728–5881; or Jan Bauer, Sr. Insurance Policy Analyst, (202) 475–7697, Division of Supervision and Regulation; or *IPAC@frb.gov.*

SUPPLEMENTARY INFORMATION: The Economic Growth, Regulatory Relief, and Consumer Protection Act established at the Board an Insurance Policy Advisory Committee (IPAC) to advise the Board on international capital standards and other insurance matters. This document advises individuals of the opportunity to be considered for appointment to the IPAC. To assist with the selection of IPAC members, the Board will consider the information submitted by the candidate along with other information that it independently obtains.

Council Size and Terms

The IPAC will have no more than 21 members. The initial IPAC members, selected in 2019, have staggered terms to provide the IPAC with continuity. Members chosen at subsequent times will be appointed to three-year terms unless the appointment is made to fill an unexpired term. Selected members will serve a three-year term on IPAC commencing on January 1, 2021, unless selected to fill an unexpired term. The Board will provide a nominal honorarium and will reimburse IPAC members only for their actual travel expenses subject to Board policy.

Statement of Interest

The Statement of Interest for the IPAC collects the following contact information about the candidate:

- Full name;
- Address;
- Phone number; and
- Email address.

At their option, candidates may also provide additional information for consideration as part of their interest in serving on the IPAC.

Qualifications

IPAC candidates should be insurance experts. The Board seeks a diverse set of expert perspectives from the various sectors of the U.S. insurance industry including life insurance, property and casualty insurance and reinsurance, agents and brokers, academics, consumer advocates, and experts on issues facing underserved insurance communities and consumers. The Board also seeks relevant actuarial, legal, regulatory, and accounting expertise, as well as expertise on lines of business underwritten by its currently supervised population of insurance institutions.

IPAC members must be willing and able to participate in conference calls and prepare for and attend meetings in person. IPAC membership and attendance is not delegable.

By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Supervision & Regulation under delegated authority, June 29, 2020.

Ann Misback,

Secretary of the Board.

[FR Doc. 2020–15102 Filed 7–13–20; 8:45 am]

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FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

Correction

In the **Federal Register** of June 24, 2020, in FR Doc. 2020–13633, ''Formations of, Acquisitions by, and Mergers of Bank Holding Companies'' pursuant to the Bank Holding Company Act of 1956 and the Board's Regulation Y, under the heading, *Federal Reserve Bank of Chicago, Katz Acquisition Corporation, LLC, Tampa, Florida;*, on page 37947, in the first column, at the end of the first full paragraph, the comment period end date is corrected to read July 24, 2020.

Interested persons may view the notice and submit comments as provided in 85 FR 37946 (June 24, 2020) no later than July 24, 2020.

Board of Governors of the Federal Reserve System, July 7, 2020.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2020–14985 Filed 7–13–20; 8:45 am]

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FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association.

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 whether the proposed transaction complies with the standards enumerated in the HOLA (12 U.S.C. 1467a(e)).

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 August 13, 2020.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Forward Mutual Holding Company and Forward Financial, Inc., both of Marshfield, Wisconsin;* to convert from bank holding companies to a mutual holding company and a mid-tier stock savings and loan holding company, respectively, by retaining voting shares of Forward Bank, a state savings

association, also of Marshfield, Wisconsin, and indirectly engage in real estate development and management activities pursuant to section 238.53(b)(4)–(8) of Regulation LL.

Board of Governors of the Federal Reserve System, July 9, 2020.

Yao-Chin Chao,

Assistant Secretary of the Board.

[FR Doc. 2020–15182 Filed 7–13–20; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Supplemental Evidence and Data Request on Continuous Positive Airway Pressure Treatment for Obstructive Sleep Apnea in Medicare Eligible Patients

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Request for supplemental evidence and data submissions.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from the public. Scientific information is being solicited to inform our review on *Continuous Positive Airway Pressure Treatment of Obstructive Sleep Apnea in Medicare Eligible Patients,* which is currently being conducted by the AHRQ's Evidence-based Practice Centers (EPC) Program. Access to published and unpublished pertinent scientific information will improve the quality of this review.

DATES: *Submission Deadline* on or before 30 days after date of publication of this Notice.

ADDRESSES:

Email submissions: epc@ahrq.hhs.gov.

Print submissions:

Mailing Address: Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E53A, Rockville, MD 20857.

Shipping Address (FedEx, UPS, etc.): Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E77D, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Jenae Benns, Telephone: 301–427–1496 or Email: *epc@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION: The Agency for Healthcare Research and Quality has commissioned the Evidence-based Practice Centers (EPC) Program to complete a review of the evidence for Continuous Positive Airway Pressure Treatment of Obstructive Sleep Apnea in Medicare Eligible Patients. AHRQ is conducting this systematic review pursuant to Section 902(a) of the Public Health Service Act, 42 U.S.C. 299a(a).

The EPC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by requesting information from the public (*e.g.,* details of studies conducted). We are looking for studies that report on *Continuous Positive Airway Pressure Treatment of Obstructive Sleep Apnea in Medicare Eligible Patients,* including those that describe adverse events. The entire research protocol is available online at: *https://www.ahrq.gov/research/findings/ta/index.html#supplemental.*

This is to notify the public that the EPC Program would find the following information on *Continuous Positive Airway Pressure Treatment of Obstructive Sleep Apnea in Medicare Eligible Patients* helpful:

- A list of completed studies that your organization has sponsored for this indication. In the list, please *indicate whether results are available on ClinicalTrials.gov along with the ClinicalTrials.gov trial number.*
- *For completed studies that do not have results on ClinicalTrials.gov,* a summary, including the following elements: study number, study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to follow-up/withdrawn/analyzed, effectiveness/efficacy, and safety results.
- *A list of ongoing studies that your organization has sponsored for this indication.* In the list, please provide the ClinicalTrials.gov trial number or, if the trial is not registered, the protocol for the study including a study number, the study period, design, methodology, indication and diagnosis, proper use instructions, inclusion and exclusion criteria, and primary and secondary outcomes.
- Description of whether the above studies constitute *ALL Phase II and above clinical trials* sponsored by your organization for this indication and an index outlining the relevant information in each submitted file.

Your contribution is very beneficial to the Program. Materials submitted must be publicly available or able to be made public. Materials that are considered confidential; marketing materials; study types not included in the review; or information on indications not included in the review cannot be used by the EPC Program. This is a voluntary request for information, and all costs for complying with this request must be borne by the submitter.

The draft of this review will be posted on AHRQ's EPC Program website and available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted, please sign up for the email list at: *https://www.effectivehealthcare.ahrq.gov/email-updates.*

The systematic review will answer the following questions. This information is provided as background. AHRQ is not requesting that the public provide answers to these questions.

Contextual and Key Questions (KQ)

Contextual Questions

CQ 1: What measures related to apneas and hypopneas (*e.g.,* apnea indices, hypopnea indices, and apnea-hypopnea indices with various measurements) or other measures (*e.g.,* time spent with oxygen saturation below 90% or other cutoffs, electrophysiologic signal analysis metrics such as time and frequency domain analyses of heart beats) are used in contemporary research and clinical settings? How have standard definitions of these measures changed over time and what is the explanation for such changes?

CQ 2: What are commonly used sleep questionnaires and how have they been validated?

CQ 3: What treatment modalities for OSA are currently being marketed in the U.S.? What OSA treatments (experimental or approved) are currently being investigated in ongoing trials for patients as an alternative to CPAP?

CQ 4: What are the variable features of marketed CPAP devices?

CQ 5: What are the patient-centered health outcome goals and symptom relief goals of CPAP devices?

Key Questions

KQ 1: What is the efficacy, effectiveness, comparative effectiveness, and harms of CPAP devices to improve *clinically significant outcomes*?

KQ 1a: How are respiratory disturbance events (apnea, hypopnea,

arousal) defined in each study? What are the diagnostic criteria for OSA (or criteria to treat with CPAP) in each study? How do the diagnostic criteria relate to time of AASM criteria? Do treatment effects of CPAP differ by the specific diagnostic criteria used within or across studies?

KQ 1b: What is the within-study concordance in CPAP trials among apnea and hypopnea indices (*e.g.,* AHI), sleep questionnaires (*e.g.,* Epworth Sleepiness Scale), and clinically significant outcomes?*

KQ 1c: Do the clinical effects or harms of specific CPAP devices differ by patient subgroups, duration of followup, or particular CPAP features?

KQ 1d: Summarize the methodological issues in the existing studies.

KQ 2: What is the evidence that apnea and hypopnea-based measures of sleep-disordered breathing (*e.g.,* apneic indices, hypopnea indices, and apnea-hypopnea indices) used in current practice and research are valid surrogate or intermediate measures for clinically significant outcomes?

KQ 2a: Summarize the methodological issues in the existing studies. What is the ideal study design for establishing the validity of a surrogate or intermediate measure?

* Note that the association between changes in apnea and hypopnea indices and clinical outcomes across a broader set of studies is primarily addressed in KQ 2.

Systematic Review Study Eligibility Criteria

Eligibility Criteria Relevant to Both KQs

Population

- Adults (>18 years)
- *Exclude* studies with any pregnant women
- *Exclude* studies in which any participants are reported to have, at baseline, central sleep apnea (from any cause including prior stroke, severe heart failure, among others), obesity hypoventilation syndrome (Pickwickian syndrome), neuromuscular disease, Parkinson disease, Down syndrome, Prader-Willi syndrome, major congenital skeletal abnormalities, narcolepsy, narcotic addiction, Alzheimer disease, epilepsy and or with mild cognitive impairment

Intervention/Comparator

- *Exclude* studies of surgical interventions for OSA or bariatric surgery

Outcomes

- Hard clinical outcomes
  - Major clinical outcomes
    - Death
    - Cardiovascular and cerebrovascular events or incident diagnosis
    - Motor vehicle accidents
    - Composite outcomes that include only major clinical outcomes (*e.g.,* major adverse cardiovascular events defined as including all-cause mortality)
  - Other patient-centered and/or clinically significant outcomes
    - Other cardiovascular outcomes
    - Objective measures of cardiovascular severity (categorized, not continuous measures such as intima media thickness)
    - Incident hypertension (or regression to normotension)
    - Arrhythmias
    - Incident arrhythmias (or resolution of arrhythmias)
    - Clinically significant ventricular arrhythmias
    - Atrial fibrillation
    - New-onset diabetes mellitus or prediabetes (or regression to normoglycemia)
    - Mental health conditions, including depression, anxiety, and substance use disorder: Incident diagnosis or resolution
    - Cognitive function: Clinical diagnosis (*e.g.,* of dementia) or validated executive function measures
    - Quality of life and functional outcomes (validated measures)
    - Sexual function: Clinical diagnosis (*e.g.,* diagnosis of erectile dysfunction or anorgasmia) or their resolution
    - Sequelae of sleep deprivation (*e.g.,* trauma, missed work or school)
    - Other clinically significant outcomes reported in studies or as found for CQ 5
    - Exclude
    - Blood pressure
    - Asymptomatic arrhythmias or laboratory measures (*e.g.,* captured by electrophysiologic testing [heart rate variability, QTc interval, etc.])
    - Glycemia measures (*e.g.,* hemoglobin A1c, fasting blood glucose)
    - Instruments to measure severity of OSA (including AHI and sleepiness)
- Minimum duration for associations with death, incident cardiovascular events, *hypertension, or diabetes* is 1 year
- *Minimum duration for all other outcomes is 6 months*

Mediators of treatment effect (or association) (*e.g.,* factors to be evaluated in subgroup analyses) Note that *these are not eligibility criteria,* but are factors that will evaluated to potentially explain different findings across studies; *e.g.,* by subgroup analysis, regression, or other methods to evaluate heterogeneity of treatment effect)

- Body weight/obesity/neck circumference, etc.
- Weight change (loss or gain)
- Prior cardiovascular, cerebrovascular, or other major clinical disease/condition
- Sex/gender
- Race/ethnicity
- Severity of OSA (as defined by study)
- Other mediators as reported in primary studies

Setting

- Outpatient only (except for sleep laboratory setting for measurement of sleep and breathing measures)
- *Exclude* acute care hospital settings (including perioperative)

Additional Eligibility Criteria Specific to KQ 1

Populations

- As listed above, for both KQs

Intervention (CPAP)

- CPAP for treatment (not diagnosis or staging) of OSA
  - At least 1 month of prescribed (planned) treatment
- *Exclude* intervention designed only to improve CPAP compliance/adherence (*i.e.,* not an intervention of CPAP, *per se*)
- *Exclude* evaluations of accessories only (*e.g.,* nasal cannulas, head straps, humidifiers)
- *Exclude* evaluation of CPAP titration methods, *per se,* including specific parameters or modes (*e.g.,* starting pressures)
- *Exclude* evaluations of other features meant to improve comfort or adherence
- *Exclude* other non-CPAP interventions (*e.g.,* different times of monitoring, scoring), including noninvasive ventilation

Comparators

- No CPAP
- Non-CPAP active interventions for OSA (*e.g.,* mandibular advancement device)
  - *Exclude* bariatric surgery (as a comparator treatment)
  - *Exclude* surgical OSA procedure (as a comparator treatment)
- Other CPAP modality or protocol (*e.g.,* autoCPAP vs. bilevel CPAP)

Exclude comparisons with different accessories, titration methods, features to improve comfort or adherence, other non-CPAP interventions (*e.g.,* different times of monitoring, scoring), including noninvasive

Outcomes

- As listed above, for both KQs
- Sleep and breathing measures (*e.g.,* AHI) and validated sleep questionnaires (*e.g.,* Epworth Sleepiness Scale) (only for the purpose of addressing KQ 1b, not as outcomes of interest)
- Adverse events related to CPAP use

Mediators of treatment effect (*e.g.,* subgroup analyses; see note above about mediators)

- As listed above, for both KQs
- New or prior OSA diagnosis
- Treatment naïve versus failed prior treatment
- First versus second or more use of CPAP
- Treatment (CPAP) compliance
- Treatment (CPAP) discontinuation

Design

- Randomized controlled trials (RCT)
  - Consider whether study met power calculation for the outcome(s) of interest (including adverse events)
- Nonrandomized comparative studies (NRCS)
  - Restrict to studies that use modeling or other analytic methods to minimize confounding bias (due to inherent differences between people who receive one or the other intervention)
  - *Exclude* case-control design
  - *Exclude* ''pre-post'' design (comparison of before and after CPAP treatment in a single group of participants)
- Longitudinal
  - *Exclude* cross-sectional

Additional Eligibility Criteria Specific to KQ 2

For KQ 2, we will include studies that measure a change in the intermediate/surrogate measure (*e.g.,* AHI) over a period of time and report on outcomes of interest. We will include studies that provide formal evaluation of validity of the intermediate/surrogate measure for the clinical outcome and other studies that report sufficient data to analyze a potential association between the change in the measure and the clinical outcome.

Population

- Adults
  - Do not require a diagnosis of OSA (for evaluations of associations of measures)
  - *Exclude* populations as described under ''Eligibility Criteria relevant to Both KQs''

Intermediate/Surrogate measures (variables of interest evaluated regarding their association with clinical outcomes)

- Sleep and breathing measures
  - Indices based on apneas or hypopneas (*e.g.,* AHI, RDI) or other respiratory events such as RERAs, oxygen desaturations
- *Exclude* evaluations of isolated neurophysiologic parameters of sleep (*e.g.,* respiratory effort, heart rate, air flow, pulse oximetry alone) and cardiac electrophysiology indices (*e.g.,* heart rate variability)

Outcomes

- As listed above, for both KQs
- Each study must report both one or more intermediate/surrogate measures (*i.e.,* sleep and breathing measures) *and* one or more outcomes of interest

Additional mediators of association (*e.g.,* analyzed by subgroup analyses)

- As listed above, for both KQs
- Definition of sleep and breathing measure

Study Design

- Longitudinal studies informing on person-level associations of sleep and breathing measure(s) with outcome(s)
  - Patient-level association between *change* in measure and *change or incident* outcome (*i.e.,* evaluation of association reported within study)
  - *Exclude* cross-sectional studies
- Comparative or noncomparative (single group) studies
- N ≥ 30 analyzed for a given association between intermediate/surrogate measure and outcome

Dated: July 9, 2020.

Virginia Mackay-Smith,

Associate Director.

[FR Doc. 2020–15172 Filed 7–13–20; 8:45 am]

BILLING CODE 4160–90–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 ''Clinical Decision Support (CDS) for Chronic Pain Management.''

DATES: Comments on this notice must be received by 60 days after date of publication of this notice.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *doris.lefkowitz@AHRQ.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by emails at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Clinical Decision Support (CDS) for Chronic Pain Management

Prescription opioid pain medication overuse, misuse, and abuse have been a significant contributing factor in the opioid epidemic. The goal of this project is to develop, implement, disseminate, and evaluate clinical decision support (CDS) tools for both patients and clinicians in the management of chronic pain. The CDS tools are intended to be interoperable and publicly-shareable, and will be designed to meet the needs of patients and clinicians through both patient-facing and clinician-facing channels and formats.

The development and deployment of CDS tools designed to optimize opioid dose reduction is intended to support primary care physicians who are not pain-management specialists as they care for patients who are at high risk of harm from opioids. This goal will be achieved through the design, development, implementation, and evaluation of a clinician-facing CDS tool for chronic pain management that optimize presentation of patient data and evidence-based guidelines to support opioid tapering. The clinician-facing CDS tool will help non-pain specialists detect patients at high risk of harm from opioids, provide personalized evidence-based guidelines to support opioid tapering, optimize the presentation of patient data, and reduce unnecessary variation in clinical practice.

The clinician-facing CDS tool will also assist non-pain specialists in determining if an opioid taper is necessary for a specific patient, aid in

performing the taper, and aid in providing follow-up and support during the taper. The clinician-facing CDS tools are meant to accomplish three goals: (1) Better monitor the patient's functional pain and opioid use, (2) visualize patient data, and (3) incorporate guidelines for prescribing and tapering opioids for chronic pain. The patient-facing CDS tool will be used to help patients at high-risk of harm from opioids track and manage chronic pain and daily function to support reduced opioid use. This goal will be achieved through the design, development, implementation, and evaluation of a CDS tool that facilitates continued patient provider engagement. This patient-facing CDS tool will deliver support in ways that enhance patient activation, education and engagement, and collaborative decisions and actions between patients and their care teams. The patient-facing CDS tool should enhance the quality of clinical discussion between healthcare providers and patients by allowing for continued patient engagement outside of the clinical setting.

This study is being conducted by AHRQ through its contractor, MedStar Health, pursuant to AHRQ's statutory authority to assist users of health information technology focused on CDS to promote the timely incorporation of comparative clinical effectiveness research into clinical practices. 42 U.S.C 299b–37(c).

Method of Collection

To achieve the goals of this project the following data collections will be implemented.

(1) Post-Use Survey with Primary Care Providers ''Evaluation Provider Survey'': This evaluation includes the collection of qualitative data through a short survey with primary care providers who used the clinician-facing CDS tool for chronic pain management (up to a maximum of 60). The research team will collect insights from providers on their experience of implementing and using the clinician-facing CDS tool for chronic pain management. The survey will be accessible in both online and paper formats.

(2) Post-Use Survey with Patients ''Evaluation Patient Survey'': This evaluation includes the collection of qualitative data through a short survey with patients who used the patient-facing CDS tool for pain management (up to a maximum of 150). The research team will collect insights from patients on their experience of implementing and using patient-facing CDS. The survey will be accessible in both online and paper formats.

(3) Post-Use Interview with Primary Care Providers ''Evaluation Provider Interview'': This evaluation component includes the collection of qualitative data through an in-depth thirty-minute interview with primary care providers who used the clinician-facing CDS tool for chronic pain management (up to a maximum of 10). The research team will collect insights from providers on their experience of implementing and using this clinician-facing CDS tool.

(4) Post-Use Interviews with Patients ''Evaluation Patient Interview'': This evaluation component includes the collection of qualitative data through an in-depth thirty-minute interview with patients who used the patient-facing CDS tool for pain management (up to a maximum of 20). The research team will collect insights from patients on their experience of implementing and using the patient-facing CDS tool.

(5) Post-Use Interviews with Site Champions ''Evaluation Site Champion Interview'': This evaluation component includes the collection of qualitative data through thirty-minute interviews with site leads (up to a maximum of 15) and site visits during which the research team will collect insights from providers and patients on their experience of implementing and using the clinical-facing and patient-facing CDS tools from the perspective of the site champions.

Estimated Annual Respondent Burden

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
Post-Use Survey with Providers	60	1	0.25	15
Post-Use Survey with Patients	150	1	0.25	37.5
Post-Use Interview with Providers	10	1	0.5	5
Post-Use Interview with Patients	20	1	0.5	10
Post-Use Interview with Site Champions	15	1	0.5	7.5
Total	255	5	2	75

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate *	Total cost burden
Post-Use Survey with Providers	60	15	[b] $102.73	$1,540.95
Post-Use Survey with Patients	150	37.5	[a] 25.72	964.50
Post-Use Interview with Providers	10	5	[b] 102.73	513.65
Post-Use Interview with Patients	20	10	[a] 25.72	257.20
Post-Use Interview with Site Champions	15	7.5	[b] 102.73	770.48
Total	255	75	53.95	4,046.78

* National Compensation Survey: Occupational wages in the United States May 2019, ''U.S. Department of Labor, Bureau of Labor Statistics'', *https://www.bls.gov/oes/current/oes_nat.htm#b29-0000.htm.*

[a] Based on the mean wages for *all occupations (00–0000).*

[b] Based on the mean wages for *Family Medicine Physicians (29–1215).*

Request for Comments

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, 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: July 8, 2020.

Virginia L. Mackay-Smith,

Associate Director.

[FR Doc. 2020–15147 Filed 7–13–20; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–D–1118]

Select Updates for Guidance for the Non-Clinical and Clinical Investigation of Devices Used for the Treatment of Benign Prostatic Hyperplasia; Draft Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, Health and Human Services (HHS).

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of the draft guidance entitled ''Select Updates for Guidance for the Non-Clinical and Clinical Investigation of Devices Used for the Treatment of Benign Prostatic Hyperplasia (BPH).'' FDA has developed this draft guidance to propose select updates to certain sections of the existing FDA guidance document ''Guidance for the Non-Clinical and Clinical Investigation of Devices Used for the Treatment of Benign Prostatic Hyperplasia (BPH).'' This draft guidance is not final nor is it in effect at this time.

DATES: Submit either electronic or written comments on the draft guidance by September 14, 2020 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–D–1118 for ''Select Updates for Guidance for the Non-Clinical and Clinical Investigation of Devices Used for the Treatment of Benign Prostatic Hyperplasia (BPH).'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

An electronic copy of the guidance document is available for download from the internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the draft guidance document entitled ''Select Updates for Guidance for the Non-Clinical and Clinical Investigation of Devices Used for the Treatment of Benign Prostatic Hyperplasia (BPH)'' to the Office of Policy, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug

Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

FOR FURTHER INFORMATION CONTACT: Charles Viviano, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 2680, Silver Spring, MD 20993–0002, 240–402–2975.

SUPPLEMENTARY INFORMATION:

I. Background

FDA has developed this draft guidance to propose select updates to the FDA guidance document ''Guidance for the Non-Clinical and Clinical Investigation of Devices Used for the Treatment of Benign Prostatic Hyperplasia (BPH).'' The existing guidance on devices used for the treatment of BPH remains in effect, in its current form, until this draft guidance is finalized. FDA intends to incorporate this draft guidance into one final guidance document after obtaining and considering public comment on these select updates. The sections of the existing BPH guidance that are not affected by this select update will not be substantively changed and will remain in effect.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''Select Updates for Guidance for the Non-Clinical and Clinical Investigation of Devices Used for the Treatment of Benign Prostatic Hyperplasia (BPH).'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the draft guidance may do so by downloading an electronic copy from the internet. A search capability for all Center for Devices and Radiological Health guidance documents is available at *https://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm.* This guidance document is also available at *https://www.regulations.gov.* Persons unable to download an electronic copy of ''Select Updates for Guidance for the Non-Clinical and Clinical Investigation of Devices Used for the Treatment of Benign Prostatic Hyperplasia (BPH)'' may send an email request to *CDRH-Guidance@fda.hhs.gov* to receive an electronic copy of the document. Please use the document number 1724 and the full title to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information in the following FDA regulations and guidance have been approved by OMB as listed in the following table:

21 CFR part or guidance	Topic	OMB control No.
58	Good Laboratory Practice (GLP) Regulations for Nonclinical Laboratory Studies.	0910–0119
800, 801, and 809	Medical Device Labeling Regulations	0910–0485
807, subpart E	Premarket Notification	0910–0120
812	Investigational Device Exemption	0910–0078
814, subparts A through E	Premarket Approval Applications	0910–0231
''De Novo Classification Process (Evaluation of Automatic Class III Designation)''.	De Novo Classification Process	0910–0844
''Requests for Feedback on Medical Device Submissions: The Pre-Submission Program and Meetings with Food and Drug Administration Staff''.	Q-submissions	0910–0756

Dated: July 8, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–15089 Filed 7–13–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1584]

Authorization of Emergency Use of Certain Medical Devices During COVID–19; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance and reissuance of Emergency Use Authorizations (EUAs) (the Authorizations) for certain medical devices related to the Coronavirus Disease 2019 (COVID–19) public health emergency. FDA has issued, and in some cases reissued, the Authorizations listed in this document under the Federal Food, Drug, and Cosmetic Act (FD&C Act). These Authorizations contain, among other things, conditions on the emergency use of the authorized products. The Authorizations follow the February 4, 2020, determination by Secretary of Health and Human Services (HHS) that there is a public health emergency that has a significant potential to affect national security or the health and security of U.S. citizens living abroad, and that involves the virus that causes COVID–19, and the subsequent declarations on February 4, 2020, March 2, 2020, and March 24, 2020, that circumstances exist justifying the authorization of emergency use of in vitro diagnostics for detection and/or diagnosis of the virus that causes COVID–19, personal respiratory protective devices, and medical devices, including alternative products used as medical devices, respectively, subject to the terms of any authorization issued under the FD&C Act. These Authorizations, which include an explanation of the reasons for issuance and reissuance, are listed in this document, and are available on FDA's website at the links indicated.

DATES: These Authorizations are applicable on their date of issuance.

ADDRESSES: Submit written requests for single copies of the EUA to the Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4338, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the Authorization may be sent.

See the **SUPPLEMENTARY INFORMATION** section for electronic access to the Authorization.

FOR FURTHER INFORMATION CONTACT: Jennifer J. Ross, Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4332, Silver Spring, MD 20993–0002, 301–796–8510 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 564 of the FD&C Act (21 U.S.C. 360bbb–3) allows FDA to strengthen the public health protections against biological, chemical, radiological, or nuclear agent or agents. Among other things, section 564 of the FD&C Act allows FDA to authorize the use of an unapproved medical product or an unapproved use of an approved medical product in certain situations. With this EUA authority, FDA can help ensure that medical countermeasures may be used in emergencies to diagnose, treat, or prevent serious or life-threatening diseases or conditions caused by a biological, chemical, radiological, or nuclear agent or agents when there are no adequate, approved, and available alternatives.

Section 564(b)(1) of the FD&C Act provides that, before an EUA may be issued, the Secretary of HHS must declare that circumstances exist justifying the authorization based on one of the following grounds: (1) A determination by the Secretary of Homeland Security that there is a domestic emergency, or a significant potential for a domestic emergency, involving a heightened risk of attack with a biological, chemical, radiological, or nuclear agent or agents; (2) a determination by the Secretary of Defense that there is a military emergency, or a significant potential for a military emergency, involving a heightened risk to U.S. military forces, including personnel operating under the authority of title 10 or title 50 of the U.S. Code, of attack with (A) a biological, chemical, radiological, or nuclear agent or agents; or (B) an agent or agents that may cause, or are otherwise associated with, an imminently life-threatening and specific risk to U.S. military forces; [1] (3) a determination by the Secretary of HHS that there is a public health emergency, or a significant potential for a public health emergency, that affects, or has a significant potential to affect, national security or the health and security of U.S. citizens living abroad, and that involves a biological, chemical, radiological, or nuclear agent or agents, or a disease or condition that may be attributable to such agent or agents; or (4) the identification of a material threat by the Secretary of Homeland Security pursuant to section 319F–2 of the Public Health Service (PHS) Act (42 U.S.C. 247d–6b) sufficient to affect national security or the health and security of U.S. citizens living abroad.

Once the Secretary of HHS has declared that circumstances exist justifying an authorization under section 564 of the FD&C Act, FDA may authorize the emergency use of a drug, device, or biological product if the Agency concludes that the statutory criteria are satisfied. Under section 564(h)(1) of the FD&C Act, FDA is required to publish in the **Federal Register** a notice of each authorization, and each termination or revocation of an authorization, and an explanation of the reasons for the action. Section 564 of the FD&C Act permits FDA to authorize the introduction into interstate commerce of a drug, device, or biological product intended for use when the Secretary of HHS has declared that circumstances exist justifying the authorization of emergency use. Products appropriate for emergency use may include products and uses that are not approved, cleared, or licensed under sections 505, 510(k), 512, or 515 of the FD&C Act (21 U.S.C. 355, 360(k), 360b, or 360e) or section 351 of the PHS Act (42 U.S.C. 262), or conditionally approved under section 571 of the FD&C Act (21 U.S.C. 360ccc). FDA may issue an EUA only if, after consultation with the HHS Assistant Secretary for Preparedness and Response, the Director of the National Institutes of Health, and the Director of the Centers for Disease Control and Prevention (to the extent feasible and appropriate given the applicable circumstances), FDA [2] concludes: (1) That an agent referred to in a declaration of emergency or threat can cause a serious or life-threatening disease or condition; (2) that, based on the totality of scientific evidence available to FDA, including data from adequate and well-controlled clinical trials, if available, it is reasonable to believe that (A) the product may be effective in diagnosing, treating, or preventing (i) such disease or condition; or (ii) a serious or life-threatening disease or condition caused by a product authorized under section 564, approved or cleared under the FD&C Act, or licensed under section 351 of the PHS Act, for diagnosing, treating, or preventing such a disease or condition caused by such an agent; and (B) the known and potential benefits of the product, when used to diagnose, prevent, or treat such disease or condition, outweigh the known and potential risks of the product, taking into consideration the material threat posed by the agent or agents identified in a declaration under section 564(b)(1)(D) of the FD&C Act, if applicable; (3) that there is no adequate, approved, and available alternative to the product for diagnosing, preventing, or treating such disease or condition; (4) in the case of a determination described in section 564(b)(1)(B)(ii), that the request for emergency use is made by the Secretary of Defense; and (5) that such other criteria as may be prescribed by regulation are satisfied.

No other criteria for issuance have been prescribed by regulation under section 564(c)(4) of the FD&C Act.

III. Electronic Access

An electronic version of this document and the full text of the Authorizations are available on the internet at *https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization.*

IV. The Authorizations

Having concluded that the criteria for the issuance and, in some cases reissuance, of the following Authorizations under section 564(c) of the FD&C Act are met, FDA has authorized the emergency use of the following products for diagnosing, treating, or preventing COVID–19 subject to the terms of each Authorization. The Authorizations in their entirety, including any authorized fact sheets and other written materials, are available on the internet from the FDA web page entitled ''Emergency Use Authorization,'' available at *https://www.fda.gov/emergency-preparedness-and-response/mcm-legal-regulatory-and-policy-framework/emergency-use-authorization.* The lists that follow include Authorizations issued, in some cases reissued, from April 11, 2020, through May 15, 2020, and we have included explanations of the reasons for their issuance, as required by section 564(h)(1) of the FD&C Act. FDA is

[1] In the case of a determination by the Secretary of Defense, the Secretary of HHS shall determine within 45 calendar days of such determination, whether to make a declaration under section 564(b)(1) of the FD&C Act, and, if appropriate, shall promptly make such a declaration.

[2] The Secretary of HHS has delegated the authority to issue an EUA under section 564 of the FD&C Act to the Commissioner of Food and Drugs.

hereby announcing the following Authorizations for in vitro diagnostics: [3]

- Ortho-Clinical Diagnostics, Inc.'s VITROS Immunodiagnostic Products Anti-SARS–CoV–2 Total Reagent Pack, issued April 14, 2020;
- Chembio Diagnostic System, Inc.'s DPP COVID–19 IgM/IgG System, issued April 14, 2020;
- Mount Sinai Laboratory's COVID–19 [enzyme-linked immunosorbent assay] ELISA IgG Antibody Test, issued April 15, 2020;
- Maccura Biotechnology (USA) LLC's SARS–CoV–2 Fluorescent PCR Kit, issued April 15, 2020;
- GenoSensor, LLC's GS COVID–19 RT–PCR KIT, issued April 16, 2020;
- KorvaLabs Inc.'s Curative-Korva SARS–CoV–2 Assay, issued April 16, 2020;
- Fosun Pharma USA Inc.'s Fosun COVID–19 RT–PCR Detection Kit, issued April 17, 2020;
- OSANG Healthcare's GeneFinder COVID–19 Plus RealAmp Kit, issued April 18, 2020;
- Trax Management Services Inc.'s PhoenixDx 2019–CoV, issued April 20, 2020;
- Laboratory Corporation of America's COVID–19 RT–PCR Test, reissued April 20, 2020 (original issuance March 16, 2020);
- Seegene, Inc.'s Allplex 2019–nCoV Assay, issued April 21, 2020;
- altona Diagnostics GmbH's RealStar SARS–CoV–2 RT–PCR Kits U.S., issued April 22, 2020;
- SD Biosensor, Inc.'s STANDARD M nCoV Real-Time Detection Kit, issued April 23, 2020;
- Autobio Diagnostics Co. Ltd.'s Anti-SARS–CoV–2 Rapid Test, issued April 24, 2020;
- Ortho-Clinical Diagnostics, Inc.'s VITROS Immunodiagnostic Products Anti-SARS–CoV–2 IgG Reagent Pack, issued April 24, 2020;
- DiaSorin Inc.'s LIAISON SARS–CoV–2 S1/S2 IgG, issued April 24, 2020;
- Abbott Laboratories Inc.'s SARS–CoV–2 IgG assay, issued April 26, 2020;
- SEASUN BIOMATERIALS's U–TOP COVID–19 Detection Kit, issued April 27, 2020;
- Bio-Rad Laboratories, Inc's Platelia SARS–CoV–2 Total Ab assay, issued April 29, 2020;
- Rheonix, Inc.'s Rheonix COVID–19 MDx Assay, issued April 29, 2020;
- LabGenomics Co., Ltd.'s LabGun COVID–19 RT–PCR Kit, issued April 29, 2020;
- Wadsworth Center, New York State Department of Health's New York SARS–CoV Microsphere Immunoassay for Antibody Detection, issued April 30, 2020;
- BioFire Diagnostics, LLC's BioFire Respiratory Panel 2.1 (RP2.1), issued May 1, 2020;
- Bio-Rad Laboratories, Inc.'s Bio-Rad SARS–CoV–2 ddPCR Test, issued May 1, 2020;
- Roche Diagnostics's Elecsys Anti-SARS–CoV–2, issued May 2, 2020;
- Sansure BioTech Inc.'s Novel Coronavirus (2019–nCoV) Nucleic Acid Diagnostic Kit (PCR-Fluorescence Probing), issued May 4, 2020;
- EUROIMUN US Inc.'s Anti-SARS–CoV–2 ELISA (IgG), issued May 4, 2020;
- Fast Track Diagnostics Luxembourg S.á.r.l's. (a Siemens Healthineers Company) FTD SARS–CoV–2, issued May 5, 2020;
- BioMérieux SA's SARS–COV–2 R–GENE, issued May 6, 2020;
- Sherlock BioSciences, Inc.'s Sherlock CRISPR SARS–CoV–2 Kit, issued May 6, 2020;
- OPTI Medical Systems, Inc.'s OPTI SARS–CoV–2 RT PCR Test, issued May 6, 2020;
- Zymo Research Corp.'s Quick SARS–Cov–2rRT–PCR Kit, issued May 7, 2020;
- Rutgers Clinical Genomics Laboratory at RUCDR Infinite Biologics-Rutgers University's Rutgers Clinical Genomics Laboratory TaqPath SARS–CoV–2 Assay, reissued May 7, 2020 (original issuance April 10, 2020);
- Gnomegen LLC's Gnomegen COVID–19–RT–qPCR Detection Kit, issued May 8, 2020;
- Quidel Corporation's Sofia 2 SARS Antigen FIA, issued May 8, 2020;
- Abbott Molecular Inc.'s Alinity m SARS–CoV–2 assay, issued May 11, 2020;
- 1drop Inc.'s 1copy COVID–19 qPR Multi Kit, issued May 11, 2020;
- Applied DNA Sciences, Inc.'s Linea COVID–19 Assay Kit, issued May 13, 2020;
- GeneMatrix, Inc.'s NeoPlex COVID–19 Detection Kit, issued May 14, 2020;
- Hologic, Inc., Aptima SARS–CoV–2 assay, issued May 14, 2020;
- Assurance Scientific Laboratories' Assurance SARS–CoV–2 Panel, issued May 15, 2020;
- Fulgent Therapeutics, LLC's Fulgent COVID–19 by RT–PCR Test, issued May 15, 2020; and
- Certain SARS–CoV–2 Antibody Tests (lateral flow or ELISA tests) that are for use in laboratories certified under the Clinical Laboratory Improvement Amendments of 1988, 42 U.S.C. 263a, to perform moderate or high complexity tests, issued on April 28, 2020 (a current list of tests included under this EUA is available at *https://www.fda.gov/media/137471/download*).

FDA is hereby announcing the following Authorizations for personal respiratory protective devices: [4]

- Certain Non-[National Institute of Industrial and Occupational Safety]NIOSH-Approved Disposable Filtering Facepiece Respirators Manufactured in China, reissued May 7, 2020, (original issuance April 3, 2020). A current list of respirators included under this EUA is available at *https://www.fda.gov/media/136663/download*).

FDA is hereby announcing the following Authorizations for other medical devices:

- B. Braun Medical, Inc.'s B. Braun Space and Outlook Pumps, issued April 11, 2020; [5]
- Advanced Sterilization Products, Inc.'s ASP STERRAD Sterilization Systems, issued April 11, 2020; [6]

[3] As set forth in the EUAs for these devices, FDA has concluded that: (1) SARS–CoV–2, the virus that causes COVID–19, can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that the devices may be effective in diagnosing COVID–19, and that the known and potential benefits of the devices, when used for diagnosing COVID–19, outweigh the known and potential risks of such devices; and (3) there is no adequate, approved, and available alternative to the emergency use of the devices.

[4] As set forth in the EUAs, FDA has concluded that: (1) SARS–CoV–2 can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is either reasonable to believe that the authorized respirators may be effective in preventing healthcare personnel (HCP) exposure to pathogenic biological airborne particulates during Filtering Facepiece Respirator (FFR) shortages, and that the known and potential benefits of the authorized respirators, when used to prevent HCP exposure to such particulates during FFR shortages during COVID–19, outweigh the known and potential risks of such products, and (3) there is no adequate, approved, and available alternative to the emergency use of this product.

[5] As set forth in the EUA, FDA has concluded that: (1) SARS–CoV–2, the virus that causes COVID–19, can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that the B. Braun Space and Outlook Pumps may be effective for use in the tracheal delivery of continuous nebulized medications into a nebulizer to treat COVID–19 patients of all ages and for the ground medical transport use of the Infusomat Space Volumetric Infusion Pump System, and that the known and potential benefits of the B. Braun Space and Outlook Pumps for these uses, outweigh the known and potential risks of such product; and (3) there is no adequate, approved, and available alternative to the emergency use of this product.

[6] As set forth in this EUA, FDA has concluded that: (1) SARS–CoV–2, the virus that causes COVID–19, can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to

Continued

- Certain Face Shields, reissued April 13, 2020 (original issuance April 9, 2020); [7]
- Synapse Biomedical, Inc.'s TransAeris Diaphragm Pacing System, issued April 13, 2020; [8]
- Stryker Instruments' STERIZONE VP4 Sterilizer, issued April 14, 2020; [9]
- Lungpacer Medical USA, Inc.'s Lungpacer DPTS, issued April 14, 2020 (see footnote 8);
- ExThera Medical Corporation's Seraph 100 Microbind Affinity Blood Filter, issued April 17, 2020; [10]
- Certain Face Masks, issued April 18, 2020, and reissued April 24, 2020; [11]
- Sterilucent, Inc.'s Sterilucent Sterilizer System, issued April 20, 2020; [12]
- Philips Medizin Systeme Boeblingen GmbH's IntelliVue Patient Monitors, issued April 21, 2020; [13]
- ALung Technologies, Inc.'s Hemolung RAS, issued April 22, 2020; [14]
- Baxter Healthcare Corp.'s oXiris Set device, issued April 23, 2020; [15]
- VitalConnect, Inc.'s VitalPatch, issued April 26, 2020; [16]
- Fresenius Medical Care's multiFiltrate PRO System and multiBic/multiPlus Solutions to provide continuous renal replacement therapy, issued May 1, 2020; [17]
- Liberate Medical, LLC's VentFree, issued May 1, 2020; [18]

FDA, it is reasonable to believe that the ASP STERRAD Sterilization Systems may be effective at preventing exposure to pathogenic airborne particulates when there are insufficient supplies of N95 respirators during the COVID–19 pandemic by decontaminating, for a maximum of two decontamination cycles per respirator, compatible N95 respirators that are contaminated or potentially contaminated with SARS–CoV–2 or other pathogenic microorganisms, and that the known and potential benefits of the Sterilization Systems, when used to decontaminate compatible N95 respirators for single-user reuse by HCP to prevent exposure to pathogenic airborne particulates during N95 respirator shortages during the COVID–19 pandemic, outweigh the known and potential risks; and (3) there is no adequate, approved, and available alternative to the emergency use of this product.

[7] As set forth in the EUA, FDA has concluded that: (1) SARS–CoV–2, the virus that causes COVID–19, can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that the authorized face shields may be effective at preventing HCP exposure to fluid biological airborne particulates during face shield shortages by providing minimal or low barrier HCP protection to the wearer, and that the known and potential benefits of face shields, when used to prevent HCP exposure to such particulates during face shield shortages during COVID–19 outweigh the known and potential risks of such product; and (3) there is no adequate, approved, and available alternative to the emergency use of this product.

[8] As set forth in the EUA, FDA has concluded that: (1) SARS–CoV–2, the virus that causes COVID–19, can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that the product may be effective for emergency use to treat patients by assisting in weaning patients off ventilators in healthcare settings during the COVID–19 pandemic, and that the known and potential benefits of the such product, for such use, outweigh the known and potential risks of such product; and (3) there is no adequate, approved, and available alternative.

[9] As set forth in the EUA, FDA has concluded that: (1) SARS–CoV–2, the virus that causes COVID–19, can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that the STERIZONE VP4 N95 Respirator Decontamination Cycle may be effective at preventing exposure to pathogenic airborne particulates by decontaminating, for a maximum of two decontamination cycles per respirator, compatible N95 respirators that are contaminated or potentially contaminated with SARS–CoV–2 or other pathogenic microorganisms, and that the known and potential benefits of this device, when used as described, outweigh the known and potential risks; and (3) there is no adequate, approved, and available alternative to the emergency use of the STERIZONE VP4 N95 Respirator Decontamination Cycle for decontaminating compatible N95 respirators for single-user reuse by HCPs during FFR shortages during the COVID–19 pandemic.

[10] As set forth in the EUA, FDA has concluded that: (1) SARS–CoV–2, the virus that causes COVID–19, can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that the Seraph 100 Microbind Affinity Blood Filter device may be effective in treating patients 18 years of age or older with confirmed COVID–19 admitted to the intensive care unit (ICU) with confirmed or imminent respiratory failure, and that the known and potential benefits of the Seraph 100 Microbind Affinity Blood Filter device, when used to treat such patients, outweigh the known and potential risks of the device; and (3) there is no adequate, approved, and available alternative to the emergency use of this product.

[11] As set forth in the EUA, FDA has concluded that: (1) SARS–CoV–2, the virus that causes COVID–19, can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that the authorized face masks may be effective as source control to help prevent the spread of SARS–CoV–2 by infected individuals who may or may not have symptoms of COVID–19 during the COVID–19 pandemic, and that the known and potential benefits of face masks, when used in accordance with the scope of this authorization, outweigh the known and potential risks of such product; and (3) there is no adequate, approved, and available alternative to the emergency use of this product.

[12] As set forth in the EUA, FDA has concluded that: (1) SARS–CoV–2, the virus that causes COVID–19, can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that the Sterilucent Sterilization System may be effective at decontaminating compatible N95 respirators for single-user reuse by HCPs to prevent exposure to pathogenic biological airborne particulates, and that the known and potential benefits of this device, when used as described, outweigh the known and potential risks of the use of such product; and (3) there is no adequate, approved, and available alternative to the emergency use of this product.

[13] As set forth in the EUA, FDA has concluded that: (1) SARS–CoV–2, the virus that causes COVID–19, can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that the IntelliVue Patient Monitors may be effective in preventing COVID–19 exposure in healthcare providers, through use of remote patient monitoring, and that the known and potential benefits of such products, for such use, outweigh the known and potential risks of the IntelliVue Patient Monitors; and (3) there is no adequate, approved, and available alternative to the emergency use of this product.

[14] As set forth in the EUA, FDA has concluded that: (1) SARS–CoV–2, the virus that causes COVID–19, can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that the Hemolung RAS may be effective in treating lung failure when used as described in the Scope of Authorization, and that the known and potential benefits of the Hemolung RAS for treating these patients, outweigh the known and potential risks; and (3) there is no adequate, approved, and available alternative to the emergency use of this product.

[15] As set forth in the EUA, FDA has concluded that: (1) SARS–CoV–2, the virus that causes COVID–19, can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that the oXiris Set device may be effective in treating patients 18 years of age or older with confirmed COVID–19 admitted to the ICU with confirmed or imminent respiratory failure in need of blood purification, including use in continuous renal replacement therapy, and that the known and potential benefits of the oXiris Set device, when used to treat such patients, outweigh the known and potential risks of the oXiris Set device; and (3) there is no adequate, approved, and available alternative to the emergency use of this product.

[16] As set forth in the EUA, FDA has concluded that: (1) SARS–CoV–2 can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that the product may be effective in remotely monitoring and detecting QT interval changes of an ECG in patients who are undergoing treatment in a hospital setting for COVID–19 with drugs that can prolong QT intervals and may cause life threatening arrhythmias (*e.g.,* hydroxychloroquine or chloroquine, especially when used in combination with azithromycin), the known and potential benefits of product for such use, outweigh the known and potential risks; and (3) there is no adequate, approved, and available alternative to the emergency use of this product.

[17] As set forth in the EUA, FDA has concluded that: (1) SARS–CoV–2, the virus that causes COVID–19, can cause a serious or life-threatening disease or condition, including severe respiratory illness and multiple organ failure, including acute kidney injury, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that your multiFiltrate PRO System and multiBic/multiPlus Solutions may be effective in delivering CRRT in an acute care environment, and that the known and potential benefits of the multiFiltrate PRO System and multiBic/multiPlus Solutions, for such use, outweigh the known and potential risks; and (3) there is no adequate, approved, and available alternative to the emergency use of this product.

[18] As set forth in the EUA, FDA has concluded that: (1) SARS–CoV–2, the virus that causes

• Certain Protective Barrier Enclosures, issued May 1, 2020; [19]
• PhsiolGuard Corp. Ltd.'s PhysiolGuard ECG–QT Analysis System, issued May 5, 2020 (refer to footnote 15);
• Duke University Health System's Duke Decontamination System, issued May 7, 2020; [20]
• Comunale's Patient Isolation Transport Unit, issued May 8, 2020; [21]
• Ascom (US) Inc.'s teleCARE IP Nurse Call System, issued May 11, 2020; [22]
• Eko Devices, Inc.'s Eko ELEFT, issued May 11, 2020; [23]
• Certain Infusion Pumps and Infusion Pump Accessories, issued May 13, 2020; [24]
• G Medical Innovations Ltd.'s VSMS Patch, issued May 14, 2020; [25] and
• Everlywell Inc.'s Everlywell COVID–19 Test Home Collection Kit, issued May 15, 2020.[26]

Dated: July 8, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–15137 Filed 7–13–20; 8:45 am]

BILLING CODE 4164–01–P

COVID–19, can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that VentFree may be effective for emergency use by HCP in healthcare settings to treat adult patients by reducing disuse atrophy of the abdominal wall muscles, which may reduce the number of days of ventilator support in patients who require mechanical ventilation during the COVID–19 pandemic, and that the known and potential benefits of the such products, for such use, outweigh the known and potential risks of such product; and (3) there is no adequate, approved, and available alternative to the emergency use of this product.

[19] As set forth in the EUA, FDA has concluded that: (1) SARS–CoV–2, the virus that causes COVID–19, can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that the authorized protective barrier enclosures may be effective at preventing HCP exposure to pathogenic biological airborne particulates by providing an extra layer of barrier protection in addition to PPE when caring for or performing medical procedures on patients who are known or suspected to have COVID–19 in healthcare settings and that the known and potential benefits of protective barrier enclosures, for such use, outweigh the known and potential risks of such product; and, (3) there is no adequate, approved, and available alternative to the emergency use of this product.

[20] As set forth in the EUA, FDA has concluded that: (1) SARS–CoV–2, the virus that causes COVID–19, can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that the Duke Decontamination System may be effective at decontaminating compatible N95 respirators for reuse by HCPs to prevent exposure to SARS–CoV–2 and other pathogenic biological airborne particulates, and that the known and potential benefits of this product, when used as described, outweigh the known and potential risks of the use of such product; and (3) there is no adequate, approved, and available alternative to the emergency use of this product.

[21] As set forth in the EUA, FDA has concluded that: (1) SARS–CoV–2, the virus that causes COVID–19, can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that the PITU may be effective in preventing HCP exposure to pathogenic biological airborne particulates by providing an extra layer of barrier protection in addition to PPE, and that the known and potential benefits of such products, when used by HCP for temporary isolation and transport of patients with suspected or confirmed diagnosis of COVID–19 requiring airborne or droplet isolation precautions in healthcare settings to prevent HCP exposure to pathogenic biological airborne particulates by providing an extra layer of barrier protection in addition to PPE, outweigh the known and potential risks of the PITU; and (3) there is no adequate, approved, and available alternative to the emergency use of this product.

[22] As set forth in the EUA, FDA has concluded that: (1) SARS–CoV–2, the virus that causes COVID–19, can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that the use of the teleCARE IP Nurse Call System in healthcare environments may be effective for preventing COVID–19 exposure in healthcare providers by enabling remote communication between patients and healthcare providers, and, for those patients utilizing a ventilator, remote monitoring of ventilator status updates to alert the healthcare provider. FDA concluded that the known and potential benefits of the teleCARE IP Nurse Call System, for such use, outweigh the known and potential risks of the product; and (3) there is no adequate, approved, and available alternative to the emergency use of this product.

[23] As set forth in the EUA, FDA has concluded that: (1) SARS–CoV–2, the virus that causes COVID–19, can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that the ELEFT may be effective for use by HCP to provide an assessment of LVEF for use as a diagnostic aid to screen for potential cardiac complications associated with COVID–19 or underlying cardiac conditions that may affect clinical management of COVID–19, in adult patients having or suspected of having COVID–19 and that the known and potential benefits of ELEFT, for such use, outweigh the known and potential risks; and (3) there is no adequate, approved, and available alternative to the emergency use of this product.

[24] As set forth in the EUA, FDA has concluded that: (1) SARS–CoV–2, the virus that causes COVID–19, can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that authorized infusion pumps and infusion pump accessories may be effective for use by HCPs to treat conditions caused by COVID–19 with the controlled infusion of medications, TPN, and/or other fluids, and that the known and potential benefits of such products, for such use outweigh the known and potential risks of such products; and (3) there is no adequate, approved, and available alternative to the emergency use of this product.

[25] As set forth in the EUA, FDA has concluded that: (1) SARS–CoV–2, can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that the VSMS Patchmay be effective in remotely monitoring QT interval prolongation on an ECG in patients who are undergoing treatment in a hospital setting for COVID–19 with drugs that can prolong QT intervals and may cause life-threatening arrhythmias (*e.g.,* hydroxychloroquine or chloroquine, especially when used in combination with azithromycin), the known and potential benefits of the VSMS Patch, for such use, outweigh the known and potential risks; and (3) there is no adequate, approved, and available alternative to the emergency use of this product.

[26] As set forth in the EUA, FDA has concluded that: (1) SARS–CoV–2, the virus that causes COVID–19, can cause a serious or life-threatening disease or condition, including severe respiratory illness, to humans infected by this virus; (2) based on the totality of scientific evidence available to FDA, it is reasonable to believe that the product may be effective in diagnosing COVID–19 by serving as an appropriate means to collect and transport human specimens so that an authorized laboratory can detect SARS–CoV–2 RNA from the home-collected human specimen, and that the known and potential benefits of the product when used for such use, outweigh the known and potential risks of the product; and (3) there is no adequate, approved, and available alternative to the emergency use of the product.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1313]

Electronic Submissions; Data Standards; Support for Standard for the Exchange of Nonclinical Data

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) Center for Biologics Evaluation and Research (CBER) is announcing support for the current version of Clinical Data Interchange Standards Consortium (CDISC) Standard for the Exchange of Nonclinical Data (SEND) and an update to the FDA Data Standards Catalog for the submission of nonclinical data in new drug applications (NDAs), abbreviated new drug applications (ANDAs), certain biologics license applications (BLAs), and certain investigational new drug applications (INDs). This update does not apply to noncommercial INDs for a product that is not intended for commercial distribution (research and investigator-sponsored INDs); INDs and BLAs for devices that are regulated by CBER as biological products under the Public Health Services (PHS) Act; and submissions for blood and blood components, including Source Plasma.

ADDRESSES: You may submit either electronic or written comments at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2020–N–1313 for ''Electronic Submissions; Data Standards; Support for Standard for the Exchange of Nonclinical Data.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure laws. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, Bldg. 71, Rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

SUPPLEMENTARY INFORMATION: CBER is announcing support for the current version of CDISC SEND and an update to the FDA Data Standards Catalog for the submission of nonclinical data in NDAs, ANDAs, BLAs, and certain INDs. This update does not apply to: (1) Noncommercial INDs for a product that is not intended for commercial distribution (research and investigator-sponsored INDs); (2) INDs and BLAs for devices that are regulated by CBER as biological products under section 351 of the PHS Act (42 U.S.C. 262); and (3) submissions for blood and blood components, including Source Plasma. In section 745A(a) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 379k–1(a)), Congress granted explicit statutory authorization to FDA to specify in guidance the format for the electronic submissions required under that section.

In the **Federal Register** of December 18, 2014 (79 FR 75568), FDA announced a final guidance for industry entitled ''Providing Regulatory Submissions in Electronic Format—Standardized Study Data.'' The guidance is available on FDA's Study Data Standards Resources web page at *https://www.fda.gov/industry/fda-resources-data-standards/study-data-standards-resources.* The guidance implemented the electronic submission requirements of section 745A(a) of the FD&C Act for study data contained in NDAs, ANDAs, BLAs, applications under subsection (a) or (k) of section 351 of the PHS Act, and certain INDs. The initial timetable for the implementation of electronic submission requirements for study data was December 17, 2016. The guidance states that a **Federal Register** notice will specify the transition date for all new standards (with the month and day for the transition date corresponding to March 15).

The transition date for support of CDISC SEND is March 15, 2021, for CBER. Although SEND is now supported by CBER and sponsors or applicants are encouraged to begin using it, the SEND standard will only be required in studies that start 24 months after the transition date of March 15, 2021. The Catalog will list March 15, 2023, as the ''date requirement begins'' for CBER. When multiple versions of an FDA-supported standard are listed in the Catalog, sponsors or applicants can select a version to use.

Dated: July 8, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–15095 Filed 7–13–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2016–D–3004]

Use of The Seafood List To Determine Acceptable Seafood Names; Compliance Policy Guide; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing the availability of a final guidance for FDA staff entitled ''Compliance Policy Guide Sec. 540.750

Use of *The Seafood List* to Determine Acceptable Seafood Names'' (the CPG). The CPG provides guidance for FDA staff regarding use of *The Seafood List* to determine whether a seafood name is acceptable.

DATES: The announcement of the guidance is published in the **Federal Register** on July 14, 2020.

ADDRESSES: You may submit either electronic or written comments on FDA guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2016–D–3004 for ''Compliance Policy Guide Sec. 540.750 Use of *The Seafood List* to Determine Acceptable Seafood Names.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' We will review this copy, including the claimed confidential information, in our consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (21 CFR 10.115(g)(5).

Submit written requests for single copies of the CPG to the Office of Strategic Planning and Operational Policy, Office of Regulatory Affairs, Food and Drug Administration, Bldg. 32, Rm. 4337, 10903 New Hampshire Ave., Silver Spring, MD 20993. Send two self-addressed adhesive labels to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the CPG.

FOR FURTHER INFORMATION CONTACT: Spring C. Randolph, Center for Food Safety and Applied Nutrition (HFC–325), Food and Drug Administration, 5001 Campus Dr., College Park, MD 20740, 240–402–1421.

SUPPLEMENTARY INFORMATION:

I. Background

We are announcing the availability of a guidance for FDA staff entitled ''Compliance Policy Guide Sec. 540.750 Use of *The Seafood List* to Determine Acceptable Seafood Names.'' The CPG updates the previously issued ''CPG Sec. 540–750—Common or Usual Names for Seafood in Interstate Commerce.'' We are issuing this CPG consistent with our good guidance practices regulation (21 CFR 10.115). The CPG represents our current thinking on acceptable names for seafood in interstate commerce. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternate approach if it satisfies the requirements of the applicable statutes and regulations.

In the **Federal Register** of November 18, 2016 (81 FR 81785), we made available a draft CPG entitled ''Compliance Policy Guide Sec. 540.750 Use of *The Seafood List* to Determine Acceptable Seafood Names'' and gave interested parties an opportunity to submit comments by January 17, 2017, for us to consider before beginning work on the final version of the guidance. We received no comments on the draft guidance. However, we made editorial changes. The editorial changes include adding ''vernacular name'' to the categories of names found in *The Seafood List* and revising the term ''Districts'' to ''Field Offices'' to reflect an FDA organizational change. The CPG announced in this notice finalizes the draft CPG dated November 2016.

II. Electronic Access

Persons with access to the internet may obtain the CPG from FDA's Office of Regulatory Affairs CPG history page at *https://www.fda.gov/ICECI/ComplianceManuals/CompliancePolicyGuidanceManual/default.htm* or *https://www.regulations.gov.* Use the FDA website listed in the previous sentence to find the most current version of the guidance.

Dated: July 9, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–15146 Filed 7–13–20; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2020–N–1602]

Revocation of Authorization of Emergency Use of an In Vitro Diagnostic Device for Detection of Antibodies Against SARS–CoV–2, the Virus That Causes Coronavirus Disease 2019 (COVID–19)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the Emergency Use Authorization (EUA) (the Authorization) issued to Chembio Diagnostic Systems, Inc. (''Chembio'') for the DPP COVID–19 IgM/IgG System. FDA revoked this Authorization on June 16, 2020, under the Federal Food, Drug, and Cosmetic Act (the FD&C Act), in consideration of new information from three evaluations performed since the Authorization of the device that demonstrate its performance may be both inconsistent and lower than that described in the request for Authorization. The revocation, which includes an explanation of the reasons for revocation, is reprinted in this document.

DATES: Chembio's Authorization is revoked as of June 16, 2020.

ADDRESSES: Submit written requests for single copies of the revocation to the Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4338, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request or include a fax number to which the revocation may be sent. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the revocation.

FOR FURTHER INFORMATION CONTACT: Jennifer J. Ross, Office of Counterterrorism and Emerging Threats, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4332, Silver Spring, MD 20993–0002, 240–402–8155 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 564 of the FD&C Act (21 U.S.C. 360bbb–3) allows FDA to strengthen the public health protections against biological, chemical, radiological, or nuclear agent or agents. Among other things, section 564 of the FD&C Act allows FDA to authorize the use of an unapproved medical product or an unapproved use of an approved medical product in certain situations. On April 14, 2020, FDA issued an EUA to Chembio, for the DPP COVID–19 IgM/IgG System, subject to the terms of the Authorization. Notice of the issuance of the Authorization is publishing elsewhere in the **Federal Register** with this revocation, as required by section 564(h)(1) of the FD&C Act. Subsequent to the Authorization, FDA considered new information from three additional evaluations, including two conducted by independent entities, demonstrating performance below the performance information submitted in the original EUA request and reflected in the authorized labeling for the device.

II. EUA Criteria for Issuance No Longer Met and Other Circumstances Make Revocation Appropriate To Protect the Public Health or Safety

Under section 564(g)(2)(B) and (C) of the FD&C Act, the Secretary of HHS may revoke an EUA if, among other things, the criteria for issuance are no longer met or other circumstances make such revocation appropriate to protect the public health or safety. On June 16, 2020, FDA revoked the EUA for Chembio's DPP COVID–19 IgM/IgG System because the criteria for issuance were no longer met and other circumstances make such revocation appropriate to protect the public health or safety. Under section 564(c)(2) of the FD&C Act an EUA may be issued only if FDA concludes that, based on the totality of scientific evidence available to the Secretary, including data from adequate and well-controlled clinical trials, if available, it is reasonable to believe that the product may be effective in diagnosing, treating, or preventing such disease or condition and the known and potential benefits of the product, when used to diagnose, prevent, or treat such disease or condition, outweigh the known and potential risks of the product. Given the poor device performance observed in multiple evaluations since the Authorization, FDA has concluded it is not reasonable to believe the product may be effective in detecting antibodies against SARS–CoV–2 or that the known and potential benefits of the device outweigh its known and potential risks. In addition, based on the same information and the risks to public health from false test results, FDA has concluded under section 564(g)(2)(C) of the FD&C Act that other circumstances make revocation appropriate to protect the public health or safety. Accordingly, FDA has revoked EUA200179 for the DPP COVID–19 IgM/IgG System, pursuant to section 564(g)(2)(B) and (C) of the FD&C Act.

III. Electronic Access

An electronic version of this document and the full text of the revocation are available on the internet at *https://www.regulations.gov/* and *https://www.fda.gov/media/139109/download.*

IV. The Revocation

Having concluded that the criteria for revocation of the Authorization under section 564(g) of the FD&C Act are met, FDA has revoked the EUA for Chembio's DPP COVID–19 IgM/IgG System. The revocation in its entirety follows and provides an explanation of the reasons for revocation, as required by section 564(h)(1) of the FD&C Act.

BILLING CODE 4164–01–P

U.S. FOOD & DRUG ADMINISTRATION

June 16, 2020

Chembio Diagnostic Systems, Inc.
c/o Louise M. Sigismondi, Ph.D.
3661 Horseblock Road
Medford, NY 11763

Re: Revocation of EUA200179

Dear Dr. Sigismondi:

This letter is to notify you of the revocation of the Emergency Use Authorization (EUA200179) for Chembio Diagnostic Systems, Inc.'s (you, your, or Chembio) DPP COVID-19 IgM/IgG System, issued on April 14, 2020. The authorization of a device for emergency use under section 564 of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 360bbb-3) may, pursuant to section 564(g)(2)(B) and (C) of the Act, be revoked when the criteria in section 564(c) for issuance of such authorization are no longer met, or other circumstances make such revocation appropriate to protect the public health or safety. FDA has decided to revoke your EUA based on both of these grounds.

On April 14, 2020, based on information available to the Agency at that time, FDA determined that the DDP COVID IgM/IgG System may be effective for the detection of IgM and IgG antibodies against SARS-CoV-2 in serum and plasma (EDTA or lithium heparin), venous whole blood, or fingerstick whole blood specimens collected from individuals suspected of COVID-19 by their healthcare provider and that the known and potential benefits of the test outweigh the known and potential risks for its use. The DPP COVID-19 IgM/IgG System was authorized for use with the DPP Micro Reader (MRI) and the DPP Micro Reader II (MRII). Authorization of your test was based on data demonstrating clinical performance estimates of 77.4% positive percent agreement (PPA)/sensitivity for IgM, 87.1% PPA for IgG, 93.5% PPA for combined IgM/IgG, and 94.4% negative percent agreement (NPA)/specificity for combined IgM/IgG.

New information from three evaluations performed since authorization of the device demonstrates its performance may be both inconsistent and lower than that described in your original submission. As we first explained to you on April 29, 2020, data generated from an independent evaluation of your device by the Department of Health and Human Services (HHS) National Institutes of Health (NIH) National Cancer Institute (NCI) (NCI evaluation) demonstrate an observed PPA of 57.1% for IgM, 78.6% for IgG, and 82.1% for combined IgM/IgG, which indicates a high false negative rate. The overall NPA was 81.2%, which indicates a high false positive rate. On April 29, 2020, you provided additional data demonstrating poor performance. Specifically, the combined data for (b) (4) (b) (4) hospital patients and employees with positive PCR results showed PPAs of (b) (4) for IgG, (b) (4) for IgM, and (b) (4) for combined IgM/IgG. On May 15, 2020, you provided the draft manuscript for a study of health care workers at (b) (4) that showed an overall sensitivity for your test of (b) (4) and an overall specificity of (b) (4) A

separate analysis in the study of results from (b) (4) healthcare workers showed that the sensitivity of the test in a cohort of (b) (4) patients with positive PCR results was (b) (4) All three of these additional evaluations, including two conducted by independent entities, demonstrate performance below the performance information submitted in your original EUA request and reflected in your authorized labeling.

The performance observed in these additional evaluations is also below the clinical performance we generally expect for serology tests to meet the effectiveness and risk/benefit standards for issuance of an EUA, as set forth in section 564(c). Under our current thinking, based on the totality of scientific evidence currently available to the Agency regarding the clinical performance estimates for serology tests, and under the current circumstances of this public health emergency, clinical agreement data for SARS-CoV-2 antibody tests with 30 positive samples and 75 negative samples generally should demonstrate a minimum combined PPA/sensitivity, of 90%; a minimum NPA/specificity, of 95%; and for tests that report specifically IgM and IgG, a minimum PPA/sensitivity for IgG of 90% and a minimum PPA/sensitivity for IgM of 70%. Moreover, clinical agreement data for SARS-CoV-2 antibody tests with greater than 30 positives and 75 negative samples generally should demonstrate a minimum overall (i.e., IgM/IgG combined) and IgG PPA of 87% with a lower bound of the 95% confidence interval greater than 74.4%, a minimum IgM PPA of 67% with a lower bound of the 95% confidence interval greater than 52.1%, and a minimum NPA of 93% with a lower bound of the 95% confidence interval greater than 87.8%.

Because the data you submitted on April 29 and May 15 did not resolve our concerns regarding the poor clinical performance of your test, we emailed you on May 22, 2020, explaining our concern that the NCI evaluation data "suggest significant performance concerns with your device, which may put patients at unreasonable risk of harm due to inaccurate results." As a result, we asked you to submit, by May 25, 2020, "information adequate to demonstrate that the health risks posed by your device performing differently than the labeled performance can be adequately mitigated/addressed in a timely manner." We also notified you that if the information you provided did not adequately address the potential risk to patients, we may take steps and/or request that you take additional actions to protect the public health as appropriate.

You responded on May 24, 2020, stating that an investigation had been performed to better understand and confirm the findings of the NCI evaluation and, based on the results of your investigation, you changed the cut-off for the MRII (which was used in the NCI evaluation) from 25 to 35. You explained that your re-analysis of the NCI evaluation data using this new cut-off suggested that the specificity of your device could be improved from 81.2% to 93.5% and that the performance of the device with the MRII with the revised cut-off produces results equivalent to those of the MRI using the original cut-off that FDA authorized on April 14.

This change in the cut-off is a significant modification that affects the sensitivity and specificity of the device. The EUA Condition of Authorization IV.L for this device expressly states that changes to the Scope of Authorization (Section II) of the EUA may be made in consultation with, and require concurrence of, FDA. Chembio has not requested and FDA has not concurred on any such changes to the Scope of Authorization.[1] Therefore, you are not permitted to distribute the modified DPP COVID-

[1] The Scope of Authorization of the EUA states that IgM and IgG positive and negative results occur when those relevant

19 IgM/IgG System unless and until you receive emergency use authorization for the modified DPP COVID-19 IgM/IgG System.

More fundamentally, your proposed modification of the device has not resolved the poor clinical performance observed, as demonstrated in the re-analysis of the NCI evaluation results that you provided on May 24. In your re-analysis, although specificity improved from 81.2% to 93.5%, the sensitivity for IgG decreased from 78.6% to 75.0% and the sensitivities for IgM and combined IgM/IgG were unchanged at 57.1% and 82.1%, respectively.

In short, the information you have provided does not address our concerns about the performance issues observed with your device, and we are unaware of any other currently available information that resolves these concerns.

Conclusion

After consideration of the totality of scientific evidence available to the Agency, including all of your submissions, FDA has determined under section 564(g)(2)(B) that the criteria for issuance of emergency authorization in section 564(c) of the Act are no longer met for the DPP COVID-19 IgM/IgG System. Under section 564(c)(2) an EUA may be issued only if FDA concludes it is reasonable to believe the product may be effective and the known and potential benefits outweigh the known and potential risks. Given the poor device performance observed in multiple evaluations since authorization described above, FDA has concluded it is not reasonable to believe the product may be effective in detecting antibodies against SARS-CoV-2 or that the known and potential benefits of your device outweigh its known and potential risks. In addition, based on the same information and the risks to public health from false test results, FDA has concluded under section 564(g)(2)(C) that other circumstances make revocation appropriate to protect the public health or safety.

Accordingly, FDA revokes EUA200179 for the DPP COVID-19 IgM/IgG System, pursuant to section 564(g)(2)(B) and (C) of the Act. As of the date of this letter, the DPP COVID-19 IgM/IgG System that was authorized by FDA for emergency use under EUA200179 is no longer authorized by FDA. As such, you are no longer authorized to distribute the DPP COVID-19 IgM/IgG System.

If you have questions about this letter, please email Ellen Flannery, Deputy Center Director for Policy, Center for Devices and Radiological Health, at Ellen.Flannery@fda.hhs.gov.

Sincerely,

/s/

RADM Denise M. Hinton
Chief Scientist
Food and Drug Administration

antibody results are at 25 or above or are less than 25, respectively.

U.S. Food & Drug Administration
10903 New Hampshire Avenue
Silver Spring, MD 20903
www.fda.gov

Dated: July 8, 2020.

Lowell J. Schiller,

Principal Associate Commissioner for Policy.

[FR Doc. 2020–15138 Filed 7–13–20; 8:45 am]

BILLING CODE 4164–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; 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 Mental Health Special Emphasis Panel; Non-Human Primate Neural Circuits (R01).

Date: July 17, 2020.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: David W. Miller, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6140, MSC 9608, Bethesda, MD, 20892–9608, 301–443–9734, *millerda@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: July 8, 2020.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–15087 Filed 7–13–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PAR–19–202: High Impact, Interdisciplinary Science in NIDDK Research Areas (RC2)—Diabetes, Endocrinology & Metabolic Diseases.

Date: September 21, 2020.

Time: 11:00 a.m. to 12:30 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: Dianne Camp, Ph.D., Scientific Review Officer, Review Branch, Division of Extramural Activities, NIDDK, National Institutes of Health, Room 7013, 6707 Democracy Boulevard, Bethesda, MD 20892–2542, (301) 594–7682, *campd@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 8, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–15086 Filed 7–13–20; 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: AIDS and Related Research.

Date: August 6, 2020.

Time: 11:00 a.m. to 3:00 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: Dimitrios Nikolaos Vatakis, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3190, Bethesda, MD 20892, (301) 827–7480, *dimitrios.vatakis@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Neuropharmacology.

Date: August 11, 2020.

Time: 1:00 p.m. to 4:30 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: Richard D Crosland, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4190, MSC 7850, Bethesda, MD 20892, (301) 694–7084, *crosland@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: July 8, 2020.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–15083 Filed 7–13–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Emergency Awards: Rapid Investigation of Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV–2) and Coronavirus Disease 2019 (COVID–19) (R21, R01 Clinical Trials Not Allowed).

Date: August 6–7, 2020.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E62, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Ruth S. Grossman, DDS, Scientific Review Officer, Office Scientific

Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12J, Bethesda, MD 20892, *grossmanrs@mail.nih.gov* (301) 594–3998.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 8, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–15084 Filed 7–13–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; National Institute of Allergy and Infectious Diseases 2019 (COVID–19).

Date: August 7, 2020.

Time: 11:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E61, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Ann Marie M. Brighenti, Ph.D., Scientific Review Officer, Program Management & Operations Branch, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3E61, Rockville, MD 20852, 301–761–3100, *ann-marie.brighenti@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 8, 2020.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2020–15085 Filed 7–13–20; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0078]

Agency Information Collection Activities: Automated Clearinghouse

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Extension of an existing collection of information.

SUMMARY: The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and must be submitted no later than September 14, 2020 to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0078 in the subject line and the agency name. To avoid duplicate submissions, please use only *one* of the following methods to submit comments:

(1) *Email.* Submit comments to: *CBP_PRA@cbp.dhs.gov.*

(2) *Mail.* Submit written comments to: CBP Paperwork Reduction Act Officer, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, Economic Impact Analysis Branch, 90 K Street NE, 10th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (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) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Automated Clearinghouse.

OMB Number: 1651–0078.

Form Number: CBP Form 400.

Current Actions: Extension.

Type of Review: Extension without change.

Affected Public: Companies enrolled in the Automated Broker Interface (ABI).

Abstract: The Automated Clearinghouse (ACH) allows participants in the Automated Broker Interface (ABI) to transmit daily statements, deferred tax, and bill payments electronically through a financial institution directly to a CBP account. ACH debit allows the payer to exercise more control over the payment process. In order to participate in ACH debit, filers must complete CBP Form 400, *ACH Application.* Participants also use this form to notify CBP of changes to bank information or contact information. The ACH procedure is

authorized by 19 U.S.C. 58a–58c and 19 U.S.C. 66, and set forth in 19 CFR 24.25. CBP Form 400 is accessible at *https://www.cbp.gov/newsroom/publications/forms,* and is not being updated at this time.

Estimated Number of Respondents: 1,443.

Estimated Number of Annual Responses per Respondent: 2.

Estimated Number of Total Annual Responses: 2,886.

Estimated Time per Response: 5 minutes (0.083 hours).

Estimated Total Annual Burden Hours: 240.

Dated: July 8, 2020.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2020–15018 Filed 7–13–20; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2020–N099; FXES11130800000–201–FF08E00000]

Endangered and Threatened Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation or survival of endangered or threatened species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments on or before August 13, 2020.

ADDRESSES: *Document availability and comment submission:* Submit requests for copies of the applications and related documents and submit any comments by email to *permitsr8es@fws.gov.* All requests and comments should specify the applicant name(s) and application number(s) (*e.g.,* TEXXXXXX).

FOR FURTHER INFORMATION CONTACT: Robert Krijgsman, via phone at 760–431–9440, via email at *permitsr8es@fws.gov,* or via the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications for permits under section 10(a)(1)(A) of the Endangered Species Act, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The requested permits would allow the applicants to conduct activities intended to promote recovery of species that are listed as endangered or threatened under the ESA.

Background

With some exceptions, the ESA prohibits activities that constitute take of listed species unless a Federal permit is issued that allows such activity. The ESA's definition of ''take'' includes such activities as pursuing, harassing, trapping, capturing, or collecting in addition to hunting, shooting, harming, wounding, or killing.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered or threatened species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. These activities often include such prohibited actions as capture and collection. Our regulations implementing section 10(a)(1)(A) for these permits are found in the Code of Federal Regulations at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild. The ESA requires that we invite public comment before issuing these permits. Accordingly, we invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies.

Application No.	Applicant, city, state	Species	Location	Take activity	Permit action
TE–77120D	Imani Russell, Santa Barbara, California.	• Sierra Nevada Yellow-legged Frog (*Rana sierrae*). • Mountain yellow-legged frog (*Rana muscosa*).	CA	Capture, handle, swab, collect tissue, and release.	New.
TE–77122D	Michelle Leis, Redwood City, California.	• California tiger salamander (Santa Barbara County and Sonoma County Distinct Population Segments (DPSs)) (*Ambystoma californiense*).	CA	Capture, handle, and release.	New.
TE–77128D	Victoria Prado, Grover Beach, California.	• Conservancy fairy shrimp (*Branchinecta conservatio*). • Longhorn fairy shrimp (*Branchinecta longiantenna*). • San Diego fairy shrimp (*Branchinecta sandiegonensis*). • Riverside fairy shrimp (*Streptocephalus woottoni*). • Vernal pool tadpole shrimp (*Lepidurus packardi*).	CA	Capture, handle, release, and collect vouchers.	New.

Application No.	Applicant, city, state	Species	Location	Take activity	Permit action
TE–034101	Naval Facilities Engineering Command, Southwest, San Diego, California.	• Arroyo (=arroyo southwestern) toad (*Anaxyrus californicus*). • Sierra Nevada Yellow-legged Frog (*Rana sierrae*). • Sonora tiger Salamander (*Ambystoma tigrinum stebbinsi*). • California tiger salamander (Santa Barbara County and Sonoma County Distinct Population Segments (DPSs)) (*Ambystoma californiense*). • Green sea turtle (*Chelonia mydas*). • Hawksbill sea turtle (*Eretmochelys imbricata*). • Loggerhead sea turtle (*Caretta caretta*). • Leatherback sea turtle (*Dermochelys coriacea*). • Olive ridley sea turtle (*Lepidochelys olivacea*).	CA, OR, AZ ...	Capture, handle, rescue, swab, salvage, transport, and release.	Renew and amend.
TE–77232D	Mark Bellini, Ojai, California.	• Southwestern willow flycatcher (*Empidonax traillii extimus*).	CA, NV, AZ, NM, TX, UT, CO.	Play taped vocalizations.	New.
TE–028605	SWCA Environmental Consultants, Flagstaff, Arizona.	• Southwestern willow flycatcher (*Empidonax traillii extimus*). • Yuma Ridgways (clapper) rail (*Rallus obsoletus* [=*longirostris*] *yumanensis*).	CA, NV, CO, UT, MT, WY, AZ, NM, TX.	Play taped vocalizations, monitor nests, collect blood, and invasive species removal.	Renew and Amend.
TE–25609A	The Peregrine Fund, Boise, Idaho.	• California condor (*Gymnogyps californianus*).	AZ, UT, NV, NM, ID, CA.	Captive breed and rear, monitor populations, provide veterinary care, maintain in captivity, capture, perform telemetry, provide supplemental food for wild populations, transport, and release.	Renew.
TE–809232	Bio-West, Inc., Logan, Utah.	• Pahrump poolfish (*Empetrichthys latos*). • White River springfish (*Crenichthys baileyi baileyi*). • Hiko White River springfish (*Crenichthys baileyi grandis*). • White River spinedace (*Lepidomeda albivallis*). • Pahranagat roundtail chub (*Gila robusta jordani*). • Virgin River Chub (*Gila seminuda* (=*robusta*)). • Bonytail (*Gila elegans*). • Razorback sucker (*Xyrauchen texanus*). • Humpback chub (*Gila cypha*). • Woundfin (*Plagopterus argentissimus*).	CA, NV, AZ, UT.	Capture, mark, tag, release, monitor populations, and electrofish.	Renew and Amend.

Application No.	Applicant, city, state	Species	Location	Take activity	Permit action
TE–77123D	Pim Laulikitnont, San Francisco, California.	• California tiger salamander (Santa Barbara County and Sonoma County Distinct Population Segments (DPSs)) (*Ambystoma californiense*).	CA	Capture, handle, and release.	New.
TE–77146D	Westervelt Ecological Services, LLC, Sacramento, California.	• California tiger salamander (Santa Barbara County and Sonoma County Distinct Population Segments (DPSs)) (*Ambystoma californiense*). • Conservancy fairy shrimp (*Branchinecta conservatio*). • Longhorn fairy shrimp (*Branchinecta longiantenna*). • San Diego fairy shrimp (*Branchinecta sandiegonensis*). • Riverside fairy shrimp (*Streptocephalus woottoni*). • Vernal pool tadpole shrimp (*Lepidurus packardi*).	CA, OR	Capture, handle, release, and collect vouchers.	New.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Angela Picco,

Acting Chief of Ecological Services, Pacific Southwest Region, Sacramento, California.

[FR Doc. 2020–15101 Filed 7–13–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2020–N097; FXES11140400000–201–FF04E00000]

Endangered Species; Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation or survival of endangered species under the Endangered Species Act of 1973, as amended. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive written data or comments on the applications by August 13, 2020.

ADDRESSES: *Reviewing Documents:* Documents and other information submitted with the applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act. Submit a request for a copy of such documents to Karen Marlowe (see **FOR FURTHER INFORMATION CONTACT**).

Submitting Comments: If you wish to comment, you may submit comments by one of the following methods:

- *U.S. mail:* U.S. Fish and Wildlife Service Regional Office, Ecological Services, 1875 Century Boulevard, Atlanta, GA 30345 (Attn: Karen Marlowe, Permit Coordinator).
- *Email: permitsR4ES@fws.gov.* Please include your name and return address in your email message. If you do not receive a confirmation from the U.S. Fish and Wildlife Service that we have received your email message, contact us directly at the telephone number listed in **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Karen Marlowe, Permit Coordinator, 404–679–7097 (telephone), *karen_marlowe@fws.gov* (email), or 404–679–7081 (fax). Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We invite review and comment from local, State, and Federal agencies and the public on applications we have received for permits to conduct certain activities with endangered and threatened species under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17. With some exceptions, the ESA prohibits activities that constitute take of listed species unless a Federal permit is issued that allows such activities. The ESA's definition of ''take'' includes hunting, shooting, harming, wounding, or killing, and also such activities as pursuing, harassing, trapping, capturing, or collecting.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered or threatened species for scientific purposes that promote recovery or for enhancement of

propagation or survival of the species. These activities often include such prohibited actions as capture and collection. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild. The ESA requires that we invite public comment before issuing these permits. Accordingly, we invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Permit application No.	Applicant	Species	Location	Activity	Type of take	Permit action
TE 18825B–1	Timothy Savidge, Durham, NC.	FISH: Amber darter (*Percina antesella*), blue shiner (*Cyprinella caerulea*), Cape Fear shiner (*Notropis mekistocholas*), Carolina madtom (*Noturus furiosus*),. Cherokee darter (*Etheostoma scotti*), Conasauga logperch (*Percina jenkinsi*), Etowah darter (*Etheostoma* etowahae), goldline darter (*Percina aurolineata*), Roanoke logperch (*Percina rex*), and snail darter (*Percina tanasi*); MUSSELS: Altamaha spinymussel (*Elliptio spinosa*), Appalachian elktoe (*Alasmidonta raveneliana*), Carolina heelsplitter (*Lasmigona decorata*), Chipola slabshell (*Elliptio chipolaensis*), Coosa moccasinshell (*Medionidus parvulus*), Cumberland bean (*Villosa trabalis*), dwarf-wedge mussel (*Alasmidonta heterodon*), fat three-ridge (*Amblema neislerii*), finelined pocketbook (*Lampsilis altilis*), Georgia pigtoe (*Pleurobema hanleyianum*), Gulf moccasinshell (*Medionidus penicillatus*), James spinymussel (*Pleurobema collina*), littlewing pearlymussel (*Pegias fabula*), oval pigtoe (*Pleurobema pyriforme*), oyster mussel (*Epioblasma capsaeformis*), purple bankclimber (*Elliptoideus slotianus*), shinyrayed pocketbook (*Lampsilis subangulata*), southern acornshell (*Epioblasma othcaloogensis*), southern clubshell (*Pleurobema decisum*), southern pigtoe (*Pleurobema georgianum*), tan riffleshell (*Epioblasma florentina walkeri*), tar spinymussel (*Elliptio steinstansanna*), upland combshell (*Epioblasma metastriata*), and yellow lance (*Elliptio lanceolata*).	Alabama, Georgia, North Carolina, South Carolina.	Presence/absence surveys.	Fish: Capture with hand nets and seines, handle, identify, and release; Mussels: Capture, handle, identify, release, and salvage relict shells.	Renewal and Amendment.
TE 75524D–0	Daniel Magoulick, U.S. Geological Survey, Fayetteville, AR.	Yellowcheek darter (*Etheostoma moorei*) ..	Arkansas	Assessment of habitat selection.	Capture via kick seine, handle, identify, and release.	New.
TE 21809A–3	Monica Folk, Kissimmee, FL.	Red-cockaded woodpecker (RCW; *Picoides borealis*) and Florida scrub jays (*Aphelocoma coerulescens*).	Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, Missouri, North Carolina, South Carolina.	Population management and monitoring.	RCW: Capture, band, monitor nest cavities, construct and monitor artificial nest cavities and restrictors, and translocate; Florida scrub jay: capture, band, and monitor nests.	Renewal.
TE 56749B–4	Patrick Moore, Harrison, AR.	Indiana bat (*Myotis sodalis*) and northern long-eared bat (*Myotis septentrionalis*).	Connecticut, Maine, Massachusetts, Montana, Nebraska, New Hampshire North Dakota, Rhode Island, South Dakota, and Wyoming.	Presence/absence surveys, studies to document habitat use, and population monitoring.	Enter hibernacula and maternity roost caves, capture with mist nets or harp traps, handle, identify, collect hair samples, band, radio-tag, light-tag, swab, and wing-punch.	Amendment.
TE 75914D–0	North Carolina State Parks, Raleigh, NC.	Spruce-fir moss spider (*Microhexura montivaga*).	Grandfather Mountain State Park and Mount Mitchell State Park, North Carolina.	Presence/absence surveys, population monitoring.	Capture, handle, identify, photograph, and release.	New.
TE 76153D–0	Jaime Collazo, North Carolina State University, Raleigh, NC.	Llanero coqui (*Eleutherodactylus juanariveroi*).	Puerto Rico	Genetic structure and diversity research and thermal limit research.	Remove from the wild for temporary holding in captivity of up to 14 individuals for CTMax experiments; removal from the wild and euthanasia of up to 50 individuals for genetic research.	New.
TE 37219B–2	Roger Perry, U.S. Forest Service, Hot Springs, AR.	Gray bat (*Myotis grisescens*), Indiana bat (*Myotis sodalis*), and northern long-eared bat (*Myotis septentrionalis*).	Arkansas, Louisiana, and Oklahoma.	Presence/absence surveys and studies to document habitat use.	Enter hibernacula or maternity roost caves, capture with mist nets, handle, identify, band, radio-tag, collect hair, light-tag, wing-punch, and salvage.	Renewal.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

John Tirpak,

Deputy Assistant Regional Director, Ecological Services.

[FR Doc. 2020–15180 Filed 7–13–20; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVB0I000.L71220000.EX0000.LVTFF1 906690.19X MO 4500144046]

Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Gibellini Project, Eureka County, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, the Bureau of Land Management (BLM) Mount Lewis Field Office, Battle Mountain, Nevada, intends to prepare an Environmental Impact Statement (EIS) to analyze the potential impacts of approving the proposed Nevada Vanadium Company, Gibellini Project, in Eureka County, Nevada. This notice announces the beginning of the scoping process to solicit public comments and identify issues and alternatives; it also serves to initiate public consultation, as required, under the National Historic Preservation Act (NHPA).

DATES: This notice initiates the public scoping process for the EIS. Comments on issues may be submitted in writing until August 13, 2020. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local media and newspapers and on the BLM website at: *https://www.blm.gov/office/battle-mountain-district-office.* In order to be considered during the preparation of the Draft EIS, all comments must be received prior to the close of the 30-day scoping period or 15 days after the last public meeting, whichever is later. The BLM will provide additional opportunities for public participation upon publication of the Draft EIS.

ADDRESSES: You may submit comments related to the proposed Gibellini Project by any of the following methods:

- *Website: https://go.usa.gov/xfCHh.*
- *Email: BLM_NV_BMDO_MLFO_GibelliniEIS@blm.gov.*
- *Fax:* (775) 635–4034.
- *Mail:* BLM Mount Lewis Field Office, Attn: Gibellini Project, 50 Bastian Road, Battle Mountain, NV 89820.

Documents pertinent to this proposal may be examined at the Mount Lewis Field Office.

FOR FURTHER INFORMATION CONTACT: Scott Distel, Project Manager, telephone: (775) 635–4093; address: 50 Bastian Road, Battle Mountain, Nevada, 89820; email: *sdistel@blm.gov.* Contact Mr. Distel if you wish to add your name to our mailing list. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FRS is available 24 hours per day, 7 days per week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Nevada Vanadium Company (NVC) proposes to construct, operate, reclaim, and close an open pit, heap leach, vanadium mining operation known as the Gibellini Project. The proposed project is in the southern extent of the Fish Creek Range on 6,456 acres of federal lands administered by the BLM in Eureka County, Nevada. The proposed project area is approximately 27 miles southeast of Eureka, Nevada, and is accessed from Eureka by traveling approximately 10 miles south on U.S. Route 50 and turning south on State Route 379 for approximately 8 miles and turning southwest on Fish Creek Ranch Road for approximately 7 miles.

The proposed project area has been prospected for vanadium and manganese since the 1940s, when Union Carbide explored the area for vanadium to support U.S. steel production. The Final List of Critical Minerals published on May 18, 2018 (83 FR 23295) includes vanadium, which has been recognized as a critical mineral due to its strategic importance in steel manufacturing, aerospace applications, and grid scale energy storage. As there is currently no primary domestic production of vanadium, the United States is dependent on foreign sources of vanadium; this creates a strategic vulnerability in the event of supply disruptions for this key mineral. The Gibellini Project would produce nearly 10 million pounds of vanadium annually, which would represent approximately 50% of U.S. demand, making the project a significant domestic contributor.

The project consists of construction and operation of an open pit mining operation and heap leach process facility to extract and recover vanadium and minor amounts of uranium as a secondary product; the anticipated mine life is approximately 7 years. The project would commence in 2021. Reclamation and site closure activities would require approximately 4 years to complete. Post-closure monitoring is estimated to take an additional 30 years. The proposed project includes mineral exploration activities in the project area.

Approximately 3.3 million tons of material would be mined annually. Mining and crushing would occur up to 24 hours per day, 7 days per week. NVC would employ up to 120 employees for the construction of the proposed Gibellini Project. During mine operations, there would be up to 120 employees with approximately 30 employees on-site at any one time, including contractors.

The primary facilities associated with the Gibellini Project Plan of Operations are an open pit, rock disposal area, mine office and facilities, crushing facilities and stockpile, heap leach pad, process facility, various process and makeup water ponds, borrow areas, and mine and access roads. The approximate 6,456-acre project area and would include approximately 806 acres of disturbance and includes all project components (*e.g.,* mine facilities, access roads, pipelines) and associated buffer areas.

The primary components associated with the proposed Gibellini Project include the following:

- Construction and operation of mine facilities to support mining operations.
- Development of an open pit mine approximately 2,410 feet × 1,560 feet and an approximate maximum depth of 280 feet.
- Construction of a rock disposal area to accommodate permanent storage of approximately 2.5 million tons over the mine life with an approximate height of 125 feet.
- Construction and operation of mined ore crushing facilities and stockpile for ore processing.
- Construction and operation of a heap leach facility where vanadium would be leached out of the ore by a sulfuric acid solution as it percolates through the stacked crushed ore material. Minor amounts of uranium, a secondary product of vanadium processing, would also be leached into the solution. Even though the uranium concentrations in the ore are very low, the process for concentrating vanadium

would also concentrate the minor amounts of uranium contained in the ore.

- Construction and operation of processing facilities designed to extract and recover vanadium and uranium. The processing facilities would include a processing facility, ancillary facilities, process offices and laboratory, septic tank and leach field, and a pond system.
- Development of various ponds to support ore processing and mine operations that would work together to keep process solution and incident stormwater fully contained within the zero-discharge process solution system.
- Construction and operation of a stormwater management system that would divert stormwater away from mining and processing facilities.
- Development of a borrow area for durable rhyolite rock material, which would be used for overliner, riprap, roads, and infrastructure, was identified from outcrops located approximately one mile to the southeast of the mine site.
- Development of mine access roads including haul, secondary, and general mine roads. The project includes upgrades to approximately 7 miles of the Fish Creek Ranch Road for mine access from State Route 379.
- Construction and operation of power transmission lines (approximately 3.6 miles) that would tie into the 69-kilovolt (kV) power line that currently provides power to the Pan Mine (the Pan Line). The 24.9-kV Gibellini Project power line would extend to the proposed project area and would include a substation in the project area. An additional line would power the water pumps near Fish Creek Ranch.
- Development of mine water resource, which would be supplied by the Fish Creek Ranch irrigation system and pumped from a 15,000-gallon water collection tank south of the ranch to the project area via an approximately 6.25-mile water pipeline. The estimated water use for the project is approximately 500 gallons per minute (gpm) 24 hours per day, 365 days per year for mine use.
- Development of mineral exploration activities, including access roads, drill pads, sumps, trenches, surface sampling, bulk sampling, staging areas, and monitor wells, which would total approximately 46 acres of disturbance in the project area. Exact locations would be identified during plan implementation.

Reclamation of disturbed areas resulting from mining operations would be completed in accordance with BLM and Nevada Division of Environmental Protection regulations. Reclamation activities proposed in the Plan of Operations include the following:

- Drill hole plugging;
- regrading and reshaping of topography to the approximate original contour;
- wildlife habitat rehabilitation;
- revegetation;
- removal or stabilization of buildings, structures, and support facilities;
- returning of existing roads in project area to pre-project conditions;
- recontouring or regrading of all other mine-related roads and safety berms to approximate original contour; and
- isolation, removal, and/or control of acid-forming, toxic, or deleterious materials.

The purpose of the public scoping process is to identify relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the process for developing the EIS. The BLM has identified preliminary issues associated with the project: (1) Closure of the heap leach facility; (2) potential impacts to greater sage-grouse, a BLM sensitive species; (3) potential impacts to visual resources; (4) potential impacts to wildlife habitat; (5) potential impacts to surface and groundwater resources; and (6) potential impacts to cultural resources eligible under the National Register of Historic Places.

The BLM will use and coordinate the NEPA scoping process to help fulfill the public involvement process under the NHPA (54 U.S.C. 306108) as provided in 42 CFR 800.2(d)(3). The information about historic and cultural resources within the area potentially affected by the proposed project will assist the BLM in identifying and evaluating impacts to such resources in the context of both NEPA and the NHPA.

The BLM will consult with Native American tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration. Federal, State, and local agencies, along with tribes and other stakeholders who may be interested in or affected by the proposed project that the BLM is evaluating, are invited to participate in the scoping process and, if eligible, may request or be asked by the BLM to participate in the development of the EIS as a cooperating agency.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 40 CFR 1501.7.

Jon D. Sherve,

Field Manager, Mount Lewis Field Office.

[FR Doc. 2020–15174 Filed 7–13–20; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–D–COS–POL–30460; PPWODIREP0] [PPMPSAS1Y.YP0000]

Notice of the September 16–17, 2020, Meeting of the National Park System Advisory Board

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972, the National Park Service (NPS) is hereby giving notice that the National Park System Advisory Board (Board) will meet as noted below. The agenda will include the review of proposed actions regarding the National Historic Landmarks (NHL) Program and the National Natural Landmarks (NNL) Program. Interested parties are encouraged to submit written comments and recommendations that will be presented to the Board. Interested parties also may attend the board meeting and upon request may address the Board concerning an area's national significance.

DATES: On Wednesday, September 16, 2020, the meeting will convene at 1:00 p.m., and adjourn for the day at 5:00 p.m., Eastern Daylight Time. The meeting will reconvene on Thursday, September 17 at 9:00 a.m., and adjourn at 5:00 p.m. NHL and NNL matters will be presented on September 17. For instructions on registering to attend, submitting written material, or giving an oral presentation at the meeting, please see guidance under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be conducted at the American Geophysical Union, 2000 Florida Avenue NW, Washington, DC 20036, telephone (202) 462–6900. A teleconference may substitute for an in-person meeting if public health restrictions are in effect. In the event of a switch to

teleconference, notification and access information will be posted by September 9, 2020, to the Board's website at *https://www.nps.gov/advisoryboard.htm.*

FOR FURTHER INFORMATION CONTACT: (a) For information concerning attending the Board meeting or to request to address the Board, contact Joshua Winchell, Staff Director for the National Park System Advisory Board, Office of Policy, National Park Service, telephone (202) 513–7053, or email *joshua_winchell@nps.gov.* (b) To submit a written statement specific to, or request information about, any NHL matter listed below, or for information about the NHL Program or NHL designation process and the effects of designation, contact Sherry A. Frear, RLA, Chief, National Register of Historic Places and National Historic Landmarks Program, National Park Service, email *sherry_frear@nps.gov.* Written comments specific to any NHL matter listed below must be submitted by no later than September 15, 2020. (c) To submit a written statement specific to, or request information about, any NNL matter listed below, or for information about the NNL Program or NNL designation process and the effects of designation, contact Heather Eggleston, Manager, National Natural Landmarks Program, National Park Service, telephone 303–969–2945, email *heather_eggleston@nps.gov.* Written comments specific to any NNL matter listed below must be submitted by no later than September 15, 2020.

SUPPLEMENTARY INFORMATION: The Board has been established by authority of the Secretary of the Interior (Secretary) under 54 U.S.C. 100906, and is regulated by the Federal Advisory Committee Act.

The Board will receive briefings and discuss topics related to improving the visitor experience in NPS managed units and workforce planning for the next century, and consider proposed NHL and NNL actions. The final agenda and briefing materials will be posted to the Board's website prior to the meeting at *https://www.nps.gov/advisoryboard.htm.*

A. National Historic Landmarks (NHL) Program

NHL Program matters will be considered at the September 17 session of the meeting, during which the Board may consider the following:

Nominations for NHL Designation

Connecticut

- First Presbyterian Church, Stamford, CT

District of Columbia

- Pan American Union Headquarters, Washington, DC

Georgia

- Andalusia Farm (Flannery O'Connor Home), Milledgeville, GA

Massachusetts

- Western Railroad Stone Arch Bridges and Chester Factory Village Depot, Becket, Middlefield, and Chester, MA

Michigan

- Minong Copper Mining District, Isle Royale National Park, Keweenaw County, MI

Nebraska

- Scout's Rest Ranch Headquarters, North Platte, NE

New York

- Grant Cottage, Wilton, NY
- West Point Foundry Archeological Site, Cold Spring, NY

Texas

- Lower Pecos Canyonlands Archeological District, Val Verde County, TX

Virginia

- Patsy Cline House, Winchester, VA
- Stabler-Leadbeater Apothecary Shop, Alexandria, VA

Wisconsin

- Rock Island Site II, Rock Island State Park, Door County, WI

Proposed Amendments to Existing Designations

Connecticut

- Hill-Stead, Farmington, CT (updated documentation)
- Hawaii Kalaupapa Leprosy Settlement, Kalawao, HI (updated documentation)

Tennessee

- Hermitage Hotel, Nashville, TN (updated documentation)

B. National Natural Landmarks (NNL) Program

NNL Program matters will be considered at the September 17 session of the meeting, during which the Board may consider the following:

California

- Lanphere and Ma-le'l Dunes, Humbolt County, CA

Colorado

- Sulphur Cave and Spring, Routt County, CO

West Virginia

- Bear Rocks and Allegheny Front Preserve, Grant and Tucker Counties, WV

The meeting is open to the public. Interested persons may choose to make oral comments at the meeting during the designated time for this purpose. Depending on the number of people wishing to comment and the time available, the amount of time for oral comments may be limited. Interested parties should contact the Staff Director for the Board (see **FOR FURTHER INFORMATION CONTACT**), for advance placement on the public speaker list for this meeting. Members of the public may also choose to submit written comments by emailing them to *joshua_winchell@nps.gov.*

Public Disclosure of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 5 U.S.C. Appendix 2.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2020–15120 Filed 7–13–20; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR–2011–0008; DS63644000 DR2000000.CH7000 190D1113RT; OMB Control Number 1012–0006]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Suspensions Pending Appeal and Bonding

AGENCY: Office of Natural Resources Revenue, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Office of Natural Resources Revenue (ONRR) is proposing to renew an information collection. Through this Information Collection Request renewal (ICR), ONRR seeks renewed authority to collect information related to the paperwork requirements necessary to

post a surety or bond, or demonstrate financial solvency.

DATES: Submit written comments on or before August 13, 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.* You may find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to Mr. Luis Aguilar, Regulatory Specialist, ONRR, Building 85, MS 64400B, Denver Federal Center, West 6th Ave. and Kipling St., Denver, Colorado 80225, or by email to *Luis.Aguilar@onrr.gov.* Please reference OMB Control Number 1012–0006 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Kimberly Werner, Financial Services, ONRR, at (303) 231–3801, or email to *Kimberly.Werner@onrr.gov.* You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA and 5 CFR 1320.8(d)(1), ONRR is providing the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps ONRR assess the impact of the information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format. A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on March 25, 2020 (85 FR 16954). ONRR did not receive any comments.

As part of our continuing effort to reduce paperwork and respondent burdens, ONRR is again soliciting comments from the public and other Federal agencies on the proposed ICR described below. ONRR is especially interested in public comments addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of ONRR's estimate of the burden for this 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) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, (for example, permitting electronic submission of response).

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask in your comment to withhold your personal identifying information from public review, ONRR cannot guarantee that it will be able to do so.

Abstract: The Secretary of the United States Department of the Interior is responsible for mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). Under various laws, the Secretary's responsibility is to carry out a comprehensive inspection, collection, and fiscal and production accounting and auditing system that provides the capability to: (1) Accurately determine mineral royalties, interest, and other payments owed, (2) collect and account for such amounts in a timely manner, and (3) disburse the funds collected.

The Secretary also has a trust responsibility to seek advice and information from Indian beneficiaries. ONRR performs the minerals revenue management functions for the Secretary and assists the Secretary in carrying out the Department's trust responsibility for Indian lands.

The laws pertaining to mineral leases on Federal and Indian lands are posted at *http://www.onrr.gov/Laws_R_D/PubLaws/default.htm.*

(a) *General Information:* When a company or an individual enters into a lease to explore, develop, produce, and dispose of minerals from Federal or Indian lands, that company or individual agrees to pay the lessor a share in an amount or value of production from the leased lands. The lessee or its designee must report various kinds of information to the lessor relative to the disposition of the leased minerals. Such information is generally available within the records of the lessee or others involved in developing, transporting, processing, purchasing, or selling such minerals.

If ONRR determines that a lessee did not properly report or pay, it may issue orders, notices of noncompliance, and civil penalty notices to compel corrective reporting, payment, or both. Lessees have a right to appeal ONRR's determinations.

(b) Information Collections: Regulations under 30 CFR part 1243 govern the submission of appropriate surety instruments to suspend compliance with orders or decisions and to stay the accrual of civil penalties (if the Office of Hearings and Appeals grants a lessee's petition to stay accrual of civil penalties) pending administrative appeal for Federal and Indian leases. For Federal oil and gas leases, under 30 U.S.C. 1724(l) and its implementing regulations under 30 CFR part 1243, an appellant requesting a suspension without providing a surety must submit information to demonstrate financial solvency. This ICR covers the burden hours associated with submitting financial statements and surety instruments required to stay an ONRR order, decision, or accrual of civil penalties.

(c) *Stay of Payment Pending Appeal:* Title 30 CFR 1243.1 states that lessees or recipients of ONRR orders may suspend compliance with an order if they appeal under 30 CFR part 1290. Pending appeal, ONRR may suspend the payment requirement if the appellant submits a formal agreement of payment in the case of default, such as a bond or other surety. For Federal oil and gas leases only, the appellant may alternatively demonstrate financial solvency. If the Office of Hearings and Appeals grants a lessee's, or other recipient of a notice of noncompliance or civil penalty notice, request to stay the accrual of civil penalties under 30 CFR 1241.55(b)(2) and 1241.63(b)(2), the lessee or other recipient must post a bond or other surety. For Federal oil and gas leases only, the appellant may alternatively demonstrate financial solvency.

ONRR accepts the following surety types: form ONRR–4435, Administrative Appeal Bond; form ONRR–4436, Letter of Credit; form ONRR–4437, Assignment of Certificate of Deposit; Self-bonding; and U.S. Treasury Securities.

When an appellant selects one of the surety types and puts it in place, the appellant must maintain the surety until the appeal's completion. If the appeal is decided in favor of the appellant, ONRR will return the surety to the appellant. If the appeal is decided in favor of ONRR, then ONRR will take action to collect the total amount due or draw

down on the surety. ONRR will draw down on a surety if the appellant fails to comply with requirements relating to the amount due, timeframe, or surety submission or resubmission. Whenever ONRR draws down on a surety, it reduces the total amount due, which is defined as the unpaid principal plus the interest accrued to the projected receipt date of the surety payment. Appellants may refer to the Surety Instrument Posting Instructions, available on our website at *http://www.onrr.gov/compliance/appeals.htm.*

(d) *Forms and Other Surety Types:* An appellant may file the following forms and surety types:

(1) *Form ONRR–4435 Administrative Appeal Bond*—An appellant may file form ONRR–4435, Administrative Appeal Bond, which ONRR uses to secure the financial interests of the public and Indian lessors during the entire administrative and judicial appeal processes. Under 30 CFR 1243.4, an appellant is required to submit its contact and surety amount information on the bond to obtain the benefit of suspension of an obligation to comply with an order. The bond must be issued by a qualified surety company that the U.S. Department of the Treasury approves (see Department of the Treasury Circular No. 570, revised periodically in the **Federal Register**). ONRR's Director, or the delegated bond-approving officer, maintains the bonds in a secure facility. After an appeal's conclusion, ONRR may release and return the bond to the appellant or collect payment on the bond. If collection is necessary for a remaining balance, ONRR will issue a demand for payment to the surety company with a notice to the appellant. ONRR will also include all interest accrued on the affected receivable.

(2) *Form ONRR–4436 Letter of Credit*—An appellant may choose to file form ONRR–4436, Letter of Credit, with no modifications. Requirements under 30 CFR 1243.4 continue to apply. ONRR's Director, or the delegated bond-approving officer, maintains the Letter of Credit (LOC) in a secure facility. The appellant is responsible for verifying that the bank provides a current Fitch rating to ONRR. After the appeal's conclusion, ONRR may release and return the LOC to the appellant or collect payment on the LOC. If collection is necessary for a remaining balance, ONRR will issue a demand for payment that includes the principal amount, plus the interest assessed on the receivable, to the bank with a notice to the appellant.

(3) *Form ONRR–4437 Assignment of Certificate of Deposit*—An appellant may choose to secure a debt by requesting to use a Certificate of Deposit (CD) from a bank with the required minimum rating and submitting form ONRR–4437, Assignment of Certificate of Deposit. Requirements under 30 CFR 1243.4 continue to apply. The appellant must file the request with ONRR prior to the invoice due date. ONRR will accept a book-entry CD that explicitly assigns the CD to ONRR's Director. If collection of the CD is necessary for an unpaid balance, ONRR will return unused CD funds to the appellant after total settlement of the appealed issues, including applicable interest charges.

(4) *Self-bonding*—For Federal oil and gas leases, regulations under 30 CFR 1243.201 provide that no surety instrument is required when a person representing the appellant periodically demonstrates, to ONRR's satisfaction, that the guarantor or appellant is financially solvent or otherwise able to pay the obligation. The appellant must submit a written request to ''self-bond'' every time a new appeal is filed. To evaluate the financial solvency and exemption from requirements of an appellant to maintain a surety related to an appeal, ONRR requires the appellant to submit a consolidated balance sheet, subject to annual audit. In some cases, ONRR also requires copies of the most recent tax returns (up to three years) filed by the appellant.

In addition, an appellant must annually submit financial statements, subject to annual audit, to support its net worth. ONRR uses the consolidated balance sheet or business information supplied to evaluate the financial solvency of a lessee, designee, or payor seeking a stay of payment obligation pending review. If the appellant does not have a consolidated balance sheet documenting its net worth, or if it does not meet the $300 million net worth requirement, ONRR selects a business information or credit reporting service to provide information concerning the appellant's financial solvency. ONRR charges the appellant a $50 fee each time it reviews data from a business information or credit reporting service. The fee covers ONRR's cost to determine an appellant's financial solvency.

(5) *U.S. Treasury Securities*—An appellant may choose to secure its debts by requesting to use a U.S. Treasury Security (TS). The appellant must file the letter of request with ONRR prior to the invoice due date. The TS must be a U.S. Treasury note or bond with maturity equal to or greater than one year. The TS must equal 120 percent of the appealed amount plus 1 year of estimated interest (necessary to protect ONRR against interest rate fluctuations). ONRR only accepts book-entry TS.

Title of Collection: Suspensions Pending Appeal and Bonding.

OMB Control Number: 1012–0006.

Form Number: Forms ONRR–4435, ONRR–4436, and ONRR–4437.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Businesses.

Total Estimated Number of Annual Respondents: 105 Federal or Indian appellants.

Total Estimated Number of Annual Responses: 105.

Estimated Completion Time per Response: 2 hours.

Total Estimated Number of Annual Burden Hours: 210.

Respondent's Obligation: Mandatory.

Frequency of Collection: Annual and on occasion.

Total Estimated Annual Nonhour Burden Cost: There are no additional recordkeeping costs associated with this information collection. However, ONRR estimates 5 appellants per year will pay a $50 fee to obtain credit data from a business information or credit reporting service, which is a total ''non-hour'' cost burden of $250 per year (5 appellants per year × $50 = $250).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Kimbra G. Davis,

Director, Office of Natural Resources Revenue.

[FR Doc. 2020–15124 Filed 7–13–20; 8:45 am]

BILLING CODE 4335–30–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[OMB Control Number 1010–0191; Docket ID: BOEM–2017–0016]

Agency Information Collection Activities; Negotiated Noncompetitive Agreement for the Use of Sand, Gravel and Shell Resources on the Outer Continental Shelf

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Ocean Energy Management (BOEM) is proposing to renew an

information collection request (ICR) with revisions.

DATES: Interested persons are invited to submit comments on or before September 14, 2020.

ADDRESSES: Send your comments on this ICR by mail to the BOEM Information Collection Clearance Officer, Anna Atkinson, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, Virginia 20166; or by email to *anna.atkinson@boem.gov.* Please reference OMB Control Number 1010–0191 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Anna Atkinson by email, or by telephone at 703–787–1025.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995, BOEM provides the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps BOEM assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

BOEM is soliciting comments on the proposed ICR described below. BOEM is especially interested in public comment addressing the following issues: (1) Is the collection necessary to the proper functions of BOEM; (2) what can BOEM do to ensure that this information is processed and used in a timely manner; (3) is the burden estimate accurate; (4) how might BOEM enhance the quality, utility, and clarity of the information to be collected; and (5) how might BOEM minimize the burden of this collection on the respondents, including minimizing the burden through the use of information technology?

Comments submitted in response to this notice are a matter of public record. BOEM will include or summarize each comment in our request to the Office of Management and Budget (OMB) for approval of this ICR. You should be aware that your entire comment—including your address, phone number, email address, or other personally identifiable information—may be made publicly available at any time. In order for BOEM to withhold from disclosure your personally identifiable information, you must identify any information contained in the submittal of your comments that, if released, would constitute a clearly unwarranted invasion of your personal privacy. You must also briefly describe any possible harmful consequences of the disclosure of information, such as embarrassment, injury, or other harm. While you can ask us in your comment to withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so.

BOEM protects proprietary information in accordance with the Freedom of Information Act (5 U.S.C. 552) and the Department of the Interior's implementing regulations (43 CFR part 2).

Abstract: In 2017, BOEM published a final rule that created part 583 in Title 30 of the Code of Federal Regulations to address the use of Outer Continental Shelf (OCS) sand, gravel and shell resources for shore protection, beach restoration, or coastal wetlands restoration projects by Federal, State or local government agencies, or for use in construction projects authorized by or funded in whole or in part by the Federal Government.

The OCS Lands Act, 43 U.S.C. 1331 *et seq.* as amended, authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of mineral resources on the OCS. Section 1337(k)(1) authorizes the Secretary ''. . . to grant to the qualified persons offering the highest cash bonuses on a basis of competitive bidding leases of any mineral other than oil, gas, and sulphur in any area of the [O]uter Continental Shelf not then under lease for such mineral upon such royalty, rental, and other terms and conditions as the Secretary may prescribe at the time of offering the area for lease.'' An amendment to the OCS Lands Act authorizes the Secretary to negotiate agreements (in lieu of the previously required competitive bidding process) for the use of OCS sand, gravel, and shell resources for certain specified types of public uses. The specified uses will support construction of governmental projects for beach nourishment, shore protection, and wetlands enhancement, or any such project authorized by the Federal Government.

Under the authority delegated by the Secretary of the Interior, BOEM is authorized, pursuant to section 1337(k)(2) of the OCS Lands Act, to convey rights to OCS sand, gravel, and shell resources by negotiated noncompetitive agreement for use in shore protection and beach and coastal restoration, or for use in construction projects funded in whole or part by or authorized by the Federal Government.

Title of Collection: 30 CFR part 583, Negotiated Noncompetitive Agreement for the Use of Sand, Gravel and Shell Resources on the Outer Continental Shelf.

OMB Control Number: 1010–0191.

Form Number: None.

Type of Review: Renewal with revisions of a currently approved collection.

Respondents/Affected Public: Potential respondents include Federal, State, or local governments.

Total Estimated Number of Annual Responses: 45 responses.

Total Estimated Number of Annual Burden Hours: 299 hours.

Respondent's Obligation: Required to retain or obtain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Non-hour Burden Cost: We have identified no non-hour paperwork cost burdens for this collection.

Estimated Reporting and Recordkeeping Hour Burden: We estimate that the annual reporting burden for this collection is 299, which would be an increase of 56 annual burden hours from the OMB-approved burden hours. This increase is due to changes in estimated hour burdens and number of responses related to 30 CFR 583, subpart C, since the publication of the regulations in 2017. The hour burden estimates would be revised to more accurately update the number of state and local governments requesting negotiated noncompetitive agreements from BOEM. In addition, BOEM has reviewed the hour burdens for requested information under this subpart, and the increase would better reflect hours it takes for respondent to collect and submit the information.

BURDEN TABLE

Citation 30 CFR 583 subpart A	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
Subpart A—General—Federal, State, & local governments				
125	Apply for reconsideration to the BOEM Director within 15 days of notification; include statement of reasons; 1 copy to program office.	4	1	4
Total Subpart A			1	4

Citation 30 CFR 583 subpart C	Reporting and recordkeeping requirement	Hour burden	Average number of annual responses	Annual burden hours
Subpart C—OCS Sand, Gravel, & Shell Resources Negotiated Agreements—State & local governments				
300	Submit to BOEM a written request to obtain agreement; including, but not limited to: Detailed description of project; borrow area(s) and placement area(s); maps (geographic coordinates); G&G data; description/documentation of environmental evaluations; target dates; description of parties involved; status of required permits, licenses, or authorizations; description of potential conflicts with CZMA plans and other applicable requirements; points of contact info. of all parties involved; statement of funding.	20	8	160
305; 310(d)	Submit additional information as requested by BOEM	5	5	25
315(b);	Request BOEM Director for reconsideration of a disapproved agreement;.	Burden covered under 30 CFR 583 Subpart A		0
315(c)–(e)	Review, comment, and negotiate draft agreement; sign and return copies for execution by BOEM.	8	8	64
335(a)	Submit written notification to BOEM once resources authorized are obtained.	2	8	16
340	Verify that all contractors comply with 2 CFR 180 & 2 CFR 1400 in contract/transaction.	2	8	16
345	Submit written request to extend, modify, or change agreement to BOEM at least 180 days before expiration; any necessary information and evaluations documentation requested by BOEM; sign and return amendment; request BOEM Director for reconsideration.	2	2	4
345(b)	Submit written request for letter amendment	2	5	10
Total Subpart C			44	295
Grand Total			45	299

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Deanna Meyer-Pietruszka,

Chief, Office of Policy, Regulation, and Analysis.

[FR Doc. 2020–15129 Filed 7–13–20; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–511 and 731–TA–1246–1247 (Review)]

Certain Crystalline Silicon Photovoltaic Products From China and Taiwan; Scheduling of Expedited Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the countervailing and antidumping duty orders on certain crystalline silicon photovoltaic products from China and the antidumping duty order on certain crystalline silicon photovoltaic products from Taiwan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: April 6, 2020.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On April 6, 2020, the Commission determined that the domestic interested party group response to its notice of institution (85 FR 120, January 2, 2020) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Staff report.—A staff report containing information concerning the subject matter of the reviews will be placed in the nonpublic record on July 22, 2020, and made available to persons on the Administrative Protective Order service list for these reviews. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determinations the Commission should reach in the reviews. Comments are due on or before July 30, 2020 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by July 30, 2020. However, should the Department of Commerce (''Commerce'') extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules with respect to filing were revised effective July 25, 2014. *See* 79 FR 35920 (June 25, 2014). The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determinations.—The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: July 9, 2020.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2020–15167 Filed 7–13–20; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's website.

[2] The Commission has found the separate responses to its notice of institution filed on behalf of domestic producers SunPower Manufacturing Oregon LLC and Hanwha Q CELLS USA, Inc. to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–654–655 and 731–TA–1529–1532 (Preliminary)]

Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe (''SSLP Pipe'') from Czechia, Korea, Russia, and Ukraine; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigation Nos. 701–TA–654–655 and 731–TA–1529–1532 (Preliminary) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of seamless carbon and alloy steel standard, line, and pressure pipe from Czechia, Korea, Russia, and Ukraine, provided for in subheading 7304.19.10, 7304.19.50, 7304.31.60, 7304.39.00, 7304.51.50, 7304.59.60, and 7304.59.80 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Governments of Korea and Russia. Unless the Department of Commerce (''Commerce'') extends the time for initiation, the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by August 24, 2020. The Commission's views must be transmitted to Commerce within five business days thereafter, or by August 31, 2020.

DATES: July 8, 2020.

FOR FURTHER INFORMATION CONTACT: Junie Joseph ((202) 205–3363), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by

accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—These investigations are being instituted, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), in response to petitions filed on July 8, 2020, by Vallourec Star, LP, Houston, Texas.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.— In light of the restrictions on access to the Commission building due to the COVID–19 pandemic, the Commission will not be conducting an in-person Title VII (antidumping and countervailing duty) preliminary staff conference at the Commission's headquarters. Information about the format of the conference on July 29, 2020 will be provided separately. Requests to participate in the conference should be emailed to *preliminaryconferences@usitc.gov* (DO NOT FILE ON EDIS) on or before July 27, 2020. Please provide an email address for each conference participant in the email. A nonparty who has testimony that may aid the Commission's deliberations may request permission to participate by submitting a short statement.

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before August 3, 2020, a written brief containing information and arguments pertinent to the subject matter of the investigations. Instructions for preconference filings will be provided separately. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these investigations must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that any information that it submits to the Commission during these investigations may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of these or related investigations or reviews, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: June 9, 2020.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2020–15162 Filed 7–13–20; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[OMB Number 1140–0019]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension Without Change of a Currently Approved Collection Federal Firearms License (FFL) RENEWAL Application—ATF Form 8 (5310.11) Part II

AGENCY: Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

ACTION: 60-Day notice.

SUMMARY: The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection (IC) is also being published to obtain comments from the public and affected agencies.

DATES: Comments are encouraged and will be accepted for 60 days until September 14, 2020.

FOR FURTHER INFORMATION CONTACT: If you have additional comments, regarding the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact: Tracey Robertson, Federal Firearms Licensing Center, either by mail at 244 Needy Road, Martinsburg, WV 25405,

by email at *Tracey.Robertson@atf.gov,* or by telephone at 304–260–3643.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection (check justification or form 83):* Extension without change of a currently approved collection.

2. *The Title of the Form/Collection:* Federal Firearms License (FFL) RENEWAL Application.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

Form number (if applicable): ATF Form 8 (5310.11) Part II.

Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other (if applicable): Individuals or households.

Abstract: The Federal Firearms License (FFL) RENEWAL Application—ATF Form 8 (5310.11) Part II is used by members of the public to renew a Federal firearms license (FFL). The collected information is used to identify the FFL business premises and/or firearm collection activity, and determine the applicant's eligibility for a FLL renewal.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 34,000 respondents will utilize the form annually, and it will take each respondent approximately 30 minutes to complete their responses.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 17,000 hours, which is equal to 34,000 (# of respondents) * 1 (total responses per respondent) * .5 (30 minutes).

7. *An Explanation of the Change in Estimates:* The adjustments associated with this information collection include a decrease in the total respondents and burden hours by 1,000 and 500 hours respectively, since the last renewal in 2018. Due to a slight increase in the postage costs from .49 cents to .55 cents currently, the total cost burden has increased by $ 1,550, since 2018.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: July 9, 2020.

Melody Braswell,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2020–15165 Filed 7–13–20; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJJDP) Docket No. 1781]

Meeting of the Federal Advisory Committee on Juvenile Justice

AGENCY: Office of Juvenile Justice and Delinquency Prevention.

ACTION: Notice of meeting.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention has scheduled a meeting of the Federal Advisory Committee on Juvenile Justice (FACJJ).

DATES: Wednesday July 29, 2020 at 11:00 a.m.–1:00 p.m. ET.

ADDRESSES: This meeting will be a virtual meeting. To register for the meeting, please visit the website, *www.facjj.ojp.gov.*

FOR FURTHER INFORMATION CONTACT: Visit the website for the FACJJ at *www.facjj.ojp.gov* or contact Elizabeth Wolfe, Designated Federal Official (DFO), OJJDP, by telephone at (202) 598–9310, email at *elizabeth.wolfe@ojp.usdoj.gov;* Keisha Kersey, Grants Management Specialist, OJJDP, by telephone (202) 532–0124, email at *keisha.kersey@ojp.usdoj.gov;* or Melissa Kanaya, Senior Program Manager/Federal Contractor, by telephone (202) 280–8874, email at *melissa.kanaya@bixal.com.* Please note that the above phone numbers are not toll free.

SUPPLEMENTARY INFORMATION: The Federal Advisory Committee on Juvenile Justice (FACJJ), established pursuant to Section 3(2)A of the Federal Advisory Committee Act (5 U.S.C. App.2), will meet to carry out its advisory functions under Section 223(f)(2)(C–E) of the Juvenile Justice and Delinquency Prevention Act of 2002. The FACJJ is composed of representatives from the states and territories. FACJJ member duties include: Reviewing Federal policies regarding juvenile justice and delinquency prevention; advising the OJJDP Administrator with respect to particular functions and aspects of OJJDP; and advising the President and Congress with regard to State perspectives on the operation of OJJDP and Federal legislation pertaining to juvenile justice and delinquency prevention. More information on the FACJJ may be found at *www.facjj.ojp.gov*.

FACJJ meeting agendas are available on *www.facjj.ojp.gov.* Agendas will generally include: (a) Opening remarks and introductions; (b) Presentations and discussion; and (c) member announcements.

Should issues arise with online registration, or to register by email, the public should contact Melissa Kanaya, Senior Program Manager/Federal Contractor (see above for contact information). If submitting registrations via email, attendees should include all of the following: Name, Title, Organization/Affiliation, Full Address, Phone Number, Fax and Email. The meeting will also be available to join online via Webex, a video conferencing platform. Registration for this is also found online at *www.facjj.ojp.gov.*

Interested parties may submit written comments and questions in advance for the FACJJ to Elizabeth Wolfe (DFO) or Keisha Kersey at the contact information above. All comments and questions should be submitted no later than 5:00 p.m. ET on Wednesday, July 27, 2020.

The FACJJ will limit public statements if they are found to be duplicative. Written questions submitted by the public while in

attendance will also be considered by the FACJJ.

Keisha Kersey,

Grants Management Specialist, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 2020–15176 Filed 7–13–20; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2013–0016]

Nemko North America, Inc.: Request for Renewal of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of Nemko North America, Inc. (NNA) requesting renewal of recognition as a Nationally Recognized Testing Laboratory (NRTL).

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before July 29, 2020.

ADDRESSES: Submit comments by any of the following methods:

Electronically: You may submit comments and attachments electronically at: *https://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2013–0016, 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 the OSHA docket number (OSHA–2013–0016). OSHA places comments and other materials, including any personal information, in the public docket without revision, and these materials will be available online at *http://www.regulations.gov.* Therefore, the agency cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others) such as Social Security Numbers, birth dates, and medical data.

Docket: To read or download comments or other material in the docket, go to *https://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 *https://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

Extension of comment period: Submit requests for an extension of the comment period on or before July 29, 2020 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210, or by fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–2110 or email: *robinson.kevin@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

OSHA recognition of a NRTL signifies that the organization meets the requirements in § 1910.7 of title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification. OSHA maintains an informational web page for each NRTL that details its scope of recognition. These pages are available on our website at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

The agency processes applications by a NRTL for renewal of recognition following requirements in appendix A to 29 CFR 1910.7. OSHA conducts renewals in accordance with the procedures in 29 CFR 1910.7, appendix A, paragraph II.C. In accordance with these procedures, NRTLs submit a renewal request to OSHA, not less than nine months or no more than one year, before the expiration date of its current recognition. The submission includes a request for renewal and any additional information the NRTL wishes to submit to demonstrate its continued compliance with the terms of its recognition and 29 CFR 1910.7. If OSHA has not conducted an on-site assessment of the NRTL's headquarters and key sites within the past 18 to 24 months, it will schedule the necessary on-site assessments prior to the expiration date of the NRTL's recognition. Upon review of the submitted material and, as necessary, the successful completion of the on-site assessment, OSHA announces its preliminary decision to grant or deny renewal in the **Federal Register** and solicit comments from the public. OSHA then publishes a final **Federal Register** notice responding to any comments and renewing the NRTL's recognition for a period of five years, or denying the renewal of recognition.

NNA initially received OSHA recognition as a NRTL on June 21, 1991 (56 FR 28579). NNA's most recent renewal was granted on July 14, 2014 for a five-year period expiring on July 14, 2019. NNA submitted a timely request for renewal, dated October 10, 2018 (OSHA–2013–0016–0016), and retains its recognition pending OSHA's final decision in this renewal process. Additionally, Nemko sent a request on January 14, 2020 (OSHA–2013–0016–0017) to remove its Salt Lake City, Utah site from their NRTL scope of recognition. The current addresses of the NNA facilities recognized by OSHA and included as part of the renewal request are:

(1) Nemko USA, Inc., 2210 Faraday Avenue, Suite 150, Carlsbad, California 92008; and

(2) Nemko Canada, Inc., 303 River Road, Ottawa, Canada K1V 1H2.

II. Notice of Preliminary Findings

OSHA is providing notice that NNA is applying for renewal of its recognition as a NRTL. This renewal covers NNA's existing NRTL scope of recognition. NNA submitted an acceptable application for renewal of its recognition as a NRTL on October 10, 2018. OSHA evaluated NNA's application for renewal and preliminarily determined that NNA can continue to meet the requirements prescribed by 29 CFR 1910.7 for recognition. Accordingly, OSHA is making a determination that it does not need to conduct an additional on-site review of NNA's facilities based on its evaluations of NNA's application and all other available information. This information includes OSHA's audits of NNA's recognized sites during this recognition period, and the satisfactory resolution of non-conformances with the requirements of 29 CFR 1910.7. This preliminary finding does not constitute an interim or temporary approval of the request.

OSHA welcomes public comment as to whether NNA meets the requirements of 29 CFR 1910.7 for renewal of their recognition as a NRTL. Comments should consist of pertinent written documents and exhibits. Commenters needing more time to comment must submit a request in writing, stating the reasons for the request. OSHA must receive the written request for an extension by the due date for comments. OSHA will limit any extension to 30 days unless the requester justifies a longer period. OSHA may deny a request for an extension if it is not adequately justified. To obtain or review copies of the publicly available information in NNA's application and other pertinent documents (including exhibits), as well as all submitted comments, contact the Docket Office, Room N–3653, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address; these materials also are available online at *http://www.regulations.gov* under Docket No. OSHA–2013–0016.

OSHA staff will review all comments to the docket submitted in a timely manner and, after addressing the issues raised by these comments, will make a recommendation to the Assistant Secretary on whether to grant NNA's application for renewal. The Assistant Secretary will make the final decision on granting the application and, in making this decision, may undertake other proceedings prescribed in appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of this final decision in the **Federal Register**.

III. Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on July 7, 2020.

Loren Sweatt,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2020–15056 Filed 7–13–20; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2006–0048]

NSF International: Request for Renewal of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of NSF International (NSF) requesting renewal of recognition as a Nationally Recognized Testing Laboratory (NRTL).

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before July 29, 2020.

ADDRESSES: Submit comments by any of the following methods:

Electronically: You may submit comments and attachments electronically at: *https://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2006–0048, 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 the OSHA docket number (OSHA–2006–0048). OSHA places comments and other materials, including any personal information, in the public docket without revision, and these materials will be available online at *http://www.regulations.gov.* Therefore, the agency cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others) such as Social Security Numbers, birth dates, and medical data.

Docket: To read or download comments or other material in the docket, go to *https://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 *https://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

Extension of comment period: Submit requests for an extension of the comment period on or before July 29, 2020 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210, or by fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–2110 or email: *robinson.kevin@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

OSHA recognition of a NRTL signifies that the organization meets the requirements in § 1910.7 of title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification of the products. OSHA maintains an informational web page for each NRTL that details its scope of recognition available at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

The agency processes applications by a NRTL for renewal of recognition following requirements in appendix A to 29 CFR 1910.7. OSHA conducts renewals in accordance with the procedures in 29 CFR 1910.7, appendix A, paragraph II.C. In accordance with these procedures, NRTLs submit a renewal request to OSHA, not less than nine months or no more than one year, before the expiration date of its current recognition. A request includes a request for renewal and any additional information the NRTL may submit to demonstrate its continued compliance with the terms of its recognition and 29 CFR 1910.7. If OSHA did not conduct an on-site assessment of the NRTL's headquarters and key sites within the past 18 to 24 months, it will schedule the necessary on-site assessments prior to the expiration date of the NRTL's recognition. Upon review of the submitted material and, as necessary, the successful completion of the on-site assessment, OSHA announces its preliminary decision to grant or deny renewal in the **Federal Register** and solicits comments from the public. OSHA then publishes a final **Federal Register** notice responding to any comments and renewing the NRTL's recognition for a period of five years, or denying the renewal of recognition.

NSF initially received OSHA recognition as a NRTL on December 10, 1998 (63 FR 68309). NSF's most recent renewal was on July 14, 2014, for a five-year period expiring on July 14, 2019. NSF submitted a timely request for renewal, dated October 11, 2018 (OSHA–2006–0048–0013), and retains its recognition pending OSHA's final decision in this renewal process. The current address of the NSF facility recognized by OSHA and included as part of the renewal request is:

1. NSF International, 789 Dixboro Road, Ann Arbor, Michigan 48105.

II. Notice of Preliminary Findings

OSHA is providing notice that NSF is applying for renewal of its recognition as a NRTL. This renewal covers NSF's existing NRTL scope of recognition. OSHA evaluated NSF's application for renewal and preliminarily determined that NSF can continue to meet the requirements prescribed by 29 CFR 1910.7 for recognition. Accordingly, OSHA is making a determination that it does not need to conduct an additional on-site review of NSF's facilities based on its evaluations of NSF's application and all other available information. This information includes OSHA's audits of NSF's NRTL recognized site during this recognition period, and the satisfactory resolution of non-conformances with the requirements of 29 CFR 1910.7. This preliminary finding does not constitute an interim or temporary approval of the request.

OSHA welcomes public comment as to whether NSF meets the requirements of 29 CFR 1910.7 for renewal of its recognition as a NRTL. Comments should consist of pertinent written documents and exhibits. Commenters needing more time to comment must submit a request in writing, stating the reasons for the request. Commenters must submit the written request for an extension by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer period. OSHA may deny a request for an extension if it is not adequately justified. To obtain or review copies of the publicly available information in NSF's application and other pertinent documents (including exhibits), as well as all submitted comments, contact the Docket Office, Room N–3653, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address; these materials also are available online at *http://www.regulations.gov* under Docket No. OSHA–2006–0048.

OSHA staff will review all comments submitted to the docket in a timely manner and, after addressing the issues raised by these comments, will make a recommendation to the Assistant Secretary on whether to grant NSF's application for renewal. The Assistant Secretary will make the final decision on granting the application and, in making this decision, may undertake other proceedings prescribed in appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of this final decision in the **Federal Register**.

III. Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on July 7, 2020.

Loren Sweatt,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2020–15057 Filed 7–13–20; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2006–0040]

SGS North America, Inc.: Request for Renewal of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the application of SGS North America, Inc.'s (SGS), requesting renewal of recognition as a Nationally Recognized Testing Laboratory (NRTL).

DATES: Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before July 29, 2020.

ADDRESSES: Submit comments by any of the following methods:

Electronically: You may submit comments and attachments electronically at: *https://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2006–0040, 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 the OSHA docket number (OSHA–2006–0040). OSHA places comments and other materials, including any personal information, in the public docket without revision, and these materials will be available online at *http://www.regulations.gov.* Therefore, the agency cautions commenters about submitting statements they do not want made available to the public, or submitting comments that contain personal information (either about themselves or others) such as Social Security Numbers, birth dates, and medical data.

Docket: To read or download comments or other material in the docket, go to *https://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 *https://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection at the OSHA Docket Office. Contact the OSHA Docket Office for assistance in locating docket submissions.

Extension of comment period: Submit requests for an extension of the comment period on or before July 29, 2020 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210, or by fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–2110 or email: *robinson.kevin@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

OSHA recognition of a NRTL signifies that the organization meets the requirements in § 1910.7 of title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification. OSHA maintains an informational web page for each NRTL that details its scope of recognition available at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

OSHA processes applications by a NRTL for renewal of recognition following requirements in appendix A to 29 CFR 1910.7. OSHA conducts renewals in accordance with the procedures in 29 CFR 1910.7, appendix A, Section II.C. In accordance with these procedures, NRTLs submit a renewal request to OSHA, not less than nine months or no more than one year, before the expiration date of its current recognition. The submission request includes a request for renewal and any additional information the NRTL wishes to submit to demonstrate its continued compliance with the terms of its recognition and 29 CFR 1910.7. If OSHA has not conducted an on-site assessment of the NRTL's headquarters and key sites within the past 18 to 24 months, it will schedule the necessary on-site assessments prior to the expiration date of the NRTL's recognition. Upon review of the submitted material and, as necessary, the successful completion of the on-site assessment, OSHA announces its preliminary decision to grant or deny renewal in the **Federal Register** and solicit comments from the public. OSHA then publishes a final **Federal Register** notice responding to any comments and renewing the NRTL's recognition for a period of five years, or denying the renewal of recognition.

SGS initially received OSHA recognition as a NRTL on March 23, 1993 (58 FR 15509). SGS's most recent renewal was on July 14, 2014, for a five-year period ending on July 14, 2019. SGS submitted a timely request for renewal, dated October 2, 2018 (OSHA–2006–0040–0050), and retains its recognition pending OSHA's final decision in this renewal process. The current addresses of the SGS facilities recognized by OSHA and included as part of the renewal request are:

(1) SGS North America, Inc., 620 Old Peachtree Road, Suwanee, Georgia 30024;

(2) Consumer Testing Services, SGS Tecnos S.A., C/. Trespaderne 29, Edificio Barajas 1, 28042 Madrid, Spain;

(3) SGS—Baseefa Limited, Rockhead Business Park, Staden Lane, Buxton SK17 9RZ, United Kingdom;

(4) SGS—Fimko, Ltd., Sarkiniementie 3, FI–00210 Helsinki, Finland;

(5) SGS—Guangzhou, 198 Kezhu Road, Scientech Park, Guangzhou Economic & Technology Development District, Guangzhou, Guangdong, China;

(6) SGS—Ningbo, 1–5/F., West of Building 4, Lingyun Industry Park, No. 1177, Lingyun Road, Ningbo National Hi-Tech Zone, Ningbo, Zhejiang, China;

(7) SGS—Shanghai, No. 588 West Jindu Road, Xinqiao Town, Songjiang District 201612, Shanghai, China;

(8) SGS—Shenzhen Branch, No. 1 Workshop, M–10, Middle Section, Science & Technology Park, Nan Shan District, Shenzhen, China; and

(9) SGS—Shunde, 198 Kezhu Road, Scientech Park Building 1, European Industrial Park, No. 1, Shunde South Road, Wusha, Daliang, Shunde District, Foshan, Guangdong, China.

II. Notice of Preliminary Findings

OSHA is providing notice that SGS is applying for renewal of its recognition as a NRTL. This renewal covers SGS's existing NRTL scope of recognition. OSHA evaluated SGS's application for renewal and preliminarily determined that SGS can continue to meet the requirements prescribed by 29 CFR 1910.7 for recognition. Accordingly, OSHA is making a determination that it does not need to conduct an additional on-site review of SGS's facilities based on its evaluations of SGS's application and all other available information. This information includes OSHA's audits of SGS's recognized NRTL sites during this recognition period, and the satisfactory resolution of non-conformances with the requirements of 29 CFR 1910.7. This preliminary finding does not constitute an interim or temporary approval of the request.

OSHA welcomes public comment as to whether SGS meets the requirements of 29 CFR 1910.7 for renewal of their recognition as a NRTL. Comments should consist of pertinent written documents and exhibits. Commenters needing more time to comment must submit a request in writing, stating the reasons for the request. OSHA must receive the written request for an extension by the due date for comments. OSHA will limit any extension to 30

days unless the requester justifies a longer period. OSHA may deny a request for an extension if it is not adequately justified. To obtain or review copies of the publicly available information in SGS's application and other pertinent documents (including exhibits), as well as all submitted comments, contact the Docket Office, Room N–3653, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address; these materials also are available online at *http://www.regulations.gov* under Docket No. OSHA–2006–0040.

OSHA staff will review all comments to the docket submitted in a timely manner and, after addressing the issues raised by these comments, will make a recommendation to the Assistant Secretary on whether to grant SGS's application for renewal. The Assistant Secretary will make the final decision on granting the application and, in making this decision, may undertake other proceedings prescribed in appendix A to 29 CFR 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

III. Authority and Signature

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1910.7.

Signed at Washington, DC, on July 7, 2020.

Loren Sweatt,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2020–15059 Filed 7–13–20; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL SCIENCE FOUNDATION

Public Availability of the National Science Foundation FY 2017 and FY 2018 Service Contract Inventory and Associated Documents

AGENCY: National Science Foundation.

ACTION: Notice of public availability of FY 2017 and FY 2018 service contract inventories and associated documents.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010, the National Science Foundation is publishing this notice to advise the public of the availability of NSF's FY 2017 and FY 2018 service contract inventory data.

FOR FURTHER INFORMATION CONTACT: Questions regarding the service contract inventory should be directed to Richard Pihl in the BFA/DACS at 703–292–7395 or *rpihl@nsf.gov.*

SUPPLEMENTARY INFORMATION: This inventory provides information on service contract actions that were made in FY 2017 and 2018. The inventory has been developed in accordance with guidance issued on November 5, 2010, and December 19, 2011, by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP). The FY 2017 and 2018 government-wide service contract inventories are available at *https://www.acquisition.gov/service-contract-inventory/.* NSF's FY 2017 and 2018 service contract inventory data is included in the government-wide inventory posted on *https://www.acquisition.gov* and the government-wide inventory can be filtered to display the inventory data for NSF. The National Science Foundation has posted its FY 2016 NSF Inventory Analysis including FY 2017 Analysis Plan and its FY 2017 NSF Inventory Analysis including FY 2018 Analysis Plan on the National Science Foundation homepage at the following links:

FY 2016 NSF Inventory Analysis Including FY 2017 Analysis Plan (NSF 20–102)

(*https://www.nsf.gov/publications/pub_summ.jsp?ods_key=nsf20102*)

FY 2017 NSF Inventory Analysis Including FY 2018 Analysis Plan (NSF 20–103)

(*https://www.nsf.gov/publications/pub_summ.jsp?ods_key=nsf20103*)

Dated: June 29, 2020.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2020–14333 Filed 7–13–20; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2020–0163]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving no Significant Hazards Considerations

AGENCY: Nuclear Regulatory Commission.

ACTION: Biweekly notice.

SUMMARY: Pursuant to the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (NRC) is publishing this regular biweekly notice. The Act requires the Commission to publish notice of any amendments issued, or proposed to be issued, and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves no significant hazards consideration (NSHC), notwithstanding the pendency before the Commission of a request for a hearing from any person. This biweekly notice includes all amendments issued, or proposed to be issued, from June 16, 2020 to June 26, 2020. The last biweekly notice was published on June 30, 2020.

DATES: Comments must be filed by August 13, 2020. A request for a hearing or petitions for leave to intervene must be filed by September 14, 2020.

ADDRESSES: You may submit comments by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0163. Address questions about NRC Docket IDs in *Regulations.gov* to Jennifer Borges; telephone: 301–287–9127; email: *Jennifer.Borges@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to*: Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Kay Goldstein, Office of Nuclear Reactor Regulation, telephone: 301–415–1506, email: *Kay.Goldstein@nrc.gov,* U.S. Nuclear Regulatory Commission, Washington DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2020–0163, facility name, unit number(s), docket number(s), application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly-

available information related to this action by any of the following methods:

• *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2020–0163.

• *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.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.

B. Submitting Comments

Please include Docket ID NRC–2020–0163, facility name, unit number(s), docket number(s), application date, and subject, in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *https://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Combined Licenses and Proposed No Significant Hazards Consideration Determination

For the facility-specific amendment requests shown below, the Commission finds that the licensee's analyses provided, consistent with title 10 of the *Code of Federal Regulations* (10 CFR) section 50.91, is sufficient to support the proposed determination that these amendment requests involve NSHC. Under the Commission's regulations in 10 CFR 50.92, operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves NSHC. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. If the Commission takes action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. If the Commission makes a final NSHC determination, any hearing will take place after issuance. The Commission expects that the need to take action on an amendment before 60 days have elapsed will occur very infrequently.

A. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this notice, any persons (petitioner) whose interest may be affected by this action may file a request for a hearing and petition for leave to intervene (petition) with respect to the action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. The NRC's regulations are accessible electronically from the NRC Library on the NRC's website at *https://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

As required by 10 CFR 2.309(d) the petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements for standing: (1) The name, address, and telephone number of the petitioner; (2) the nature of the petitioner's right to be made a party to the proceeding; (3) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the petitioner's interest.

In accordance with 10 CFR 2.309(f), the petition must also set forth the specific contentions which the petitioner seeks to have litigated in the proceeding. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner must provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to the specific sources and documents on which the petitioner intends to rely to support its position on the issue. The petition must include sufficient information to show that a genuine dispute exists with the applicant or licensee on a material issue of law or fact. Contentions must be limited to matters within the scope of the proceeding. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to satisfy the requirements at 10 CFR 2.309(f) with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene. Parties have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that party's admitted contentions, including the opportunity to present evidence, consistent with the NRC's regulations, policies, and procedures.

Petitions must be filed no later than 60 days from the date of publication of this notice. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii). The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the

Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally-recognized Indian Tribe, or agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h)(1). The petition should state the nature and extent of the petitioner's interest in the proceeding. The petition should be submitted to the Commission no later than 60 days from the date of publication of this notice. The petition must be filed in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document, and should meet the requirements for petitions set forth in this section, except that under 10 CFR 2.309(h)(2) a State, local governmental body, or Federally-recognized Indian Tribe, or agency thereof does not need to address the standing requirements in 10 CFR 2.309(d) if the facility is located within its boundaries. Alternatively, a State, local governmental body, Federally-recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

If a hearing is granted, any person who is not a party to the proceeding and is not affiliated with or represented by a party may, at the discretion of the presiding officer, be permitted to make a limited appearance pursuant to the provisions of 10 CFR 2.315(a). A person making a limited appearance may make an oral or written statement of his or her position on the issues but may not otherwise participate in the proceeding. A limited appearance may be made at any session of the hearing or at any prehearing conference, subject to the limits and conditions as may be imposed by the presiding officer. Details regarding the opportunity to make a limited appearance will be provided by the presiding officer if such sessions are scheduled.

B. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing and petition for leave to intervene (petition), any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities that request to participate under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Detailed guidance on making electronic submissions may be found in the Guidance for Electronic Submissions to the NRC and on the NRC website at *https://www.nrc.gov/site-help/e-submittals.html.* Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit adjudicatory documents. Submissions must be in Portable Document Format (PDF). Additional guidance on PDF submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed so that they can obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing adjudicatory documents in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the

document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the Commission or the presiding officer. If you do not have an NRC-issued digital ID certificate as described above, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or personal phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. For example, in some instances, individuals provide home addresses in order to demonstrate proximity to a facility or site. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

The table below provides the plant name, docket number, date of application, ADAMS accession number, and location in the application of the licensee's proposed NSHC determination. For further details with respect to these license amendment applications, see the application for amendment which is available for public inspection in ADAMS. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

Duke Energy Carolinas, LLC; Oconee Nuclear Station, Units 1, 2, and 3; Oconee County, SC	
Application Date	April 13, 2020.
ADAMS Accession No	ML20104A384.
Location in Application of NSHC	Pages 5–6 of Enclosure.
Brief Description of Amendments	The proposed amendments would change the Technical Specifications to adopt Technical Specification Task Force (TSTF) Traveler TSTF–272, Revision 1, ''Refueling Boron Concentration Clarification.''
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Kathryn B. Nolan, Deputy General Counsel, Duke Energy Corporation, 550 South Tryon Street (DEC45A), Charlotte, NC 28202.
Docket Nos	50–269, 50–270, and 50–287.
NRC Project Manager, Telephone Number	Shawn Williams, 301–415–1009.

Duke Energy Carolinas, LLC; Oconee Nuclear Station, Units 1, 2, and 3; Oconee County, SC	
Application Date	April 13, 2020.
ADAMS Accession No	ML20104A384.
Location in Application of NSHC	Page 11 of Enclosure.
Brief Description of Amendments	The proposed amendments would change the Technical Specifications to adopt Technical Specification Task Force (TSTF) Traveler TSTF–421, Revision 0, ''Revision to RCP [Reactor Coolant Pump] Flywheel Inspection Program (WCAP–15666).''
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Kathryn B. Nolan, Deputy General Counsel, Duke Energy Corporation, 550 South Tryon Street (DEC45A), Charlotte, NC 28202.
Docket Nos	50–269, 50–270, and 50–287.
NRC Project Manager, Telephone Number	Shawn Williams, 301–415–1009.

Exelon Generation Company, LLC; Peach Bottom Atomic Power Station, Units 2 and 3; York County, PA	
Application Date	May 29, 2020.
ADAMS Accession No	ML20150A007.
Location in Application of NSHC	Pages 11–13 of Attachment 1.
Brief Description of Amendments	The proposed amendments would modify technical specification requirements to permit the use of risk-informed completion times in accordance with Technical Specifications Task Force (TSTF) Traveler, TSTF–505, Revision 2, ''Provide Risk-Informed Extended Completion Times—RITSTF [Risk-Informed TSTF] Initiative 4b,'' dated July 2, 2018 (ADAMS Accession No. ML18183A493).
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Tamra Domeyer, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.
Docket Nos	50–277 and 50–278.
NRC Project Manager, Telephone Number	Jennifer Tobin, 301–415–2328.

NextEra Energy Duane Arnold, LLC; Duane Arnold Energy Center; Linn County, IA	
Application Date	May 15, 2020.
ADAMS Accession No	ML20136A374.
Location in Application of NSHC	Pages 8–10 of Enclosure.
Brief Description of Amendments	The proposed license amendment request would remove the existing Cyber Security Plan requirements contained in License Condition 2.C(5) of the Duane Arnold Energy Center Renewed Facility Operating License.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Steven Hamrick, Managing Attorney—Nuclear, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420.
Docket No	50–331.
NRC Project Manager, Telephone Number	Scott Wall, 301–415–2855.

NextEra Energy Duane Arnold, LLC; Duane Arnold Energy Center; Linn County, IA	
Application Date	May 15, 2020.
ADAMS Accession No	ML20136A438.
Location in Application of NSHC	Pages 11–13 of Enclosure.

Brief Description of Amendments	The proposed changes would revise the Duane Arnold Energy Center (DAEC) Emergency Plan and Emergency Action Level scheme to support a permanently shutdown and defueled condition at DAEC.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Steven Hamrick, Managing Attorney—Nuclear, Florida Power & Light Company, P.O. Box 14000, Juno Beach, FL 33408–0420.
Docket No	50–331.
NRC Project Manager, Telephone Number	Scott Wall, 301–415–2855.

Southern Nuclear Operating Company, Inc.; Edwin I Hatch Nuclear Plant, Units 1 and 2; Appling County, GA

Application Date	June 12, 2020.
ADAMS Accession No	ML20164A278.
Location in Application of NSHC	Section 3.1, page E–1.
Brief Description of Amendments	The proposed changes would revise Technical Specification (TS) 3.6.3.2, ''Primary Containment Oxygen Concentration.'' The proposed changes simplify and clarify the applicability statements, which if misapplied, could conflict with the corresponding required actions. The proposed changes also remove the undefined term ''scheduled plant shutdown'' and provide adequate terminal actions. The proposed amendment is based on Technical Specifications Task Force (TSTF) Traveler TSTF–568, Revision 2, ''Revise Applicability of BWR/4 TS 3.6.2.5 and TS 3.6.3.2'' (ADAMS Accession No. ML19141A122). The U.S. Nuclear Regulatory Commission (NRC or the Commission) approved TSTF–568, Revision 2, by letter dated December 17, 2019 (ADAMS Package Accession No. ML19325C444). The NRC staff's safety evaluation of the traveler was enclosed with the NRC staff's approval letter.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Millicent Ronnlund, Vice President and General Counsel, Southern Nuclear Operating Co., Inc., P.O. Box 1295, Birmingham, AL 35201–1295.
Docket Nos	50–321 and 50–366.
NRC Project Manager, Telephone Number	John Lamb, 301–415–3100.

Tennessee Valley Authority; Browns Ferry Nuclear Plant, Units 1, 2, and 3; Limestone County, AL

Application Date	May 6, 2020.
ADAMS Accession No	ML20127H904.
Location in Application of NSHC	E1–21—E1–23 of Enclosure 1.
Brief Description of Amendments	The proposed amendments would incorporate the Tornado Missile Risk Evaluator methodology into the Browns Ferry Nuclear Plant, Units 1, 2, and 3, Updated Final Safety Analysis Report.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Sherry Quirk, Executive VP and General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 6A, Knoxville, TN 37902.
Docket Nos	50–259, 50–260, and 50–296.
NRC Project Manager, Telephone Number	Michael Wentzel, 301–415–6459.

Tennessee Valley Authority; Watts Bar Nuclear Plant, Units 1 and 2; Rhea County, TN

Application Date	May 19, 2020.
ADAMS Accession No	ML20140A342.
Location in Application of NSHC	Page E19 of 24 of Enclosure.
Brief Description of Amendments	The proposed amendments would revise the Watts Bar Nuclear Plant, Units 1 and 2, Technical Specification 3.7.11, ''Control Room Emergency Air Temperature Control System (CREATCS),'' to provide a temporary change to the completion time for Required Actions A.1 and E.1 to support replacement of the Trains A and B CREATCS chillers.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	Sherry Quirk, Executive VP and General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 6A, Knoxville, TN 37902.
Docket Nos	50–390 and 50–391.
NRC Project Manager, Telephone Number	Kimberly Green, 301–415–1627.

III. Notice of Issuance of Amendments to Facility Operating Licenses and Combined Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed NSHC determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action, see (1) the application for amendment; (2) the amendment; and (3) the Commission's related letter, Safety Evaluation, and/or Environmental Assessment as indicated. All of these items can be accessed as described in the ''Obtaining Information and Submitting Comments'' section of this document.

Dominion Energy Nuclear Connecticut, Inc.; Millstone Power Station, Unit No. 2; Waterford, CT

Date Issued	June 24, 2020.
ADAMS Accession No	ML20140A369.
Amendment No	339.

Brief Description of Amendments	The amendment revised Technical Specification 3.8.1.1, ''A.C. [Alternating Current] Sources—Operating,'' to add a permanent Required Action a.3 that provides an option to extend the allowed outage time (AOT) from 72 hours to 10 days for one inoperable offsite circuit. In addition, the amendment added a one-time exception to the Required Action a.3 that extends the AOT to 35 days for one inoperable offsite circuit.
Docket Nos	50–336.

Duke Energy Progress, LLC; H. B. Robinson Steam Electric Plant, Unit No. 2; Darlington County, SC

Date Issued	June 18, 2020.
ADAMS Accession No	ML20058E899.
Amendment No	267.
Brief Description of Amendments	The amendment revised Technical Specification (TS) 3.8.2, ''AC [Alternating Current] Sources—Shutdown,'' Surveillance Requirement (SR) 3.8.2.1. The SR change reflects that SR 3.8.1.18 is not required to be met in the TS 3.8.2 Applicability.
Docket No	50–261.

Energy Northwest; Columbia Generating Station; Benton County, WA

Date Issued	June 22, 2020.
ADAMS Accession No	ML20136A347.
Amendment No	259.
Brief Description of Amendments	The amendment modified Technical Specification (TS) requirements in Sections 1.3, ''Completion Times,'' and 3.0, ''Limiting Condition for Operation (LCO) Applicability,'' and ''Surveillance Requirement (SR) Applicability,'' regarding LCO and SR usage. These changes are consistent with NRC-approved Technical Specifications Task Force (TSTF) Traveler TSTF–529, ''Clarify Use and Application Rules.''
Docket No	50–397.

Exelon Generation Company, LLC; Quad Cities Nuclear Power Station, Units 1 and 2; Rock Island County, IL

Date Issued	June 26, 2020.
ADAMS Accession No	ML20150A328.
Amendment Nos	281 (Unit 1) and 277 (Unit 2).
Brief Description of Amendments	The amendments revised the combined main steam isolation valve leakage rate limit for all four steam lines in Technical Specification (TS) 3.6.1.3, ''Primary Containment Isolation Valves (PCIVs),'' Surveillance Requirement (SR) 3.6.1.3.10; added a new TS 3.6.2.6, ''Residual Heat Removal (RHR) Drywell Spray''; and revised TS 3.6.4.1, ''Secondary Containment,'' SR 3.6.4.1.1.
Docket Nos	50–254 and 50–265.

Dated: July 1, 2020.

For the Nuclear Regulatory Commission.

Craig G. Erlanger,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2020–14640 Filed 7–13–20; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2019–0217]

Information Collection: Safeguards on Nuclear Material—Implementation of United States/International Atomic Energy Agency Agreement

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of submission to the Office of Management and Budget; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted a request for renewal of an existing collection of information to the Office of Management and Budget (OMB) for review. The information collection is entitled, ''Safeguards on Nuclear Material—Implementation of United States/International Atomic Energy Agency Agreement.''

DATES: Submit comments by August 13, 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: 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 Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: David Cullison, NRC Clearance Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2019–0217 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2019–0217.
- *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 supporting statement is available in ADAMS under Accession No. ML20139A123.
- *NRC's Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting the NRC's Clearance Officer, David Cullison, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2084; email: *Infocollects.Resource@nrc.gov.*

B. Submitting Comments

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. All comment submissions are posted at *https://www.regulations.gov/* and entered into ADAMS. Comment submissions are not routinely edited to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for

submission to the OMB, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that comment submissions are not routinely edited to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC recently submitted a request for renewal of an existing collection of information to OMB for review entitled, ''Information Collection: Safeguards on Nuclear Material—Implementation of United States/International Atomic Energy Agency Agreement.'' The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on March 26, 2020 (85 FR 17100).

1. *The title of the information collection:* Part 75 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Safeguards on Nuclear Material—Implementation of US/IAEA Agreement.''

2. OMB approval number: 3150–0055.

3. Type of submission: Extension.

4. *The form number if applicable:* Not applicable.

5. *How often the collection is required or requested:* Selected licensees are required to provide reports of nuclear material inventory and flow for selected facilities under the US/IAEA Safeguards Agreement, permit inspections by International Atomic Energy Agency Agreement (IAEA) inspectors, complementary access of IAEA inspectors under the Additional Protocol, give immediate notice to the NRC in specified situations involving the possibility of loss of nuclear material, and give notice for imports and exports of specified amounts of nuclear material. Reporting is done when specified events occur. Recordkeeping for nuclear material accounting and control information is done in accordance with specific instructions.

6. *Who will be required or asked to respond:* Licensees of facilities on the US eligible list who have been selected by the IAEA for reporting and/or recordkeeping activities.

7. *The estimated number of annual responses:* 32 (2 reporting responses plus 30 recordkeepers).

8. *The estimated number of annual respondents:* 30.

9. *An estimate of the total number of hours needed annually to comply with the information collection requirement or request:* 4,227 hours.

10. *Abstract:* Part 75 of 10 CFR, requires selected licensees to provide reports of nuclear material inventory and flow for selected facilities under the US/IAEA Safeguards Agreement, permit inspections by IAEA inspectors, complementary access of IAEA inspectors under the Additional Protocol, give immediate notice to the NRC in specified situations involving the possibility of loss of nuclear material, and give notice for imports and exports of specified amounts of nuclear material. In addition, this collection is being renewed to include approximately 25 entities subject to the U.S.-IAEA Caribbean Territories Safeguards Agreement (INFCIRC/366). These licensees will provide reports of nuclear material inventory and flow for entities under the U.S.-IAEA Caribbean Territories Safeguards Agreement (INFCIRC/366), permit inspections by IAEA inspectors, give immediate notice to the NRC in specified situations involving the possibility of loss of nuclear material, and give notice for imports and exports of specified amounts of nuclear material. These licensees will also follow written material accounting and control procedures, although actual reporting of transfer and material balance records to the IAEA will be done through the US State system (Nuclear Materials Management and Safeguards System, collected under OMB clearance numbers 3150–0003, 3150–0004, 3150–0057, and 3150–0058). The NRC needs this information to implement its responsibilities under the US/IAEA agreement.

Dated: July 9, 2020.

For the Nuclear Regulatory Commission.

David C. Cullison,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 2020–15136 Filed 7–13–20; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for Review: OPM Online Form 1417, Combined Federal Campaign Results Report

AGENCY: Office of Personnel Management.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Office of Combined Federal Campaign, Office of Personnel Management (OPM) offers the general public and other federal agencies the opportunity to comment on an information collection request (ICR) 3206–0271, OPM Form 1654–B, the Combined Federal Campaign Results Report. As required by the Paperwork Reduction Act of 1995, as amended by the Clinger-Cohen Act, OPM is soliciting comments for this collection. The information collection was previously published in the **Federal Register** on April 14, 2020. No comments were received for this information collection. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until August 13, 2020. This process is conducted under 5 CFR 1320.1.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management Budget, 725 17th Street NW, Washington, DC 20503, Attention: Desk Officer for the Office of Personnel Management or sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Office of the Combined Federal Campaign, 1900 E Street NW, Suite 6484E, Washington, DC 20405, Attention: Anthony DeCristofaro or sent via electronic mail to *cfc@opm.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget and the Office of Personnel Management are particularly interested in comments that:

1. Evaluate whether the continued collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

The Combined Federal Campaign (CFC) is the world's largest and most successful annual workplace philanthropic giving campaign, with 36 CFC Zones throughout the country and overseas raising millions of dollars each year. The mission of the CFC is to promote and support philanthropy through a program that is employee-focused, cost-efficient, and effective in providing all federal employees and retirees the opportunity to improve the quality of life for all.

OPM Form 1654–B is a new information collection that collects CFC pledge information from federal annuitants and military retirees according to Executive Order 13743 signed October 13, 2016. It will be available in both paper format and as an electronic form administered by the CFC's Central Campaign Administrator according to 5 CFR 950.106(a). After the 2022 campaign year, OPM plans to phase out the collection of the paper form and convert this to an entirely electronic process.

Analysis

Agency: Combined Federal Campaign, Office of Personnel Management.

Title: OPM Form 1654–B, Combined Federal Campaign Federal Retiree Pledge Form.

OMB Number: 3206–0271.

Frequency: Annually.

Affected Public: Individuals or Households.

Number of Respondents: 250,000.

Estimated Time per Respondent: 30 minutes

Total Burden Hours: 125,000 hours.

Total Costs: $2,343,750.00.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2020–15099 Filed 7–13–20; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

[OMB Control No. 3206–NEW; Docket No. 2019–0001; Sequence No. 11]

Information Collection; Improving Customer Experience (OMB Circular A–11, Section 280 Implementation)

AGENCY: Office of Personnel Management.

ACTION: Notice; request for comment.

SUMMARY: The Office of Personnel Management (OPM), as part of its continuing effort to reduce paperwork and respondent burden, is announcing an opportunity for public comment on a new proposed collection of information by the Agency. Under the Paperwork Reduction Act of 1995 (PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on new collection proposed by the Agency.

DATES: Submit comments on or before: September 14, 2020.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by the following method:

—*Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

All submissions received must include the agency name and docket number or RIN for this document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Amira Boland, Office of Government-wide Policy, 1800 F St. NW, Washington, DC 20405, or via email to *amira.boland@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Under the PRA, (44 U.S.C. 3501–3520) Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval.

Whether seeking a loan, Social Security benefits, veterans benefits, or other services provided by the Federal Government, individuals and businesses expect Government customer services to be efficient and intuitive, just like services from leading private-sector organizations. Yet the 2016 American Consumer Satisfaction Index and the 2017 Forrester Federal Customer Experience Index show that, on average, Government services lag nine percentage points behind the private sector.

A modern, streamlined and responsive customer experience means: Raising government-wide customer experience to the average of the private sector service industry; developing indicators for high-impact Federal programs to monitor progress towards excellent customer experience and mature digital services; and providing the structure (including increasing transparency) and resources to ensure customer experience is a focal point for agency leadership. To support this, OMB Circular A–11 Section 280 established government-wide standards for mature customer experience organizations in government and measurement. To enable Federal programs to deliver the experience taxpayers deserve, they must undertake three general categories of activities: Conduct ongoing customer research, gather and share customer feedback, and test services and digital products.

These data collection efforts may be either qualitative or quantitative in nature or may consist of mixed methods. Additionally, data may be collected via a variety of means, including but not limited to electronic or social media, direct or indirect observation (*i.e.,* in person, video and audio collections), interviews, questionnaires, surveys, and focus groups. OPM will limit its inquiries to data collections that solicit strictly voluntary opinions or responses. Steps will be taken to ensure anonymity of respondents in each activity covered by this request.

The results of the data collected will be used to improve the delivery of Federal services and programs. It will include the creation of personas, customer journey maps, and reports and summaries of customer feedback data and user insights. It will also provide

government-wide data on customer experience that can be displayed on *performance.gov* to help build transparency and accountability of Federal programs to the customers they serve.

Method of Collection:

OPM will collect this information by electronic means when possible, as well as by mail, fax, telephone, technical discussions, and in-person interviews. OPM may also utilize observational techniques to collect this information.

Data:

Form Number(s): 3206–NEW.

Type of Review: New.

B. Annual Reporting Burden

Affected Public: Collections will be targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future. For the purposes of this request, ''customers'' are individuals, businesses, and organizations that interact with a Federal Government agency or program, either directly or via a Federal contractor. This could include individuals or households; businesses or other for-profit organizations; not-for-profit institutions; State, local or tribal governments; Federal government; and Universities.

Estimated Number of Respondents: 250,000.

Estimated Time per Response: Varied, dependent upon the data collection method used. The possible response time to complete a questionnaire or survey may be 3 minutes or up to 30 minutes to participate in an interview.

Estimated Total Annual Burden Hours: 2,512,500.

Estimated Total Annual Cost to Public: $47,109,375.

C. Public Comments

OPM invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Office of Personnel Management.

Alexys Stanley,

Regulatory Affairs Analyst.

[FR Doc. 2020–15100 Filed 7–13–20; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89259; File No. SR–CboeBYX–2020–005]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Withdrawal of a Proposed Rule Change To Amend Certain Rules Within Rules 4.5 Through 4.16, Which Contains the Exchange's Compliance Rule Regarding the National Market System Plan Governing the Consolidated Audit Trail (''CAT NMS Plan''), To Be Consistent With Certain Proposed Amendments to and Exemptions From the CAT NMS Plan as Well as To Facilitate the Retirement of Certain Existing Regulatory Systems

July 8, 2020.

On January 22, 2020, Cboe BYX Exchange, Inc. (''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's compliance rule regarding the National Market System Plan Governing the Consolidated Audit Trail. The proposed rule change was published for comment in the **Federal Register** on February 5, 2020.[3] On March 20, 2020, the Commission extended the time period within which to 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 May 5, 2020.[4] On April 29, 2020, the Commission issued an order instituting proceedings under Section 19(b)(2)(B) of the Act[5] to determine whether to approve or disapprove the proposed rule change.[6] The Commission received no comment letters regarding the proposed rule change.

On June 18, 2020, the Exchange withdrew the proposed rule change (SR–CboeBYX–2020–005).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–15115 Filed 7–13–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89263; File No. SR–CboeBZX–2020–011]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Withdrawal of a Proposed Rule Change To Amend Certain Rules Within Rules 4.5 Through 4.16, Which Contains the Exchange's Compliance Rule Regarding the National Market System Plan Governing the Consolidated Audit Trail (''CAT NMS Plan''), To Be Consistent With Certain Proposed Amendments to and Exemptions From the CAT NMS Plan as Well as To Facilitate the Retirement of Certain Existing Regulatory Systems

July 8, 2020.

On January 22, 2020, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's compliance rule regarding the National Market System Plan Governing the Consolidated Audit Trail. The proposed rule change was published for comment in the **Federal Register** on February 5, 2020.[3] On March 20, 2020, the Commission extended the time period within which to 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 May 5, 2020.[4] On April 29, 2020, the Commission issued an order instituting proceedings under Section 19(b)(2)(B) of the Act[5] to determine whether to approve or disapprove the proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 88100 (January 30, 2020), 85 FR 6624.

[4] *See* Securities Exchange Act Release No. 88438, 85 FR 17138 (March 26, 2020).

[5] 15 U.S.C. 78s(b)(2)(B).

[6] *See* Securities Exchange Act Release No. 88770, 85 FR 26764 (May 5, 2020).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 88101 (January 30, 2020), 85 FR 6589.

[4] *See* Securities Exchange Act Release No. 88440, 85 FR 17141 (March 26, 2020).

[5] 15 U.S.C. 78s(b)(2)(B).

rule change.[6] The Commission received no comment letters regarding the proposed rule change.

On June 18, 2020, the Exchange withdrew the proposed rule change (SR–CboeBZX–2020–011).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–15118 Filed 7–13–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89261; File No. SR–MIAX–2020–24]

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

July 8, 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 July 2, 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 30, 2020, to July 31, 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.

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. These measures have affected the U.S. markets.[5] In the United States, Level 1 market wide circuit breaker halts were triggered on March 9, March 12, March 16, and March 18, 2020. While markets have seen significant declines, governments around the world are undertaking efforts to stabilize the economy and assist affected companies and their employees.[6] While many state governments recently relaxed some social distancing measures and permitted the limited reopening of non-essential businesses, many State governments have now paused the reopening of non-essential businesses due to increased infection rates. Significant uncertainty remains.

Amidst this continued and unprecedented market uncertainty, the Exchange sought to address potential challenges that members may face in timely meeting their obligations to submit to the Exchange annual supervision-related reports under Rule 1308(g) and (h) (''Supervision Reporting Requirements''), especially in light of unforeseen and uncertain demands on resources required to respond to COVID–19. 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.[7] 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.[8]

On each of March 31, 2020 and June 4, 2020, the Exchange filed a proposal to temporarily extend the filing requirements for these annual supervision-related reports from April 1, 2020 to June 1, 2020 and from June 1,

[6] *See* Securities Exchange Act Release No. 88771, 85 FR 26741 (May 5, 2020).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[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] ''Analysts showed that we saw the fastest 'correction' in history (down 10% from a high), occurring in a matter of days. In the last week of February, the Dow fell 12.36% with notional trading of $3.6 trillion.'' *See* Phil Mackintosh, Putting the Recent Volatility in Perspective, available at *https://www.nasdaq.com/articles/putting-the-recent-volatility-in-perspective2020-03-05.*

[6] *See, e.g.,* the list of actions undertaken by the Board of Governors of the Federal Reserve System at *https://www.federalreserve.gov/covid-19.htm. See also* Families First Coronavirus Response Act, Public Law 116–127.

[7] The report shall include, but not be limited to, the information set out in Exchange Rule 1308(g)(1)–(6).

[8] *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.

2020 to June 30, 2020, respectively.[9] 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. Accordingly, the Exchange proposes to provide additional, temporary relief for members from the Supervision Reporting Requirements by further extending the June 30, 2020 filing deadlines described above to July 31, 2020. The Exchange believes that this additional, temporary relief will permit those members who have been unable to submit their annual supervision-related reports to continue to focus on running their businesses and the health crisis caused by the COVID–19 pandemic, including its impact on their employees, customers, and communities.

The Exchange 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 its supervision-related reports (FINRA Rule 3120 Report and FINRA Rule 3130 certification) from its second extension deadlines of June 30, 2020 [10] to July 31, 2020.[11] The Exchange notes, too, that at least one other options exchange that had twice previously extended the supervisory report deadlines from April 1 to June 1 and then from June 1 to June 30 for its members,[12] also other exchanges either plan to or have already submitted a similar filing to, again, extend its deadlines through July 31, 2020.[13] In light of these deadline extensions, the Exchange believes that a consistent regulatory approach is important and therefore that extending its deadline would avoid unnecessary confusion and added burden among entities that are members of both the Exchange and FINRA because the deadline to submit supervisory reports would remain uniform.

[9] *See* Securities Exchange Act Release Nos. 88543 (April 2, 2020), 85 FR 19788 (April 8, 2020) (SR–MIAX–2020–06); *and* 89093 (June 18, 2020), 85 FR 37986 (June 24, 2020) (SR–MIAX–2020–15).

[10] *See* FINRA Regulatory Notice 20–08 (March 9, 2020) available at *https://www.finra.org/rules-guidance/notices/20-08.*

[11] *See* FINRA Regulatory Notice 20–08, FAQs, Supervision (June 29, 2020) available at *https://www.finra.org/rules-guidance/key-topics/covid-19/faq#supe.*

[12] *See* Securities Exchange Act No. 88528 (March 31, 2020), 85 FR 19196 (April 6, 2020) (SR–CBOE–2020–029).

[13] *See* SR–Phlx–2020–35 *and* SR–ISE–2020–26 [sic].

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act [14] in general, and furthers the objectives of Section 6(b)(5) of the Act [15] 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) [16] 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 30, 2020 to July 31, 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 30, 2020 to July 31, 2020.[17] Additionally, as indicated above, other options exchanges that had previously extended the supervisory report deadlines to June 30, 2020 for their members, plan to submit similar filings to re-extend their deadlines through July 31, 2020.[18]

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(5).

[16] *Id.*

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 to July 31, 2020,[19] and other options exchanges have filed or plan to file for the same relief through July 31, 2020, as well.[20]

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 [21] and

[17] *See supra* note 11.

[18] *See supra* notes 12 and 13.

[19] *See supra* note 11.

[20] *See supra* notes 12 and 13.

[21] 15 U.S.C. 78s(b)(3)(A).

subparagraph (f)(6) of Rule 19b–4 thereunder.[22]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[23] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[24] 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 30, 2020, to July 31, 2020. This is consistent with extensions for certain supervision-related reports provided by other exchanges.[25] 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.[26]

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–MIAX–2020–24 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–2020–24. 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–2020–24 and should be submitted on or before August 4, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–15116 Filed 7–13–20; 8:45 am]

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[22] 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.

[23] 17 CFR 240.19b–4(f)(6).

[24] 17 CFR 240.19b–4(f)(6)(iii).

[25] *See* Securities Exchange Act Release Nos. 89246 (July 8, 2020) (ISE–2020–28); 89247 (July 8, 2020) (SR–PHLX–2020–35); and 89248 (July 8, 2020) (SR–CBOE–2020–063).

[26] 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).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89257; File No. SR–CBOE–2020–065]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To Add the Consolidated Audit Trail Industry Member Compliance Rules to the List of Minor Rule Violations in Rule 13.15

July 8, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 2, 2020, Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I 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 and approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to add the Consolidated Audit Trail (''CAT'') industry member compliance rules (''CAT Compliance Rules'') to the list of minor rule violations in Rule 13.15. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

In order to implement the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'') the Exchange codified the CAT Compliance Rules in Chapter 7, Section B of the Cboe Options Rulebook (specifically, Rules 7.20 through 7.31).[3] The CAT NMS Plan was filed by the Plan Participants to comply with Rule 613 of Regulation NMS under the Exchange Act,[4] and each Plan Participant accordingly has adopted the same compliance rules as the Exchange's Rules 7.20 through 7.31 in Chapter 7, Section B of the Cboe Options Rulebook. The common compliance rules adopted by each Plan Participant are designed to require industry members to comply with the provisions of the CAT NMS Plan, which broadly calls for industry members to timely and accurately record and report timely and accurate customer, order, and trade information relating to activity in NMS Securities and OTC Equity Securities.

Rule 13.15 provides for disposition of specific violations through assessment of fines in lieu of conducting a formal disciplinary proceeding. Rule 13.15(g), specifically, sets forth the list of specific Exchange Rules under which a Trading Permit Holder (''TPH'') or person associated with or employed by a TPH may be subject to a fine for violations of such Rules. The Exchange proposes to amend Rule 13.15 to add the CAT Compliance Rules in Rules 7.20 through 7.31 to the list of rules in Rule 13.15(g) eligible for disposition pursuant to a minor fine specifically under proposed Rule 13.15(g)(20).[5] Proposed Rule 13.15(g)(20) provides that for failures to comply with the Consolidated Audit Trail Compliance Rule requirements of Rules 7.20 through 7.31, the Exchange may impose a minor rule violation fine of up to $2,500. The Exchange may seek other disciplinary action for more serious violations.

The Exchange is coordinating with the Financial Industry Regulatory Authority, Inc. (''FINRA'') and other Plan Participants to promote harmonized and consistent enforcement of all the Plan Participants' CAT Compliance Rules. The Commission recently approved a Rule 17d–2 Plan under which the regulation of CAT Compliance Rules will be allocated among Plan Participants to reduce regulatory duplication for industry members that are members of more than one Participant (''common members'').[6] Under the Rule 17d–2 Plan, the regulation of CAT Compliance Rules with respect to common members that are members of FINRA is allocated to FINRA. Similarly, under the Rule 17d–2 Plan, responsibility for common members of multiple other Plan Participants and not a member of FINRA will be allocated among those other Plan Participants, including to the Exchange. For those non-common members who are allocated to the Exchange pursuant to the Rule 17d–2 Plan, the Exchange and FINRA have entered into a Regulatory Services Agreement (''RSA'') pursuant to which FINRA will assist the Exchange with conducting surveillance, investigation, examination, and enforcement activity in connection with the CAT Compliance Rules on the Exchange's behalf. The Exchange expects that the other exchanges will be entering into similar RSAs.

The Exchange notes that this proposal is based upon the FINRA filing to amend FINRA Rule 9217 in order to add FINRA's corresponding CAT Compliance Rules to FINRA's list of rules that are eligible for minor rule violation plan treatment.[7] The Exchange also notes that the New York Stock Exchange LLC (''NYSE'') submitted a filing to amend its Minor Rule Violation Plan (''MRVP'') to add its CAT Compliance Rules in a manner consistent with FINRA's proposal,[8] and other Plan Participants intend to submit the same. Thus, in order to achieve consistency with FINRA and the other Plan Participants, the Exchange proposes to adopt fines up to $2,500 in connection with minor rule fines for violations of the CAT Compliance Rules in Rules 7.20 through 7.31 in proposed Rule 13.15(g)(20) under the Exchange's MRVP.

In connection with FINRA's proposed amendment to FINRA Rule 9217 to make FINRA's CAT Compliance Rules MRVP eligible, FINRA has stated that it will apply the minor fines for CAT Compliance Rules in the same manner that FINRA has for its similar existing audit trail-related rules.[9] Accordingly, in order to promote regulatory consistency, the Exchange plans to do the same. Specifically, application of a minor fine with respect to CAT Compliance Rule violations will be guided by the same factors that FINRA references in its filing. However, more formal disciplinary proceedings may be warranted instead of minor rule dispositions in certain circumstances such as where violations prevent regulatory users of the CAT from performing their regulatory functions. Where minor rule dispositions are appropriate, the following factors help guide the determination of fine amounts:

- Total number of reports that are not submitted or submitted late;
- The timeframe over which the violations occur;
- Whether violations are batched;
- Whether the violations are the result of the actions of one individual or the result of faulty systems or procedures;
- Whether the firm has taken remedial measures to correct the violations;
- Prior minor rule violations within the past 24 months;
- Collateral effects that the failure has on customers; and
- Collateral effects that the failure has on the Exchange's ability to perform its regulatory function.[10]

Upon effectiveness of this rule change, the Exchange will publish a regulatory bulletin notifying its TPHs of the rule change and the specific factors that will be considered in connection with assessing minor rule fines described above.

For the foregoing reasons, the Exchange believes that the proposed

[3] *See* Securities Exchange Act Release Nos. 79950 (February 2, 2017), 82 FR 9916 (February 8, 2017) (SR–CBOE–2017–012); *and* 80256 (March 15, 2017), 82 FR 14526 (March 21, 2017) (Order Approving Proposed Rule Changes To Adopt Consolidated Audit Trail Compliance Rules).

[4] 17 CFR 242.613.

[5] FINRA's maximum fine for minor rule violations under FINRA Rule 9216(b) is $2,500. The Exchange will apply an identical maximum fine amount for eligible violations of Rules 7.20 through 7.31 to achieve consistency with FINRA and also amend its minor rule violation plan (''MRVP'') to include such fines. Like FINRA, the Exchange would be able to pursue a fine greater than $2,500 for violations of Rules 7.20 through 7.31 in a regular disciplinary proceeding or a letter of consent under Chapter 13 as appropriate. Any fine imposed in excess of $2,500 or not otherwise covered by Rule 19d–1(c)(2) of the Act would be subject to prompt notice to the Commission pursuant to Rule 19d–1 under the Act. As noted below, in assessing the appropriateness of a minor rule fine with respect to CAT Compliance Rules, the Exchange will be guided by the same factors that FINRA utilizes. *See* text accompanying notes 7–8 [sic], *infra*.

[6] *See* Securities Exchange Act Release No. 88366 (March 12, 2020), 85 FR 15238 (March 17, 2020).

[7] *See* Securities Exchange Act Release No. 88870 (May 14, 2020), 85 FR 30768 (May 20, 2020) (SR–FINRA–2020–013).

[8] *See* SR–NYSE–2020–51 (filed June 12, 2020).

[9] *See supra* note 7; *see* also FINRA Notice to Members 04–19 (March 2004) available at *https://www.finra.org/rules-guidance/notices/04-19* (providing specific factors used to inform dispositions for violations of OATS reporting rules).

[10] *See id*.

rule change will result in a coordinated, harmonized approach to CAT Compliance Rule enforcement across Plan Participants that will be consistent with the approach FINRA has taken with the CAT rules.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[11] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [12] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with 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.

Minor rule fines provide a meaningful sanction for minor or technical violations of rules when the conduct at issue does not warrant stronger, immediately reportable disciplinary sanctions. The inclusion of a rule in the Exchange's MRVP does not minimize the importance of compliance with the rule, nor does it preclude the Exchange from choosing to pursue violations of eligible rules through a letter of consent if the nature of the violations or prior disciplinary history warrants more significant sanctions. Rather, the Exchange believes that the proposed rule change will strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities in cases where full disciplinary proceedings are unwarranted in view of the minor nature of the particular violation. The Exchange believes the option to impose a minor rule sanction gives the Exchange additional flexibility to administer its enforcement program in the most effective and efficient manner while still fully meeting the Exchange's remedial objectives in addressing violative conduct.[14] Specifically, the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because it will provide the Exchange the ability to issue a minor rule fine for violations of the CAT Compliance Rules in Rules 7.20 through 7.31 where a more formal disciplinary action may not be warranted or appropriate consistent with the approach of other Plan Participants for the same conduct.

In connection with the fine level specified in the proposed rule change, adding proposed Rule 13.15(g)(20) to specifically provide that for violations of the CAT Compliance Rules in Rules 7.20 through 7.31 the Exchange may impose a fine not to exceed $2,500 would further the goal of transparency within the Exchange's rules. Adopting the same cap as FINRA for minor rule fines in connection with the CAT Compliance Rules would also promote regulatory consistency across self-regulatory organizations.

The Exchange further believes that the proposed amendment to Rule 13.15 is consistent with Section 6(b)(6) of the Act,[15] which provides that members and persons associated with members shall be appropriately disciplined for violation of the provisions of the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction. As noted, the proposed rule change would provide the Exchange ability to sanction minor or technical violations of Rules 7.20 through 7.31 pursuant to the Exchange's rules.

Finally, the Exchange also believes that the proposed change is designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.[16] Rule 13.15 does not preclude a TPH or person associated with or employed by a TPH from contesting an alleged violation and receiving a hearing on the matter with the same procedural rights through a litigated disciplinary proceeding.

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 but rather is concerned solely with making the CAT Compliance Rules in Rules 7.20 through 7.31 eligible for a minor rule fine disposition, thereby strengthening the Exchange's ability to carry out its oversight and enforcement functions and deter potential violative conduct. Also, as stated above, the proposed rule change is consistent with similar proposals recently filed by FINRA and NYSE, and other Plan Participants intend to submit the same.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2020–065 the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2020–065. 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

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] *Id.*

[14] Pursuant to Rule 13.15(a) and (f), the Exchange has the discretion to impose a fine in lieu of commencing a disciplinary proceeding for a violation that is minor in nature. Under Rule 13.15(f), the Exchange may refer matters covered under the MRVP for formal disciplinary action whenever it determines that any violation is intentional, egregious or otherwise not minor in nature.

[15] 15 U.S.C. 78f(b)(6).

[16] 15 U.S.C. 78f(b)(7) and 78f(d).

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2020–065 and should be submitted on or before August 4, 2020.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[17] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[18] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act [19] which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d–1(c)(2) under the Act,[20] which governs minor rule violation plans.

As stated above, the Exchange proposes to add the CAT Compliance Rules to the list of minor rule violations in Rule 13.15 to be consistent with the approach FINRA has taken for minor violations of its corresponding CAT Compliance Rules.[21] The Commission has already approved FINRA's treatment of CAT Compliance Rules violations when it approved the addition of CAT Compliance Rules to FINRA's MRVP.[22] As noted in that order, and similarly herein, the Commission believes that Exchange's treatment of CAT Compliance Rules violations as part of its MRVP provides a reasonable means of addressing violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. However, the Commission expects that, as with FINRA, the Exchange will continue to conduct surveillance with due diligence and make determinations based on its findings, on a case-by-case basis, regarding whether a sanction under the rule is appropriate, or whether a violation requires formal disciplinary action. Accordingly, the Commission believes the proposal raises no novel or significant issues.

For the same reasons discussed above, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[23] for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register**. The proposal merely adds the CAT Compliance Rules to the Exchange's MRVP and harmonizes its application with FINRA's application of CAT Compliance Rules under its own MRVP. Accordingly, the Commission believes that a full notice-and-comment period is not necessary before approving the proposal.

V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act [24] and Rule 19d–1(c)(2) thereunder,[25] that the proposed rule change (SR–CBOE–2020–065) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–15113 Filed 7–13–20; 8:45 am]

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[17] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78f(b)(1) and 78f(b)(6).

[20] 17 CFR 240.19d–1(c)(2).

[21] As discussed above, the Exchange has entered into a Rule 17d–2 Plan and an RSA with FINRA with respect to the CAT Compliance Rules. The Commission notes that, unless relieved by the Commission of its responsibility, as may be the case under the Rule 17d–2 Plan, the Exchange continues to bear the responsibility for self-regulatory conduct and liability for self-regulatory failures, not the self-regulatory organization retained to perform regulatory functions on the Exchange's behalf pursuant to an RSA. *See* Securities Exchange Release No. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR–BATS–2009–031), note 93 and accompanying text.

[22] *See supra* note 7.

[23] 15 U.S.C. 78s(b)(2).

[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 240.19d–1(c)(2).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89258; File No. SR–CboeEDGA–2020–003]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Withdrawal of a Proposed Rule Change To Amend Certain Rules Within Rules 4.5 Through 4.16, Which Contains the Exchange's Compliance Rule Regarding the National Market System Plan Governing the Consolidated Audit Trail (''CAT NMS Plan''), To Be Consistent With Certain Proposed Amendments to and Exemptions From the CAT NMS Plan as Well as To Facilitate the Retirement of Certain Existing Regulatory Systems

July 8, 2020.

On January 22, 2020, Cboe EDGA Exchange, Inc. (''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's compliance rule regarding the National Market System Plan Governing the Consolidated Audit Trail. The proposed rule change was published for comment in the **Federal Register** on February 5, 2020.[3] On March 20, 2020, the Commission extended the time period within which to 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 May 5, 2020.[4] On April 29, 2020, the Commission issued an order instituting proceedings under Section 19(b)(2)(B) of the Act [5] to determine whether to approve or disapprove the proposed rule change.[6] The Commission received

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 88102 (January 30, 2020), 85 FR 6659.

[4] *See* Securities Exchange Act Release No. 88446, 85 FR 17151 (March 26, 2020).

[5] 15 U.S.C. 78s(b)(2)(B).

[6] *See* Securities Exchange Act Release No. 88772, 85 FR 26762 (May 5, 2020).

no comment letters regarding the proposed rule change.

On June 18, 2020, the Exchange withdrew the proposed rule change (SR–CboeEDGA–2020–003).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–15114 Filed 7–13–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89248; File No. SR–CBOE–2020–063]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 8.16 and Rule 9.2 to Temporarily Extend the Filing Deadline for Certain Supervision-Related Reports

July 8, 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 July 1, 2020, Cboe Exchange, Inc. (''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to amend Rule 8.16 and Rule 9.2 to temporarily extend the filing requirements for certain supervision-related reports, currently given an extension through June 30, 2020, to July 31, 2020. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Given current market conditions, the Exchange proposes to provide its Trading Permit Holders (''TPHs'') temporary relief from filing certain supervision-related reports pursuant to Rule 8.16 (Supervision) and Rule 9.2 (Supervision of Accounts).

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 and 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. Indeed, in response to the pandemic, the Exchange has taken various actions to allow it to maintain fair and orderly markets, including the closure of its trading floor, which remained inoperable into June 2020, and is currently operating in a modified manner due to the ongoing pandemic.[5] 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 prior extension deadlines of June 30, 2020[6] to July 31, 2020.[7]

By way of background, (1) Rule 8.16(g)(2) provides that by April 1 of each year each Trading Permit Holder shall submit to the Exchange written report on the Trading Permit Holder's supervision and compliance effort during the preceding year and on the adequacy of the Trading Permit Holder's ongoing compliance processes and procedures; (2) Rule 9.2(g) provides that by April 1 of each year each TPH organization that conducts a non-Trading Permit Holder customer business shall submit to the Exchange a written report on the TPH organization's supervision and compliance effort during the preceding year and on the adequacy of the TPH organization's ongoing compliance processes and procedures; and (3) Rule 9.2(h) provides that by April 1 of each year, each TPH organization shall submit a copy of the report that paragraph (g) (of Rule 9.2) requires the TPH organization to prepare to its one or more control persons or, if the TPH organization has no control person, to the audit committee of its board of directors or its equivalent committee or group. Both Rules currently provide relief to TPHs and their employees by extending these deadlines to June 30, 2020.[8] However, as COVID–19 remains an ongoing pandemic, to meet the current June 30 deadlines in Rules 8.16 and 9.2, TPH 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 July

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Tradedesk Update No. C2020031204 (March 12, 2020) Novel Coronavirus Update, Trading Floor Closure; *and* Tradedesk Update No. C2020060300 (June 3, 2020) Cboe Options Trading Floor Re-Opening. The trading floor is operating currently with a modified configuration of trading crowds in order to implement social distancing and other measures consistent with local and state health and safety guidelines to help protect the safety and welfare of individuals accessing the trading floor.

[6] *See* FINRA Regulatory Notice 20–08, FAQs, Supervision (updated May 19, 2020) available at *https://www.finra.org/rules-guidance/key-topics/covid-19/faq#supe; see also* FINRA Regulatory Notice 20–08 (March 9, 2020) available at *https://www.finra.org/rules-guidance/notices/20-08.*

[7] *See* FINRA Regulatory Notice 20–08, FAQs, Supervision (updated June 29, 2020) available at *https://www.finra.org/rules-guidance/key-topics/covid-19/faq#supe.*

[8] *See* Securities Exchange Act Nos. 88978 (June 1, 2020), 85 FR 34688 (June 5, 2020) (SR–CBOE–2020–049); and 88528 (March 31, 2020), 85 FR 19196 (April 6, 2020) (SR–CBOE–2020–029).

31, 2020, thus allowing TPH 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 TPH'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 the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[9] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [10] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [11] 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 TPHs by issuing another extension of certain supervisory reporting deadlines from June 30, 2020 to July 31, 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 further extending the deadlines for filing certain supervision related reports in Rules 8.16 and 9.2, the Exchange believes the proposed rule will allow TPH 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 further extended the time for their members to file supervision-related reports from June 30, 2020 to July 31, 2020.[12]

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 July 31, 2020 extension for supervision-related reports in Rules 8.16 and 9.2 will apply equally to all TPHs. 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 30, 2020 to July 31, 2020.[13]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 [14] and subparagraph (f)(6) of Rule 19b–4 thereunder.[15]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [16] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [17] 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 TPHs by extending the deadline for supervision-related reports in Rules 8.16 and 9.2 from June 30, 2020 to July 31, 2020. 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.[18]

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:

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *Id.*

[12] *See supra* note 7.

[13] *See id.*

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 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.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2020–063 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2020–063. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2020–063 and should be submitted on or before August 4, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

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[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89255; File No. SR–NYSEArca–2020–64]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the NYSE Arca Options Fee Schedule

July 8, 2020.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on July 1, 2020, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE Arca Options Fee Schedule (''Fee Schedule'') to amend a threshold to qualify for an existing discount for removing liquidity and to add an alternative basis to qualify for such discount. The Exchange proposes to implement the fee change effective July 1, 2020. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend the Fee Schedule to modify a threshold to qualify for an existing discount for removing liquidity and to add an alternative basis for OTP Holders and OTP Firms (collectively, ''OTP Holders'') to qualify for such discount. The Exchange is not modifying the amount of the discount.

Specifically, the Exchange proposes to modify the qualification thresholds required to receive the ''Take Fee Discount Qualification for Non-Penny Issues'' to expand and increase the current qualification basis and to add an alternative qualification basis.

The Exchange proposes to implement the fee changes on July 1, 2020.

Background

The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [4]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[5] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in January 2020, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.[6]

The Exchange believes that the ever-shifting market share among the exchanges from month to month

[4] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (''Reg NMS Adopting Release'').

[5] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, *available here: https://www.theocc.com/market-data/volume/default.jsp.*

[6] Based on OCC data, *see id.,* in 2019, the Exchange's market share in equity-based options was 9.57% for the month of January 2019 and 9.59% for the month of January 2020.

demonstrates that market participants can shift order flow or discontinue or reduce use of certain categories of products. To respond to this competitive marketplace, the Exchange has established incentives, including discounts, designed to encourage OTP Holders to direct additional order flow to the Exchange to achieve more favorable pricing and higher credits. The Exchange incentives also encourage order flow from all account types, which allows OTP Holders to aggregate their options volume with affiliated or appointed Market Makers (collectively referred to as affiliates herein), making NYSE Arca a more attractive trading venue.[7]

The Exchange proposes to modify an incentive program designed to attract order flow to the Exchange.

Proposed Rule Change

If an OTP Holder executes a transaction that removes or ''takes'' liquidity on the Exchange, the OTP Holder is charged a Take Fee and such liquidity may be referred to as ''Liquidity Removing'' or liquidity taking.[8] To offset such costs and to encourage market participants to direct order flow to the Exchange, the Exchange offers, among other incentives, a ''Take Fee Discount Qualification for Non-Penny Issues'' (the ''Take Fee Discount''). The Exchange is not modifying the amount of the Take Fee Discount.

Currently, an OTP Holder may earn the ($0.02) per contract Take Fee Discount on executions in non-Penny issues if the OTP Holder executes at least 0.65% of Total Industry Customer equity and ETF option average daily volume (''TCADV'')[9] from Professional Customer and Non-Customer Liquidity Removing interest in all issues (the ''existing Take Fee threshold'').[10] The Exchange proposes to modify the existing Take Fee threshold such that, to qualify for the Take Fee Discount, an OTP Holder would also have to execute ''at least 0.15% of TCADV from posted interest in all issues and all account types.''[11] In addition to maintaining the same level of Liquidity Removing volume, the Exchange believes this change would incent OTP Holders to increase the variety of account types and volume of posted interest executed on the Exchange, which activity may result in tighter spreads making the Exchange a more attractive trading venue to the benefit of all participants.

The Exchange also proposes to offer a new, alternative basis, to qualify for the Take Fee Discount. Specifically, as proposed, an OTP Holder may earn the ($0.02) per contract Take Fee Discount on executions in non-Penny issues if the OTP Holder executes ''[a]t least 1.50% of TCADV from Professional Customer and Non-Customer Liquidity Removing interest in all issues.''[12] This new alternative basis essentially increases the minimum volume required under the existing Take Fee threshold from 0.65% to 1.50%, which should encourage OTP Holders to direct more volume to the Exchange. The Exchange believes the alternative basis would incent OTP Holders to increase trading activity in all issues and a variety of account types on the Exchange, which increased liquidity benefits all market participants because of increased trading opportunities and price discovery.

As is the case with other incentives, OTP Holders may aggregate their volume with affiliated OTP Holders to achieve the Take Fee Discount, as modified herein.[13] As such, the Exchange believes the proposed modification to the existing Take Fee threshold and additional qualification basis for the Take Fee Discount would provide additional incentives for OTP Holders (and their affiliates) to execute large volumes of orders on the Exchange to qualify for the Discount on executions in non-Penny issues. The Exchange's fees are constrained by intermarket competition, as OTP Holders (and their affiliates) may direct their order flow to any of the 16 options exchanges, including those with similar pricing incentives.

The Exchange cannot predict with certainty whether any OTP Holder would benefit from the proposed change to the existing Take Fee threshold or the additional qualification basis. At present, whether or when an OTP Holder qualifies for the discount in a given month is dependent on market activity and the OTP Holder's mix of order flow. Thus, the Exchange cannot predict with any certainty the number of OTP Holders that may qualify for the discount based on the proposed modifications.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[14] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[15] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Rule Change Is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.''[16]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[17]

[7] *See* Fee Schedule, Endnote 15 (providing that an ''Appointed MM'' is an NYSE Arca Market Maker designated as such by an Order Flow Provider (''OFP'') (as defined in NYSE Arca Rule 6.1A–O(a)(21)) and ''Appointed OFP'' is an OFP been designated as such by an NYSE Arca Market Maker).

[8] *See* Fee Schedule, NYSE Arca OPTIONS: TRADE–RELATED CHARGES FOR STANDARD OPTIONS, TRANSACTION FEE FOR ELECTRONIC EXECUTIONS—PER CONTRACT (setting forth a per contract take fee of $1.10 for such Non-Penny executions in Professional Customer, Firm, Broker Dealer, and Market Maker range as compared to a per contract take fee of $0.85 for such Non-Penny executions in the Customer range).

[9] *See* Fee Schedule, Endnote 8 (providing that TCADV ''includes OCC calculated Customer volume of all types, including Complex Order Transactions and QCC transactions, in equity and ETF options'').

[10] *See* Fee Schedule, Take Fee Discount. For fee/credit purposes, ''Professional Customer'' executions are treated as ''Customer'' executions unless such executions are specifically delineated and ''Non-Customers'' executions include those of Firms, Broker Dealers, and Market Makers. *See* Fee Schedule, NYSE Arca OPTIONS: TRADE–RELATED CHARGES FOR STANDARD OPTIONS (preamble).

[11] *See* proposed Fee Schedule, Take Fee Discount (requiring ''[a]t least 0.65% of TCADV from Professional Customer and Non-Customer Liquidity Removing interest in all issues, plus at least 0.15% of TCADV from posted interest in all issues and all account types'').

[12] *See id.*

[13] *See* Fee Schedule, Endnotes 8 (providing that the alternative volume threshold, like the existing Take Fee Discount threshold, will include the activity of affiliates) and 15 (defining affiliates referenced in Endnote 8).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78f(b)(4) and (5).

[16] *See* Reg NMS Adopting Release, *supra* note 4, at 37499.

[17] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, *available here: https://www.theocc.com/market-data/volume/default.jsp.*

Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in January 2020, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.[18]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain options exchange transaction fees. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

Regarding the change to the existing Take Fee threshold, the Exchange believes this change would incent OTP Holders to increase the variety of account types and volume of posted interest executed on the Exchange (while maintaining the same level of Liquidity Removing volume), which activity may result in tighter spreads and more trading making the Exchange a more attractive trading venue to the benefit of all participants.

The Exchange believes the proposed alternative basis would incent OTP Holders to increase trading activity in all issues and a variety of account types on the Exchange, which increased liquidity benefits all market participants because of increased trading opportunities and price discovery.

The Exchange believes the proposed modification to the existing Take Fee threshold and additional qualification basis for the Take Fee Discount would provide additional incentives for OTP Holders (and their affiliates) to execute large volumes of orders on the Exchange to qualify for the Discount on executions in non-Penny issues. To the extent that OTP Holder activity in all issues is increased by the proposal, market participants will increasingly compete for the opportunity to trade on the Exchange, and thus would promote just and equitable principles of trade, 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.

To the extent that the proposed rule change attracts more interest in all issues, this increased order flow would continue to make the Exchange a more competitive venue for order execution, which, in turn, promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule change is a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors.

The Exchange cannot predict with certainty whether any OTP Holder would benefit from the proposed change to existing the Take Fee threshold or the additional qualification basis. At present, whether or when an OTP Holder qualifies for the discount in a given month is dependent on market activity and the OTP Holder's mix of order flow. Thus, the Exchange cannot predict with any certainty the number of OTP Holders that may qualify for the discount based on the proposed modifications.

The Proposed Rule Change Is an Equitable Allocation of Credits and Fees

The Exchange believes the proposed rule change is an equitable allocation of its fees and credits. The proposal is based on the amount and type of business transacted on the Exchange and OTP Holders (and their affiliates) can opt to avail themselves of the incentives or not. The Take Fee Discount, as modified, continues to apply to all participants other than Customers, who pay a much lower take fee.[19]

To the extent that the proposed change continues to attract more trading activity, the increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange thereby improving market-wide quality and price discovery.

The Proposed Rule Change Is not Unfairly Discriminatory

The Exchange believes it is not unfairly discriminatory to introduce the alternative methods of qualifying for a discount because the proposed modifications would be available to all similarly situated market participants on an equal and non-discriminatory basis. The Take Fee Discount, as modified, continues to apply to all participants other than Customers, who pay a much lower take fee.[20] In addition, the proposal is based on the amount and type of business transacted on the Exchange and OTP Holders are not obligated to try to achieve either of the qualifications for the discount. The Exchange believes the proposed incentive is reasonable, equitable and not unfairly discriminatory because encouraging OTP Holders to direct more volume to the Exchange would also contribute to the Exchange's depth of book as well as to the top of book liquidity.

To the extent that the proposed change attracts more OTP Holder trading activity, this increased order flow would continue to make the Exchange a more competitive venue for order execution, which, in turn, promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [21]

Intramarket Competition. The proposal is designed to attract additional order flow to the Exchange by offering a discount based on increased volumes on the Exchange (from a variety of issues and account types), which would enhance the quality of quoting and may increase the

[18] Based on OCC data, *see id.,* in 2019, the Exchange's market share in equity-based options was 9.57% for the month of January 2019 and 9.59% for the month of January 2020.

[19] *See supra* note 8 (setting forth take fee charged to Non-Customer versus Customer).

[20] *See id.*

[21] *See* Reg NMS Adopting Release, *supra* note 4, at 37499.

volumes of contracts traded on the Exchange. In particular, the change to the existing Take Fee threshold is designed to incent OTP Holders to increase the variety of account types and volume of posted interest executed on the Exchange (while maintaining the same level of Liquidity Removing volume), which activity may result in tighter spreads and more trading making the Exchange a more attractive trading venue to the benefit of all participants. The proposed alternative basis to qualify for the Discount is designed to incent OTP Holders to increase trading activity in all issues and a variety of account types on the Exchange, which increased liquidity benefits all market participants because of increased trading opportunities and price discovery.

Furthermore, the Exchange believes that incenting additional activity by OTP Holders (and their affiliates) benefits all participants as it contributes to the Exchange's depth of book as well as to the top of book liquidity. To the extent that the proposal attracts more liquidity, this increased order flow would continue to make the Exchange a more competitive venue for order execution and all of the Exchange's market participants should benefit from the improved market quality. Enhanced market quality and increased transaction volume that results from the anticipated increase in order flow directed to the Exchange would benefit all market participants and improve competition on the Exchange.

The proposal would be available to all similarly-situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange. The Exchange also believes the proposed incentive is not unfairly discriminatory to Customers, because such market participants are not subject to the same fee structure that applies to Professional Customers and Non-Customers.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[22] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity & ETF options order flow. More specifically, in January 2020, the Exchange had less than 10% market share of executed volume of multiply-listed equity & ETF options trades.[23]

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees in a manner designed to encourage OTP Holders (and their affiliates) to direct trading interest to the Exchange. In particular, the change to the existing Take Fee threshold is designed to incent OTP Holders to increase the variety of account types and volume of posted interest executed on the Exchange (while maintaining the same level of Liquidity Removing volume), which activity may result in tighter spreads and more trading making the Exchange a more attractive trading venue to the benefit of all participants. The proposed alternative basis to qualify for the Discount is designed to incent OTP Holders to increase trading activity in all issues and a variety of account types on the Exchange, which increased liquidity benefits all market participants because of increased trading opportunities and price discovery. To the extent that the proposal increases trading on the Exchange, all the Exchange's market participants should benefit from the improved market quality and increased opportunities for price improvement.

Finally, the Exchange believes that the proposal could promote competition between the Exchange and other execution venues, including those that currently offer similar incentives.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[24] of the Act and subparagraph (f)(2) of Rule 19b–4[25] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[26] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2020–64 on the subject line.

Paper Comments

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2020–64. 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

[22] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, *available here: https://www.theocc.com/market-data/volume/default.jsp*.

[23] Based on OCC data, *see id.,* in 2019, the Exchange's market share in equity-based options was 9.57% for the month of January 2019 and 9.59% for the month of January 2020.

[24] 15 U.S.C. 78s(b)(3)(A).

[25] 17 CFR 240.19b–4(f)(2).

[26] 15 U.S.C. 78s(b)(2)(B).

printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2020–64 and should be submitted on or before August 4, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–15111 Filed 7–13–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89256; File No. SR–Phlx–2020–33]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Phlx's Pricing Schedule To Waive Certain Fees

July 8, 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 25, 2020, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx's Pricing Schedule at Options 7, Section 8, ''Membership Fees'' and Options 7, Section 9, ''Other Member Fees.'' Phlx also proposes other technical amendments to various sections of Options 7.

While the changes proposed herein are effective upon filing, the Exchange has designated the amendments become operative on July 1, 2020.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Phlx proposes to amend its pricing within Options 7, Section 8, ''Membership Fees'' and Options 7, Section 9, ''Other Member Fees.'' Phlx also proposes to update the name of the ''Penny Pilot Program'' within Options 7. Each change will be described below.

Options 7, Section 8

Phlx proposes to amend Options 7, Section 8, ''Membership Fees,'' at Part A, ''Permit and Registration Fees,'' to waive the Floor Lead Market Maker and Floor Market Maker[3] Permit Fee of $6,000, for the months of July and August 2020, for those members and member organizations who paid the Floor Lead Market Maker and Floor Market Maker Permit Fee in March 2020 and were not otherwise registered as a Streaming Quote Trader[4] or Remote Streaming Quote Trader[5] in March 2020.

Open outcry on the Exchange's Trading Floor was closed on March 17, 2020[6] and did not re-open until June 3, 2020.[7] At the time that open outcry trading became unavailable in March 2020, Floor Lead Market Makers and Floor Market Makers were unable to transact business on the Phlx Trading Floor. The Exchange assessed these members and member organizations the monthly Floor Lead Market Maker and Floor Market Maker Fee of $6,000 during the time period when open outcry trading was unavailable. The Exchange seeks to waive the Floor Lead Market Maker and Floor Market Maker Permit Fee, for the months of July and August 2020, for those members and member organizations that paid the Floor Lead Market Maker and Floor Market Maker Permit Fee in March 2020, and were not otherwise registered as a Streaming Quote Trader or as a Remote Streaming Quote Trader in March 2020. This waiver of the Floor Lead Market Maker and Floor Market Maker Permit Fee, for the months of July and August 2020, is intended to relieve Floor Lead Market Makers and Floor Market Makers, who do not otherwise stream quotes, of these fees for two months to ensure that these market makers continue to provide liquidity to the Trading Floor.

The Exchange proposes to remove obsolete rule text, which was relevant in June 2020, regarding fee waivers for the Floor Broker Permit Fee, the Clerk Fee and the Streaming Quote Trader (''SQT'') Fees, which are no longer available. The Exchange also proposes to remove obsolete rule text related to an electronic Permit Fee credit that was offered in June 2020 and is no longer available.

Options 7, Section 9

The Exchange proposes to remove obsolete rule text, which was relevant in June 2020, regarding a fee waiver for the Floor Facility Fee, which is no longer available.

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[27] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A ''Floor Market Maker'' is a Market Maker who is neither an SQT or an RSQT.

[4] A ''Streaming Quote Trader'' or ''SQT'' means a Market Maker who has received permission from the Exchange to generate and submit option quotations electronically in options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the trading floor of the Exchange. An SQT may only submit quotes in classes of options in which the SQT is assigned. *See* Options 1, Section 1(b)(54).

[5] A ''Remote Streaming Quote Trader'' or ''RSQT'' means a Market Maker that is a member affiliated with an Remote Streaming Quote Trader Organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically in options to which such RSQT has been assigned. A qualified RSQT may function as a Remote Lead Market Maker upon Exchange approval. An RSQT is also known as a Remote Market Maker (''RMM'') pursuant to Options 2, Section 11. A Remote Streaming Quote Organization (''RSQTO'') or Remote Market Maker Organization (''RMO'') are Exchange member organizations that have qualified pursuant to Options 2, Section 1. *See* Options 1, Section 1(b)(49).

[6] *See* Options Trader Alert #2020–07.

[7] *See* Options Trader Alert #2020–08.

Penny Pilot

The Exchange proposes to amend the description of Penny Symbols to replace the term ''Penny Pilot Program'' with ''Penny Interval Program,'' and replace the terms ''Penny Pilot Options'' and ''Penny Pilot'' with ''Penny Symbol.'' On April 1, 2020, the Commission approved the amendment to the OLPP to make permanent the Pilot Program (the ''OLPP Program'').[8] The Exchange recently filed a proposal to amend Phlx Options 3, Section 3 to conform the rule to Section 3.1 of the Plan for the Purpose of Developing and Implementing Procedures Designed to Facilitate the Listing and Trading of Standardized Options (the ''OLPP'').[9] The Exchange's proposal amended Phlx Options 3, Section 3 to refer to a Penny Interval Program instead of a Penny Pilot Program. The proposed amendments conform the name of the program and also amend other references by removing the term ''pilot options'' and instead referring to Penny or Non-Penny Symbols. Specifically, the Exchange proposes to amend Options 7, Section 1; Options 7, Section 4; and Options 7, Section 6.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[11] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [12]

Likewise, in *NetCoalition* v. *Securities and Exchange Commission* [13] (''NetCoalition'') the D.C. Circuit upheld the Commission's use of a market-based approach in evaluating the fairness of market data fees against a challenge claiming that Congress mandated a cost-based approach.[14] As the court emphasized, the Commission ''intended in Regulation NMS that 'market forces, rather than regulatory requirements' play a role in determining the market data . . . to be made available to investors and at what cost.'' [15]

Further, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [16] Although the court and the SEC were discussing the cash equities markets, the Exchange believes that these views apply with equal force to the options markets.

Options 7, Section 8

Phlx's proposal to amend Options 7, Section 8, ''Membership Fees,'' at Part A, ''Permit and Registration Fees,'' to waive the Floor Lead Market Maker and Floor Market Maker Permit Fee,[17] for the months of July and August 2020, provided a member or member organization (1) paid the Floor Lead Market Maker or Floor Market Maker Permit Fee in March 2020; and (2) was not otherwise registered as a Streaming Quote Trader or as a Remote Streaming Quote Trader in March 2020, is reasonable. Open outcry on the Exchange's Trading Floor was closed on March 17, 2020 [18] and did not re-open until June 3, 2020.[19] At the time that open outcry trading became unavailable in March 2020, certain Floor Lead Market Makers and Floor Market Makers were unable to transact business on the Phlx Trading Floor. The Exchange assessed these members and member organizations the monthly Floor Lead Market Maker and Floor Market Maker Fee of $6,000 during the time period that open outcry was unavailable for trading. The Exchange seeks to waive the Floor Lead Market Maker and Floor Market Maker Permit Fee, for the months of July and August 2020, for those members and member organizations that paid the Floor Lead Market Maker and Floor Market Maker Permit Fee in March 2020, and were not otherwise registered as a Streaming Quote Trader or as a Remote Streaming Quote Trader in March 2020. This waiver of the Floor Lead Market Maker and Floor Market Maker Permit Fee, for the months of July and August 2020, is intended to relieve Floor Lead Market Makers and Floor Market Makers, who do not otherwise stream quotes, of these fees for two months to ensure that these market makers continue to provide liquidity to the Trading Floor.

Phlx's proposal to amend Options 7, Section 8, ''Membership Fees,'' at Part A, ''Permit and Registration Fees,'' to waive the Floor Lead Market Maker and Floor Market Maker Permit Fee,[20] for the months of July and August 2020, provided a member or member organization (1) paid the Floor Lead Market Maker or Floor Market Maker Permit Fee in March 2020; and (2) was not otherwise registered as a Streaming Quote Trader or as a Remote Streaming Quote Trader in March 2020, is equitable and not unfairly discriminatory. The Exchange is proposing to waive fees for members and member organizations that solely conducted a business within open outcry trading and did not otherwise conduct an electronic business during the time period that open outcry trading was unavailable. Floor Lead Market Makers and Floor Market Makers are by definition not Streaming Quote Traders [21] or Remote Streaming Quote Traders. Some members and member organizations are registered to transact a market making business both on the Trading Floor and also electronically. The Exchange proposes to compensate members and member organizations who conducted a market making business on the Trading Floor in March

[8] *See* Securities Exchange Act Release No. 88532 (April 1, 2020), 85 FR 19545 (April 7, 2020) (File No. 4–443) (''Approval Order'').

[9] *See* SR–Phlx–2020–32 (not yet published).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4) and (5).

[12] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[13] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[14] *See NetCoalition,* at 534–535.

[15] *Id.* at 537.

[16] *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[17] Phlx assesses a Floor Lead Market Maker and Floor Market Maker Permit Fee of $6,000.

[18] *See* Options Trader Alert #2020–07.

[19] *See* Options Trader Alert #2020–08.

[20] Phlx assesses a Floor Lead Market Maker and Floor Market Maker Permit Fee of $6,000.

[21] The Exchange notes that Streaming Quote Traders were able to register as Remote Market Makers, pursuant to Options 2, Section 11, during the period of time that the Trading Floor was unavailable. In addition, the Exchange waived Streaming Quote Trader Fees from April 2020 through June 2020. *See* Securities Exchange Act Release Nos. 88525 (March 31, 2020), 85 FR 19185 (April 6, 2020) (SR–Phlx–2020–12); and 89041 (June 10, 2020), 85 FR 36438 (June 16, 2020) (SR–Phlx–2020–28).

2020, and did not conduct an electronic business, because these members and member organizations were not able to transact any business on Phlx from March 17, 2020 through June 3, 2020, when open outcry trading was unavailable. Floor Lead Market Makers and Floor Market Maker have certain trading obligations, pursuant to Options 8, Section 27,[22] and incur certain infrastructure costs to provide liquidity on the Exchange's Trading Floor. The Exchange will uniformly apply the waiver to all members and member organizations who only conducted a market making business on Phlx's Trading Floor in March 2020 as a Floor Lead Market Maker or Floor Market Maker, and did not otherwise act in a market making capacity electronically on Phlx.

The Exchange's proposal to remove obsolete rule text, which was relevant in June 2020, regarding fee waivers for the Floor Broker Permit Fee, the Clerk Fee and the SQT Fees, as well as an electronic Permit Fee credit, which fee waivers and credit are no longer available, is reasonable, equitable and not unfairly discriminatory.

Options 7, Section 9

The Exchange's proposal to remove obsolete rule text, which was relevant in June 2020, regarding a fee waiver for the Floor Facility Fee, which is no longer available, is reasonable, equitable and not unfairly discriminatory.

Penny Pilot

The Exchange's proposal to amend rule text relating to the Penny Pilot Program to replace the term ''Penny Pilot Program'' with ''Penny Interval Program,'' and replace the terms ''Penny Pilot Options'' and ''Penny Pilot'' with ''Penny Symbol'' is reasonable, equitable and not unfairly discriminatory. The proposed amendments conform the name of the program and also amend other references by removing the term ''pilot options'' and instead referring to Penny or Non-Penny Symbols. Specifically, the Exchange proposes to amend Options 7, Section 1; Options 7, Section 4; and Options 7, Section 6.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

Inter-Market Competition

The proposal does not impose an undue burden on inter-market competition. The Exchange believes its proposal remains competitive with other options markets and will offer market participants with another choice of where to transact options. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

Intra-Market Competition

Options 7, Section 8

Phlx's proposal to amend Options 7, Section 8, ''Membership Fees,'' at Part A, ''Permit and Registration Fees,'' to waive the Floor Lead Market Maker and Floor Market Maker Permit Fee,[23] for the months of July and August 2020, provided a member or member organization (1) paid the Floor Lead Market Maker or Floor Market Maker Permit Fee in March 2020; and (2) was not otherwise registered as a Streaming Quote Trader or as a Remote Streaming Quote Trader in March 2020, does not impose an undue burden on competition. The Exchange is proposing to waive fees for members and member organizations that solely conducted a business within open outcry trading and did not otherwise conduct an electronic business during the time period that open outcry trading was unavailable. Floor Lead Market Makers and Floor Market Makers are by definition not Streaming Quote Traders [24] or Remote Streaming Quote Traders. Some members and member organizations are registered to transact a market making business both on the Trading Floor and also electronically. The Exchange proposes to compensate members and member organizations who conducted a market making business on the Trading Floor in March 2020, and did not conduct an electronic business, because these members and member organizations were not able to transact any business on Phlx from March 17, 2020 through June 3, 2020, when open outcry trading was unavailable. Floor Lead Market Makers and Floor Market Maker have certain trading obligations, pursuant to Options 8, Section 27,[25] and incur certain infrastructure costs to provide liquidity on the Exchange's Trading Floor. The Exchange will uniformly apply the waiver to all members and member organizations who only conducted a market making business on Phlx's Trading Floor in March 2020 as a Floor Lead Market Maker or Floor Market Maker, and did not otherwise act in a market making capacity electronically on Phlx.

The Exchange's proposal to remove obsolete rule text, which was relevant in June 2020, regarding fee waivers for the Floor Broker Permit Fee, the Clerk Fee and the SQT Fees, as well as an electronic Permit Fee credit, which fee waivers and credit are no longer available, does not impose an undue burden on competition.

Options 7, Section 9

The Exchange's proposal to remove obsolete rule text, which was relevant in June 2020, regarding a fee waiver for the Floor Facility Fee, which is no longer available, does not impose an undue burden on competition.

Penny Pilot

The Exchange's proposal to amend rule text relating to the Penny Pilot Program to replace the term ''Penny Pilot Program'' with ''Penny Interval Program,'' and replace the terms ''Penny Pilot Options'' and ''Penny Pilot'' with ''Penny Symbol'' does not impose an undue burden on competition. The proposed amendments conform the name of the program and also amend other references by removing the term

[22] Phlx Options 8, Section 27(f) provides, ''(f) A Floor Market Maker is required to trade either (a) 1,000 contracts and 300 transactions, or (b) 10,000 contracts and 100 transactions, on the Exchange each quarter. Transactions executed in the trading crowd where the contra-side is an ROT are not included.''

[23] Phlx assesses a Floor Lead Market Maker and Floor Market Maker Permit Fee of $6,000.

[24] The Exchange notes that Streaming Quote Traders were able to register as Remote Market Makers, pursuant to Options 2, Section 11, during the period of time that the Trading Floor was unavailable. In addition, the Exchange waived Streaming Quote Trader Fees from April 2020 through June 2020. *See* Securities Exchange Act Release Nos. 88525 (March 31, 2020), 85 FR 19185 (April 6, 2020) (SR–Phlx–2020–12); and 89041 (June 10, 2020), 85 FR 36438 (June 16, 2020) (SR–Phlx–2020–28).

[25] Phlx Options 8, Section 27(f) provides, ''(f) A Floor Market Maker is required to trade either (a) 1,000 contracts and 300 transactions, or (b) 10,000 contracts and 100 transactions, on the Exchange each quarter. Transactions executed in the trading crowd where the contra-side is an ROT are not included.''

''pilot options'' and instead referring to Penny or Non-Penny Symbols. Specifically, the Exchange proposes to amend Options 7, Section 1; Options 7, Section 4; and Options 7, Section 6.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[26]

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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2020–33 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–Phlx–2020–33. 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–Phlx–2020–33 and should be submitted on or before August 4, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–15112 Filed 7–13–20; 8:45 am]

BILLING CODE 8011–01–P

[26] 15 U.S.C. 78s(b)(3)(A)(ii).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89254; File No. SR–LTSE–2020–11]

Self-Regulatory Organizations; Long-Term Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To Add the Consolidated Audit Trail Industry Member Compliance Rules to the List of Minor Rule Violations

July 8, 2020.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 2, 2020, Long-Term Stock Exchange, Inc. (''LTSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and approving the proposal on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

LTSE proposes a rule change to add the Consolidated Audit Trail (''CAT'') industry member compliance rules to the list of minor rule violations in Rule 9.218. The Exchange requests accelerated approval and effectiveness of this filing.

The text of the proposed rule change is available at the Exchange's website at *https://longtermstockexchange.com/,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add LTSE's CAT industry member compliance rules (the ''CAT Compliance Rules'') to the list of minor rule violations in Rule 9.218.[3] This proposal is based upon the Financial Industry Regulatory Authority, Inc. (''FINRA'') filing to amend FINRA Rule 9217 in order to add FINRA's corresponding CAT Compliance Rules to FINRA's list of rules that are eligible for minor rule violation plan treatment.[4]

[3] LTSE's minor rule violation plan (''MRVP'') was declared effective by the Commission on October 29, 2019. *See* Securities Exchange Act Release No. 87415 (October 29, 2019), 84 FR 59427 (November 4, 2019) (File No. 4–753).

[4] *See* Securities Exchange Act Release No. 88870 (May 14, 2020), 85 FR 30768 (May 20, 2020) (SR–FINRA–2020–013). The proposal is also based upon the New York Stock Exchange (''NYSE'') filing to amend NYSE Rule 9217 in order to add NYSE's corresponding CAT Compliance Rules to NYSE's list of rules that are eligible for MRVP treatment. *See* SR–NYSE–2020–51.

Proposed Rule Change

The Exchange's CAT Compliance Rules in Rule Series 11.600 implements the National Market System Plan Governing the Consolidated Audit Trail (the ''CAT NMS Plan'' or ''Plan'').[5] The CAT NMS Plan was filed by the Plan Participants to comply with Rule 613 of Regulation NMS under the Exchange Act,[6] and each Plan Participant accordingly has adopted the same compliance rules in the Exchange's Rule Series 11.600. The common CAT Compliance Rules adopted by each Plan Participant are designed to require industry members to comply with the provisions of the CAT NMS Plan, which broadly calls for industry members to record and report timely and accurately customer, order, and trade information relating to activity in NMS Securities and OTC Equity Securities.

Rule 9.218 sets forth the list of rules under which a Member [7] or associated person may be subject to a fine under Rule 9.216(b). Rule 9.216(b) permits the Exchange to impose a fine of up to $2,500 on any Member or associated person for a minor violation of an eligible rule. The Exchange proposes to amend Rule 9.218 to add the CAT Compliance Rules in the Rule Series 11.600 to the list of rules in Rule 9.218 eligible for disposition pursuant to a minor fine under Rule 9.216(b).[8]

LTSE is coordinating with FINRA and other Plan Participants to promote harmonized and consistent enforcement of all the Plan Participants' CAT Compliance Rules. The Commission recently approved a Rule 17d–2 Plan under which the regulation of CAT Compliance Rules will be allocated among Plan Participants to reduce regulatory duplication for industry members that are members of more than one Participant (''common members'').[9] Under the Rule 17d–2 Plan, the regulation of CAT Compliance Rules with respect to common members that are members of FINRA is allocated to FINRA. Similarly, under the Rule 17d–2 Plan, responsibility for common members of multiple other Plan Participants that are not members of FINRA will be allocated among those other Plan Participants, including to the Exchange. For those non-common members who are allocated to LTSE pursuant to the Rule 17d–2 Plan, the Exchange and FINRA entered into a Regulatory Services Agreement (''RSA'') pursuant to which FINRA will conduct surveillance, investigation, examination, and enforcement activity in connection with the CAT Compliance Rules on the Exchange's behalf. LTSE understands that the other exchanges entered into similar RSAs with FINRA.

FINRA, in connection with its amendment to FINRA Rule 9217 to make FINRA's CAT Compliance Rules MRVP eligible, represented that it will apply MRVP fines for CAT Compliance Rules in the same manner that FINRA has for its similar existing audit trail-related rules.[10] Accordingly, in order to promote regulatory consistency, the Exchange, and FINRA acting on behalf of the Exchange, plan to do the same. Specifically, application of a MRVP fine with respect to CAT Compliance Rules will be guided by the same factors that FINRA referenced in its filing. However, more formal disciplinary proceedings may be warranted instead of minor rule dispositions in certain circumstances such as where violations prevent regulatory users of the CAT from performing their regulatory functions. Where minor rule dispositions are appropriate, the following factors help guide the determination of fine amounts:

- Total number of reports that are not submitted or submitted late;
- The timeframe over which the violations occur;
- Whether violations are batched;
- Whether the violations are the result of the actions of one individual or the result of faulty systems or procedures;
- Whether the firm has taken remedial measures to correct the violations;
- Prior minor rule violations within the past 24 months;
- Collateral effects that the failure has on customers; and
- Collateral effects that the failure has on the Exchange's ability to perform its regulatory function.[11]

Upon effectiveness of this rule change, the Exchange will publish a regulatory bulletin notifying its Members of the rule change and the specific factors that will be considered in connection with assessing minor rule fines described above.

For the foregoing reasons, the Exchange believes that the proposed rule change will result in a coordinated, harmonized approach to CAT compliance rule enforcement across Plan Participants that will be consistent with the approach FINRA has taken with the CAT rules.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[12] in general, and furthers the objectives of Section 6(b)(5) of the Act,[13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in 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.

Minor rule fines provide a meaningful sanction for minor or technical violations of rules when the conduct at issue does not warrant stronger, immediately reportable disciplinary sanctions. The inclusion of a rule in the Exchange's MRVP does not minimize the importance of compliance with the rule, nor does it preclude the Exchange from choosing to pursue violations of eligible rules through an AWC if the nature of the violations or prior disciplinary history warrants more significant sanctions. Rather, the Exchange believes that the proposed rule change will strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities in cases where full disciplinary proceedings are unwarranted in view of the minor

[5] *https://www.federalregister.gov/documents/2017/03/21/2017-05505/self-regulatory-organizations-bats-byx-exchange-inc-bats-bzx-exchange-inc-bats-edga-exchange-inc.* See Securities Exchange Act Release No. 85828 (May 10, 2019), 84 FR 21841 (May 15, 2019) (approving *https://www.federalregister.gov/documents/2017/03/21/2017-05505/self-regulatory-organizations-bats-byx-exchange-inc-bats-bzx-exchange-inc-bats-edga-exchange-inc*, LTSE's Form 1 and Rule Series 11.600).

[6] 17 CFR 242.613.

[7] *See* Rule 1.160(w).

[8] FINRA's maximum fine for minor rule violations under FINRA Rule 9216(b) is also $2,500. Like FINRA, the Exchange, or FINRA on its behalf, would be able to pursue a fine greater than $2,500 for violations of the Rule Series 11.600 in a regular disciplinary proceeding or an acceptance, waiver, and consent (''AWC'') under Chapter 9 of the LTSE Rule Book, as appropriate. Any fine imposed in excess of $2,500 or not otherwise covered by Rule 19d–1(c)(2) of the Act would be subject to prompt notice to the Commission pursuant to Rule 19d–1 under the Act. As noted below, in assessing the appropriateness of a minor rule fine with respect to CAT Compliance Rules, the Exchange will be guided by the same factors that FINRA utilizes. See text accompanying notes 10–11, *infra*.

[9] *See* Securities Exchange Act Release No. 88366 (March 12, 2020), 85 FR 15238 (March 17, 2020) (File No. 4–618).

[10] *See* Securities Exchange Act Release No. 88870 (May 14, 2020), 85 FR 30768, 30768–69 (May 20, 2020) (SR–FINRA–2020–013); *see also* FINRA Notice to Members 04–19 (March 2004) (providing specific factors used to inform dispositions for violations of OATS reporting rules).

[11] *See supra* note 10.

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(5).

nature of the particular violation. Thus, the option to impose a minor rule sanction gives the Exchange additional flexibility to administer its enforcement program in the most effective and efficient manner while still fully meeting the Exchange's remedial objectives in addressing violative conduct. Specifically, the proposed rule change is designed to prevent fraudulent and manipulative acts and practices because it will provide the Exchange the ability to issue a minor rule fine for violations of the CAT Compliance Rules in the Rule Series 11.600 where a more formal disciplinary action may not be warranted or appropriate consistent with the approach of other Plan Participants for the same conduct, and thereby promote regulatory consistency across self-regulatory organizations.

The Exchange further believes that the proposed changes to Rule 9.218 are consistent with Section 6(b)(6) of the Act,[14] which provides that members and persons associated with members shall be appropriately disciplined for violation of the provisions of the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction. As noted, the proposed rule change would provide the Exchange ability to sanction minor or technical violations of the Rule Series 11.600 pursuant to the Exchange's rules.

Finally, the Exchange also believes that the proposed changes are designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.[15] Rule 9.216 does not preclude a Member or associated person from contesting an alleged violation and receiving a hearing on the matter with the same procedural rights through a litigated disciplinary proceeding.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed rule change is not intended to address competitive issues but rather is concerned solely with making the CAT Compliance Rules in the Rule Series 11.600 eligible for disposition pursuant to a MRVP, thereby strengthening the Exchange's ability to carry out its oversight and enforcement functions and deter potential violative conduct.

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. 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–LTSE–2020–11 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–LTSE–2020–11. 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–LTSE–2020–11 and should be submitted on or before August 4, 2020.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[16] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[17] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act [18] which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d–1(c)(2) under the Act,[19] which governs minor rule violation plans.

As stated above, the Exchange proposes to add the CAT Compliance Rules to the list of minor rule violations in Rule 9.218 to be consistent with the approach FINRA has taken for minor violations of its corresponding CAT Compliance Rules.[20] The Commission has already approved FINRA's treatment of CAT Compliance Rules violations when it approved the addition of CAT Compliance Rules to FINRA's MRVP.[21]

[14] 15 U.S.C. 78f(b)(6).

[15] 15 U.S.C. 78f(b)(7) and 78f(d).

[16] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78f(b)(1) and 78f(b)(6).

[19] 17 CFR 240.19d–1(c)(2).

[20] As discussed above, the Exchange has entered into a Rule 17d–2 Plan and an RSA with FINRA with respect to the CAT Compliance Rules. The Commission notes that, unless relieved by the Commission of its responsibility, as may be the case under the Rule 17d–2 Plan, the Exchange continues to bear the responsibility for self-regulatory conduct and liability for self-regulatory failures, not the self-regulatory organization retained to perform regulatory functions on the Exchange's behalf pursuant to an RSA. *See* Securities Exchange Release No. 61419 (January 26, 2010), 75 FR 5157 (February 1, 2010) (SR–BATS–2009–031), note 93 and accompanying text.

[21] *See supra* note 4.

As noted in that order, and similarly herein, the Commission believes that Exchange's treatment of CAT Compliance Rules violations as part of its MRVP provides a reasonable means of addressing violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. However, the Commission expects that, as with FINRA, the Exchange will continue to conduct surveillance with due diligence and make determinations based on its findings, on a case-by-case basis, regarding whether a sanction under the rule is appropriate, or whether a violation requires formal disciplinary action. Accordingly, the Commission believes the proposal raises no novel or significant issues.

For the same reasons discussed above, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[22] for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register**. The proposal merely adds the CAT Compliance Rules to the Exchange's MRVP and harmonizes its application with FINRA's application of CAT Compliance Rules under its own MRVP. Accordingly, the Commission believes that a full notice-and-comment period is not necessary before approving the proposal.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [23] and Rule 19d–1(c)(2) thereunder,[24] that the proposed rule change (SR–LTSE–2020–11) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–15110 Filed 7–13–20; 8:45 am]

BILLING CODE 8011–01–P

[22] 15 U.S.C. 78s(b)(2).

[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 240.19d–1(c)(2).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89262; File No. SR–CboeEDGX–2020–005]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Withdrawal of a Proposed Rule Change To Amend Certain Rules Within Rules 4.5 Through 4.16, Which Contains the Exchange's Compliance Rule Regarding the National Market System Plan Governing the Consolidated Audit Trail (''CAT NMS Plan''), To Be Consistent With Certain Proposed Amendments to and Exemptions From the CAT NMS Plan as Well as To Facilitate the Retirement of Certain Existing Regulatory Systems

July 8, 2020.

On January 22, 2020, Cboe EDGX Exchange, Inc. (''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's compliance rule regarding the National Market System Plan Governing the Consolidated Audit Trail. The proposed rule change was published for comment in the **Federal Register** on February 5, 2020.[3] On March 20, 2020, the Commission extended the time period within which to 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 May 5, 2020.[4] On April 29, 2020, the Commission issued an order instituting proceedings under Section 19(b)(2)(B) of the Act [5] to determine whether to approve or disapprove the proposed rule change.[6] The Commission received no comment letters regarding the proposed rule change.

On June 18, 2020, the Exchange withdrew the proposed rule change (SR–CboeEDGX–2020–005).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–15117 Filed 7–13–20; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 88103 (January 30, 2020), 85 FR 6640.

[4] *See* Securities Exchange Act Release No. 88445, 85 FR 17140 (March 26, 2020).

[5] 15 U.S.C. 78s(b)(2)(B).

[6] *See* Securities Exchange Act Release No. 88774, 85 FR 26766 (May 5, 2020).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89264; File No. SR–Cboe–2020–004]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Withdrawal of a Proposed Rule Change Relating To Amend Chapter 7, Section B of the Rules, Which Contains the Exchange's Compliance Rule Regarding the National Market System Plan Governing the Consolidated Audit Trail (''CAT NMS Plan''), To Be Consistent With Certain Proposed Amendments to and Exemptions From the CAT NMS Plan as Well as To Facilitate the Retirement of Certain Existing Regulatory Systems

July 8, 2020.

On January 17, 2020, Cboe Exchange, Inc. (''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Exchange's compliance rule regarding the National Market System Plan Governing the Consolidated Audit Trail. The proposed rule change was published for comment in the **Federal Register** on February 5, 2020.[3] On March 20, 2020, the Commission extended the time period within which to 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 May 5, 2020.[4] On April 29, 2020, the Commission issued an order instituting proceedings under Section 19(b)(2)(B) of the Act [5] to determine whether to approve or disapprove the proposed rule change.[6] The Commission received no comment letters regarding the proposed rule change.

On June 18, 2020, the Exchange withdrew the proposed rule change (SR–Cboe–2020–004).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 88105 (January 30, 2020), 85 FR 6600.

[4] *See* Securities Exchange Act Release No. 88437, 85 FR 17129 (March 26, 2020).

[5] 15 U.S.C. 78s(b)(2)(B).

[6] *See* Securities Exchange Act Release No. 88769, 85 FR 26758 (May 5, 2020).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–15119 Filed 7–13–20; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 33922; 812–14909]

OFS Capital Corp., et al.

July 8, 2020.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit business development companies (''BDCs'') and closed-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated investment funds and accounts.

APPLICANTS: OFS Capital Corporation (''OFS BDC''), Hancock Park Corporate Income, Inc. (''Hancock BDC''), OFS Credit Company, Inc. (''OFS Credit''), CIM Real Assets & Credit Fund (''CIM RACR''), LFTW–OFS, Inc., MAC–OFS Holdings, LLC, Convene Holdings LLC, DRSOFSCC, Inc., PB–OFSC, Inc., OFSCC–CR, LLC, OFSCC–FS Holdings, LLC, OFSCC–FS, LLC, OFSCC–MB, Inc., OFSCC–TTG, LLC, OFSCC–TS, LLC, OFS SBIC I LP, LFTW–HPCI, Inc., DRS–HPCI, Inc., HPCI–CR, LLC, HPCI–MB, Inc., HPCITTG, LLC, OFS Capital Management, LLC (''OFS Adviser''), OFS CLO Management, LLC (''OFS CLO Adviser''), OFSI Fund V, LTD., OFSI Fund VI, LTD., OFSI Fund VII, LTD., OFSI BSL VIII, LTD., OFSI BSL IX, LTD., Orchard First Source Asset Management, LLC (''OFSAM''), OFS Funding I, LLC, CIM Capital, LLC (''CIM Capital Advisor''), CIM Capital IC Management, LLC (''CIM IC Advisor''), CIM Capital SA Management, LLC (''CIMSA''), CIM Urban Real Estate Fund, L.P., CIM Urban REIT, LLC, CIM Fund III, L.P., CIM Infrastructure Fund, L.P., CIM VI (Urban REIT), LLC, CIM Fund VIII, L.P., CIM Infrastructure Fund II, L.P., CIM Urban Income Investments, L.P., CMMT Partners, L.P., CIM Fund IX, L.P., CIM Income NAV Management, LLC, CIM Real Estate Finance Management, LLC, Cole REIT Management V, LLC, Cole Corporate Income Management II, LLC, Cole Corporate Income Management III, LLC, CIM Income NAV, Inc., CIM Real Estate Finance Trust, Inc., Cole Credit Property Trust V, Inc., Cole Office & Industrial REIT (CCIT II), Inc., and Cole Office & Industrial REIT (CCIT III), Inc.

FILING DATES: The application was filed on May 23, 2018, and amended on September 18, 2019, December 31, 2019, April 3, 2020 and June 29, 2020.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving applicants with a copy of the request by email. Hearing requests should be received by the Commission by 5:30 p.m. on August 3, 2020, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, *Secretarys-Office@sec.gov. Applicants:* Tod K. Reichert, OFS Capital Management, LLC, *treichert@ofsmanagement.com;* Mukya Porter, CIM Group, LLC, *mporter@cimgroup.com.*

FOR FURTHER INFORMATION CONTACT: Jennifer O. Palmer, Senior Counsel, at (303) 844–1012, or David J. Marcinkus, Branch Chief, at (202) 551–6825 (Chief Counsel's Office, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's website by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Introduction

1. The Applicants request an order of the Commission under Sections 17(d) and 57(i) and Rule 17d–1 thereunder (the ''Order'') to permit, subject to the terms and conditions set forth in the application (the ''Conditions''), one or more Regulated Funds [1] and/or one or more Affiliated Funds [2] to enter into Co-Investment Transactions with each other. ''Co-Investment Transaction'' means any transaction in which one or more Regulated Funds (or its Wholly-Owned Investment Sub, defined below) participated together with one or more Affiliated Funds and/or one or more other Regulated Funds in reliance on the Order. ''Potential Co-Investment Transaction'' means any investment opportunity in which a Regulated Fund (or its Wholly-Owned Investment Sub) could not participate together with one or more Affiliated Funds and/or one or more other Regulated Funds without obtaining and relying on the Order.[3]

Applicants

2. OFS BDC, a Delaware corporation, and Hancock BDC, a Maryland corporation, have elected to be regulated as business development companies

[7] 17 CFR 200.30–3(a)(12).

[1] ''Regulated Funds'' means CIM RACR, OFS BDC, Hancock BDC and OFS Credit (the ''Existing Regulated Funds'') and any Future Regulated Funds. ''Future Regulated Fund'' means a closed-end management investment company (a) that is registered under the Act or has elected to be regulated as a BDC, (b) whose investment adviser (and sub-adviser(s), if any) is an Adviser, and (c) that intends to participate in the program of co-investment described in the application.

''Adviser'' means any Existing Adviser and any Future Adviser. ''Existing Adviser'' means CIMSA, OFS Adviser, OFS CLO Adviser, CIM Capital Advisor and CIM IC Advisor. ''Future Adviser'' means any investment adviser that in the future (i) controls, is controlled by or is under common control with OFSAM, CIM Capital Advisor, CIM IC Advisor or CIMSA, (ii) (a) is registered as an investment adviser under the Investment Advisers Act of 1940 (the ''Advisers Act'') or (b) is a relying adviser of an investment adviser that is registered under the Advisers Act and that controls, is controlled by or is under common control with OFSAM, CIM Capital Advisor, CIM IC Advisor or CIMSA, and (iii) is not a Regulated Fund or a subsidiary of a Regulated Fund.

[2] ''Affiliated Fund'' means any Existing Affiliated Fund (defined below) or any Future Affiliated Fund. ''Future Affiliated Fund'' means an entity (a) whose investment adviser or sub-adviser is an Adviser, (b)(i)(x) that would be an investment company but for Section 3(c)(1), 3(c)(5)(C) or 3(c)(7) of the Act or (y) relies on Rule 3a–7 under the Act, or (ii) that does not meet the definition of investment company under the Act and qualifies as a REIT within the meaning of Section 856 of the Code because substantially all of its assets would consist of real properties, and (c) that intends to participate in the program of co-investment described in the application; provided that an entity sub-advised by an Adviser is not included in this term with respect to such Affiliated Fund if: (i) Such Adviser serving as sub-adviser does not control the entity, and (ii) the primary investment adviser is not an Adviser.

[3] All existing entities that currently intend to rely on the Order have been named as Applicants and any existing or future entities that may rely on the Order in the future will comply with the terms and Conditions set forth in the application.

(''BDCs'') under the Act.[4] OFS Credit, a Delaware corporation, and CIM RACR, a Delaware statutory trust, are closed-end management investment companies registered as investment companies under the Act. The Board [5] of each of these Existing Regulated Funds will be comprised of a majority of members who are Independent Directors.[6]

3. OFS Adviser serves as investment adviser to OFS BDC, Hancock BDC and OFS Credit. CIM IC Advisor is responsible for the overall management of CIM RACR and has engaged CIMSA and OFS Adviser to serve as investment sub-advisers to CIM RACR. Each of OFS Adviser, CIM IC Advisor and CIMSA is a Delaware limited liability company that is registered under the Advisers Act.

4. The Existing Affiliated Funds are the Existing OFS Proprietary Accounts, Existing OFS Affiliated Funds, Existing CIM Funds and Existing Cole Funds. The Existing OFS Proprietary Accounts, OFSAM and its subsidiary OFS Funding I, LLC, hold various financial assets in a principal capacity. The Existing OFS Affiliated Funds, Existing CIM Funds and Existing Cole Funds are identified in Appendices A, B and C, respectively, to the application. Applicants represent that each Existing Affiliated Fund is a separate and distinct legal entity and each: (i) Would be an investment company but for Section 3(c)(1), 3(c)(5)(C) or 3(c)(7) of the Act; (ii) relies on Rule 3a–7 under the Act; or (iii) does not meet the definition of investment company under the Act and qualifies as a real estate investment trust (''REIT'') within the meaning of Section 856 of the Internal Revenue Code (the ''Code'') because substantially all of its assets would consist of real properties. Certain of the Existing Advisers serve as investment advisers to the Existing OFS Affiliated Funds and Existing CIM Funds. Each Existing Cole Fund will engage an Adviser to serve as investment adviser and/or sub-adviser with respect to any securities that would be subject to the Order.[7]

5. Each of the Applicants may be deemed to be directly or indirectly controlled by Orchard Investments III, LLC (''OI3''), a Delaware limited liability company. Applicants state that OI3 is a holding company and does not currently offer investment advisory services to any person and is not expected to do so in the future. Applicants state that, as a result, OI3 has not been included as an Applicant.

6. Applicants state that a Regulated Fund may, from time to time, form one or more Wholly-Owned Investment Subs.[8] Such a subsidiary may be prohibited from investing in a Co-Investment Transaction with a Regulated Fund (other than its parent) or any Affiliated Fund because it would be a company controlled by its parent Regulated Fund for purposes of Section 57(a)(4) and Rule 17d–1. Applicants request that each Wholly-Owned Investment Sub be permitted to participate in Co-Investment Transactions in lieu of the Regulated Fund that owns it and that the Wholly-Owned Investment Sub's participation in any such transaction be treated, for purposes of the Order, as though the parent Regulated Fund were participating directly.

Applicants' Representations

A. Allocation Process

7. Applicants state that the Advisers are presented with thousands of investment opportunities each year on behalf of their clients and the Advisers must determine how to allocate those opportunities in a manner that, over time, is fair and equitable to all of their clients. Such investment opportunities may be Potential Co-Investment Transactions.

8. Applicants represent that the Existing Advisers have established, and each Future Adviser will establish, processes for allocating initial investment opportunities, opportunities for subsequent investments in an issuer and dispositions of securities holdings reasonably designed to treat all clients fairly and equitably. Further, Applicants represent that these processes will be extended and modified in a manner reasonably designed to ensure that the additional transactions permitted under the Order will both (i) be fair and equitable to the Regulated Funds and the Affiliated Funds and (ii) comply with the Conditions.

9. Specifically, applicants state that the Advisers are organized and managed such that the portfolio managers and investment teams responsible for evaluating investment opportunities and making investment decisions on behalf of clients are promptly notified of the opportunities. If the requested Order is granted, the Advisers will establish, maintain and implement policies and procedures reasonably designed to ensure that, when such opportunities arise, the Advisers to the relevant Regulated Funds are promptly notified and receive the same information about the opportunity as any other Advisers considering the opportunity for their clients. In particular, consistent with Condition 1, if a Potential Co-Investment Transaction falls within the then-current Objectives and Strategies [9] and any Board-Established Criteria [10] of

[4] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in Section 55(a)(1) through 55(a)(3) and makes available significant managerial assistance with respect to the issuers of such securities.

[5] ''Board'' means the board of directors (or the equivalent) of a Regulated Fund.

[6] ''Independent Director'' means a member of the Board of any relevant entity who is not an ''interested person'' as defined in Section 2(a)(19) of the Act. No Independent Director of a Regulated Fund will have a financial interest in any Co-Investment Transaction, other than indirectly through share ownership in one of the Regulated Funds.

[7] The current advisers to the Existing Cole Funds, identified in Appendix C to the application, are not Advisers, will not source Potential Co-Investment Transactions under the required Order and are only deemed to be Advisers for purposes of Conditions 2(c)(iv), 13 and 14.

[8] ''Wholly-Owned Investment Sub'' means an entity (i) that is wholly-owned by a Regulated Fund (with such Regulated Fund at all times holding, beneficially and of record, directly or indirectly, 95% or more of the voting and economic interests); (ii) whose sole business purpose is to hold one or more investments on behalf of such Regulated Fund (and, in the case of a SBIC Subsidiary (defined below), maintain a license under the SBA Act (defined below) and issue debentures guaranteed by the SBA (defined below)); (iii) with respect to which such Regulated Fund's Board has the sole authority to make all determinations with respect to the entity's participation under the Conditions; and (iv)(A) that would be an investment company but for Section 3(c)(1), 3(c)(5)(C), or 3(c)(7) of the Act, (B) relies on Rule 3a–7 under the Act, or (C) qualifies as a REIT within the meaning of Section 856 of the Code because substantially all of its assets would consist of real properties. ''SBIC Subsidiary'' means a Wholly-Owned Investment Sub that is licensed by the Small Business Administration (the ''SBA'') to operate under the Small Business Investment Act of 1958, as amended, (the ''SBA Act'') as a small business investment company.

[9] ''Objectives and Strategies'' means a Regulated Fund's investment objectives and strategies, as described in its most current registration statement on Form N–2, other current filings with the Commission under the Securities Act of 1933 (the ''Securities Act'') or under the Securities Exchange Act of 1934, as amended, and its most current report to stockholders.

[10] ''Board-Established Criteria'' means criteria that the Board of a Regulated Fund may establish from time to time to describe the characteristics of Potential Co-Investment Transactions regarding which the Adviser to the Regulated Fund should be notified under Condition 1. The Board-Established Criteria will be consistent with the Regulated Fund's Objectives and Strategies. If no Board-Established Criteria are in effect, then the applicable Regulated Fund's Adviser(s) will be notified of all Potential Co-Investment Transactions that fall within the Regulated Fund's then-current Objectives and Strategies. Board-Established Criteria will be objective and testable, meaning that they will be based on observable information, such as industry/sector of the issuer, minimum EBITDA of the issuer, asset class of the investment opportunity or required commitment size, and not on characteristics that involve a discretionary assessment. The Adviser(s) to the Regulated Fund may from time to time recommend criteria for the Board's consideration, but Board-Established Criteria will only become effective if approved by a majority of the Independent Directors. The

Continued

a Regulated Fund, the policies and procedures will require that the relevant portfolio managers, investment teams and/or investment committees responsible for that Regulated Fund receive sufficient information to allow the Regulated Fund's Adviser to make its independent determination and recommendations under the Conditions.

10. The Adviser to each applicable Regulated Fund will then make an independent determination of the appropriateness of the investment for the Regulated Fund in light of the Regulated Fund's then-current circumstances. If the Adviser to a Regulated Fund deems the Regulated Fund's participation in such Potential Co-Investment Transaction to be appropriate, then it will formulate a recommendation regarding the proposed order amount for the Regulated Fund.

11. Applicants state that, for each Regulated Fund and Affiliated Fund whose Adviser recommends participating in a Potential Co-Investment Transaction, the Adviser will submit a proposed order amount to an allocation committee on which senior management and legal or compliance personnel participate. Applicants state further that, at this stage, each proposed order amount may be reviewed and adjusted, in accordance with the Advisers' written allocation policies and procedures.[11] The order of a Regulated Fund or Affiliated Fund resulting from this process is referred to as its ''Internal Order.'' The Internal Order will be submitted for approval by the Required Majority of any participating Regulated Funds in accordance with the Conditions.[12]

12. If the aggregate Internal Orders for a Potential Co-Investment Transaction do not exceed the size of the investment opportunity immediately prior to the submission of the orders to the underwriter, broker, dealer or issuer, as applicable (the ''External Submission''), then each Internal Order will be placed with the expectation that it will be fulfilled as placed. If, on the other hand, the aggregate Internal Orders for a Potential Co-Investment Transaction exceed the size of the investment opportunity immediately prior to the External Submission, then the allocation of the opportunity will be made pro rata on the basis of the size of the Internal Orders.[13] If, subsequent to such External Submission, the size of the opportunity is increased or decreased, or if the terms of such opportunity, or the facts and circumstances applicable to the Regulated Funds' or the Affiliated Funds' consideration of the opportunity, change, the participants will be permitted to submit revised Internal Orders in accordance with written allocation policies and procedures that the Advisers will establish, implement and maintain.[14]

B. Follow-On Investments

13. Applicants state that from time to time the Regulated Funds and Affiliated Funds may have opportunities to make Follow-On Investments [15] in an issuer in which a Regulated Fund and one or more other Regulated Funds and/or Affiliated Funds previously have invested.

14. Applicants propose that Follow-On Investments would be divided into two categories depending on whether the prior investment was a Co-Investment Transaction or a Pre-Boarding Investment.[16] If the Regulated Funds and Affiliated Funds had previously participated in a Co-Investment Transaction with respect to the issuer, then the terms and approval of the Follow-On Investment would be subject to the Standard Review Follow-Ons described in Condition 8. If the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer but hold a Pre-Boarding Investment, then the terms and approval of the Follow-On Investment would be subject to the Enhanced-Review Follow-Ons described in Condition 9. All Enhanced Review Follow-Ons require the approval of the Required Majority. For a given issuer, the participating Regulated Funds and Affiliated Funds would need to comply with the requirements of Enhanced-Review Follow-Ons only for the first Co-Investment Transaction. Subsequent Co-Investment Transactions with respect to the issuer would be governed by the requirements of Standard Review Follow-Ons.

15. A Regulated Fund would be permitted to invest in Standard Review Follow-Ons either with the approval of the Required Majority under Condition 8(c) or without Board approval under Condition 8(b) if it is (i) a Pro Rata Follow-On Investment [17] or (ii) a Non-Negotiated Follow-On Investment.[18] Applicants believe that these Pro Rata and Non-Negotiated Follow-On Investments do not present a significant opportunity for overreaching on the part of any Adviser and thus do not warrant the time or the attention of the Board. Pro Rata Follow-On Investments and Non-Negotiated Follow-On Investments remain subject to the Board's periodic review in accordance with Condition 10.

Independent Directors of a Regulated Fund may at any time rescind, suspend or qualify its approval of any Board-Established Criteria, though Applicants anticipate that, under normal circumstances, the Board would not modify these criteria more often than quarterly.

[11] The reason for any such adjustment to a proposed order amount will be documented in writing and preserved in the records of the Advisers.

[12] ''Required Majority'' means a required majority, as defined in Section 57(o) of the Act. In the case of a Regulated Fund that is a registered closed-end fund, the Board members that make up the Required Majority will be determined as if the Regulated Fund were a BDC subject to Section 57(o).

[13] The Advisers will maintain records of all proposed order amounts, Internal Orders and External Submissions in conjunction with Potential Co-Investment Transactions. Each applicable Adviser will provide the Eligible Directors with information concerning the Affiliated Funds' and Regulated Funds' order sizes to assist the Eligible Directors with their review of the applicable Regulated Fund's investments for compliance with the Conditions. ''Eligible Directors'' means, with respect to a Regulated Fund and a Potential Co-Investment Transaction, the members of the Regulated Fund's Board eligible to vote on that Potential Co-Investment Transaction under Section 57(o) of the Act.

[14] The Board of the Regulated Fund will then either approve or disapprove of the investment opportunity in accordance with condition 2, 6, 7, 8 or 9, as applicable.

[15] ''Follow-On Investment'' means an additional investment in the same issuer, including, but not limited to, through the exercise of warrants, conversion privileges or other rights to purchase securities of the issuer.

[16] ''Pre-Boarding Investments'' are investments in an issuer held by a Regulated Fund as well as one or more Affiliated Funds and/or one or more other Regulated Funds that were acquired prior to participating in any Co-Investment Transaction: (i) In transactions in which the only term negotiated by or on behalf of such funds was price in reliance on one of the JT No-Action Letters (defined below); or (ii) in transactions occurring at least 90 days apart and without coordination between the Regulated Fund and any Affiliated Fund or other Regulated Fund.

[17] A ''Pro Rata Follow-On Investment'' is a Follow-On Investment (i) in which the participation of each Affiliated Fund and each Regulated Fund is proportionate to its outstanding investments in the issuer or security, as appropriate, immediately preceding the Follow-On Investment, and (ii) in the case of a Regulated Fund, a majority of the Board has approved the Regulated Fund's participation in the pro rata Follow-On Investments as being in the best interests of the Regulated Fund. The Regulated Fund's Board may refuse to approve, or at any time rescind, suspend or qualify, its approval of Pro Rata Follow-On Investments, in which case all subsequent Follow-On Investments will be submitted to the Regulated Fund's Eligible Directors in accordance with Condition 8(c).

[18] A ''Non-Negotiated Follow-On Investment'' is a Follow-On Investment in which a Regulated Fund participates together with one or more Affiliated Funds and/or one or more other Regulated Funds (i) in which the only term negotiated by or on behalf of the funds is price and (ii) with respect to which, if the transaction were considered on its own, the funds would be entitled to rely on one of the JT No-Action Letters. ''JT No-Action Letters'' means SMC Capital, Inc., SEC No-Action Letter (pub. avail. Sept. 5, 1995) and Massachusetts Mutual Life Insurance Company, SEC No-Action Letter (pub. avail. June 7, 2000).

C. Dispositions

16. Applicants propose that Dispositions [19] would be divided into two categories. If the Regulated Funds and Affiliated Funds holding investments in the issuer had previously participated in a Co-Investment Transaction with respect to the issuer, then the terms and approval of the Disposition would be subject to the Standard Review Dispositions described in Condition 6. If the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer but hold a Pre-Boarding Investment, then the terms and approval of the Disposition would be subject to the Enhanced Review Dispositions described in Condition 7. Subsequent Dispositions with respect to the same issuer would be governed by Condition 6 under the Standard Review Dispositions.[20]

17. A Regulated Fund may participate in a Standard Review Disposition either with the approval of the Required Majority under Condition 6(d) or without Board approval under Condition 6(c) if (i) the Disposition is a Pro Rata Disposition [21] or (ii) the securities are Tradable Securities [22] and the Disposition meets the other requirements of Condition 6(c)(ii). Pro Rata Dispositions and Dispositions of a Tradable Security remain subject to the Board's periodic review in accordance with Condition 10.

D. Delayed Settlement

18. Applicants represent that under the terms and Conditions of the application, all Regulated Funds and Affiliated Funds participating in a Co-Investment Transaction will invest at the same time, for the same price and with the same terms, conditions, class, registration rights and any other rights, so that none of them receives terms more favorable than any other. However, the settlement date for an Affiliated Fund in a Co-Investment Transaction may occur up to ten business days after the settlement date for the Regulated Fund, and vice versa. Nevertheless, in all cases, (i) the date on which the commitment of the Affiliated Funds and Regulated Funds is made will be the same even where the settlement date is not and (ii) the earliest settlement date and the latest settlement date of any Affiliated Fund or Regulated Fund participating in the transaction will occur within ten business days of each other.

E. Holders

19. Under Condition 15, if an Adviser, its principals, or any person controlling, controlled by, or under common control with the Adviser or its principals, and the Affiliated Funds (collectively, the ''Holders'') own in the aggregate more than 25 percent of the outstanding voting shares of a Regulated Fund (the ''Shares''), then the Holders will vote such Shares as directed by an independent third party when voting on matters specified in the Condition. Applicants believe that this Condition will ensure that the Independent Directors will act independently in evaluating Co-Investment Transactions, because the ability of the Adviser or its principals to influence the Independent Directors by a suggestion, explicit or implied, that the Independent Directors can be removed will be limited significantly. The Independent Directors shall evaluate and approve any independent party, taking into account its qualifications, reputation for independence, cost to the shareholders, and other factors that they deem relevant.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit participation by a registered investment company and an affiliated person in any ''joint enterprise or other joint arrangement or profit-sharing plan,'' as defined in the rule, without prior approval by the Commission by order upon application. Section 17(d) of the Act and rule 17d–1 under the Act are applicable to Regulated Funds that are registered closed-end investment companies.

2. Similarly, with regard to BDCs, section 57(a)(4) of the Act generally prohibits certain persons specified in section 57(b) from participating in joint transactions with the BDC or a company controlled by the BDC in contravention of rules as prescribed by the Commission. Section 57(i) of the Act provides that, until the Commission prescribes rules under section 57(a)(4), the Commission's rules under section 17(d) of the Act applicable to registered closed-end investment companies will be deemed to apply to transactions subject to section 57(a)(4). Because the Commission has not adopted any rules under section 57(a)(4), rule 17d–1 also applies to joint transactions with Regulated Funds that are BDCs.

3. Co-Investment Transactions are prohibited by either or both of Rule 17d–1 and Section 57(a)(4) without a prior exemptive order of the Commission to the extent that the Affiliated Funds and the Regulated Funds participating in such transactions fall within the category of persons described by Rule 17d–1 and/or Section 57(b), as applicable, vis-à-vis each participating Regulated Fund. Each of the participating Regulated Funds and Affiliated Funds may be deemed to be affiliated persons vis-à-vis a Regulated Fund within the meaning of section 2(a)(3) by reason of common control because: (i) OFS Adviser serves as the Adviser to and may be deemed to control each of OFS BDC, Hancock BDC, and OFS Credit; (ii) CIM IC Advisor may be deemed to control CIM RACR because it will serve as the Adviser to CIM RACR; (iii) each of OFS Adviser and CIMSA may be deemed to control CIM RACR because they will serve as sub-advisers to CIM RACR; (iii) OFS Adviser manages and may be deemed to control the Affiliated Funds for which it currently serves as investment adviser; (iv) OFS CLO Adviser manages and may be deemed to control the Affiliated

[19] ''Disposition'' means the sale, exchange or other disposition of an interest in a security of an issuer.

[20] However, with respect to an issuer, if a Regulated Fund's first Co-Investment Transaction is an Enhanced Review Disposition, and the Regulated Fund does not dispose of its entire position in the Enhanced Review Disposition, then before such Regulated Fund may complete its first Standard Review Follow-On in such issuer, the Eligible Directors must review the proposed Follow-On Investment not only on a stand-alone basis but also in relation to the total economic exposure in such issuer (*i.e.,* in combination with the portion of the Pre-Boarding Investment not disposed of in the Enhanced Review Disposition), and the other terms of the investments. This additional review would be required because such findings would not have been required in connection with the prior Enhanced Review Disposition, but they would have been required had the first Co-Investment Transaction been an Enhanced Review Follow-On.

[21] A ''Pro Rata Disposition'' is a Disposition (i) in which the participation of each Affiliated Fund and each Regulated Fund is proportionate to its outstanding investment in the security subject to Disposition immediately preceding the Disposition; and (ii) in the case of a Regulated Fund, a majority of the Board has approved the Regulated Fund's participation in pro rata Dispositions as being in the best interests of the Regulated Fund. The Regulated Fund's Board may refuse to approve, or at any time rescind, suspend or qualify, its approval of Pro Rata Dispositions, in which case all subsequent Dispositions will be submitted to the Regulated Fund's Eligible Directors.

[22] ''Tradable Security'' means a security that meets the following criteria at the time of Disposition: (i) It trades on a national securities exchange or designated offshore securities market as defined in rule 902(b) under the Securities Act; (ii) it is not subject to restrictive agreements with the issuer or other security holders; and (iii) it trades with sufficient volume and liquidity (findings as to which are documented by the Advisers to any Regulated Funds holding investments in the issuer and retained for the life of the Regulated Fund) to allow each Regulated Fund to dispose of its entire position remaining after the proposed Disposition within a short period of time not exceeding 30 days at approximately the value (as defined by section 2(a)(41) of the Act) at which the Regulated Fund has valued the investment.

Funds that it manages; (v) CIM Capital Advisor manages and may be deemed to control the Affiliated Funds for which it serves as investment adviser; (vi) an Adviser will serve as investment adviser (and sub-adviser, if any) to, and will be deemed to control, any Cole Fund that relies on the Order; (vii) an Adviser will serve as investment adviser (and sub-adviser, if any) to, and will be deemed to control, any Future Regulated Fund or Future Affiliated Fund; and (viii) the Existing Advisers are all under common control, any Future Advisers will be under common control with the Existing Advisers and CIM IC Advisor is under common control with the Advisers. Thus, each Regulated Fund and each Affiliated Fund may be deemed to be a person related to a Regulated Fund in a manner described by Section 57(b) and Rule 17d–1, as applicable; and therefore the prohibitions of Rule 17d–1 and Section 57(a)(4) would apply respectively to prohibit the Regulated Funds and Affiliated Funds from participating in Co-Investment Transactions with the Regulated Funds.

4. Further, because the Wholly-Owned Investment Subs are controlled by the Regulated Funds, the Wholly-Owned Investment Subs are subject to Section 57(a)(4) (or Section 17(d) in the case of Wholly-Owned Investment Subs controlled by Regulated Funds that are registered under the Act), and thus also subject to the provisions of Rule 17d–1, and therefore would be prohibited from participating in Co-Investment Transactions.

5. In addition, because the OFS Proprietary Accounts are controlled by OFSAM, which is the parent company of OFS Adviser and OFS CLO Adviser and, therefore, are under common control with the Regulated Funds, the OFS Proprietary Accounts could be deemed to be persons related to the Regulated Funds (or a company controlled by the Regulated Funds) in a manner described by Section 57(b) and also prohibited from participating in the program of co-investment described in the application.

6. In passing upon applications under rule 17d–1, the Commission considers whether the company's participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

7. Applicants state that in the absence of the requested relief, in many circumstances the Regulated Funds would be limited in their ability to participate in attractive and appropriate investment opportunities. Applicants state that, as required by Rule 17d–1(b), the Conditions ensure that the terms on which Co-Investment Transactions may be made will be consistent with the participation of the Regulated Funds being on a basis that it is neither different from nor less advantageous than other participants, thus protecting the equity holders of any participant from being disadvantaged. Applicants further state that the Conditions ensure that all Co-Investment Transactions are reasonable and fair to the Regulated Funds and their shareholders and do not involve overreaching by any person concerned, including the Advisers. Applicants state that the Regulated Funds' participation in the Co-Investment Transactions in accordance with the Conditions will be consistent with the provisions, policies, and purposes of the Act and would be done in a manner that is not different from, or less advantageous than, that of other participants.

Applicants' Conditions

Applicants agree that the Order will be subject to the following Conditions:

1. *Identification and Referral of Potential Co-Investment Transactions.*

(a) The Advisers will establish, maintain and implement policies and procedures reasonably designed to ensure that each Adviser is promptly notified of all Potential Co-Investment Transactions that fall within the then-current Objectives and Strategies and Board-Established Criteria of any Regulated Fund such Adviser manages.

(b) When an Adviser to a Regulated Fund is notified of a Potential Co-Investment Transaction under Condition 1(a), it will make an independent determination of the appropriateness of the investment for the Regulated Fund in light of the Regulated Fund's then-current circumstances.

2. *Board Approvals of Co-Investment Transactions.*

(a) If the Adviser deems a Regulated Fund's participation in any Potential Co-Investment Transaction to be appropriate for the Regulated Fund, it will then determine an appropriate level of investment for the Regulated Fund.

(b) If the aggregate amount recommended by the Advisers to be invested in the Potential Co-Investment Transaction by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, the investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in Section III.A.1.b. of the application. Each Adviser to a participating Regulated Fund will promptly notify and provide the Eligible Directors with information concerning the Affiliated Funds' and Regulated Funds' order sizes to assist the Eligible Directors with their review of the applicable Regulated Fund's investments for compliance with these Conditions.

(c) After making the determinations required in Condition 1(b) above, each Adviser to a participating Regulated Fund will distribute written information concerning the Potential Co-Investment Transaction (including the amount proposed to be invested by each participating Regulated Fund and each participating Affiliated Fund) to the Eligible Directors of its participating Regulated Fund(s) for their consideration. A Regulated Fund will enter into a Co-Investment Transaction with one or more other Regulated Funds or Affiliated Funds only if, prior to the Regulated Fund's participation in the Potential Co-Investment Transaction, a Required Majority concludes that:

(i) The terms of the transaction, including the consideration to be paid, are reasonable and fair to the Regulated Fund and its equity holders and do not involve overreaching in respect of the Regulated Fund or its equity holders on the part of any person concerned;

(ii) the transaction is consistent with:

(A) The interests of the Regulated Fund's equity holders; and

(B) the Regulated Fund's then-current Objectives and Strategies;

(iii) the investment by any other Regulated Fund(s) or Affiliated Fund(s) would not disadvantage the Regulated Fund, and participation by the Regulated Fund would not be on a basis different from, or less advantageous than, that of any other Regulated Fund(s) or Affiliated Fund(s) participating in the transaction; provided that the Required Majority shall not be prohibited from reaching the conclusions required by this Condition 2(c)(iii) if:

(A) The settlement date for another Regulated Fund or an Affiliated Fund in a Co-Investment Transaction is later than the settlement date for the Regulated Fund by no more than ten business days or earlier than the settlement date for the Regulated Fund by no more than ten business days, in either case, so long as: (x) The date on which the commitment of the Affiliated Funds and Regulated Funds is made is the same; and (y) the earliest settlement date and the latest settlement date of any Affiliated Fund or Regulated Fund participating in the transaction will occur within ten business days of each other; or

(B) any other Regulated Fund or Affiliated Fund, but not the Regulated Fund itself, gains the right to nominate a director for election to a portfolio company's board of directors, the right to have a board observer or any similar right to participate in the governance or management of the portfolio company so long as: (x) The Eligible Directors will have the right to ratify the selection of such director or board observer, if any; (y) the Adviser agrees to, and does, provide periodic reports to the Regulated Fund's Board with respect to the actions of such director or the information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and (z) any fees or other compensation that any other Regulated Fund or Affiliated Fund or any affiliated person of any other Regulated Fund or Affiliated Fund receives in connection with the right of one or more Regulated Funds or Affiliated Funds to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among any participating Affiliated Funds (who may, in turn, share their portion with their affiliated persons) and any participating Regulated Fund(s) in accordance with the amount of each such party's investment; and

(iv) the proposed investment by the Regulated Fund will not involve compensation, remuneration or a direct or indirect [23] financial benefit to the Advisers, any other Regulated Fund, the Affiliated Funds or any affiliated person of any of them (other than the parties to the Co-Investment Transaction), except (A) to the extent permitted by Condition 14, (B) to the extent permitted by Section 17(e) or 57(k), as applicable, (C) indirectly, as a result of an interest in the securities issued by one of the parties to the Co-Investment Transaction, or (D) in the case of fees or other compensation described in Condition 2(c)(iii)(B)(z).

3. *Right to Decline.* Each Regulated Fund has the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. *General Limitation.* Except for Follow-On Investments made in accordance with Conditions 8 and 9 below,[24] a Regulated Fund will not invest in reliance on the Order in any issuer in which a Related Party has an investment.[25]

5. *Same Terms and Conditions.* A Regulated Fund will not participate in any Potential Co-Investment Transaction unless (i) the terms, conditions, price, class of securities to be purchased, date on which the commitment is entered into and registration rights (if any) will be the same for each participating Regulated Fund and Affiliated Fund and (ii) the earliest settlement date and the latest settlement date of any participating Regulated Fund or Affiliated Fund will occur as close in time as practicable and in no event more than ten business days apart. The grant to one or more Regulated Funds or Affiliated Funds, but not the respective Regulated Fund, of the right to nominate a director for election to a portfolio company's board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this Condition 5, if Condition 2(c)(iii)(B) is met.

6. *Standard Review Dispositions.*

(a) *General.* If any Regulated Fund or Affiliated Fund elects to sell, exchange or otherwise dispose of an interest in a security and one or more Regulated Funds and Affiliated Funds have previously participated in a Co-Investment Transaction with respect to the issuer, then:

(i) the Adviser to such Regulated Fund or Affiliated Fund [26] will notify each Regulated Fund that holds an investment in the issuer of the proposed Disposition at the earliest practical time; and

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to participation by such Regulated Fund in the Disposition.

(b) *Same Terms and Conditions.* Each Regulated Fund will have the right to participate in such Disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the Affiliated Funds and any other Regulated Fund.

(c) *No Board Approval Required.* A Regulated Fund may participate in such a Disposition without obtaining prior approval of the Required Majority if:

(i) (A) The participation of each Regulated Fund and Affiliated Fund in such Disposition is proportionate to its then-current holding of the security (or securities) of the issuer that is (or are) the subject of the Disposition [27]; (B) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in such Dispositions on a pro rata basis (as described in greater detail in the application); and (C) the Board of the Regulated Fund is provided on a quarterly basis with a list of all Dispositions made in accordance with this Condition; or

(ii) each security is a Tradable Security and (A) the Disposition is not to the issuer or any affiliated person of the issuer; and (B) the security is sold for cash in a transaction in which the only term negotiated by or on behalf of the participating Regulated Funds and Affiliated Funds is price.

(d) *Standard Board Approval.* In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors and the Regulated Fund will participate in such Disposition solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

7. *Enhanced Review Dispositions.*

(a) *General.* If any Regulated Fund or Affiliated Fund elects to sell, exchange or otherwise dispose of a Pre-Boarding Investment in a Potential Co-Investment Transaction and the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer:

(i) The Adviser to such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds an

[23] For example, procuring the Regulated Fund's investment in a Potential Co-Investment Transaction to permit an affiliate to complete or obtain better terms in a separate transaction would constitute an indirect financial benefit.

[24] This exception applies only to Follow-On Investments by a Regulated Fund in issuers in which that Regulated Fund already holds investments.

[25] ''Related Party'' means (i) any Close Affiliate and (ii) in respect of matters as to which any Adviser has knowledge, any Remote Affiliate. ''Close Affiliate'' means the Advisers, the Regulated Funds, the Affiliated Funds and any other person described in Section 57(b) (after giving effect to Rule 57b–1) in respect of any Regulated Fund (treating any registered investment company or series thereof as a BDC for this purpose) except for limited partners included solely by reason of the reference in Section 57(b) to Section 2(a)(3)(D). ''Remote Affiliate'' means any person described in Section 57(e) in respect of any Regulated Fund (treating any registered investment company or series thereof as a BDC for this purpose) and any limited partner holding 5% or more of the relevant limited partner interests that would be a Close Affiliate but for the exclusion in that definition.

[26] Any OFS Proprietary Account that is not advised by an Adviser is itself deemed to be an Adviser for purposes of Conditions 6(a)(i), 7(a)(i), 8(a)(i) and 9(a)(i).

[27] In the case of any Disposition, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the security in question immediately preceding the Disposition.

investment in the issuer of the proposed Disposition at the earliest practical time;

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to participation by such Regulated Fund in the Disposition; and

(iii) the Advisers will provide to the Board of each Regulated Fund that holds an investment in the issuer all information relating to the existing investments in the issuer of the Regulated Funds and Affiliated Funds, including the terms of such investments and how they were made, that is necessary for the Required Majority to make the findings required by this Condition.

(b) *Enhanced Board Approval.* The Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Disposition solely to the extent that a Required Majority determines that:

(i) The Disposition complies with Condition 2(c)(i), (ii), (iii)(A), and (iv); and

(ii) the making and holding of the Pre-Boarding Investments were not prohibited by Section 57 or Rule 17d–1, as applicable, and records the basis for the finding in the Board minutes.

(c) *Additional Requirements.* The Disposition may only be completed in reliance on the Order if:

(i) *Same Terms and Conditions.* Each Regulated Fund has the right to participate in such Disposition on a proportionate basis, at the same price and on the same terms and Conditions as those applicable to the Affiliated Funds and any other Regulated Fund;

(ii) *Original Investments.* All of the Affiliated Funds' and Regulated Funds' investments in the issuer are Pre-Boarding Investments;

(iii) *Advice of counsel.* Independent counsel to the Board advises that the making and holding of the investments in the Pre-Boarding Investments were not prohibited by Section 57 (as modified by Rule 57b–1) or Rule 17d–1, as applicable;

(iv) *Multiple Classes of Securities.* All Regulated Funds and Affiliated Funds that hold Pre-Boarding Investments in the issuer immediately before the time of completion of the Co-Investment Transaction hold the same security or securities of the issuer. For the purpose of determining whether the Regulated Funds and Affiliated Funds hold the same security or securities, they may disregard any security held by some but not all of them if, prior to relying on the Order, the Required Majority is presented with all information necessary to make a finding, and finds, that: (x) Any Regulated Fund's or Affiliated Fund's holding of a different class of securities (including for this purpose a security with a different maturity date) is immaterial [28] in amount, including immaterial relative to the size of the issuer; and (y) the Board records the basis for any such finding in its minutes. In addition, securities that differ only in respect of issuance date, currency, or denominations may be treated as the same security; and

(v) *No control.* The Affiliated Funds, the other Regulated Funds and their affiliated persons (within the meaning of Section 2(a)(3)(C) of the Act), individually or in the aggregate, do not control the issuer of the securities (within the meaning of Section 2(a)(9) of the Act).

8. *Standard Review Follow-Ons.*

(a) *General.* If any Regulated Fund or Affiliated Fund desires to make a Follow-On Investment in an issuer and the Regulated Funds and Affiliated Funds holding investments in the issuer previously participated in a Co-Investment Transaction with respect to the issuer:

(i) The Adviser to each such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds securities of the portfolio company of the proposed transaction at the earliest practical time; and

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to the proposed participation, including the amount of the proposed investment, by such Regulated Fund.

(b) *No Board Approval Required.* A Regulated Fund may participate in the Follow-On Investment without obtaining prior approval of the Required Majority if:

(i) (A) The proposed participation of each Regulated Fund and each Affiliated Fund in such investment is proportionate to its outstanding investments in the issuer or the security at issue, as appropriate,[29] immediately preceding the Follow-On Investment; and (B) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in Follow-On Investments on a pro rata basis (as described in greater detail in the application); or

(ii) it is a Non-Negotiated Follow-On Investment.

(c) *Standard Board Approval.* In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority makes the determinations set forth in Condition 2(c). If the only previous Co-Investment Transaction with respect to the issuer was an Enhanced Review Disposition the Eligible Directors must complete this review of the proposed Follow-On Investment both on a stand-alone basis and together with the Pre-Boarding Investments in relation to the total economic exposure and other terms of the investment.

(d) *Allocation.* If, with respect to any such Follow-On Investment:

(i) The amount of the opportunity proposed to be made available to any Regulated Fund is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments in the issuer or the security at issue, as appropriate, immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the Advisers to be invested in the Follow-On Investment by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, then the Follow-On Investment opportunity will be allocated among them *pro rata* based on the size of the Internal Orders, as described in section III.A.1.b. of the application.

(e) *Other Conditions.* The acquisition of Follow-On Investments as permitted by this Condition will be considered a Co-Investment Transaction for all purposes and subject to the other Conditions set forth in the application.

9. *Enhanced Review Follow-Ons.*

(a) *General.* If any Regulated Fund or Affiliated Fund desires to make a

[28] In determining whether a holding is ''immaterial'' for purposes of the Order, the Required Majority will consider whether the nature and extent of the interest in the transaction or arrangement is sufficiently small that a reasonable person would not believe that the interest affected the determination of whether to enter into the transaction or arrangement or the terms of the transaction or arrangement.

[29] To the extent that a Follow-On Investment opportunity is in a security or arises in respect of a security held by the participating Regulated Funds and Affiliated Funds, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the security in question immediately preceding the Follow-On Investment using the most recent available valuation thereof. To the extent that a Follow-On Investment opportunity relates to an opportunity to invest in a security that is not in respect of any security held by any of the participating Regulated Funds or Affiliated Funds, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the issuer immediately preceding the Follow-On Investment using the most recent available valuation thereof.

Follow-On Investment in an issuer that is a Potential Co-Investment Transaction and the Regulated Funds and Affiliated Funds holding investments in the issuer have not previously participated in a Co-Investment Transaction with respect to the issuer:

(i) The Adviser to each such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds securities of the portfolio company of the proposed transaction at the earliest practical time;

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to the proposed participation, including the amount of the proposed investment, by such Regulated Fund; and

(iii) the Advisers will provide to the Board of each Regulated Fund that holds an investment in the issuer all information relating to the existing investments in the issuer of the Regulated Funds and Affiliated Funds, including the terms of such investments and how they were made, that is necessary for the Required Majority to make the findings required by this Condition.

(b) *Enhanced Board Approval.* The Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority reviews the proposed Follow-On Investment both on a stand-alone basis and together with the Pre-Boarding Investments in relation to the total economic exposure and other terms and makes the determinations set forth in Condition 2(c). In addition, the Follow-On Investment may only be completed in reliance on the Order if the Required Majority of each participating Regulated Fund determines that the making and holding of the Pre-Boarding Investments were not prohibited by Section 57 (as modified by Rule 57b–1) or Rule 17d–1, as applicable. The basis for the Board's findings will be recorded in its minutes.

(c) *Additional Requirements.* The Follow-On Investment may only be completed in reliance on the Order if:

(i) *Original Investments.* All of the Affiliated Funds' and Regulated Funds' investments in the issuer are Pre-Boarding Investments;

(ii) *Advice of counsel.* Independent counsel to the Board advises that the making and holding of the investments in the Pre-Boarding Investments were not prohibited by Section 57 (as modified by Rule 57b–1) or Rule 17d–1, as applicable;

(iii) *Multiple Classes of Securities.* All Regulated Funds and Affiliated Funds that hold Pre-Boarding Investments in the issuer immediately before the time of completion of the Co-Investment Transaction hold the same security or securities of the issuer. For the purpose of determining whether the Regulated Funds and Affiliated Funds hold the same security or securities, they may disregard any security held by some but not all of them if, prior to relying on the Order, the Required Majority is presented with all information necessary to make a finding, and finds, that: (x) Any Regulated Fund's or Affiliated Fund's holding of a different class of securities (including for this purpose a security with a different maturity date) is immaterial in amount, including immaterial relative to the size of the issuer; and (y) the Board records the basis for any such finding in its minutes. In addition, securities that differ only in respect of issuance date, currency, or denominations may be treated as the same security; and

(iv) *No control.* The Affiliated Funds, the other Regulated Funds and their affiliated persons (within the meaning of Section 2(a)(3)(C) of the Act), individually or in the aggregate, do not control the issuer of the securities (within the meaning of Section 2(a)(9) of the Act).

(d) *Allocation.* If, with respect to any such Follow-On Investment:

(i) The amount of the opportunity proposed to be made available to any Regulated Fund is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments in the issuer or the security at issue, as appropriate, immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the Advisers to be invested in the Follow-On Investment by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, then the Follow-On Investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in Section III.A.1.(b) of the application.

(e) *Other Conditions.* The acquisition of Follow-On Investments as permitted by this Condition will be considered a Co-Investment Transaction for all purposes and subject to the other Conditions set forth in the application.

10. *Board Reporting, Compliance and Annual Re-Approval.* (a) Each Adviser to a Regulated Fund will present to the Board of each Regulated Fund, on a quarterly basis, and at such other times as the Board may request, (i) a record of all investments in Potential Co-Investment Transactions made by any of the other Regulated Funds or any of the Affiliated Funds during the preceding quarter that fell within the Regulated Fund's then-current Objectives and Strategies and Board-Established Criteria that were not made available to the Regulated Fund, and an explanation of why such investment opportunities were not made available to the Regulated Fund; (ii) a record of all Follow-On Investments in and Dispositions of investments in any issuer in which the Regulated Fund holds any investments by any Affiliated Fund or other Regulated Fund during the prior quarter; and (iii) all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by other Regulated Funds or Affiliated Funds that the Regulated Fund considered but declined to participate in, so that the Independent Directors, may determine whether all Potential Co-Investment Transactions and Co-Investment Transactions during the preceding quarter, including those investments that the Regulated Fund considered but declined to participate in, comply with the Conditions.

(b) All information presented to the Regulated Fund's Board pursuant to this Condition will be kept for the life of the Regulated Fund and at least two years thereafter, and will be subject to examination by the Commission and its staff.

(c) Each Regulated Fund's chief compliance officer, as defined in rule 38a–1(a)(4), will prepare an annual report for its Board each year that evaluates (and documents the basis of that evaluation) the Regulated Fund's compliance with the terms and Conditions of the application and the procedures established to achieve such compliance.

(d) The Independent Directors will consider at least annually whether continued participation in new and existing Co-Investment Transactions is in the Regulated Fund's best interests.

11. *Record Keeping.* Each Regulated Fund will maintain the records required by Section 57(f)(3) of the Act as if each of the Regulated Funds were a BDC and each of the investments permitted under these Conditions were approved by the Required Majority under Section 57(f).

12. *Director Independence.* No Independent Director of a Regulated Fund will also be a director, general partner, managing member or principal, or otherwise be an ''affiliated person''

(as defined in the Act) of any Affiliated Fund.

13. *Expenses.* The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act) will, to the extent not payable by the Advisers under their respective advisory agreements with the Regulated Funds and the Affiliated Funds, be shared by the Regulated Funds and the participating Affiliated Funds in proportion to the relative amounts of the securities held or being acquired or disposed of, as the case may be.

14. *Transaction Fees.*[30] Any transaction fee (including break-up, structuring, monitoring or commitment fees but excluding brokerage or underwriting compensation permitted by Section 17(e) or 57(k)) received in connection with any Co-Investment Transaction will be distributed to the participants on a pro rata basis based on the amounts they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by an Adviser pending consummation of the transaction, the fee will be deposited into an account maintained by the Adviser at a bank or banks having the qualifications prescribed in Section 26(a)(1), and the account will earn a competitive rate of interest that will also be divided pro rata among the participants. None of the Advisers, the Affiliated Funds, the other Regulated Funds or any affiliated person of the Affiliated Funds or the Regulated Funds will receive any additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction other than (i) in the case of the Regulated Funds and the Affiliated Funds, the pro rata transaction fees described above and fees or other compensation described in Condition 2(c)(iii)(B)(z), (ii) brokerage or underwriting compensation permitted by Section 17(e) or 57(k) or (iii) in the case of the Advisers, investment advisory compensation paid in accordance with investment advisory agreements between the applicable Regulated Fund(s) or Affiliated Fund(s) and its Adviser.

15. *Independence.* If the Holders own in the aggregate more than 25 percent of the Shares of a Regulated Fund, then the Holders will vote such Shares as directed by an independent third party when voting on (1) the election of directors; (2) the removal of one or more directors; or (3) any other matter under either the Act or applicable State law affecting the Board's composition, size or manner of election.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

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BILLING CODE 8011–01–P

[30] Applicants are not requesting and the Commission is not providing any relief for transaction fees received in connection with any Co-Investment Transaction.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89247; File No. SR–Phlx–2020–35]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Temporarily Extend the Filing Requirements for Certain Written Reports Pursuant to Options 10, Section 7

July 8, 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 July 6, 2020, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to further extend the filing requirements for certain written reports pursuant to Options 10, Section 7, currently due June 30, 2020, to July 31, 2020.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Given current and ongoing market conditions, the Exchange proposes to provide its members with continued temporary relief from filing certain supervision-related reports pursuant to Options 10, Section 7 (Supervision of Accounts).

In December 2019, COVID–19 began to spread and disrupt company operations and supply chains and impact consumers and investors, resulting in a dramatic slowdown in production and spending.[3] By 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. These measures have affected the U.S. markets.[5] In the United States, Level 1 market wide circuit breaker halts were triggered on March 9, March 12, March

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See, e.g.,* Chairman Jay Clayton, Proposed Amendments to Modernize and Enhance Financial Disclosures; Other Ongoing Disclosure Modernization Initiatives; Impact of the Coronavirus; Environmental and Climate-Related Disclosure (Jan. 30, 2020), *available at https://www.sec.gov/news/public-statement/clayton-mda-2020-01-30.* (''Yesterday, I asked the staff to monitor and, to the extent necessary or appropriate, provide guidance and other assistance to issuers and other market participants regarding disclosures related to the current and potential effects of the coronavirus. We recognize that such effects may be difficult to assess or predict with meaningful precision both generally and as an industry- or issuer-specific basis. This is an uncertain issue where actual effects will depend on many factors beyond the control and knowledge of issuers.'').

[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-remarks-at-the-media-briefing-on-covid-19---11-march-2020.*

[5] ''Analysts showed that we saw the fastest 'correction' in history (down 10% from a high), occurring in a matter of days. In the last week of February, the Dow fell 12.36% with notional trading of $3.6 trillion.'' *See* Phil Mackintosh, Putting the Recent Volatility in Perspective, available at *https://www.nasdaq.com/articles/putting-the-recent-volatility-in-perspective-2020-03-05.*

16, and March 18, 2020. While markets have seen significant declines, governments around the world are undertaking efforts to stabilize the economy and assist affected companies and their employees.[6] While many state governments recently relaxed some social distancing measures and permitted the limited reopening of non-essential businesses, many State governments have now paused the reopening of non-essential businesses due to increased infection rates. Significant uncertainty remains.

Amidst this continued and unprecedented market uncertainty, the Exchange sought to address potential challenges that members may face in timely meeting their obligations to submit to the Exchange annual supervision-related reports under Options 10, Sections 7(g) and (h) (''Supervision Reporting Requirements''), especially in light of unforeseen and uncertain demands on resources required to respond to COVID–19. Options 10, Section 7(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.[7] The Section 7(g) report is due on April 1 of each year. Options 10, Section 7(h) requires that each member submit, by April 1 of each year, a copy of the Section 7(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.[8]

On each of March 31, 2020 and June 2, 2020, the Exchange filed a proposal to temporarily extend the filing requirements for these annual supervision-related reports from April 1, 2020 to June 1, 2020 and from June 1, 2020 to June 30, 2020, respectively.[9] In light of the continued market uncertainty, the Exchange is again seeking to address potential challenges that certain members continue to face in timely meeting their obligations to submit to the Exchange annual supervision-related reports. Accordingly, the Exchange proposes to provide additional, temporary relief for members from the Supervision Reporting Requirements by further extending the June 30, 2020 filing deadlines described above to July 31, 2020. The Exchange believes that this additional, temporary relief will permit those members who have been unable to submit their annual supervision-related reports to continue to focus on running their businesses and the health crisis caused by the COVID–19 pandemic, including its impact on their employees, customers, and communities.

The Exchange 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 its supervision-related reports (FINRA Rule 3120 Report and FINRA Rule 3130 certification) from its second extension deadlines of June 30, 2020[10] to July 31, 2020.[11] The Exchange notes, too, that at least one other options exchange that had twice previously extended the supervisory report deadlines from April 1 to June 1 and then from June 1 to June 30 for its members,[12] also plans to submit a similar filing to, again, extend its deadlines through July 31, 2020. In light of these deadline extensions, the Exchange believes that a consistent regulatory approach is important and therefore that extending its deadline would avoid unnecessary confusion and added burden among entities that are members of both the Exchange and FINRA because the deadline to submit supervisory reports would remain uniform.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[13] in general, and furthers the objectives of Section 6(b)(5) of the Act,[14] in particular, in that it is designed to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general to protect investors and the public interest. As a result of continued uncertainty related to the ongoing spread of the COVID–19 virus, the U.S. exchanges are experiencing unprecedented market volatility. The proposed rule change would allow the Exchange to continue to provide temporary relief to those members who continue to be unable to comply with the Supervision Reporting Requirements, which were amended twice already—most recently to require members to provide written reports to the Exchange by June 30, 2020, and further extend that deadline to July 31, 2020. The Exchange believes that this additional, temporary relief is necessary and appropriate in the public interest, and consistent with the protection of investors, given the unforeseen and uncertain challenges, including business continuity implementation and market volatility, posed by COVID–19 to members that must comply with the Supervision Reporting Requirements. The Exchange also believes that it is necessary and appropriate in the public interest, and consistent with the protection of investors, because FINRA has also re-extended twice the time for its members to file supervision-related reports, most recently from June 30, 2020 to July 31, 2020.[15] Additionally, as indicated above, at least one other options exchange that had previously extended the supervisory report deadlines twice, from April 1 to June 1 and again from June 1 to June 30 for its members,[16] plans to submit a similar filing to re-extend its deadlines through July 31, 2020. Extending the deadline, therefore, will ensure that those entities that are members of both FINRA and the Exchange have a uniform deadline to submit their supervisory reports.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather to provide temporary relief for all

[6] *See, e.g.,* the list of actions undertaken by the Board of Governors of the Federal Reserve System at *https://www.federalreserve.gov/covid-19.htm. See also* Families First Coronavirus Response Act, Public Law 116–127.

[7] The report shall include, but not be limited to, the information set out in Options 10, Section 7(g)(i)–(v).

[8] *See* Options 10, Section 7(h) for the meaning of the term ''control person'' and requirements in the case of a control person that is an organization.

[9] *See* Securities Exchange Act Release No. 88827 (March 31, 2020), 85 FR 19190 (April 6, 2020) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Temporarily Extend Certain Filing Requirement); Securities Exchange Act Release No. 88995 (June 2, 2020), 85 FR 35149 (June 8, 2020) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Further Extend the Deadline for Certain Written Supervisory-Related Reports Pursuant to Options 10, Section 7 (Supervision of Accounts).

[10] *See* FINRA Regulatory Notice 20–08 (March 9, 2020) available at *https://www.finra.org/rules-guidance/notices/20-08.*

[11] *See* FINRA Regulatory Notice 20–08, FAQs, Supervision (June 29, 2020) available at *https://www.finra.org/rules-guidance/key-topics/covid-19/faq#supe.*

[12] *See* Securities Exchange Act No. 88528 (March 31, 2020), 85 FR 19196 (April 6, 2020) (SR–CBOE–2020–029).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] *See supra* note 11.

[16] *See supra* note 12.

members that are required to comply with the Supervision Reporting Requirements.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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 further extending the deadline for written reports pursuant to the Supervision Reporting Requirements from June 30, 2020, to July 31, 2020. 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.[21]

[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 Exchange has satisfied this requirement.

[19] 17 CFR 240.19b–4(f)(6).

[20] 17 CFR 240.19b–4(f)(6)(iii).

[21] 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).

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–PHLX–2020–35 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–PHLX–2020–35. 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–PHLX–2020–35 and should be submitted on or before August 4, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

J. Matthew DeLesDernier,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–89246; File No. SR–ISE–2020–28]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Temporarily Extend the Filing Requirements for Certain Written Reports Pursuant to Options 10, Section 7

July 8, 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 July 7, 2020, Nasdaq ISE, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to further extend the filing requirements for certain written reports pursuant to Options 10, Section 7, currently due June 30, 2020, to July 31, 2020.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/ise/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[22] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that the Exchange filed this proposed rule change on July 1, 2020 (SR–ISE–2020–27). On July 7, 2020, the Exchange withdrew that filing and submitted this filing.

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 and ongoing market conditions, the Exchange proposes to provide its members with continued temporary relief from filing certain supervision-related reports pursuant to Options 10, Section 7 (Supervision of Accounts).[4]

In December 2019, COVID–19 began to spread and disrupt company operations and supply chains and impact consumers and investors, resulting in a dramatic slowdown in production and spending.[5] By March 11, 2020, the World Health Organization characterized COVID–19 as a pandemic.[6] 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. These measures have affected the U.S. markets.[7] In the United States, Level 1 market wide circuit breaker halts were triggered on March 9, March 12, March 16, and March 18, 2020. While markets have seen significant declines, governments around the world are undertaking efforts to stabilize the economy and assist affected companies and their employees.[8] While many state governments recently relaxed some social distancing measures and permitted the limited reopening of non-essential businesses, many state governments have now paused the reopening of non-essential businesses due to increased infection rates. Significant uncertainty remains.

Amidst this continued and unprecedented market uncertainty, the Exchange sought to address potential challenges that members may face in timely meeting their obligations to submit to the Exchange annual supervision-related reports under Options 10, Sections 7(g) and (h) (''Supervision Reporting Requirements''), especially in light of unforeseen and uncertain demands on resources required to respond to COVID–19. Options 10, Section 7(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.[9] The Section 7(g) report is due on April 1 of each year. Options 10, Section 7(h) requires that each member submit, by April 1 of each year, a copy of the Section 7(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.[10]

On each of March 31, 2020 and June 2, 2020, the Exchange filed a proposal to temporarily extend the filing requirements for these annual supervision-related reports from April 1, 2020 to June 1, 2020, and from June 1, 2020 to June 30, 2020, respectively.[11] In light of the continued market uncertainty, the Exchange is again seeking to address potential challenges that certain members continue to face in timely meeting their obligations to submit to the Exchange annual supervision-related reports. Accordingly, the Exchange proposes to provide additional, temporary relief for members from the Supervision Reporting Requirements by further extending the June 30, 2020 filing deadlines described above to July 31, 2020. The Exchange believes that this additional, temporary relief will permit those members who have been unable to submit their annual supervision-related reports to continue to focus on running their businesses and the health crisis caused by the COVID–19 pandemic, including its impact on their employees, customers, and communities.

The Exchange 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 its supervision-related reports (FINRA Rule 3120 Report and FINRA Rule 3130 certification) from its second extension deadlines of June 30, 2020[12] to July 31, 2020.[13] The Exchange notes, too, that at least one other options exchange that had twice previously extended the supervisory report deadlines from April 1 to June 1 and then from June 1 to June 30 for its members,[14] also plans to

[4] The Exchange notes that ISE Options 10, including Section 7, is incorporated by reference into the rulebooks of Nasdaq GEMX, LLC (''GEMX'') and Nasdaq MRX, LLC (''MRX''). As such, the amendments to ISE Options 10, Section 7 proposed herein will also impact GEMX and MRX Options 10, Section 7.

[5] *See, e.g.,* Chairman Jay Clayton, Proposed Amendments to Modernize and Enhance Financial Disclosures; Other Ongoing Disclosure Modernization Initiatives; Impact of the Coronavirus; Environmental and Climate-Related Disclosure (Jan. 30, 2020), *available at https://www.sec.gov/news/public-statement/clayton-mda-2020-01-30.* (''Yesterday, I asked the staff to monitor and, to the extent necessary or appropriate, provide guidance and other assistance to issuers and other market participants regarding disclosures related to the current and potential effects of the coronavirus. We recognize that such effects may be difficult to assess or predict with meaningful precision both generally and as an industry- or issuer-specific basis. This is an uncertain issue where actual effects will depend on many factors beyond the control and knowledge of issuers.'').

[6] *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-remarks-at-the-media-briefing-on-covid-19---11-march-2020.*

[7] ''Analysts showed that we saw the fastest 'correction' in history (down 10% from a high), occurring in a matter of days. In the last week of February, the Dow fell 12.36% with notional trading of $3.6 trillion.'' *See* Phil Mackintosh, Putting the Recent Volatility in Perspective, available at *https://www.nasdaq.com/articles/putting-the-recent-volatility-in-perspective-2020-03-05.*

[8] *See, e.g.,* the list of actions undertaken by the Board of Governors of the Federal Reserve System at *https://www.federalreserve.gov/covid-19.htm. See also* Families First Coronavirus Response Act, Public Law 116–127.

[9] The report shall include, but not be limited to, the information set out in Options 10, Section 7(g)(1)–(6).

[10] *See* Options 10, Section 7(h) for the meaning of the term ''control person'' and requirements in the case of a control person that is an organization.

[11] *See* Securities Exchange Act Release No. 88827 (March 31, 2020), 85 FR 19190 (April 6, 2020) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Temporarily Extend Certain Filing Requirement); Securities Exchange Act Release No. 88994 (June 2, 2020), 85 FR 35131 (June 8, 2020) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Further Extend the Deadline for Certain Written Supervisory-Related Reports Pursuant to Options 10, Section 7 (Supervision of Accounts).

[12] *See* FINRA Regulatory Notice 20–08 (March 9, 2020) available at *https://www.finra.org/rules-guidance/notices/20-08.*

[13] *See* FINRA Regulatory Notice 20–08, FAQs, Supervision (June 29, 2020) available at *https://www.finra.org/rules-guidance/key-topics/covid-19/faq#supe.*

[14] *See* Securities Exchange Act No. 88528 (March 31, 2020), 85 FR 19196 (April 6, 2020) (SR–CBOE–2020–029).

submit a similar filing to, again, extend its deadlines through July 31, 2020. In light of these deadline extensions, the Exchange believes that a consistent regulatory approach is important and therefore that extending its deadline would avoid unnecessary confusion and added burden among entities that are members of both the Exchange and FINRA because the deadline to submit supervisory reports would remain uniform.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[15] in general, and furthers the objectives of Section 6(b)(5) of the Act,[16] in particular, in that it is designed to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general to protect investors and the public interest. As a result of continued uncertainty related to the ongoing spread of the COVID–19 virus, the U.S. exchanges are experiencing unprecedented market volatility. The proposed rule change would allow the Exchange to continue to provide temporary relief to those members who continue to be unable to comply with the Supervision Reporting Requirements, which were amended twice already—most recently to require members to provide written reports to the Exchange by June 30, 2020, and further extend that deadline to July 31, 2020. The Exchange believes that this additional, temporary relief is necessary and appropriate in the public interest, and consistent with the protection of investors, given the unforeseen and uncertain challenges, including business continuity implementation and market volatility, posed by COVID–19 to members that must comply with the Supervision Reporting Requirements. The Exchange also believes that it is necessary and appropriate in the public interest, and consistent with the protection of investors, because FINRA has also re-extended twice the time for its members to file supervision-related reports, most recently from June 30, 2020 to July 31, 2020.[17] Additionally, as indicated above, at least one other options exchange that had previously extended the supervisory report deadlines twice, from April 1 to June 1 and again from June 1 to June 30 for its members,[18] plans to submit a similar filing to re-extend its deadlines through July 31, 2020. Extending the deadline, therefore, will ensure that those entities that are members of both FINRA and the Exchange have a uniform deadline to submit their supervisory reports.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues but rather to provide temporary relief for all members that are required to comply with the Supervision Reporting Requirements.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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[19] and subparagraph (f)(6) of Rule 19b–4 thereunder.[20]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[21] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[22] 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 further extending the deadline for written reports pursuant to the Supervision Reporting Requirements from June 30, 2020, to July 31, 2020. 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 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–ISE–2020–28 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–ISE–2020–28. 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

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] *See supra* note 11.

[18] *See supra* note 12.

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[21] 17 CFR 240.19b–4(f)(6).

[22] 17 CFR 240.19b–4(f)(6)(iii).

[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).

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–ISE–2020–28 and should be submitted on or before August 4, 2020.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2020–15107 Filed 7–13–20; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB), for the collection of information described below. The Paperwork Reduction Act (PRA) of 1995 requires federal agencies to publish a notice in the **Federal Register** concerning each collection of information before submission to OMB and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before September 14, 2020.

ADDRESSES: Send all comments to the U.S. Small Business Administration's Office of Financial Assistance dedicated email box at *PPP-IFR@sba.gov.*

FOR FURTHER INFORMATION CONTACT: Gregorius Suryardi, Financial and Loan Specialist, Office of Financial Assistance at *gregorius.suryardi@sba.gov* or Mary Frias, Loan Specialist, Office of Financial Assistance at *mary.frias@sba.gov* or Curtis B. Rich, Management Analyst, (202) 205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: Section 1102 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Public Law 116–136 (3/27/2020), authorized SBA to guarantee loans made by banks or other financial institutions under a new temporary program titled the ''Paycheck Protection Program'' (PPP). These loans are available to eligible small businesses; certain non-profit organizations, veterans' organizations, and Tribal business concerns; independent contractors; and self-employed individuals adversely impacted by the COVID–19 emergency. Proceeds of a PPP loan may be used for payroll costs, including costs related to the continuation of group health care benefits during periods of paid sick, medical or family leave, and insurance premiums; rent payments; mortgage interest payments, and payments of interest on other debt incurred prior to February 15, 2020, and to refinance certain SBA Economic Injury Disaster Loans received between January 31, 2020 and April 3, 2020 or used for the same purpose. Under section 1106(b) of the CARES Act, a loan may be forgiven in full or in part if the small business uses the proceeds for payroll costs, payment of interest on a covered mortgage, payment on any covered rent obligation, and any covered utility payment.

In order to make the financial assistance available as expeditiously as possible after the PPP was authorized, SBA obtained emergency approval, including waiver of the 60-day public comment notice, of the information collection necessary to implement the program. That approval will expire on October 30, 2020. SBA will request OMB's approval to extend this expiration date to enable the agency to remain in compliance with the PRA as it continues to collect information from the PPP participants.

(a) *Solicitation of Public Comments:*

SBA is requesting comments on (i) Whether the collection of information is necessary for the agency to properly perform its functions; (ii) whether the burden estimates are accurate; (iii) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (iv) whether there are ways to enhance the quality, utility, and clarity of the information.

(b) *Summary of Information Collection:*

Title: Paycheck Protection Program.

OMB Control Number: 3245–0407.

(i) SBA Form 2483, *Paycheck Protection Program Borrower Application Form.* SBA estimates approximately 6.5 million loan applicants will submit this form (or the lender's equivalent form) to PPP participating lenders to provide information concerning the purpose of the loan, applicant's history of any prior government debt, information regarding 20.0 percent or more owners of the business, including criminal history. The estimated time to complete this form is 8 minutes for a total of 866,667 hours. Lenders will use the information to evaluate whether applicants are eligible to receive a PPP loan and if loan proceeds will be used for eligible purposes.

(ii) SBA Form 2484, *Paycheck Protection Program Lender's Application for 7(a) Guaranty.* Lenders making PPP loans are required to submit the information concerning the eligibility of each loan applicant and the use of proceeds, and also the loan terms and conditions. SBA estimates that the 7,000 lenders will take about 25 minutes to gather and complete the requested information, for a total estimated burden of 2,708,333 hours. SBA uses the information provided by lenders to ensure the loan was made in compliance with all applicable laws and PPP loan program requirements issued by SBA.

(iii) SBA Form 3506, *CARES Act Section 1102 Lender Agreement.* This information is submitted by Federally Insured Depository Institutions, federally insured credit unions, and Farm Credit System regulated agricultural lenders (other than the Federal Agricultural Mortgage Corporation) that do not already participate in SBA's 7(a) loan program but are seeking to participate in the PPP. SBA and the Department of Treasury use the information to determine whether the financial institutions meet the eligibility requirements to participate in the PPP. An estimated 1,000 lending institutions will submit this form and will need approximately 10 minutes to review and complete the information for a total estimated burden of 167 hours.

(iv) SBA Form 3507, *CARES Act Section 1102 Lender Agreement—Non-Bank and Non-Insured Depository Institution Lenders.* This form collects information from depository or non-depository institutions and certain service providers that have contracted with insured depository institutions to support their lending activities. SBA and the Department of Treasury use the information to determine the eligibility of Non-Bank and Non-Insured Depository Institution Lenders to make PPP loans. SBA estimates that 250 institutions will apply and that it will take approximately 25 minutes for them to review, complete and submit the

[24] 17 CFR 200.30–3(a)(12).

application for a total estimated burden of 104 hours.

(v) SBA Form 3508, *Paycheck Protection Program—Loan Forgiveness Application* and SBA Form 3508EZ, *Paycheck Protection Program—PPP Loan Forgiveness Application Form EZ.* PPP borrowers submit the applicable version of these forms (or the lender's equivalent forms) to request forgiveness of all or a portion of the PPP loan. The information is used to determine whether the application meets the criteria for loan forgiveness. SBA estimates that 1.625 million borrowers (or 25.0 percent of all borrowers) will submit the SBA Form 3508 to request forgiveness. The estimated time for each borrower to review and complete this form is 180 minutes for a total estimated burden of 4,875,000 hours. SBA assumes that the remaining 4.875 million borrowers will submit the streamlined Form 3508EZ to request forgiveness. The estimated time for each of these borrowers to complete this form is 20 minutes, for a total estimated burden of 1,625,500 hours.

(vi) [No Form Number] *Lender Reporting Requirements Concerning Requests for Forgiveness.* Lenders participating in the PPP are required to submit information to SBA to support the requests for forgiveness, including certain information extracted from SBA Form 3508, and to support the Lenders' decision to approve or deny that request for forgiveness. SBA will use the information to determine borrowers' and Lenders' compliance with PPP requirements and the appropriate amount of loan forgiveness. SBA estimates that it will take Lenders about 30 minutes to review the information submitted by the estimated 1.625 borrowers that use SBA Form 3508 and prepare the rationale for its decision. The total estimated burden is 812,500 hours. SBA estimates that it will take Lenders about 15 minutes to review the information submitted by the 4.875 million borrowers that use SBA Form 3508EZ for a total estimated burden of 1,218,750 hours.

(vii) *[No Form Number] Lender Reporting for Loan Reviews.* PPP loans are subject to review by SBA in its sole discretion, and Lenders are required to submit information to the agency to facilitate the reviews when requested. The information to be collected includes a certified transcript of account, borrower's loan application, application for forgiveness, and all supporting documentation. SBA will use the information to review the eligibility of the borrower, the eligibility of the loan amount and use of loan proceeds, and whether the borrower is eligible for forgiveness in whole or in part. SBA estimates that it will select about 1,025,000 loans for review and that it will take lenders about 30 minutes to compile the information and respond to SBA, for a total estimated burden of 512,500 hours.

Curtis Rich,

Management Analyst.

[FR Doc. 2020–15145 Filed 7–13–20; 8:45 am]

BILLING CODE 8026–03–P

SMALL BUSINESS ADMINISTRATION

[Docket No. SBA–2020–0014]

Class Waiver of the Nonmanufacturer Rule

AGENCY: U.S. Small Business Administration.

ACTION: Notice of intent to waive the Nonmanufacturer Rule for diabetic test strips.

SUMMARY: The U.S. Small Business Administration (SBA) is considering granting a request for a class waiver of the Nonmanufacturer Rule (NMR) for diabetic test stripes under North American Industry Classification (NAICS) code 325413 and Product Service Code (PSC) 6515. If granted, the class waiver would allow otherwise qualified regular dealers to supply the waived item on certain small business contracts, regardless of the business size of the manufacturer.

DATES: Comments and source information must be submitted by August 13, 2020.

ADDRESSES: You may submit comments and source information via the Federal Rulemaking Portal at *https://www.regulations.gov.* If you wish to submit confidential business information (CBI) as defined in the User Notice at *https://www.regulations.gov,* please submit the information to Carol Hulme, Attorney Advisor, Office of Government Contracting, U.S. Small Business Administration, 409 Third Street SW, 8th Floor, Washington, DC 20416. Highlight the information that you consider to be CBI and explain why you believe this information should be held confidential. SBA will review the information and make a final determination as to whether the information will be published.

FOR FURTHER INFORMATION CONTACT: Carol Hulme, Attorney Advisor, by telephone at 202–205–6347; or by email at *Carol-Ann.Hulme@sba.gov.*

SUPPLEMENTARY INFORMATION: Sections 8(a)(17) and 46 of the Small Business Act (Act), 15 U.S.C. 637(a)(17) and 657s, and SBA's implementing regulations, found at 13 CFR 121.406(b), require that recipients of Federal supply contracts provide the product of a small business manufacturer or processor if the recipient of the set-aside contract is not the actual manufacturer or processor of the product, This requirement is commonly referred to as the Nonmanufacturer Rule (NMR). 13 CFR 121.406(b). The NMR applies to a contract issued as a small business set-aside (except as stated below); a service-disabled veteran-owned small business (SDVOSB) set-aside or sole-source contract; a Historically Underutilized Business Zone (HUBZone) set-aside or sole source contract; a women-owned small business (WOSB) or economically disadvantaged women-owned small business (EDWOSB) set-aside or sole source contract; or 8(a) set-aside or sole source contract; a partial set-aside; or a set-aside of an order against a multiple award contract. The NMR does not apply to small business set-aside acquisitions with an estimated value between the micro-purchase threshold and the simplified acquisition threshold.

Sections 8(a)(17)(B)(iv)(II) and 46(a)(4)(B) of the Act authorize SBA to waive the NMR for a ''class of products'' for which there are no small business manufacturers or processors available to participate in the Federal market. The SBA defines ''class of products'' based on a combination of (1) the six-digit NAICS code, (2) the four-digit PSC, and (3) a description of the class of products. A waiver would not have any effect on the requirements in 13 CFR 121.406(b)(1)(i) through (iii) or on requirements external to the Act that involve domestic sources of supply, such as the Buy American Act, 41 U.S.C. 8301–8305, or the Trade Agreements Act, 19 U.S.C. 2501 *et seq.*

As implemented in SBA's regulations at 13 CFR 121.1202(c), in order to be considered available to participate in the Federal market for a class of products, a small business manufacturer must have submitted a proposal for a contract solicitation or been awarded a contract to supply the class of products within the last 24 months.

SBA has received a request for a class waiver for diabetic testing strips. The applicable NAICS Code is 325413 and the PSC is 6515 as there are no small businesses that manufacturer this product. A search of the Federal marketplace revealed there are no small business manufacturers that can manufacture and supply this product to the Federal government.

SBA invites the public to comment on this pending request to waive the NMR

for diabetic testing strips. The public may comment or provide source information on any small business manufacturers of this class of products that are available to participate in the Federal market. The public comment period will run for 30 days after the date of publication in the **Federal Register**.

More information on the NMR and class waivers can be found at *https://www.sba.gov/contracting/contracting-officials/non-manufacturer-rule/non-manufacturer-waivers.*

David Loines,

Director, Office of Government Contracting.

[FR Doc. 2020–15149 Filed 7–13–20; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF STATE

[Public Notice 11113]

Notice of the Renaming of the International Telecommunication Advisory Committee (ITAC) as the International Digital Economy and Telecommunication (IDET) Advisory Committee and Renewal of Charter

SUMMARY: This notice announces that the International Telecommunication Advisory Committee has been renamed the International Digital Economy and Telecommunication (IDET) Advisory Committee and that its charter has been renewed. In accordance with the provisions of the Federal Advisory Committee Act and the general authority of the Secretary of State and the Department of State, the charter of the International Digital Economy and Telecommunication Advisory Committee has been renewed for two years.

The IDET consists of members of the telecommunications industry, including network operators and service providers, equipment vendors, members of academia; members of organizations, institutions, or entities with specific interests in digital economy, digital connectivity, economic aspects of emerging digital technologies, telecommunications, and communications and information policy matters; members of civil society; and officials of interested government agencies. The IDET provides views and advice to the Department of State on positions concerning international digital economy, telecommunications, and information policy matters. This advice has been a major factor in ensuring that the United States was well prepared to participate effectively in the international telecommunications and information policy arena, including the International Telecommunication Union (ITU), the Organization of American States Inter-American Telecommunication Commission (CITEL), the Organization for Economic Cooperation and Development (OECD), the Asia Pacific Economic Cooperation Forum Telecommunications and Information Working Group, the Group of Seven (G7), the Group of Twenty (G20) Digital Economy Task Force, and relevant standards setting bodies.

FOR FURTHER INFORMATION CONTACT: Please contact the Designated Federal Officer (DFO), Daniel Oates or Lynnette Jackson at *IDET@state.gov.*

Zachary A. Parker,

Director, Office of Directives Management, Department of State.

[FR Doc. 2020–15096 Filed 7–13–20; 8:45 am]

BILLING CODE 4710–07–P

SURFACE TRANSPORTATION BOARD

30-Day Notice of Intent To Seek Extension of Approval; Complaints

AGENCY: Surface Transportation Board.

ACTION: Notice and request for comments.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (PRA), the Surface Transportation Board (STB or Board) gives notice of its intent to seek approval from the Office of Management and Budget (OMB) for an extension of approval for the information collection required from those seeking to file complaints, as described below. The Board previously published a notice about this collection in the **Federal Register** on May 21, 2020. That notice allowed for a 60-day public review and comment period. No comments were received.

DATES: Comments on this information collection should be submitted by August 13, 2020.

ADDRESSES: Written comments should be identified as ''Paperwork Reduction Act Comments, Surface Transportation Board: Complaints.'' Written comments for the proposed information collection should be submitted via *www.reginfo.gov/public/do/PRAMain.* This information collection can be accessed by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. As an alternative, written comments may be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Michael J. McManus, Surface Transportation Board Desk Officer: By email at *oira_submission@omb.eop.gov;* by fax at (202) 395–1743; or by mail to Room 10235, 725 17th Street NW, Washington, DC 20503.

Please also direct comments to Chris Oehrle, PRA Officer, Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001 and to *PRA@stb.gov.* For further information regarding this collection, contact Michael Higgins, Deputy Director, Office of Public Assistance, Governmental Affairs (OPAGAC), and Compliance, at (202) 245–0284 or *michael.higgins@stb.gov.* Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Comments are requested concerning: (1) The accuracy of the Board's burden estimates; (2) ways to enhance the quality, utility, and clarity of the information collected; (3) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate; and (4) whether the collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility. Submitted comments will be summarized and included in the Board's request for OMB approval.

Description of Collection

Title: Complaints.

OMB Control Number: 2140–0029.

STB Form Number: None.

Type of Review: Extension without change.

Respondents: Affected shippers, railroads, and communities that seek redress for alleged violations related to unreasonable rates, unreasonable practices, service issues, and other statutory claims.

Number of Respondents: Four.

Estimated Time per Response: 469 hours.

Frequency: On occasion. For years 2017–2019, respondents filed an average of four complaints of this type with the Board.

Total Burden Hours (annually including all respondents): 1,876 (estimated hours per complaint (469) × average number of complaints (4)).

Total ''Non-Hour Burden'' Cost: $5,848 (estimated non-hour burden cost per complaint ($1,462) × average number of complaints (4)).

Needs and Uses: Under the Board's regulations, persons may file complaints before the Board pursuant to 49 CFR part 1111 seeking redress for alleged violations of provisions of the Interstate Commerce Act, 49 U.S.C. 10101 *et seq.*

The required content of a complaint is outlined at 49 CFR 1111.1(a). Generally, the most significant complaints filed at the Board allege that railroads are charging unreasonable rates or that they are engaging in unreasonable practices. The collection by the Board of these complaints, and the agency's action in conducting proceedings and ruling on the complaints, enables the Board to meet its statutory duty to regulate the rail industry.

In two notices of proposed rulemakings, *Final Offer Rate Review,* EP 755 et al. (84 FR 48872 (Sept. 17, 2019)), and *Market Dominance Streamlined Approach,* EP 756 (84 FR 48882 (Sept. 17, 2019)), the Board proposed new rules that are intended to simplify and streamline certain complaint proceedings. The Board has submitted to OMB an interim request for modification and extension of the existing collection in connection with those proceedings, and has received comments, which it is reviewing. The Board will need to submit another request for modification of the collection for complaints, and address comments received in those proceedings, should final rules be adopted in those proceedings.

Under the PRA, a Federal agency that conducts or sponsors a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Section 3507(b) of the PRA requires, concurrent with an agency's submitting a collection to OMB for approval, a 30-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: July 8, 2020.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2020–15091 Filed 7–13–20; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2020–0623]

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval for renew an information collection. The collection involves a series of voluntary surveys within the aviation community. The information to be collected will be used to and/or is necessary because it will lead to improvements for safety within the National Airspace.

DATES: Written comments should be submitted by September 1, 2020.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov/2020-0623.

By mail: SAFE Program, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

By fax: 202–267–4200.

FOR FURTHER INFORMATION CONTACT: Edward Kleinschmidt by email at: *edward.kleinschmidt@faa.gov;* phone: 202–267–4265.

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: 2120–0759.

Title: SAFE Program.

Form Numbers: None.

Type of Review: Renewal.

Background: Aviation Safety Awareness, Feedback, and Evaluation Program (''SAFE''). The SAFE program is a federally directed, compliant with the 2017 OMB Comprehensive Plan for Reforming Federal Government, program with the following primary intents, all of which are designed to increase overall aviation safety:

Promote continuous improvements to maintain the safest aviation system in the world;

Understand current aviation stakeholder (customer) perceptions of effectiveness;

Produce actionable results and findings to continue effective programs while recommending alternate strategies, where needed, to increase effectiveness;

Communicate feedback effectively with aviation stakeholders regarding current effectiveness indices within particular communities and the plan to maintain effective programs or alter other programs to increase effectiveness.

The information will be collected from five aviation stakeholder groups; general aviation pilots, mechanics, repair station, commercial and air transport pilots, and air carriers. Information will be collected in the areas of certification, communication, safety, training, and interaction with the FAA. The information will be collected by an online survey program as well as by paper copies sent directly to the respondents.

Respondents: Respondents include the Aviation Community (general aviation pilots, mechanics, repair station, commercial and air transport pilots, and air carriers).

Frequency: NA.

Estimated Average Burden per Response: Twenty (20) minutes, on average, to complete the survey in any of the response modes.

Estimated Total Annual Burden: The total average annual burden for the 3-year approval period is 527 hours per year. A mixed mode survey approach is being used in an effort to offset the individual burden by providing a means of requesting a print version and the convenience of on-demand electronic versions. This allows the respondent to choose how and when to complete the survey.

Issued in Washington, DC, on July 1, 2020.

Jacqueline Tonic,

SAFE Program Assistant, Office of Flight Standards, Federal Aviation Administration.

[FR Doc. 2020–14594 Filed 7–13–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0125; FMCSA–2014–0102; FMCSA–2015–0327; FMCSA–2015–0328; FMCSA–2015–0329; FMCSA–2017–0059;FMCSA–2017–0060]

Qualification of Drivers; Exemption Applications; Hearing

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

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to renew exemptions for 22 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) for interstate commercial motor vehicle (CMV) drivers. The exemptions enable these hard of hearing and deaf individuals to continue to operate CMVs in interstate commerce.

DATES: Each group of renewed exemptions were applicable on the dates stated in the discussions below and will expire on the dates provided below.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, 202–366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov.* Insert the docket number, FMCSA–2013–0125, FMCSA–2014–0102, FMCSA–2015–0327, FMCSA–2015–0328, FMCSA–2015–0329, FMCSA–2017–0059, or FMCSA–2017–0060, 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 online by visiting the Docket Operations 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., ET, 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.

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 *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.*

II. Background

On June 5, 2020, FMCSA published a notice announcing its decision to renew exemptions for 22 individuals from the hearing standard in 49 CFR 391.41(b)(11) to operate a CMV in interstate commerce and requested comments from the public (85 FR 34717). The public comment period ended on July 6, 2020, and no comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that renewing these exemptions would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(11).

The physical qualification standard for drivers regarding hearing found in § 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5–1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

III. Discussion of Comments

FMCSA received no comments in this proceeding.

IV. Conclusion

Based upon its evaluation of the 22 renewal exemption applications, FMCSA announces its decision to exempt the following drivers from the hearing requirement in § 391.41 (b)(11).

In accordance with 49 U.S.C. 31136(e) and 31315(b), the following groups of drivers received renewed exemptions in the month of June and are discussed below:

As of June 17, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following 11 individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers (85 FR 34717):

Paul Aseka (TX), James Bogart (KS), Thomas Buretz (FL), Glenn Ferguson (TX), Anthony Panto (NJ), William Symonds (IL), Steven Tipton (IA), Daniel Tricolici (MA), Wayne Turner (IL), Fernando Velasquez (TX), Scott Weeaks (OK).

The drivers were included in docket number FMCSA–2013–0125, FMCSA–2015–0327, FMCSA–2015–0328, FMCSA–2015–0329, and FMCSA–2017–0059. Their exemptions are applicable as of June 17, 2020, and will expire on June 17, 2022.

As of June 25, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following three individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers (85 FR 34717):

Alfredo Ramirez (TX); Julie Ramirez (TX); and Hayden Teesdale (TX)

The drivers were included in docket number FMCSA–2014–0102. Their exemptions are applicable as of June 25, 2020, and will expire on June 25, 2022.

As of June 29, 2020, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following eight individuals have satisfied the renewal conditions for obtaining an exemption from the hearing requirement in the FMCSRs for interstate CMV drivers (85 FR 34717):

Leroy Carter (OH), Robert Cates (NM), Brodey DiPasquale (MD), Richard Fisher (PA), Kimberly Foss (OR), Dustin McFaddin (TX), Marcel Paul (WA), Jason Winemiller (IL).

The drivers were included in docket number FMCSA–2017–0060. Their exemptions are applicable as of June 29, 2020, and will expire on June 29, 2022.

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals

and objectives of 49 U.S.C. 31136(e) and 31315(b).

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–15156 Filed 7–13–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2020–0009]

Qualification of Drivers; Exemption Applications; Vision

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

ACTION: Notice of applications for exemption; request for comments.

SUMMARY: FMCSA announces receipt of applications from six individuals for an exemption from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions will enable these individuals to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

DATES: Comments must be received on or before August 13, 2020.

ADDRESSES: You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA–2020–0009 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/docket?D=FMCSA-2020-0009.* Follow the online instructions for submitting comments.
- *Mail:* Docket Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, Department of Transportation, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA–2020–0009), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov/docket?D=FMCSA-2020-0009.* Click on the ''Comment Now!'' button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to *http://www.regulations.gov/docket?D=FMCSA-2020-0009* and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Operations 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., ET, 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.

C. 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.transportation.gov/privacy.*

II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The six individuals listed in this notice have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding vision found in § 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal Meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

On July 16, 1992, the Agency first published the criteria for the Vision Waiver Program, which listed the conditions and reporting standards that CMV drivers approved for participation would need to meet (57 FR 31458). The current Vision Exemption Program was established in 1998, following the enactment of amendments to the statutes governing exemptions made by § 4007 of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107, 401 (June 9, 1998). Vision exemptions are considered under the procedures

established in 49 CFR part 381 subpart C, on a case-by-case basis upon application by CMV drivers who do not meet the vision standards of § 391.41(b)(10).

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely in intrastate commerce with the vision deficiency for the past 3 years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at *https://www.regulations.gov/docket?D=FMCSA-1998-3637.*

FMCSA believes it can properly apply the principle to monocular drivers, because data from the Federal Highway Administration's (FHWA) former waiver study program clearly demonstrated the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively.[1] The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors. These factors—such as age, sex, geographic location, mileage driven, and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., ''Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process,'' Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

[1] A thorough discussion of this issue may be found in a FHWA final rule published in the **Federal Register** on March 26, 1996 and available on the internet at *https://www.govinfo.gov/content/pkg/FR-1996-03-26/pdf/96-7226.pdf.*

III. Qualifications of Applicants

Heath G. Brown

Mr. Brown, 41, has had a macular scar in his right eye since childhood. The visual acuity in his right eye is 20/60, and in his left eye, 20/20. Following an examination in 2020, his ophthalmologist stated, ''In my opinion, Mr. Brown has sufficient vision to perform the driving task required to operate a commercial vehicle.'' Mr. Brown reported that he has driven straight trucks for 18 years, accumulating 9,000 miles and tractor-trailer combinations for 18 years, accumulating 1.35 million miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Frederick V. Hanks

Mr. Hanks, 65, has complete loss of vision in his left eye due to a traumatic incident in 2010. The visual acuity in his right eye is 20/20, and in his left eye, no light perception. Following an examination in 2019, his ophthalmologist stated, ''In our opinion, Mr. Hanks has sufficient vision to continue driving a commercial vehicle.'' Mr. Hanks reported that he has driven straight trucks for 33 years, accumulating 3.3 million miles, and buses for 6 years, accumulating 22,500 miles. He holds a Class BM CDL from Alabama. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

David T. Lembke

Mr. Lembke, has had amblyopia in his right eye since childhood. The visual acuity in his right eye is 20/150, and in his left eye 20/25. Following an examination in 2020, his optometrist stated, ''In my medical opinion, I believe he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Lembke reported that he has driven tractor-trailer combinations for 5 years, accumulating 595,000 miles. He holds an operator's license from Wisconsin. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

David W. McVicar

Mr. McVicar, 55, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/25, and in his left eye, 20/60. Following an examination in 2020 his optometrist stated, ''In my medical opinion, Mr. McVicar has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. McVicar reported that he has driven tractor-trailer combinations for 17 years, accumulating 2.7 million miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Anthony M. Millard

Mr. Millard, 38, has a corneal scar in his left eye due to a traumatic incident in 2000. The visual acuity in his right eye is 20/20, and in his left eye, light perception only. Following an examination in 2020, his optometrist stated, ''I believe that in my medical opinion Anthony has sufficient vision to perform the driving tasks to operate a commercial vehicle.'' Mr. Millard reported that he has driven straight trucks for 2 years, accumulating 30,000 miles, and tractor-trailer combinations for 14 years, accumulating 308,000 miles. He holds a Class A CDL from Nebraska. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Paul B. Overman

Mr. Overman, 65, has a prosthetic left eye due to a traumatic incident in 2011. The visual acuity in his right eye is 20/15, and in his left eye, no light perception. Following an examination in 2020, his optometrist stated, ''Paul's vision in unchanged, therefore he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Overman reported that he has driven straight trucks for 27 years, accumulating 701,190 miles, and tractor-trailer combinations for 27 years, accumulating 701,190 miles. He holds a Class A CDL from Washington. His driving record for the last 3 years shows one crash and no convictions for moving violations in a CMV.

IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments and material received before

the close of business on the closing date indicated under the **DATES** section of the notice.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2020–15155 Filed 7–13–20; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2020–0027–N–12]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, this notice announces that FRA is forwarding the Information Collection Requests (ICRs) abstracted below to the Office of Management and Budget (OMB) for review and comment. These ICRs describe the information collections and their expected burdens. On April 15, 2020, FRA published a notice providing a 60-day period for public comment on the ICRs.

DATES: Interested persons are invited to submit comments on or before August 13, 2020.

ADDRESSES: Written comments and recommendations for the proposed ICRs should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find the particular ICR by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Ms. Hodan Wells, Information Collection Clearance Officer, Office of Railroad Safety, Regulatory Analysis Division, Federal Railroad Administration, telephone (202) 493–0440, email: *Hodan.wells@dot.gov.*

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. *See* 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. On April 15, 2020, FRA published a 60-day notice in the **Federal Register** soliciting comment on the ICRs for which it is now seeking OMB approval. *See* 85 FR 21066. FRA received no comments in response to this notice.

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507(b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect.

Comments are invited on the following ICRs regarding: (1) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the information will have practical utility; (2) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology.

The summaries below describe the ICRs that FRA will submit for OMB clearance as the PRA requires:

Title: Passenger Train Emergency Preparedness.

OMB Control Number: 2130–0545.

Abstract: Under 49 CFR part 239, FRA requires railroads to meet minimum Federal standards for the preparation, adoption, and implementation of emergency preparedness plans connected with the operation of passenger trains, including freight railroads hosting passenger rail service operations. The information collected is necessary for compliance with the regulation.

Type of Request: Extension with change (revised estimates) of a currently approved collection.

Affected Public: Businesses.

Form(s): N/A.

Respondent Universe: 34 railroads.

Frequency of Submission: On occasion.

Total Estimated Annual Responses: 1,556.

Total Estimated Annual Burden: 350 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $26,592.

Title: Critical Incident Stress Plans.

OMB Control Number: 2130–0602.

Abstract: Under 49 CFR part 272, Class I, intercity passenger, and commuter railroads are required to develop, and submit to FRA for approval, critical incident stress plans that provide for appropriate support services to be offered to their employees who are affected by a critical incident as defined in 49 CFR 272.9. FRA uses the information collected to ensure the minimum standards of part 272 are met.

Type of Request: Extension with change (revised estimates) of a currently approved collection.

Affected Public: Businesses/Rail Labor Unions.

Form(s): N/A.

Respondent Universe: 41 railroads.

Frequency of Submission: On occasion.

Total Estimated Annual Responses: 5,064.

Total Estimated Annual Burden: 467 hours.

Total Estimated Annual Burden Hour Dollar Cost Equivalent: $35,522.

Under 44 U.S.C. 3507(a) and 5 CFR 1320.5(b) and 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

(Authority: 44 U.S.C. 3501–3520)

Brett A. Jortland,

Deputy Chief Counsel.

[FR Doc. 2020–15148 Filed 7–13–20; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[U.S. DOT Docket No. NHTSA–2020–0024]

Agency Information Collection Activities; Notice and Request for Comments; National Survey of Drowsy Driving Knowledge, Attitudes and Behaviors

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice and request for public comment on a proposed new collection of information.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) invites

public comments about our intention to request approval from the Office of Management and Budget (OMB) for a new information collection. Before a Federal agency can collect certain information from the public, it must receive approval from OMB. Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections. This document describes an Information Collection Request (ICR) for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before September 14, 2020.

ADDRESSES: You may submit comments identified by DOT Docket ID Number NHTSA–2020–0024 using any of the following methods:

Electronic submissions: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Mail: Docket Management Facility, M–30, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590.

Hand Delivery: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9322 before coming.

Fax: 1–202–493–2251.

Instructions: Each submission must include the agency name and the docket number for this Notice of proposed collection of information. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *https://www.transportation.gov/privacy.*

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or the street address listed above. Follow the online instructions for accessing the dockets via internet.

FOR FURTHER INFORMATION CONTACT: For additional information or access to background documents, contact Jordan A. Blenner, JD, Ph.D., Contracting Officer's Representative, Office of Behavioral Safety Research (NPD–320), National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, W46–470, Washington, DC 20590. Dr. Blenner's telephone number is 202–366–9982, and her email address is *jordan.blenner@dot.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following: (i) 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; (ii) 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; (iii) how to enhance the quality, utility, and clarity of the information to be collected; and (iv) how 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, *e.g.,* permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks public comment on the following proposed collection of information:

Title: National Survey of Drowsy Driving Knowledge, Attitudes and Behaviors.

OMB Control Number: New.

Type of Review Requested: Regular.

Form Number: NHTSA Forms 1547, 1548, 1549, 1550, 1551, and 1552.

Type of Information Collection Request: Approval of a new information collection.

Requested Expiration Date of Approval: 3 years from date of approval.

Summary of the Collection of Information: Title 23, United States Code, Chapter 4, Section 403 gives the Secretary authorization to use funds appropriated to conduct research and development activities, including demonstration projects and the collection and analysis of highway and motor vehicle safety data and related information needed to carry out this section, with respect to all aspects of highway and traffic safety systems and conditions relating to vehicle, highway, driver, passenger, motorcyclist, bicyclist, and pedestrian characteristics; accident causation and investigations; and human behavioral factors and their effect on highway and traffic safety.

We are seeking approval to collect information from a random sample of adults (18 years or older) who have driven a motor vehicle in the past month for a one-time voluntary survey to report their knowledge, attitudes, and behaviors associated with drowsy driving. This collection has two parts. The first part is a pilot test for which NHTSA will contact 1,000 households for an expected number of 163 voluntary responses. The second part is the full survey for which NHTSA will contact 81,490 households to achieve a total target of at least 15,000 complete voluntary responses, consisting of 7,000 completed instruments from a nationally representative sample and 2,000 completed instruments from each of four samples representative of States that recently have had drowsy driving law or program activities (Arkansas, Iowa, Massachusetts, and New Jersey). The total estimated burden hours associated with this collection is 16,323 hours—up to 10,949 hours associated with survey invitations and reminders and up to 5,374 hours associated with completing the survey. NHTSA will summarize the results of the collection using aggregate statistics in a final report to be distributed to NHTSA program and regional offices, State Highway Safety Offices, and other traffic safety stakeholders. This collection will inform the development of countermeasures, particularly in the areas of communications and outreach, for reducing fatalities, injuries and crashes associated with drowsy driving.

Description of the Need for the Information and Proposed Use of the Information: NHTSA's Congressional mandate is to reduce deaths, injuries, and economic losses resulting from motor vehicle crashes on the Nation's highways. As part of this statutory mandate, NHTSA is authorized to conduct research as a foundation for the development of traffic safety programs. *See* 23 U.S.C. 403; 49 U.S.C. 30101(2); 49 U.S.C. 32501. NHTSA's Fatality Analysis Reporting System (FARS) database reports that 2% of traffic fatalities were drowsy driving related in

2018.[1] However, the involvement of drowsy driving in crashes is likely underreported due to difficulty in defining and reporting drowsy driving incidents.[2] Using a multiple imputation methodology, the study estimated 21% of fatal crashes involved drowsy driving.[3] If this estimate is accurate, it suggests that more than 7,000 people die in drowsy driving related motor vehicle crashes across the United States each year. While there have been several studies of self-reported drowsy driving behavior, there is limited research about knowledge and attitudes that lead to drowsy driving. NHTSA last fielded a similar survey in 2002, and much has changed since then. The information will assist NHTSA in (a) planning drowsy driving prevention program activities; (b) supporting groups involved in improving public safety; and (c) identifying countermeasure strategies that are most acceptable and effective in reducing drowsy driving.

Number of Respondents: 82,490 Invitations/16,122 Expected Responses.

Under this proposed collection, the potential respondent universe is U.S. residents aged 18 years or older who have driven a motor vehicle in the past month. The pilot study will invite one voluntary participant from 1,000 households, and the full study (national and four State surveys) will invite one voluntary participant from 81,490 households. The expected number of survey responses is 16,122 (163 for the pilot and 15,959 for the full survey).

Estimated Time per Participant: Pilot—25 minutes/Full—28 minutes.

Households selected for the pilot survey will receive two invitation letters and a reminder postcard that would take an estimated five minutes to read (2 minutes for each letter, and 1 minute for the postcard). Households selected for the full survey will receive three invitation letters and two reminder postcards that would take an estimated eight minutes to read (2 minutes for each letter, and 1 minute for each postcard). The estimated time to complete the survey is 20 minutes.

Total Estimated Burden Hours: 16,323.

The total estimated burden hours associated with this collection is 16,323 hours. The total burden hours for the respondents are derived by estimating the number of minutes each respondent would spend on each form and multiplying by the number of respondents (*i.e.,* Form 1547 invitation letter 1 for the pilot phase: 1,000 Respondents × 2 minutes ÷ 60 = 33.3 hours). This estimate includes 83 hours associated with pilot invitations and reminders (33.3 hours (Form 1547) + 16.7 hours (Form 1548) + 33.3 hours (Form 1549) = 83.3 or 83 hours), 10,866 hours associated with the full survey invitations and reminders (2,716.3 hours (Form 1547) + 1,358.2 hours (Form 1548) + 2,716.3 hours (Form 1549) + 1,358.2 hours (Form 1550) + 2,716.3 hours (Form 1551) = 10,865.3 or 10,866 hours), and up to 5,374 hours associated with completing the survey (54.3 hours (pilot) + 5,319.7 hours (full) = 5,374 hours). The details are presented in Table 1 below.

TABLE 1—BURDEN HOURS BY FORM

Form	Description	Respondents	Est. minutes per respondent	Total burden hours per form per phase	Total burden hours per form
Form 1547	Invitation Letter 1—Pilot Survey	1,000	2	33.3	2,749.6
	Invitation Letter 1—Full Survey	81,490	2	2,716.3	
Form 1548	Reminder Postcard 1—Pilot Survey	1,000	1	16.7	1,374.9
	Reminder Postcard 1—Full Survey	81,490	1	1,358.2	
Form 1549	Invitation Letter 2—Pilot Survey	1,000	2	33.3	2,749.6
	Invitation Letter 2—Full Survey	81,490	2	2,716.3	
Form 1550	Reminder Postcard 2—Full Survey	81,490	1	1,358.2	1,358.2
Form 1551	Invitation Letter 3—Full Survey	81,490	2	2,716.3	2,716.3
Form 1552	Pilot Survey	163	20	54.3	5,374.0
	Full Survey	15,959	20	5,319.7	
Totals					16,322.6 or 16,323

Total Estimated Burden Cost: NHTSA estimates that there are no costs to respondents beyond the time spent completing the survey.

Frequency of Collection: This study is a one-time data collection, and there will be no recurrence.

Public Comments Invited: You are asked to comment on any aspects of this information collection, including (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended; 49 CFR 1.49; and DOT Order 1351.29.

Issued in Washington, DC.

Nanda Narayanan Srinivasan,

Associate Administrator, Research and Program Development.

[FR Doc. 2020–15184 Filed 7–13–20; 8:45 am]

BILLING CODE 4910–59–P

[1] National Center for Statistics and Analysis. (October 2019). *2018 Fatal Motor Vehicle Crashes: Overview,* pg. 8. (Traffic Safety Facts, Research Note, Report No. DOT HS 812 826). Washington, DC: National Highway Traffic Safety Administration.

[2] National Center for Statistics and Analysis. (October 2017). *Drowsy Driving 2015,* pg. 2 (Crash•Stats, A Brief Statistical Summary. Report No. DOT HS 812 446). Washington, DC: National Highway Traffic Safety Administration (available at *https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/812446*).

[3] Tefft, Brian C. (2014) *Prevalence of Motor Vehicle Crashes Involving Drowsy Drivers, United States, 2009–2013.* Washington, DC: AAA Foundation for Traffic Safety.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1041–ES

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 1041–ES, Estimated Income Tax for Estates and Trusts.

DATES: Written comments should be received on or before September 14, 2020 to be assured of consideration.

ADDRESSES: Direct all written comments to Paul Adams, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Sara Covington at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or *Sara.L.Covington@irs.gov, 202–317–5744.*

SUPPLEMENTARY INFORMATION:

Title: Estimated Income Tax for Estates and Trusts.

OMB Number: 1545–0971.

Form Number: Form 1041–ES.

Abstract: Internal Revenue Code section 6654(1) imposes a penalty on trusts, and in certain circumstances, a decedent's estate, for underpayment of estimated tax. Form 1041–ES is used by the fiduciary to make the estimated tax payments. The form provides the IRS with information to give estates and trusts proper credit for estimated tax payments. For first-time filers, the form is available in an Over The Counter (OTC) version at IRS offices. For previous filers, the form is sent to them by the IRS with preprinted vouchers in the Optical Character Resolution (OCR) version.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and Businesses or other for-profit organizations.

Estimated Number of Respondents: 582,024.

Estimated Time per Respondent: 3 hours, 18 minutes.

Estimated Total Annual Burden Hours: 1,914,859.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 30, 2020.

Sara L Covington,

IRS Tax Analyst.

[FR Doc. 2020–14501 Filed 7–13–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request Concerning Forms 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 general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning employer's quarterly federal tax return, adjusted employer's quarterly federal tax return or claim for refund, allocation schedule for aggregated filers and employer credit for qualified sick and family leave wages.

DATES: Written comments should be received on or before September 14, 2020 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis, at (202) 317–5751 or Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet, at *Kerry.Dennis@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: (Employer's Quarterly Federal Tax Return), 941–PR (Planilla Para La Declaracion Trimestral Del Patrono-LaContribucion Federal Al Seguro Social Y Al Seguro Medicare), 941–SS (Employer's Quarterly Federal Tax Return-American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the U.S. Virgin Islands), 941–X, Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund, 941–X(PR), Ajuste a la Declaracion Federal Trimestral del Patrono o Reclamacion de Reembolso, Schedule R, Allocation Schedule for Aggregated Form 941 Filers, Schedule B (Form 941) (Employer's Record of Federal Tax Liability), and Schedule B (Form 941–PR) (Registro Suplementario De La Obligacion Contributiva Federal Del Patrono), Form 7200 Advance of Employer Credit for Qualified Sick and Family Leave Wages.

OMB Number: 1545–0029.

Form Numbers: 941, 941–PR, 941–SS, 941–X, 941–X(PR), Schedule B (Form 941), Schedule B (Form 941–PR), Schedule R (Form 941), 941–SS–V, 941–V, 941–X, 941–X(PR), 7200.

Abstract: Form 941 is used by employers to report payments made to employees subject to income and social security/Medicare taxes and the amounts of these taxes. Form 941–PR is used by employers in Puerto Rico to report social security and Medicare taxes only. Form 941–SS is used by employers in the U.S. possessions to report social security and Medicare taxes only. Schedule B is used by employers to record their employment tax liability. The Form 8974 was developed to determine the portion of the elected amount that can be claimed

for the quarter on the Form 941. The new Form 7200, Advance Payment of Employer Credits Due to COVID–19, is used to request an advance payment of the tax credits for qualified sick and qualified family leave wages, and the employee retention credit.

Current Actions: There has been an increase in burden with the addition of new Form 7200, Advance of Employer Credit for Qualified Sick and Family Leave Wages and changes to the Form 941 and schedules, due to the implementation of Division G of Public Law 116–127, the Families First Coronavirus Response Act (the ''Act'') addressing the economic disruption stemming from the Novel (new) Coronavirus (''2019–nCoV'') global pandemic .

Type of Review: Revision of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals, individuals or households, not-for-profit institutions, Federal government, and state, local or tribal governments.

Estimated Number of Respondents: 40,361,546.

Estimated Time per Respondent: 14 hours, 19 minutes.

Estimated Total Annual Burden Hours: 578,219,960.

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.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 8, 2020.

Chakinna B. Clemons,

Supervisory Tax Analyst.

[FR Doc. 2020–15106 Filed 7–13–20; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Pricing for the 2020 Basketball Hall of Fame Colorized Coins

AGENCY: United States Mint, Department of the Treasury.

ACTION: Notice.

SUMMARY: The United States Mint is announcing pricing for the 2020 Basketball Hall of Fame Commemorative Coin Program as follows:

Coin	Regular price
Colorized Silver Dollar	$95.00
Colorized Clad Half Dollar	55.00

FOR FURTHER INFORMATION CONTACT: Rosa Williams, Program Manager for Sales and Marketing; United States Mint; 801 9th Street NW; Washington, DC 20220; or call 202–354–7500.

Authority: Public Law 115–343.

Eric Anderson,

Executive Secretary, United States Mint.

[FR Doc. 2020–15171 Filed 7–13–20; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0379]

Agency Information Collection Activity Under OMB Review: Time Record (Work-Study Program)

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. 2900–0379.

FOR FURTHER INFORMATION CONTACT: Danny S. Green, (202) 421–1354 or email *Danny.Green2@va.gov.* Please refer to ''OMB Control No. 2900–0379'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: Title 38 United States Code § 3485, and Title 38 Code of Federal Regulations § 21.272 and § 21.4145.

Title: Time Record (Work-Study Program).

OMB Control Number: 2900–0379.

Type of Review: Revision of a currently approved collection.

Abstract: VA uses the information collected on these forms to ensure that the amount of benefits payable to the student who is pursuing work study is correct. Without this information, VA would not have a basis upon which to make payment.

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 May 05, 2020, at page 26783.

Affected Public: State, Local or Tribal Governments.

Estimated Annual Burden: 11,856 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: Annual.

Actual Number of Respondents: 142,272.

By direction of the Secretary.

Danny S. Green,

VA PRA Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2020–15177 Filed 7–13–20; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0325]

Agency Information Collection Activity Under OMB Review: Certificate of Delivery of Advance Payment and Enrollment

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. 2900–0325.''

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. 2900–0325'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 U.S.C. 3034, 3241, 3531, 3680(d), 3684; 38 CFR 21.4138a, 21.4203(a) and (d), 21.5135, 21.5200(d), and 21.5292(e)(2), 21.7151(b), and 21.7640(d); 10 U.S.C. 16136(b), 16166(b).

Title: Certificate of Delivery of Advance Payment and Enrollment (VA Form 22–1999v).

OMB Control Number: 2900–0325.

Type of Review: Revision of a currently approved collection.

Abstract: VA uses information from the current collection at the beginning of the school term to ensure that advance payments have been delivered and to determine whether the student has increased, reduced, or terminated training.

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 November 22, 2019, at page 64617–64618.

Affected Public: Individuals or households.

Estimated Annual Burden: 58 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On occasion.

Actual Number of Respondents: 475.

By direction of the Secretary.

Danny S. Green,

VA PRA Clearance Officer, Office of Quality, Performance and Risk, Department of Veterans Affairs.

[FR Doc. 2020–15088 Filed 7–13–20; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Department of Agriculture

Rural Utilities Service
Rural Housing Service
Rural Business-Cooperative Service

7 CFR Parts 1779, 3575, et al.
OneRD Guaranteed Loan Regulation; Final Rule

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Rural Housing Service

Rural Business-Cooperative Service

7 CFR Parts 1779, 3575, 4279, 4287, and 5001

[Docket No. RUS–19-Agency–0030]

RIN 0572–AC43

OneRD Guaranteed Loan Regulation

AGENCY: Rural Business-Cooperative Service, Rural Housing Service, Rural Utilities Service, USDA.

ACTION: Final rule; request for comments.

SUMMARY: The Rural Business-Cooperative Service, Rural Housing Service, and the Rural Utilities Service, agencies of the Rural Development mission area within the U.S. Department of Agriculture (USDA), hereinafter collectively referred to as the Agency, are proposing a unified guaranteed loan platform for enhanced delivery of four of its existing guaranteed loan programs: Community Facilities (CF) administered by the Rural Housing Service; Water and Waste Disposal (WWD) administered by the Rural Utilities Service; and, Business and Industry (B&I) and Rural Energy for America (REAP) administered by the Rural Business-Cooperative Service. Collectively, these four Rural Development's guaranteed loan programs work to assist in building and maintaining sustainable rural communities. This rule incorporates new and revised provisions intended to simplify, improve, expand and enhance the delivery of the four guaranteed loan programs. These provisions include, among others, clearly defining specific project eligibility criteria, revising the requirements for lenders to participate in the programs, and streamlining the documentation requirements for submission of guaranteed loan applications.

DATES:

Effective date: This final rule is effective October 1, 2020.

Comment date: Comments are due September 14, 2020.

ADDRESSES: You may submit comments, identified by docket number RUS–19-Agency–0030 and Regulatory Information Number (RIN) number 0572–AC43 through *https://www.regulations.gov.*

Instructions: All submissions received must include the Agency name and docket number or RIN for this rulemaking. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas P. Dickson, Regulations Management Division Team 2, Rural Development Innovation Center, U.S. Department of Agriculture, 1400 Independence Ave. SW, Stop 1522, Washington, DC 20250; telephone 202–690–4492; email *thomas.dickson@usda.gov*.

SUPPLEMENTARY INFORMATION:

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I. Abbreviations

CDE Community Development Entity
CFDA Catalog of Federal Domestic Assistance
CFR Code of Federal Regulations
CONAct Consolidated Farm and Rural Development Act
FCRA Federal Credit Reform Act of 1990
FDIC Federal Deposit Insurance Corporation
FIRREA Financial Institutions Reform, Recovery and Enforcement Act of 1989
FR Federal Register
FSRIA Farm Security and Rural Investment Act of 2002
GAAP Generally accepted accounting principles
GPO Government Printing Office
ICBA Independent Community Bankers of America
LNG Loan Note Guarantee
NEPA National Environmental Policy Act
NMTC New Markets Tax Credit
OGC Office of General Counsel
OMB Office of Management and Budget
OneRD OneRD Guaranteed Loan Program
PER Preliminary Engineering Reports
QALICB Qualified Active Low Income Community Business
RD Rural Development
REAP Rural Energy for America Program
RFA Regulatory Flexibility Act
RMA Risk Management Association
SAM System for Award Management
§ Section
TBSE Tangible Balance Sheet Equity
UMRA Unfunded Mandates Reform Act 1995
U.S.C. United States Code
USDA U.S. Department of Agriculture
USPAP Uniform Standards of Professional Appraisal Practice

II. Background

Through this regulation, Rural Development (RD) is consolidating and standardizing the rules associated with making and servicing of four guaranteed loan programs. The new regulation eliminates existing regulations in six areas: 7 CFR part 3575, subpart A which is the existing regulation for making and servicing Community Facilities (CF) guaranteed loans; 7 CFR part 1779 which is the existing regulation for making and servicing Water and Waste Disposal (WWD) guaranteed loans; 7 CFR part 4279, subparts A and B which are the existing regulations for making Business and Industry (B&I) guarantee loans; 7 CFR part 4280, subpart B which is the existing regulation for making Rural Energy for America (REAP) guarantee loans; and, 7 CFR 4287 subpart B which is the existing regulation for servicing B&I and REAP guarantee loans. This regulation replaces those removed sections with the OneRD guarantee loan regulation (''OneRD''), a unified regulation for making and servicing the four guaranteed loan programs, codified at 7 CFR 5001. To ensure that the drafting of OneRD was a customer-centric process, the Agency invited public input through six listening sessions and a Human Experience Lab. The public participation provided input on ways to simplify, improve, enhance and expand the delivery of the four guarantee programs. Through this process, the Agency identified eight broad areas of

improvement on which to focus its efforts: Community impact; Agency staff training and empowerment; enabling technology; USDA-lender relationship; simplicity and consistency; speed of approval process; communication and transparency; and marketing and outreach. Comments and Agency responses to comments received are provided in section V. Public Participation and Discussion of Comments from Listening Sessions.

A. Rural Development's Mission

By statutory authority, Rural Development is an advocate for rural America, administering a multitude of programs, ranging from housing and community facilities to infrastructure and business development. The Agency's mission is to increase economic opportunity and improve the quality of life in rural communities by providing the leadership, infrastructure, capital, and technical support that enables rural communities to prosper.

To achieve its mission, the Agency provides financial support, including loan guarantees, direct loans and grants, and technical assistance to enhance the quality of life and provide the foundation for economic development in rural areas. This final rule with comment addresses the use of a unified guaranteed loan regulation for four programs to support Rural Development's mission. The regulation implements changes to current guarantee practices to make the processes and procedures consistent across the four programs. As a loan-making agency, Rural Development is exempt from prior notice and comment (5 U.S.C. 553(a)(2)) to implement policies and procedures governing loan programs. Nevertheless, we are providing the public the opportunity to comment on the requirements found in this Final Rule. During the comment period, the Agency will host listening sessions and the schedule will be available on the website. Comments received will be considered and addressed in a future rulemaking.

B. Composition of the OneRD Guaranteed Loan Program

This section briefly describes the scope of each of the four individual programs with regard to eligible projects, borrowers, and lenders, application processes, guarantee and loan terms, and how the four programs are combined into a unified guaranteed loan platform.

(1) *Community Facilities Guaranteed Loan Program.* The CF guaranteed loan program guarantees loans to develop essential community facilities in rural areas and towns with a population of up to 50,000, depending on the level of appropriated funding for a respective fiscal year. Loan funds may be used to construct, enlarge, extend or otherwise improve essential community facilities including health care, public safety, and public services. Eligible borrowers include public entities, such as municipalities, counties, special-purpose districts, Indian tribes, and not-for-profit corporations who are unable to obtain commercial credit at reasonable rates and terms without the Federal Government's guarantee.

(2) *Water and Waste Disposal Guaranteed Loan Program.* The Water and Waste Disposal Guaranteed Loan program guarantees loans to construct, enlarge, extend or otherwise improve water and waste disposal systems, including wastewater treatment, solid waste disposal, and storm drainage, in rural areas and in cities and towns with a population of up to 50,000. Eligible borrowers include public entities, such as municipalities, counties, special-purpose districts, and Indian tribes, as well as not-for-profit corporations and tribal governments who are unable to obtain commercial credit at reasonable rates and terms without the Federal Government's guarantee.

(3) *Business and Industry Guaranteed Loan Program.* The B&I Guaranteed Loan program guarantees loans that further job creation and stimulate rural economies by providing financial backing for rural businesses. Eligible borrowers include cooperatives, corporations, partnerships, trusts or other profit or not-for-profit entities, Indian tribes, municipalities, counties, or other political subdivisions of a state.

(4) *Rural Energy for America Program.* The Rural Energy for America Program is a guaranteed loan program, providing loan guarantees for the purchase and installation of renewable energy systems, energy efficiency improvements and energy efficient equipment. Eligible borrowers include farmers, ranchers, and rural small businesses.

(5) *Similarities Between the Four Guaranteed Loan Programs.* While each program has some different requirements based on statutory authorizations (*e.g.,* borrower and project eligibility, necessary documentation, and funding limits), the same basic framework for making loan guarantees applies to each of the programs.

- In accordance with rural area definition and reservation requirements found at 7 U.S.C. 1991(a) and 7 U.S.C. 1926(a)(24), projects must be located in any area of a state not in a city or town that has a population of more than 50,000 inhabitants, according to the latest decennial census of the United States and not in the urbanized area contiguous and adjacent to a city or town that has a population of more than 50,000 inhabitants.
- Lenders requesting loan guarantees from the Agency under OneRD must meet the definition of either a regulated lending entity or a non-regulated lending entity as specified in § 5001.130.
- A borrower works with a lender to obtain a loan for a project eligible under one or more of the four programs, providing the lender with necessary information on the borrower and the project.
- A lender evaluates borrower and project eligibility and performs a detailed credit evaluation and, as applicable, an economic or financial analysis of the project to ensure that the borrower will be able to repay the loan.
- A lender applies to the Agency for a loan guarantee and submits the credit evaluation for the project and borrower, and all required application documentation.
- The Agency reviews each guaranteed loan application package in accordance with the OneRD program requirements and approves or denies the guarantee. Subject to the availability of funds, each approved package is provided a conditional commitment for a loan guarantee.
- Each lender is responsible for the origination and servicing of its guaranteed loan portfolio and for working with the Agency, as necessary, to resolve borrower issues (such as default).

Using this framework allows the Agency to support rural economic development effectively and efficiently through loan guarantees and combines the four programs into one unified guaranteed loan program in OneRD.

III. Basis and Purpose

As noted earlier, prior to implementation of this final rule, the four guaranteed loan programs origination and servicing processes appeared in separate regulations and required users to become familiar with the individual provisions. The four loan programs share many common elements and the Agency has reviewed opportunities to increase commonalities among processes to improve efficiency and customer experience while maintaining the distinct purposes of the authorized programs.

The four guaranteed loan programs and their respective regulations combined under this final rule

developed over time and, in some respects, independently of each other. A review of these programs and their regulations, individually and collectively, has identified four key operational issues that this final rule aims to resolve. These issues and the OneRD regulation's approach related to them are as follows:

Increased Efficiency: Many lenders and, in some cases, borrowers, seek loan guarantees under more than one of the four RD loan guarantee programs, for example, a small town builds a senior day center with a CF loan guarantee, and then adds solar panels through a REAP loan guarantee. Therefore, under the current conditions, they are required to learn multiple, similarly regulated, but differently operated, loan guarantee programs. For lenders, the benefit of using a program must be worth the cost of investing in learning and adapting to its rules, thus if the bulk of a lender's business is in one program, any differences may disincentivize, through decreased efficiency and increased costs, the use of the other programs should the opportunity arise.

Under this final rule, the Agency expects that lenders (and to a lesser extent borrowers) will find all four loan guarantee programs easier and more efficient to use because (1) a single set of forms and application process is used for the four programs being consolidated, (2) the common elements for origination, processing, and servicing have been consolidated into a single part of this final rule, and (3) this final rule relies more on common lending practices, which may reduce the lender's and borrower's costs. Consolidating requirements is expected to reduce burden for lenders, borrowers, and the Agency's staff, easing delivery and increasing efficiency. Additionally, those borrowers who may only utilize one of the guaranteed programs will benefit when the Agency is better able to leverage scarce IT resources for improvements to the application system.

Overall, a common platform like the OneRD regulation is expected to be easier to administer, improve consistency and thus customer experience, and reduce Agency and lender risk. Internally, OneRD will reduce the time, effort, and training necessary to guarantee a loan, especially through efficiencies realized through common forms, rules, and information technology platforms. With OneRD, internal management controls will improve through standardized servicing and oversight. Common elements assist lenders in managing a diverse portfolio while meeting Federal requirements. Uniform processes facilitate electronic commerce between the Agency and its customers.

Improved Flexibility: Maintaining separate sets of basic requirements for different loan guarantee programs creates inflexibilities, including the burden of ensuring new crosscutting requirements are incorporated into separate regulations or incorporating new efficiencies where they apply. Additionally, the single regulation allows for the addition of other loan guarantee programs without having to build a completely new structure and instead only incorporating any unique factors into the existing OneRD regulation. General provisions, which apply to all guaranteed loan programs, are contained in subpart A of the final rule and additional guaranteed loan programs can be added as needed in the remaining or new subparts. Additionally, each of the four subparts corresponding to the four programs includes an introductory section describing requirements that apply to the specific program.

Efficient use of Agency Resources: Previously, the separate programs did not encourage a streamlined and cross-program use of Agency resources. For programs that issued fewer guarantees, staff might lack familiarity with the applicable regulations and commercial lender practices and standards, creating inconsistencies in delivery as the program was relearned for each loan. For programs that issued many guarantees, staff might experience significant workloads that could be alleviated by cross-trained colleagues. The Agency has worked to make consistent its approach to evaluating risk relative to the program, industry, and conditions applicable to the loan guarantee. This final rule allows the Agency to more effectively utilize its resources via implementation of a OneRD model, which emphasizes consistency, reliance on lender expertise, refocusing time spent on loan processing to time spent servicing clients, and increasing access to its programs by eliminating regulatory redundancy.

Improved Risk Management: In developing a portfolio of loan guarantees, consideration must be given to credit risk management. The ''5 Cs of Credit'': character; capacity; capital; collateral; and, conditions are industry recognized credit evaluation standards. OneRD emphasizes that the lender's credit evaluation relies on the professional judgement of the lender and their review of the credit factors in determining risk. These credit factors, while implied in the existing regulations are now defined and specific Agency standards are provided at § 5001.202(a) and (b). Providing a single set of credit evaluation factors with defined meanings improves consistency in Agency reviews which improves response and delivery times.

In addition to credit risk management, institutional risk management has been addressed and codified. Institutional risk, in this regulation, refers to the quality of the lender seeking the loan guarantee. Currently, each program area has its own set of criteria that lending entities must meet to be determined eligible. A lending entity can be eligible under one program but not another which creates confusion and inefficiencies for all parties. By implementing one defined, comprehensive set of criteria across all four programs to assess lender performance, the unified guaranteed loan platform allows the Agency to improve its management of lenders participating in these programs and provide a one-stop shop for lenders. With this final rule, the Agency implements lender eligibility criteria based on the status, regulated or non-regulated, of the lending entity. These criteria are in 7 CFR 5001.130 through 5001.132, which discuss lender eligibility requirements, the lender's agreement, and maintenance of approved lender status.

Agency operational risk refers to internal weaknesses that can occur in administering separate guaranteed loan programs using a variety of regulations that require unique sets of processes and procedures. OneRD uses commonalities, consistency in regulatory language, and integration of information management systems to reduce Agency operational risk. The use of electronic reporting and standardized forms also allows the Agency to manage its portfolio of outstanding guaranteed loans better.

Ultimately, the OneRD guarantee loan regulation provides a framework to ensure consistent implementation of the four guaranteed loan programs and full utilization of all four guarantee programs for the benefit of rural communities.

IV. Discussion of the Rule

A. Organization of the Rule

To help the public locate existing regulatory provisions found in the new rule, the Agency provides the following table showing new sections and subparts under the OneRD Guaranteed Loan program and where the information and requirements were previously located.

TABLE 1—ONERD GUARANTEED LOAN PROGRAM CFR SECTIONS AND SUBPARTS

OneRD section No. and title	Current section Nos. and titles
Subpart A—General Provisions	
§ 5001.1 General.	
§ 5001.2 Structure of Regulation.	
§ 5001.3 Definitions	*B&I:* § 4279.2 Definitions and abbreviations. *REAP:* § 4280.103 Definitions. *CF:* § 3575.2 Definitions. *WWD:* § 1779.2 Definitions.
§ 5001.4 Exception authority	*B&I:* § 4279.15 Exception authority. *REAP:* § 4280.104 Exception authority. *CF:* § 3575.17 Exception authority. *WWD:* § 1779.17 Exception authority.
§ 5001.5 Appeal and review rights	*B&I:* § 4279.16 Appeals. *REAP:* § 4280.105 Review or appeal rights. *CF:* § 3575.13 Appeals. *WWD:* § 1779.13 Appeals.
§ 5001.6 General Lender responsibilities	*B&I:* § 4279.30 Lenders' functions and responsibilities.
§ 5001.7 Agency special initiatives.	
§ 5001.8 Approvals, regulations, and forms	*B&I:* § 4279.1 Introduction. *REAP:* § 4280.107 Statute and regulation references. *CF:* § 3570.257 Statute and regulation references.
§ 5001.9 Standards for Financial information	*B&I:* § 4279.137 Financial statements. *REAP:* § 4280.132 Financial statements.
Subpart B—Eligibility Provisions	
§ 5001.101 Introduction.	
§ 5001.102 Project eligibility—general	*B&I:* § 4279.113 Eligible uses of funds. *REAP:* § 4280.113 Project eligibility. *CF:* § 3575.20 Eligibility. *WWD:* § 1779.20 Eligibility.
§ 5001.103 Eligible Community Facility (CF) Projects and requirements	*CF:* § 3575.24 Eligible loan purposes; § 3575.20 Eligibility.
§ 5001.104 Eligible Water and Waste Disposal (WWD) Projects and requirements.	*WWD:* § 1779.24 Eligible loan purposes; § 1779.20 Eligibility.
§ 5001.105 Eligible Business and Industry (B&I) Projects and requirements.	*B&I:* § 4279.113 Eligible uses of funds.
§ 5001.106 Eligible Rural Energy for America Program (REAP)—Renewable Energy System (RES) Projects and requirements.	*REAP:* § 4280.128 Project eligibility.
§ 5001.107 Eligible Rural Energy for America Program (REAP)—Energy Efficiency Improvement (EEI) Projects and requirements.	*REAP:* § 4280.128 Project eligibility.
§ 5001.108 Rural Energy for America Program (REAP)—Energy Efficient Equipment and Systems (EEE) Projects and requirements.	
§ 5001.115 Ineligible Projects General	*B&I:* § 4279.117 Ineligible purposes and entity types. *CF:* § 3575.25 Ineligible loan purposes. *WWD:* § 1779.25 Ineligible loan purposes.
§ 5001.116 Ineligible CF Projects	*CF:* § 3575.25 Ineligible loan purposes.
§ 5001.117 Ineligible WWD Projects	*WWD:* § 1779.25 Ineligible loan purpose.
§ 5001.118 Ineligible B&I Projects	*B&I:* § 4279.117 Ineligible purposes and entity types.
§ 5001.119 Ineligible REAP Projects.	
§ 5001.121 Eligible uses of loan funds	*B&I:* § 4279.113 Eligible uses of funds. *REAP:* § 4280.114 RES and EEI grant funding. *CF:* § 3575.24 Eligible loan purposes. *WWD:* § 1779.24 Eligible loan purposes.
§ 5001.122 Ineligible uses of loan funds	*B&I:* § 4279.210 Project eligibility requirements; § 4279.117 Ineligible purposes and entity types. *REAP:* § 4280.114 RES and EEI grant funding. *CF:* § 3575.24 Eligible loan purposes; § 3575.25 Ineligible loan purposes. *WWD:* § 1779.25 Ineligible loan purposes.
§ 5001.126 Borrower eligibility	*B&I:* § 4279.108 Eligible borrowers. *REAP:* § 4280.127 Borrower eligibility. *CF:* § 3575.20 Eligibility. *WWD:* § 1779.20 Eligibility.
§ 5001.127 Borrower ineligibility conditions	*B&I:* § 4279.117 Ineligible purposes and entity types. *REAP:* § 4280.109 Ineligible Applicants, borrowers, and owners.
§ 5001.130 Lender eligibility requirements	*B&I:* § 4279.29 Eligible lenders. *REAP:* § 4280.125(b). *CF:* § 3575.27 Eligible lenders. *WWD:* § 1779.27 Lenders.

TABLE 1—ONERD GUARANTEED LOAN PROGRAM CFR SECTIONS AND SUBPARTS—Continued

OneRD section No. and title	Current section Nos. and titles
§ 5001.131 Lender's Agreement	*B&I:* § 4279.29 Eligible lenders. *REAP:*. *CF:* § 3575.64 Issuance of Lender's Agreement, Loan Note Guarantee, and Assignment Guarantee Agreement. *WWD:* § 1779.64 Issuance of Lender's Agreement, Loan Note Guarantee, and Assignment Guarantee Agreement.
§ 5001.132 Maintenance of approved Lender status	*B&I:* § 4279.29 Eligible lenders.
§ 5001.140 Cooperative Stock/Cooperative equity	*B&I:* § 4279.115 Cooperative stock/cooperative equity.
§ 5001.141 New Markets Tax Credit	*B&I:* § 4279.116 New Markets Tax Credit program.
Subpart C—Origination Provisions	
§ 5001.201 General origination requirements	*B&I:* § 4279.30 Lenders' functions and responsibilities.
§ 5001.202 Evaluation of Credit Underwriting	*B&I:* § 4279.30 Lenders' functions and responsibilities; § 4279.131 Credit quality. *REAP:* § 4280.131 Credit quality. *WWD:* § 1779.47 and § 1779.48 Collateral.
§ 5001.203 Appraisals	*B&I:* § 4279.144 Appraisals. *REAP:* § 4279.144 Appraisals.
§ 5001.204 Personal, partnership, and corporate guarantees	*B&I:* § 4279.132 Personal and corporate guarantees. *REAP:* § 4280.134 Personal and corporate guarantees.
§ 5001.205 General monitoring requirements	*B&I:* § 4279.167 Planning and performing development. *REAP:* § 4279.167 Planning and performing development. *CF:* § 3575.42 Design and construction requirements; § 3575.12 Inspections; § 3575.63 Conditions precedent to issuance of the Loan Note Guarantee. *WWD:* § 1779.12 Inspections; § 1779.42 Design and construction requirements.
§ 5001.206 Compliance with USDA Departmental Regulations, Policies, and other Federal laws.	*B&I:* § 4279.167 Planning and performing development. *REAP:* § 4280.36 Other laws that contain compliance requirements for these Programs; § 4280.36 Other laws that contain compliance requirements for these Programs. *CF:* § 3575.42 Design and construction requirements. *WWD:* § 1779.42 Design and construction requirements.
§ 5001.207 Environmental responsibilities	*B&I:* § 4279.59 Environmental requirements; § 4279.167 Planning and performing development. *REAP:* § 4280.36 Other laws that contain compliance requirements for these Programs.; § 4280.41 Environmental review of the application.; § 4280.124 Construction planning and performing development. *CF:* § 3575.9 Environmental review requirements. *WWD:* § 1779.9 Environmental review requirements.
§ 5001.208 Conflicts of Interest	*REAP:* § 4280.106 Conflict of interest. *CF:* § 3575.27 Eligible lenders. *WWD:* § 1779.27 Lenders.
Subpart D—Guarantee Application Provisions	
§ 5001.301 Beginning the application process.	
§ 5001.302 Preliminary eligibility review	*B&I:* § 4279.161 Filing preapplications and applications. *CF:* § 3575.52 Processing. *WWD:* § 1779.52 Processing.
§ 5001.303 Applications for loan guarantee	*B&I:* § 4279.261 Application for loan guarantee content. *CF:* § 3575.52(b) Applications. *WWD:* § 1779.52(b) Applications.
§ 5001.304 Specific Application Requirements for Community Facility Projects.	*CF:* § 3575.47 Economic feasibility requirements.
§ 5001.305 Specific Application Requirements for Water and Waste Disposal Projects.	*WWD:* § 1779.42 Design and construction requirements; § 1779.47 Economic feasibility requirements.
§ 5001.306 Specific Application Requirements for Business and Industry Projects.	*B&I:* § 4279.161 Filing preapplications and applications.
§ 5001.307 Specific Application Requirements for Rural Energy for America Program Projects.	*REAP:* § 4280.137 Application and documentation.
§ 5001.315 Application evaluation and award provisions	*B&I:* § 4279.260 Guarantee applications—general. *REAP:* § 4280.110 General Applicant, application, and funding provisions. *CF:* § 3575.53 Evaluation of application. *WWD:* § 1779.53 Evaluation of application.
§ 5001.316 Community Facility Project priority point system and reservation of funds.	*CF:* § 3575.53 Evaluation of application.
§ 5001.317 Water and Waste Disposal Project priority points system.	
§ 5001.318 Business and Industry Project priority points system	*B&I:* § 4279.166 Loan priority scoring.

TABLE 1—ONERD GUARANTEED LOAN PROGRAM CFR SECTIONS AND SUBPARTS—Continued

OneRD section No. and title	Current section Nos. and titles
§ 5001.319 Rural Energy for America Program Project priority points system.	*REAP:* § 4280.135 Scoring RES and EEI Guaranteed Loan-only applications.
Subpart E—Loan and Guarantee Provisions	
Loan Provisions	
§ 5001.401 Interest rate provisions	*B&I and REAP:* § 4279.125 Interest rates; § 4279.233 Interest rates. *CF:* § 3575.33 Interest rates. *WWD:* § 1779.33 Interest rates.
§ 5001.402 Term length, loan schedule, repayment	*B&I and REAP:* § 4279.126 Loan terms. *CF:* § 3575.34 Terms of loan repayment. *WWD:* § 1779.34 Terms of loan repayment.
§ 5001.403 Lender fees	*B&I:* § 4279.120 Fees and charges; § 4279.231 Fees. *REAP:* § 4280.129 Guaranteed loan funding. *CF:* § 3575.29 Fees and charges by lender. *WWD:* § 1779.29 Fees and charges by lender.
§ 5001.406 Loan amounts	*B&I:* § 4279.119 Loan guarantee limits. *REAP:* § 4280.129 Guaranteed loan funding.
§ 5001.407 Percent of guarantee	*B&I:* § 4279.119 Loan guarantee limits. *REAP:* § 4280.129 Guaranteed loan funding. *CF:* § 3575.30 Loan guarantee limitations. *WWD:* § 1779.30 Loan guarantee limitations.
§ 5001.408 Sale or assignment of Guaranteed Loan	*B&I:* § 4279.75 Sale or assignment of guaranteed loan; § 4279.223 Sale or assignment of guaranteed loan. *CF:* § 3575.65 Lender's sale or assignment of the guaranteed portion of loan. *WWD:* § 1779.65 Lender's sale or assignment of the guaranteed portion of loan.
Guarantee Provisions	
§ 5001.450 General	*B&I:* § 4279.72 Conditions of guarantee. *REAP:* § 4280.131 Credit quality. *CF:* § 3575.3 Full faith and credit; § 3575.4 Conditions of guarantee. *WWD:* § 1779.3 Full faith and credit; § 1779.4 Conditions of guarantee.
§ 5001.451 Conditional Commitment	*B&I:* § 4279.173 Loan Approval and obligating funds.
§ 5001.452 Loan closing and conditions precedent to issuance of Loan Note Guarantee.	*B&I:* § 4279.181 Conditions precedent to issuance of the Loan Note Guarantee; § 4279.281 Conditions precedent to issuance of Loan Note Guarantee. *REAP:* § 4280.142 Conditions precedent to issuance of loan note guarantee. *CF:* § 3575.63 Conditions precedent to issuance of the Loan Note Guarantee. *WWD:* § 1779.63 Conditions precedent to issuance of the Loan Note Guarantee.
§ 5001.453 Issuance of the guarantee	*B&I:* § 4279.181 Conditions precedent to issuance of the Loan Note Guarantee; § 4279.281 Conditions precedent to issuance of Loan Note Guarantee. *REAP:* § 4280.142 Conditions precedent to issuance of loan note guarantee. *CF:* § 3575.63 Conditions precedent to issuance of the Loan Note Guarantee; § 3575.64 Issuance of Lender's Agreement, Loan Note Guarantee, and Assignment Guarantee Agreement. *WWD:* § 1779.63 Conditions precedent to issuance of the Loan Note Guarantee; § 1779.64 Issuance of Lender's Agreement, Loan Note Guarantee, and Assignment Guarantee Agreement.
§ 5001.454 Guarantee fee	*B&I:* § 4279.120 Fees and charges; § 4279.231 Fees. *REAP:* § 4280.126 Guarantee/annual renewal fee. *CF:* § 3575.29 Fees and charges by lender. *WWD:* § 1779.29 Fees and charges by lender.
§ 5001.455 Periodic Guarantee Retention fee	*B&I:* § 4279.120 Fees and charges; § 4279.231 Fees. *REAP:* § 4280.126 Guarantee/annual renewal fee.
§ 5001.456 Other fees	*B&I:* § 4279.120 Fees and charges.
§ 5001.457 Changes prior to loan closing	*B&I:* § 4279.174 Transfer of lenders; § 4279.280 Changes in borrower. *REAP:* § 4279.174 Transfer of lenders; § 4279.280 Changes in borrower.
§ 5001.458 Other Federal, State, and local requirements	*CF:* § 3575.43 Other Federal, State, and local requirements. *WWD:* § 1779.43 Other Federal, State, and local requirements.

TABLE 1—ONERD GUARANTEED LOAN PROGRAM CFR SECTIONS AND SUBPARTS—Continued

OneRD section No. and title	Current section Nos. and titles
§ 5001.459 Replacement of Loan Note Guarantee and Assignment Guarantee Agreement.	*B&I:* § 4279.84 Replacement of document; § 4279.226 Replacement of document; § 4279.84 Replacement of document; § 4279.226 Replacement of document. *REAP:* § 4279.84 Replacement of document; § 4279.226 Replacement of document; § 4279.84 Replacement of document; § 4279.226 Replacement of document. *CF:* § 3575.73 Replacement of loss, theft, destruction, mutilation, or defacement of Loan Note Guarantee or Assignment Guarantee Agreement. *WWD:* § 1779.73 Replacement of loss, theft, destruction, mutilation, or defacement of Loan Note Guarantee or Assignment Guarantee Agreement.
Subpart F—Servicing Provisions	
§ 5001.501 General	*B&I:* § 4287.107 Routine servicing. *REAP:* § 4287.107 Routine servicing. *CF:* § 3575.69 Loan servicing. *WWD:* § 1779.69 Loan servicing.
§ 5001.502 Oversight and monitoring	*B&I:* § 4279.217 Oversight and monitoring. *REAP:* § 4287.107 Routine servicing.
§ 5001.503 Project completion requirements	*REAP:* § 4280.143 Requirements after project construction.
§ 5001.504 Financial reports	B&I and *REAP:* § 4287.107(d) Borrower financial reports. *CF:* § 3575.69 Loan servicing. *WWD:* § 1779.69 Loan servicing.
§ 5001.505 Collateral inspection and release	*B&I:* § 4287.113 Release of Collateral. *REAP:* § 4287.113 Release of Collateral. *CF:* § 3575.12 Inspections; § 3575.69 Loan servicing. *WWD:* § 1779.12 Inspections; § 1779.69 Loan servicing.
§ 5001.506 Loan transfers and assumptions	*B&I:* § 4287.134 Transfer and Assumption. *REAP:* § 4287.134 Transfer and Assumption. *CF:* § 3575.88 Transfers and assumptions. *WWD:* § 1779.88 Transfers and assumptions.
§ 5001.507 Lender transfer	*B&I:* § 4279.174 Transfer of lenders; § 4279.279 Transfer of Lenders.
§ 5001.508 Mergers	*CF:* § 3575.89 Mergers. *WWD:* § 1779.89 Mergers.
§ 5001.509 Servicing fees	*B&I:* § 4279.120 Fees and charges. *REAP:* § 4287.334 Transfer and Assumption.
§ 5001.510 Subordination of lien position	*B&I:* § 4287.123 Subordination of lien position. *REAP:* § 4287.323 Subordination of lien position.
§ 5001.511 Repurchases from Holders	*B&I:* § 4279.78 Repurchase from holder; § 4279.225 Repurchase from Holder. *REAP:* § 4279.78 Repurchase from holder; § 4279.225 Repurchase from Holder. *CF:* § 3575.78 Repurchase of loan. WWD; § 1779.78 Repurchase of loan.
§ 5001.512 Additional expenditures and loans	*CF:* § 3575.84 Additional loans or advances. *WWD:* § 1779.84 Additional loans or advances.
§ 5001.513 Interest rate changes	*B&I:* § 4287.112 Interest rate changes. *REAP:* § 4287.112 Interest rate changes. *CF:* § 3575.80 Interest rate changes after loan closing. *WWD:* § 1779.80 Interest rate changes after loan closing.
§ 5001.514 Lender failure	*B&I:* § 4287.136 Lender failure. *REAP:* § 4287.136 Lender failure.
§ 5001.515 Default by Borrower	*B&I:* § 4287.145 Default by Borrower. *REAP:* § 4287.145 Default by borrower. *WWD:* § 1779.75 Defaults by borrower.
§ 5001.516 Protective Advances	*B&I:* § 4287.156 Protective Advances. *REAP:* § 4287.156 Protective advances. *CF:* § 3575.83 Protective advances. *WWD:* § 1779.83 Protective advances.
§ 5001.517 Liquidation	*B&I:* § 4287.157 Liquidation. *REAP:* § 4287.157 Liquidation. *CF:* § 3575.81 Liquidation. *WWD:* § 1779.81 Liquidation.
§ 5001.519 Bankruptcy	*B&I:* § 4287.170 Bankruptcy. *REAP:* § 4287.170 Bankruptcy. *CF:* § 3575.85 Bankruptcy. *WWD:* § 1779.85 Bankruptcy.
§ 5001.520 Litigation.	

TABLE 1—ONERD GUARANTEED LOAN PROGRAM CFR SECTIONS AND SUBPARTS—Continued

OneRD section No. and title	Current section Nos. and titles
§ 5001.521 Loss calculations and payment	*B&I:* § 4287.158 Determination of loss and payment. *REAP:* § 4287.158 Determination of loss and payment. *CF:* § 3575.34 Terms of loan repayment; § 3575.81 Liquidation; § 3575.94 Determination and payment of loss. *WWD:* § 1779.34 Terms of loan repayment; § 1779.42 Design and construction requirements; § 1779.81 Liquidation; § 1779.94 Determination and payment of loss.
§ 5001.522 Future recovery	B&I: § 4287.169 Future Recovery. REAP: § 4287.169 Future Recovery. *CF:* § 3575.95 Future recovery. *WWD:* § 1779.95 Future recovery.
§ 5001.523 Property acquired by the Lender	*CF:* § 3575.90 Disposition of acquired property. *WWD:* § 1779.90 Disposition of acquired property.
§ 5001.524 Termination of Loan Note Guarantee	B&I: § 4287.180 Termination of Guarantee. *REAP:* § 4287.180 Termination of Guarantee. *CF:* § 3575.96 Termination of Loan Note Guarantee. *WWD:* § 1779.96 Termination of Loan Note Guarantee.

As noted in table 1 above, this final rule is divided into six major subparts:

(1) Subpart A contains general provisions that are applicable to each guaranteed loan made under 7 CFR part 5001, except as may be otherwise indicated. Topics covered include definitions; exception authority; appeal and review rights; general lender responsibilities; special initiatives; approvals, regulations, and forms; and standards for financial information.

(2) Subpart B contains provisions for determining project, borrower, and lender eligibility. It also contains a list of ineligible projects, both general and program specific, and a set of conditions that would make an otherwise eligible borrower ineligible. This subpart addresses the lender's agreement, along with provisions associated with a lender maintaining its approved lender status. This subpart also addresses specific project requirements for the Business and Industry, Community Facility, and Water and Waste Disposal guaranteed loan programs, and Renewable Energy System Projects, Energy Efficiency Improvement Projects and Energy Efficient Equipment and Systems projects under REAP.

(3) Subpart C contains provisions for origination requirements, credit evaluations and underwriting, appraisals, guarantees, monitoring requirements, compliance with other laws, environmental responsibilities, and conflicts of interest.

(4) Subpart D contains application provisions for a loan guarantee under this part, including preliminary eligibility reviews and applications, application evaluation, and application award processes. This subpart also includes more specific application requirements and priority point systems for Community Facility, Water and Waste Disposal, Business and Industry, and REAP projects.

(5) Subpart E contains loan and guarantee provisions. Loan provisions cover interest rates, term length, loan schedule, repayment, lender fees, loan amounts, percentage of guarantee, eligible and ineligible uses of loan funds, and sale or assignment of a guaranteed loan. Guarantee provisions cover the conditional commitment, loan closing and conditions precedent to issuing the loan note guarantee (LNG), the issuance of the LNG, periodic retention and other fees, replacement of documents, reorganizations, and other legal requirements.

(6) Subpart F contains provisions for servicing the loan guaranteed under this part, including oversight, monitoring, and reporting requirements, and project completion requirements. Servicing topics covered include audits and financial reports, collateral, loan transfer and assumption, lender transfer, mergers, servicing fees, subordination of lien position, repurchases, additional expenditures and loans, interest rate changes, lender failure and borrower default, protective advances, liquidation, bankruptcy, litigation, loss calculations and payments, future recovery, property acquired by the lender, and termination of the LNG.

Lastly, we included appendices with information about financial feasibility studies and reports and technical reports for Renewable Energy Systems and Energy Efficiency Improvement projects under various project cost thresholds.

B. Delivery of the OneRD Guaranteed Loan Program

While each of the four loan programs remain substantially the same under OneRD, the way they will be delivered to the Agency's customers has changed to improve consistency, accountability and transparency. In delivering OneRD, the Agency will publish **Federal Register** notices annually containing specific information associated with the guaranteed loan programs, such as fee amounts, or project priorities based on Agency initiatives. Additional programs that may become part of OneRD in the future will also be announced via **Federal Register** notice and this rule will be amended to incorporate those additional programs.

The following paragraphs address OneRD by examining the delivery mechanisms and include a discussion of the **Federal Register** notices that will be used as part of the implementation of the unified platform.

Eligibility. Under OneRD, four basic types of eligibility are identified in subpart B: Project eligibility, eligible use of loan funds, borrower eligibility, and lender eligibility.

- *Project eligibility* is based on the proposed project benefiting a rural area, on the ability of the activity to be funded to meet the requirements of the applicable program, on meeting a minimum set of project criteria, and, when applicable, on the boundaries of the proposed service area meeting a nondiscrimination criterion. Projects that do not meet these criteria would be ineligible under OneRD. In addition, these criteria cannot be voided under the exception authority provided in this final rule. The applicable project eligibility requirements, located in §§ 5001.102 through 5001.108 of this final rule, remain essentially unchanged for each of the four loan programs. However, some differences are discussed in section III of this preamble. One of the most important differences discussed is that OneRD uses three

minimum project financial conditions to reduce project risk by screening out those projects less likely to achieve a level of success. These three financial conditions establish minimum requirements for debt-service coverage ratio, cash equity or community support, and loan-to-value ratio. While the four loan programs currently address cash equity or community support, separately, they do not have requirements associated with debt-service coverage ratios and loan-to-value ratios. By specifying these project financial conditions in this final rule, borrowers and lenders can determine a project's eligibility for a loan guarantee early in the process.

In addition to identifying eligible projects, this final rule identifies specific projects and purposes that are not eligible to receive a loan guarantee. The Agency assembled this list based on analyses of its current portfolio and historic loan defaults as well as the list of ineligible projects and purposes identified in the existing regulations for the four loan programs.

- *Borrower eligibility* is based on the borrower meeting the common requirements outlined in § 5001.126(a) as well as the program-specific requirements of § 5001.126(b) through (e). This final rule also identifies borrowers who would be categorically ineligible in § 5001.127. In terms of eligible and ineligible entities, there is little change under OneRD compared to the four current programs.
- *Lender eligibility* is based on the criteria provided in § 5001.130. Requirements to be an approved lending participant vary for regulated and non-regulated lending entities.

Regulated lending entities, listed at § 5001.130(b)(1) through (9), who are subject to supervision and credit examination by an applicable agency of the United States or a state, who meet the requirements of § 5001.130(a), are eligible to receive a loan guarantee without additional documentation being sent to the Agency. The list of regulated lending entities as well as requirements is essentially the same as that in the four existing regulations with one exception. The language, ''. . . or were created specifically by state statute and operated under the direct supervision of a state government authority'' were added to allow the issuance of loan guarantees to state bond banks or state bond pools better clarifying the status of these entities. Previous language listed these entities; however, restricting eligibility to lending entities to those ''. . . subject to supervision and credit examination by the applicable agency . . .'' effectively made them ineligible as they are quasi-state agencies and not, in most cases, subject to credit examination. State bond banks and state bond pools have approached the Agency numerous times and have been declined due to the limiting language.

A non-regulated lending entity that seeks to become an approved lender must submit a written request to the Agency. The request must address the criteria listed at § 5001.130(c)(1) and (2).

To address the unique situation of providing capital on tribal trust lands, the Agency has added a category of ''non-regulated lending entities servicing tribal trust lands'' at § 5001.130(d). This designation provides a modified set of criteria that must be met to become an approved lending entity but restricts lending activity to tribal trust lands only. Any lending activity proposed outside of tribal trust lands requires the lending entity to apply and meet the requirements of § 5001.130(c)(1) and (2).

Approved lender status for all non-regulated lending entities will last for not more than five years

Currently, each guarantee program has a separate and distinct process of approving lenders so that a lender approved to originate a B&I loan is not approved to originate a CF loan and vice versa. This creates confusion and adds an additional burden to lenders wishing to participate in multiple guarantee programs. The process described streamlines the approval process for lenders by providing one unified approach that approves them for all four guarantee programs. The Agency believes this approach will expand program usage by enabling lenders to participate in programs they may not have otherwise been participating in due to the additional cost and time of being approved.

Guaranteed loan approval. Under the four loan programs, the Agency views proper loan origination as a responsibility of the lender. OneRD reinforces the concept of negligent loan origination throughout this Part to help lenders understand the importance of conducting proper credit analysis and sound loan origination. The policy regarding negligence in the origination and servicing of loans is found in § 5001.521(d). The Agency anticipates that the clarification for negligent loan origination will reduce loan defaults through improved loan origination. However, in the event of a default, this regulation provides the Agency remedies for negligent loan origination and servicing, up to and including a total reduction of the loss claim payable. However, in the event of loan default, loss claims paid under the guarantee will be collected from the lender, as stated in § 5001.521.

With OneRD, the Agency has standardized, to the extent possible, the types of information to be included in the loan guarantee application, although some additional information is required by some of the programs described in subpart B of this final rule. In general, the information associated with a loan guarantee application under subpart D of OneRD is not significantly different from that originally required under the existing regulations.

The main difference in the application for a loan guarantee under OneRD is the amount of supporting documentation that is required to be submitted with or accompany the application for certain projects. Project risk will drive the amount of documentation required versus total project cost thresholds, which were utilized in previous regulations.

The Agency will examine the lender's analysis of the project, the technical merit, any business plans or feasibility studies required, and environmental information. If the Agency disapproves the application, the lender and borrower have the right to appeal the decision per 7 CFR 1900, subpart B.

Servicing. Once RD approves a loan guarantee, the lender is responsible for servicing the entire loan. The lender's servicing responsibilities under the provisions of OneRD, including those regarding negligent servicing, are essentially the same as are currently required under the four loan programs. This information is in subpart F.

Oversight and monitoring. Under OneRD, as under the four loan programs, the Agency conducts all oversight and monitoring activities necessary to ensure that lenders are originating, and servicing Agency guaranteed loans in a manner consistent with lender and Agency standards. These activities include, but are not limited to, conducting lender visits and meetings and requiring various reports and notifications as discussed throughout subpart C. There are a few differences in these activities under OneRD compared to those previously required under the four loan programs. Sections II.1 through II.4 of this preamble discuss each program in detail.

The Agency also uses this oversight and monitoring to ensure that lenders maintain the qualification criteria for being an Agency-approved lender.

Managing Risks. As noted earlier in this preamble, the Agency has incorporated into the provisions of OneRD certain features to help manage project, operational, and institutional

risks, and loss exposure. Those various provisions are discussed in detail in section III of this preamble.

Federal Register *notices.* To implement OneRD, the Agency will publish at least one **Federal Register** notice each year. Each annual notice will address the following items as necessary:

Funding Availability. RD will issue notices each year specifying the amount of funds available for OneRD guarantees. Notices may also include the following information, should there be change from prior notices:

○ *Maximum loan amounts.* The Agency will identify in the **Federal Register** notice the maximum loan amount per loan guarantee that will be available under each of the four guaranteed loan programs within OneRD.

○ *Percent of Loan Guarantee.* The maximum guarantee is 90 percent of eligible guaranteed loan loss pursuant to statutory authority. The Agency will set annually a guarantee percentage by program that will apply to loans guaranteed within each program. The Agency will announce annual guarantee percentages for each program by publishing a notice in the **Federal Register** in accordance with Section 5001.10. The annual guarantee percentage may be set at or below the maximum allowed authorized by statute. The annual guarantee percentage will take current Federal credit policy into consideration and may be set at or below the maximum allowed authorized by statute.

○ *Fees.* The Agency will identify the fees, including but not limited to, the initial guarantee fee rate and the renewal fee that will be used for the fiscal year for each program in an annual notice published in the **Federal Register**.

○ *Priority Scoring.* The Agency will identify in the **Federal Register** notice the scoring criteria (*e.g.,* Agency priorities) that will be used, if necessary, to allocate funds when funds are insufficient to cover all funding requests within a program.

Additionally, if there are any changes to the OneRD Guaranteed Loan Program, this rule will be amended accordingly.

C. Changes of Note

The Agency has identified changes, including, but not limited to lender eligibility, and annual notice contents throughout section III and IV. Additional items, considered major changes, not addressed elsewhere include:

• The Agriculture Improvement Act of 2018 (Pub. L. 115–334) amended the definition of rural and rural area in the Consolidated Farm and Rural Development Act (Pub. L. 92–419) for the CF and WWD guarantee programs to align the population limit with B&I and REAP. The definition of rural and rural area, which is unchanged for the B&I and REAP programs, is any area of a state not in a city or town that has a population of more than 50,000 inhabitants according to the latest decennial census of the United States and not in the urbanized area contiguous and adjacent to a city or town that has a population of more than 50,000 inhabitants; it is codified in this regulation at § 5001.3. This definition is subject to reservation requirements for the CF Program found at 7 U.S.C. 1926(a)(24).

To align the Agency's guarantee programs purposes with its customer's needs, the Agency will allow refinancing as an eligible project purpose. Included in the regulation is the ability to refinance lender, other lender and federally guaranteed, including Agency, debt. There are specific thresholds that must be met for debt to be considered for refinancing. Refinancing may allow a lender to improve an applicant's cash flow position or obtain a more favorable lien position, but the Agency does not anticipate frequent use of this provision. For a request for refinancing to be eligible for a loan guarantee, it must meet the requirements of § 5001.102(d)(1) through (5) as well as those in the applicable program sections §§ 5001.103 through 5001.108. This change expands funding options for refinancing for some programs and creates a consistent approach for guaranteeing loans for debt refinancing across all four programs. Additionally, as CF and WWD direct loans have a statutory ''graduation'' requirement per 7 CFR 1942(b)(5) and 7 CFR 1780.1(c) Refinancing provides a ''stepping stone'' for those direct borrowers that may wish to refinance their direct Agency debt but may not meet all the requirements of a commercial lender without a guarantee.

Recognizing that equity serves a valuable role in providing stability against unforeseen changes to cash flow or profitability and is one of the five factors in credit analysis, the OneRD regulation at § 5001.105(d) removes the B&I program's requirement for tangible balance sheet equity and replaces it with a requirement for sufficient equity for all businesses. The tangible balance sheet equity requirement and calculation is not common in the lending community and created confusion. The OneRD regulation provides a 10 percent equity position for a typical existing business and a capital injection based on projected revenue for new businesses. This change removes a cumbersome calculation for lenders and aligns the Agency with current industry practices.

• New Markets Tax Credit (NMTC) provisions are included at § 5001.141. Currently, NMTC requirements are only codified in the B&I regulation at § 4279.116 even though projects in other programs may be eligible to participate. By incorporating NMTC requirements into the OneRD regulation, the Agency ensures a standardized approach to project, borrower and lender eligibility.

• The Agency, recognizing that the lender is familiar with and understands the nature of the collateral being offered for their guarantee loan request, and has removed the collateral discounting requirements currently found at § 4279.131(b)(1)(i) through (iv) in favor of a lender driven process at § 5001.202(b)(4)(ii). The lender will rely on discounts that are consistent with sound loan-to-discounted value practices while ensuring that adequate security exists for the guaranteed loan. Satisfactory justification of the discounting factors used must be provided to the Agency. The change will simplify the discounting process and allow the lender to customize the discount for each loan. Placing the collateral discounting responsibility on the lenders and requiring them to justify their discounting factor is a better alternative than a 'strict' standard as currently in the B&I regulation. For example, currently in the B&I program to meet our collateral requirements, equipment can be valued no greater than 70% and real estate no greater than 80% of its value which is generally considered standard discounting factors. However, these stated factors may be too low for some collateral and too high for others. Therefore, OneRD allows some subjectivity, as requested by the lenders, and we will rely on the proper training of our staff to recognize when collateral is not discounted on sound discounting practices.

• The Agency currently allows the issuance of the loan note guarantee prior to project completion in the B&I program only. OneRD, at § 5001.205(e)(2), expands this option to CF, WWD and REAP. There are additional construction contract, contractor performance and lender monitoring (§ 5001.205(e)(2)(i) through (viii)), and reporting (§ 5001.205(f)) requirements and fees (§ 5001.454(c)) associated with this opportunity; however, when requested and approved, issuing the LNG prior to construction completion allows the lender the

flexibility to conduct one loan closing for a project involving both construction and long-term financing.

- Currently for CF and WWD guarantee projects, preliminary architectural and engineering reports (PAR and PER respectively) or plans must be approved by the lender and concurred on by the Agency. The Agency provides at § 5001.205(a) the removal of that requirement and allows the lender to provide engineering or architectural documentation that meets the level of detail the lender would typically require for a standard commercial loan. The Agency will provide assistance to clarify any Agency requirements; however, no technical oversight or recommendations as to the technical feasibility of the project will be provided. This change will reduce time and expenses incurred by the borrower to produce planning documents as well as reducing processing time as the Agency will rely on the state's regulatory agency's review and permitting process rather than their own, duplicative, review.
- Currently each of the four programs included in the OneRD regulation have separate term limit requirements with B&I having the most prescriptive. The Agency provides at § 5001.402 to allow the lender to establish and justify the guaranteed loan term for each individual loan. The term will be based on the justified useful economic life of the asset being financed, not to exceed 40 years, or limitations imposed by state statute, whichever is less. The Agency must concur with the term proposal. This change provides consistency between the programs and provides flexibility to the lender in proposing and setting the term of the loan based on their knowledge of the funding request.
- In order to reduce portfolio risk, the OneRD regulation introduces, at § 5001.406, maximum guaranteed loan amounts to the CF and WWD programs. The guaranteed loan limits for B&I and REAP are statutory and remain unchanged from previous regulations.
- The four programs included in the OneRD regulation currently have separate maximum guarantee percentages. The OneRD regulation, at § 5001.407, sets the maximum guarantee at 90 percent of eligible guaranteed loan loss across the four programs. However, the Agency will set annually a guarantee percentage by program that will apply to loans guaranteed within each program for the fiscal year. The Agency will announce annual guarantee percentages for each program by publishing a notice in the **Federal Register** in accordance with § 5001.10. The annual guarantee percentage may be set at or below the maximum allowed authorized by statute This change provides consistency and certainty for lenders and gives the Agency the flexibility necessary to effectively manage its portfolio. Although the guarantee percentage may vary from program to program, the guarantee percentage will be the same for all loan guarantees within a program for the year. The annual guarantee percentage will take current Federal credit policy into consideration and may be set at or below the maximum allowed authorized by statute. This will provide certainty for program participants and consistency across program offices.
- To ensure lender responsibility and commitment throughout the life of the loan, the Agency has increased the minimum retention percentage from 5 percent to 7.5 percent of the unguaranteed portion of the loan amount at § 5001.408(a)(3)(i).

At § 5001.454, § 5001.455 and § 5001.456 the Agency discusses and provides guidance on the various fees and charges that are currently in place or will be implemented with OneRD, at § 5001.454 and § 5001.455 or that may be implemented in the future, at § 5001.456. The OneRD sections outline the types of fees that may be charged and whether those fees may be passed on to the borrower; however, OneRD does not provide the fee amount. The Agency will establish actual fee amounts and provide to the public in an annual notice published in the **Federal Register**. The fee to be charged and the fee rate may vary by program. The agency may establish higher fees for larger loans. By defining the fees that may be charged in the regulation, and including the specific fee amounts in an annual **Federal Register** publication, the Agency is provided the flexibility to implement administration or congressionally mandated changes quickly and better respond to changes in its portfolio.

The Agency, at § 5001.454 adds maximum guarantee fee level for each of the OneRD programs. The Agency feels that setting a maximum fee, above which a technical change to the rule is required, provides flexibility to raise fees within a reasonable range without creating a barrier to participation. As with the fee itself, the maximum fee varies by program to account for differences in risk by sector and business models of various project types.

V. Public Participation and Discussion of Comments From Listening Sessions

The Agency has worked to develop a regulation that is customer driven and simplifies the processes involved with loan guarantees. From the application to servicing, the Agency critically reviewed every process to draft this final rule. The Agency hosted listening sessions throughout the West, South, Midwest, and Northeast regions with a focus on improving customer experience with RD's loan guarantee programs. In addition, RD held a National listening session in Washington, DC, and a virtual listening session for Tribal communities. From those sessions, the Agency collected 314 comments and consistently heard that customers were looking for a more streamlined and refined process. The Agency appreciates all comments and has considered suggestions from each commenter.

The following sections discuss each comment and the Agency's responses, organized by subpart of the new regulations with each section organized by comment paragraph and then Agency response paragraph. Sections with multiple comments will continue the comment/response paragraph pairing format until all comments for that section are addressed. Comments are as received from listening session participants. The Agency has done its best to interpret the context and meaning of each comment or question.

Subpart A—General Provisions

Definitions

One commenter asked for a definition of affiliates for B&I loan documentation. The commenter's interpretation of the current regulations is to obtain financial statements for any affiliate of the borrower, regardless of the ownership percentage. The commenter then said that there should be a threshold of 50 percent or more ownership to be considered an affiliate.

Agency's Response: Per § 5001.3, this final rule defines an affiliate as a person or entity with control over the borrower, with no specific ownership percentage identified.

Definition of Rural and Population Limits

The Agency received comments asking to standardize rural population standards and definition across all programs.

Agency's Response: The Agricultural Improvement Act of 2018 expanded the population limit for the CF and WWD guarantee programs, in agreement with this comment. The new population

limits have been incorporated into OneRD, so all four guarantee programs now have the same definition of rural and rural area.

Subpart B—Eligibility Provisions

Program Specific Requirements and Concerns

One commenter asked if Risk Management Association (RMA) statements are required for the B&I guaranteed loan program. The commenter added that lenders do not analyze RMA statements and questioned if RMA statements were necessary as a result.

Agency's Response: The Agency uses the RMA information as an industry comparison to the borrower's financial statements. However, the Agency does not require that lender submit RMA statements as part of the application. The regulation states that spreadsheets and analysis of the financial statements are accepted in a credit evaluation if they comply with industry standards. Standards for financial information are also discussed in § 5001.9.

Eligibility

The Agency received several comments with concerns about eligibility for OneRD guaranteed loans programs. We divided the comments into subcategories regarding eligibility for borrowers, lenders, loan purposes, and projects, and respond point by point.

Borrowers

Commenters discussing eligibility for guaranteed loan borrowers recommended the Agency revise or simplify its ''credit elsewhere'' requirements. One commenter said that the Small Business Administration's version of credit elsewhere requirements is better tailored to rural markets.

Agency's Response: In accordance with 7 U.S.C. 1983, the Agency has a statutory requirement for the CF and WWD program to document that the applicant is unable to obtain the required credit from private, commercial, or cooperative sources at reasonable rates and terms without the RD loan guarantee. The lender also has a responsibility to evaluate and certify to the Agency that it would not make the loan without a guarantee (Community Facilities and Water and Waste Disposal Programs only). The Agency considered the commenters' remarks in developing the regulation and accompanying guidance to address the proper analysis and documentation of this eligibility criterion.

One commenter asked if Alaska Native Corporations are considered Tribal governments.

Agency's Response: Under the OneRD Guarantee regulation, applicant eligibility will vary from program to program based on the authority provided by Congress. Based on the definition of Indian tribe at 25 U.S.C. 5304(e), if the Alaska Native Corporation is defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) they would meet the definition of Indian tribe and potentially be eligible.

Lenders

Regarding the Community Facilities and Water and Waste Disposal programs, one commenter said that for non-regulated lenders, the Agency should ''issue a statement of good standing so new application is not needed'' and, ''if no loss claim is made, process an automatic renewal.'' Another commenter said that Rural Development should consider using Aeris Ratings (formerly the Community Development Financial Institution Assessment and Rating System) for outside credit examination of non-regulated entities like the B&I Guaranteed Loan program.

Agency's Response: Under the OneRD Guarantee regulation, the approval and renewal process for non-regulated entities will be the same across all programs. Currently, Rural Development does not allow an automatic renewal as suggested by the commenter, but the regulation does provide a streamlined renewal process for non-regulated lenders that meet certain thresholds. Regarding the suggestion from the second commenter, Rural Development already considers Aeris to be an approved credit examination entity and does accept the use of Aeris to evaluate outside credit of non-regulated entities.

Projects

Some comments suggested the Agency eliminate, modify, or clarify how projects will ''primarily serve rural areas'' in the Community Facilities program.

Agency's Response: 7 U.S.C. 1926(a)(1) under which the Community Facilities guarantee program operates authorizes assistance to entities ''primarily serving'' rural businesses and other rural residents. Therefore, in addition to the location of the facility (*i.e.,* rural area) we must also determine who is being served by the facility or service in order to determine eligibility. While we cannot eliminate this provision due to statutory requirements, as was suggested by one commenter, more clarity on meeting this eligibility criterion has been provided.

Loan Purposes

Some comments received inquired about refinancing Community Facility loans. One comment specifically recommended the Agency allow refinancing of over more than 50 percent on Community Facilities loans.

Agency's Response: In the CF program.

Maintenance of Approved Lender Status: Preferred Lenders

There were comments in the docket regarding a preferred lender program. The commenters suggested adding a preferred lending program to the OneRD program. One commenter noted that under a preferred lender program ''banks that use USDA lending can be put in SBA categories.'' Another commenter added that a preferred lender program should contain ''uniform requirements across all programs.''

Agency's Response: The Agency has determined that it will not implement a preferred lender program with this regulation. As the regulation covers varying types of eligible projects, it would be difficult to develop a common preferred lender program. We want to encourage lenders of all sizes and capacities to utilize the program and ensure funds are available to all to the extent possible, and a preferred lender program may affect our ability to fund projects with smaller lenders. The OneRD regulation provides consistent lender eligibility criteria for the guaranteed loan programs. The Agency also added a new provision for non-regulated lenders providing loans to entities located on Tribal Trust lands. Rural Development monitors lenders for liquidity and reviews their guaranteed loan quality and activity on a regular basis.

Lender Participation

The Agency received one comment regarding lender participation in OneRD. The commenter said that this final rule should not disadvantage small lenders. Instead, the commenter said the Agency should ensure the maximum number of lenders use the programs so that the maximum number of rural communities are served via these loan programs under OneRD. The commenter added that maximizing the number of lenders using the program rather than promoting fewer, larger lenders will result in a ''broad base of support for the program from stakeholders.''

Agency's Response: The Agency wishes to maximize the number of

lenders using the programs and therefore, the OneRD final rule looks to increase application efficiency, which will benefit all lenders regardless of size.

New Markets Tax Credit

A commenter expressed concern that a 7-year foreclosure forbearance period makes it difficult to pair lender programs with New Market Tax Credit (NMTC) benefits, particularly for community banks. Another commenter said that banks would like to use the ''B&I guarantee product on the leverage loan piece of the NMTC structure''.

Agency's Response: OneRD allows a leveraged lender in the NMTC leveraged equity structure of that transaction to receive guaranteed loans. The 7-year forbearance agreement is protection for the NMTC investor, typical of all NMTC transactions, and must be factored as a credit risk by the lender in their analysis.

Regarding another commenter's concern about recognizing forbearance limitations, we added a provision to OneRD that the sub-Community Development Entity (sub-CDE) must include in its operating agreement that the investor fund entity has approval rights to certain loan servicing actions by the sub-CDE lender. The intention of this addition is to allow the guaranteed loan lender the ability to monitor any forbearance or servicing actions by the sub-CDE lender and protect their interests in the project.

One commenter indicated that requiring a lender upfront to state its plan to allow for debt forgiveness could create NMTC compliance issues. Qualified Low-Income Community Investments must meet the ''true debt'' requirement under Internal Revenue Service rules. Another commenter wanted the Agency to address the impact of unwinding the NMTC structure at the end of the 7-year compliance period based on a reference in the regulations. The commenter wanted clarification that the unwind plan could include the transfer of the guaranty between debt instruments.

Agency's Response: The Agency has taken into consideration the two comments related to sub-CDE. With this regulation, we have added a provision that the sub-CDE must include in its operating agreement that the investor fund entity has approval rights to certain loan servicing actions by the sub-CDE lender. We have also eliminated the requirement to provide an exit strategy for the NMTC investor.

Another commenter said regulations in 7 CFR 4279.126(a) that require that loan terms must be equal in length create issues because the B-note is usually longer than the A-note in NMTC projects.

Agency's Response: The provision referenced by the commenter requires that the maturity and related payment schedule of the lender's guaranteed loan to the borrower must be no longer than the maturity and related payment schedule of the sub-CDE's loan to the Qualified Active Low Income Community Business (QALICB) funded by the direct tracing method in a leveraged equity structure. This requirement allows a smooth transfer and assumption of the leveraged lender's loan, if necessary, and retains the guarantee. The regulation does not require equal terms between the two loans from the CDE to the QALICB, see § 5001.141.

Subpart C—Origination Provisions

Environmental Responsibilities

The Agency received some comments regarding National Environmental Policy Act (NEPA) requirements to apply for a OneRD loan guarantee. Most of the commenters suggested that environmental reporting slows down the process of application approval because of its complexity. One commenter noted that the Agency provides sufficient guidance on environmental reporting, but now lenders need to hire a consulting firm to get the loan approved, citing a $15,000 fee that needs to be paid up front. Another commenter added that the Agency's environmental requirements for New Markets Tax Credits (NMTC) ''are more stringent and time intensive than the other financing entities, which often include multiple banks.'' A commenter recommended the USDA revert to completing this requirement in-house, which was supported by another commenter who said the previous environmental regulations were ''much less costly and didn't take as long to approve'' and asked if a National Office review of the project would be possible if the State Office evaluation is delayed. A commenter said that it would be ''more appropriate for the lender to have the flexibility to run environmental lien searches and have questionnaires completed by the borrowers to determine what environmental risks are present.'' Overall, the commenter did not believe a blanket Phase 1 requirement is the best way to address environmental risks.

Agency's Response: The Agency's environmental policies and procedures regulation (7 CFR 1970) has decreased the number of Environmental Assessments required and has reduced the time to complete environmental reviews across all programs. A few programs have seen an increase in the level of environmental review. Environmental site assessments that are not part of compliance with NEPA are completed only when the Agency will finance real estate and are a risk management decision made on a case-by-case basis by the agency and offer protection to the lender, borrower, and agency. RD is continually evaluating and implementing ways to improve efficiency of all environmental review and will continue to do so.

Standards for Financial Information

One commenter shared concern that onerous costs include environmental reports and account financials.

Agency's Response: Environmental compliance is statutory, and compliance has been improved through the expanded capability to provide a categorical exclusion for eligible projects. The list of categorical exclusions can be found at 7 CFR 1970.53 and 1970.54. The list of projects referenced in § 5001.102 ''Project eligibility—general'' will often fall under §§ 1970.53 (which may require additional information) and 1970.54 (which will always require an environmental report) list of categorical exclusions. We encourage lenders and borrowers to work with RD staff to ensure that any environmental reports are focused on projects and impacts that need analysis and not pay for assessments related to projects and impacts that are unnecessary. Standards for financial information in § 5001.9 provide flexibility to provide financial information that is prepared and submitted in accordance with accounting practices acceptable to the Agency. They include, but are not limited to, GAAP and the industry's standard accounting practices.

Origination and Credit Evaluations

Two commenters suggested that the Agency should consider using tax returns as a more consistent approach to analyze underwriting and as the basis of historical financial statement for B&I guaranteed loans.

Agency's Response: Standards for financial information as noted in § 5001.9 provides flexibility to provide financial information that is prepared and submitted in accordance with accounting practices acceptable to the Agency. Those include, but are not limited to, GAAP and the industry's standard accounting practices. Tax returns often include accelerated depreciation and other tax treatments that impact a borrower's balance sheet,

or they are too generally summarized and do not contain details about the description of assets (*e.g.,* fixed assets and liabilities).

The Agency received some comments about lender autonomy and responsibilities during the application process. Some commenters said that there are too many offices involved in the approval process, and that the Agency must allow the lender to be the primary point of contact, especially regarding credit analysis and underwriting.

Agency's Response: The Agency respects the role of the lender and their relationship to the borrower and has established a process that is respectful of that relationship. The Agency has streamlined and standardized its credit risk evaluation and continues to review its policies.

One commenter suggested methods for lender responsibility and commitment during the application process for OneRD. The commenter said that the application process should clearly outline the responsibility of the lender and timeline and review process of the Agency. Not only should the lender be responsible for underwriting the project, the lender should be required to keep ''skin in the game'' for the life of the project. The commenter closed with suggesting that encouraging a commitment to deep rural customer relationships has been a hallmark of USDA programs, and should continue to be encouraged with a new lending partner.

Agency's Response: The OneRD regulation defines lender and Agency roles. The Agency will also be providing training to lenders and field staff on their individual roles and responsibilities including time frames. The Agency is developing an electronic application intake system, which will communicate with the lender as the application progresses through each phase of processing. The desire is that the electronic system will help provide a consistent processing timeframe and enhance the lender's relationship with the Agency. The minimum retention percentage has been increased to 7.5 percent of the unguaranteed portion of the loan amount from 5% at § 5001.408(a)(3)(i). By raising the percentage to 7.5%, which is a nominal increase, we believe that this will help ensure lender responsibility and commitment throughout the life of the loan. Other lender responsibilities are outlined in § 5001.6 ''General Lender responsibilities.''

A commenter asked if it was possible for a company working on a OneRD project to use tax credit programs for building marine transportation vessels that transport agricultural resources.

Agency's Response: OneRD will help leverage Agency programs to suit the needs of the credit. Due to OneRD and tax credit program requirements, each structure is reviewed independently to ensure eligibility and compliance; therefore, the Agency cannot comment on a specific project's eligibility.

Appraisals

The Agency received three comments regarding appraisal process for OneRD loans. One commenter suggested that appraisal reviews conducted by a Certified General Appraiser should not require additional review by USDA. Another commenter said that to use market value, appraisals would need to be done ''as-is,'' and not as an ongoing concern value. A third commenter recommended that the Agency should provide lenders with a list of approved appraisers so that two appraisals are unnecessary.

Agency's Response: We agree that qualified and licensed appraisers provide valuable insight to asset value. The Agency requires appraisals to meet the Financial Institution Reform, Recover, and Enforcement Act (FIRREA) and Uniform Standards of Professional Appraisal Practice (USPAP) requirements, and the lender to provide an independent review of the appraisal—both of which are also required by banking regulators. The regulation requires real estate appraisals when the value of the collateral exceeds $500,000 or the current limitation under the Financial Institutions Reform, Recovery and Enforcement Act Public Law 101–73, 103 Stat. 183 (1989).

Tangible Balance Sheet Equity Requirements

The Agency received comments about current Tangible Balance Sheet Equity (TBSE) requirements for B&I guaranteed loans. For B&I guaranteed loans, one commenter suggested the Agency allow NMTC Equity to serve as a TBSE for easier leveraging of NMTC investment with Community Facilities and other Rural Development project financing. Other comments suggested simply revising TBSE requirements or providing additional options outside of TBSE requirements, such as market-based financial statements ''based on current appraised value'' or using tax returns ''with verifications for financial information.'' One commenter said eliminating the TBSE requirement would benefit lenders because ''[n]o other lender uses this practice and it creates a huge distortion of market asset value.''

Agency's Response: Equity serves a valuable role in providing business stability against unforeseen changes to cash flow or profitability and is one of the five factors of credit analysis. The OneRD regulation of the B&I program will require sufficient equity for an existing business, stated as a 10-percent balance sheet equity position or capital investment into the project to at least 10 percent of the project cost for a typical business, with criteria for issuance of an exception to the minimum equity requirement. Typical new businesses will have the option of meeting equity requirements by contributing either 20 percent balance sheet equity or injection of capital equal to at least 25 percent of the project costs.

USDA Partnerships

We received two comments about USDA partnerships. A commenter requested the Agency continue to create Memorandums of Understanding with guaranteed loan programs across the government. The commenter added that these partnerships ''will help create greater flexibility for lenders, which ultimately helps their customers.''

Agency's Response: The Agency agrees with this comment and has participated in an MOU with the Small Business Administration since 2018. This is a focus of OneRD's outreach plans. However, the process for engaging in a Memorandum of Understanding is separate from the rulemaking process.

Subpart D—Guarantee Application Provisions

Application Evaluation

One commenter stated that the B&I application process is cumbersome and recommended that the Agency use bank-provided information to meet Rural Development application financial requirements instead.

Agency's Response: The Agency must obtain information to enable it to expeditiously complete its review process and ensure compliance with statutory and regulatory requirements. While receipt of the information is required, the format for presenting that information to the Agency is not specified and may include lender's documents and forms.

Reservation of Funds

One commenter suggested the Agency allow lenders to request reservation of funds for loans in progress to ensure they obtain the guarantees.

Agency's Response: The Agency reviews the pipeline of applications on a regular basis but is not authorized to

hold funds for a specific project. Project awards will continue to be made with available funds only after credit approval by the Agency. The Agency reviews applications as they are received; however, depending on the completeness of the application or the complexity of the proposal, applications may not receive conditional commitments in that same order. This is especially common near the end of a federal fiscal year when the value of applications received exceeds the funds remaining. The Agency does not propose a reservation of funds process as that could potentially ''tie up'' funding for a reserved application that might or might not be ready to obligate to the detriment of an application that is complete and ready to move forward.

Feasibility Studies

Seven comments were received pertaining to the Agency's process in conducting feasibility studies. All of the comments had some type of recommendation on how to revise the feasibility study requirements, such as increasing the length of the validity period, specifying requirements to the intended industry or business, being more flexible for third-party feasibility studies, requiring third-party feasibility studies only on requests over $10 million and providing more resources for compliance.

Agency's Response: This final rule provides consistency in the application of the feasibility study requirements across all four programs. The Agency will rely upon the lender's analysis of the five feasibility study components provided in the lender's analysis, borrower's business plan, or other project information, to determine a basis for successful repayment of the guaranteed loan. Projects not adequately documented and that pose a higher risk to the Agency will be subject to the requirements of a third-party feasibility study. The requirements will vary depending on items such as the nature of the project, the project's impact to the borrower's operation and financial stability, size of guarantee loan request, borrower history, market conditions, collateral, and other factors.

Guarantee Thresholds

The Agency received comments about the threshold for guarantees on an eligible loan. The comments suggested that all programs under OneRD should have a maximum guarantee of 90 percent of eligible loans like the Community Facilities guaranteed loan.

Agency's Response: The Agency has considered various approaches to bring uniformity across all four programs in the maximum amount of loan guarantee percentages established in the OneRD Guarantee regulation. Consideration was given to statutory authority that limits some program's options. The maximum guarantee is 90 percent of eligible loan loss. The annual guarantee percentage will take current Federal credit policy into consideration and may be set at or below the maximum allowed authorized by statute. The Agency will announce, annually, guarantee percentages for each program by publishing a notice in the **Federal Register**.

Priority Scoring

The Agency received comments suggesting changes to OneRD's priority point system. One commenter suggested priority points for loans of more than $1 million, and a second commenter requested more guidance on priority scoring.

Agency's Response: We have considered the commenter's suggestion to add priority points for loans of more than $1 million. Loan size, where larger guarantee loan requests receive greater priority over smaller guarantee loan requests, is not a priority factor the Agency will use in any of its OneRD Guarantee programs. However, priority factors may change. Any changes will be published in a **Federal Register** notice.

Regarding the second commenter's concern, this final rule provides consistent language as it relates to the purpose and use of assigning points in order to prioritize guarantee loan awards for funding. Priority points are assigned to all applications and play an important role when funds requested by otherwise potentially successful applications and guarantee loan requests exceed the lending authority of guarantee funds available. Due to the varying purposes of each guarantee program within OneRD Guarantee, there are differences in each program's priorities. For example, the B&I Guarantee Program focuses on creating jobs, while the Water and Environmental Program focuses on providing safe reliable drinking water.

Application Evaluation

One commenter suggested that, for small loans under $100,000, the Agency should consider a less detailed application. Another commenter suggested the Agency provide a short application form for small loans under $1 million to $2 million in size. The commenter also said the Agency should have one ''Master application'' for the overall single platform.

Agency's Response: The Agency has created a single application for all four programs, which we believe will streamline the process for lenders. B&I has provisions for loans of less than $600,000 to provide a lower document application, if they meet certain criteria; however, there is not an overall ''low doc'' application process as loan size is not necessarily an indicator of project complexity or risk. The Agency is developing an on-line application process that they believe will streamline the process further.

One commenter expressed concern about the Agency's need for due diligence to mitigate risk.

Agency's Response: The Agency relies on the lender's due diligence and underwriting to mitigate credit risk and performs a secondary review of the loan to assure credit quality and regulatory adherence. The Agency also monitors the lender's guaranteed loan portfolio to evaluate the borrower's loan performance and timely lender reporting. The Agency believes that OneRD provides a balance between the lender's and the Agency's needs.

Application Award Process

One commenter asked the Agency to not require System for Award Management (SAM) registration for guaranteed loans based on the commenter's understanding that other Federal guarantee programs do not require SAM registration for guaranteed loans. Another commenter suggested eliminating the need for SAM registration, specifically for Rural Energy for America Program (REAP). The commenter said that SAM registration inhibits the number of small applications because the REAP program is inaccessible for areas that do not have internet access.

Agency's Response: The Agency acknowledges this concern; however SAM requirements are outside the scope of this rulemaking.

Approval Authority

The Agency received comments about allowing more State, district, and county offices to approve loan applications. One commenter recommended that the Agency allow county, district, or State Offices to approve all loans that are smaller in size. Another commenter suggested having various levels within Rural Development approve loans of certain dollar amounts and categories and provided the example of Water and Waste Disposal Loan Guarantee of less than $5 million could be approved by the local Rural Development office, while a loan of greater than $5 million would need to be approved by the National Office. A comment suggested that there could be an option for lenders

to send loan approvals to the National Office if there have been approval issues at the local office. The reasoning for this option is that it would help to keep local projects locally controlled but allow for a lender to move projects up the chain if necessary. A commenter suggested that the multiple levels of loan review done between the state and National Office are duplicative and time-consuming. Two more levels of review are done after the state offices have reviewed and approved the loans. This is duplicative, time consuming, and prevents timely approval.

Agency's Response: The Agency's internal operations, such as loan approval authority, are governed by a separate regulation and not part of this regulatory process; however, the comments will be taken under advisement.

Preliminary Engineering Report (PERs)

The Agency received comments requesting a change to the PER (also referred to as engineering reports or engineering documentation) review process. Some comments suggested the Agency allow expedited PER reviews for guaranteed Water and Environmental Program loans, such as Water and Waste Disposal. One commenter explained, ''The lender is making the loans and has credit policies in place to make sound loans. Consulting engineers are licensed, and the projects are regulated by their state and local agencies so additional review by RD is not needed.'' Another commenter said ''that the Agency should provide a waiver of engineering or architectural reports for small equipment type only projects like solar panel installation, waterflow meters, and lift stations'', while another commenter suggested the Agency not require PER reviews for loans under $1 million in size. Some commenters added that PER reviews are a barrier to potential lenders who want to use USDA lending programs.

Agency's Response: The Agency requires project information as part of its application review process; however, it has scaled back the specific information requested and leaves the level of detail required for the planning documents to the lender. Section 5001.305(a) discusses the details that must be included in a lender's engineering documentation. The Agency will, if requested, provide assistance on Agency requirements and regulations but will not provide technical oversight or recommendations. In the event of default, the Agency may review the planning documents as part of the loss claim process. If it is determined that the project was not designed utilizing accepted engineering practices, the loss claim may be reduced.

Subpart E—Loan and Guarantee Provisions

Underwriting

One commenter suggested the Agency consider credit quality of borrowers applying to OneRD, adding that borrowers in high default industries are still being approved by the Agency.

Agency's Response: The Agency resolves these issues by reviewing each application for credit quality and monitoring its loan portfolio to mitigate industry concentrations. It is the intent of OneRD to assist the lender in preparing and the Agency in reviewing all applications based on sound lending practices, even those in high default or risk industries.

Regarding automation and application processing, one commenter suggested that the Agency share underwriting expertise between States to reduce the learning curve for loan specialists in understanding many different industries and business types.

Agency's Response: The commenter's suggestion describes an existing process. Throughout this final rule, we state the responsibilities of State and National Offices. Agency field staff can readily use the National Office for support and analysis of industries unfamiliar to them. OneRD lays out credit evaluation factors for the lender and staff instructions and training will assist the processing staff in evaluating the credit factors and the risk of each credit factor.

One commenter said that the Agency should establish regulatory thresholds for loan reviews based on the funding amount requested, and that small amounts should have less regulatory burden.

Agency's Response: The Agency has considered this comment. The Agency is obligated to continue to review all loans for statutory and regulatory compliance; however, we have streamlined the application process and believe that it will improve the process for all applications, not just small ones.

Capital and Secondary Market Concerns

The Agency received many comments about how capital and secondary market concerns affect the implementation of OneRD. Most comments expressed concern about the Agency's focus on its Community Facilities Direct Loan Program. One commenter said the ''current over-emphasis by USDA on the Community Facilities Direct Loan program has become a very real threat to the continued viability of the Community Facilities Guaranteed Loan program'' and recommended ''strengthening'' the Community Facilities Guaranteed Loan Program to ''increase the participation of the banking industry in these types of loans.''

Agency's Response: The intent of the OneRD Guarantee program is to increase the usage of the Agency's guarantee programs and provide needed capital in rural areas. The new regulation and streamlined application process should encourage more lender participation. With respect to the Community Facilities Direct loan program, the Agency is required by statute to consider the availability of commercial credit at reasonable rates and terms for each direct loan applicant. We routinely review the ''other credit'' requirement with staff and train them on the proper analysis and documentation to support the Agency's decision. The Agency welcomes the participation of lenders to finance community facility projects either with or without a guarantee in conjunction with a direct loan.

One commenter said that for B&I guaranteed loans, stoppage of interest at 90 days dissuades secondary markets from working with lenders and causes reluctance on the part of lenders to work with borrowers on workout agreements; thus, increasing work for USDA.

Agency's Response: The Agency is, under certain circumstances, increasing the 90-day interest termination date to 180-days (see § 5001.450(g)(1) for specific criteria) to allow lenders time for development of a restructuring plan. Lenders would retain the option to repurchase the loan guarantee from a Holder to allow for debt servicing, including restructuring of the loan.

One commenter suggested providing a ''separate section'' in the regulation for loans that involve the capital markets or ''underwritten'' deals. The commenter said that providing a separate section would allow these loans to be made as they always have been made but would also allow borrowers and lenders to ''take advantage of the lower rates and better terms in the capital markets'' accordingly.

Agency's Response: This comment appears to relate to the Biorefinery, Renewable Chemical, and Biobased Product Manufacturing Assistance Program (Section 9003) that was included in this regulation at the time of the listening sessions. Due to significant differences between this program and the CF, WWD, B&I and REAP programs, the Section 9003 program was removed from consideration in this rule. The only other capital markets items in this regulation are for investors in the New

Markets Tax Credit program which has a separate section, § 5001.141, in the OneRD regulation.

One commenter suggested the Agency allow an Assignment Guarantee Agreement to be assigned to a trustee for the benefit of investors. The commenter said this would ''increase participation in guarantee programs and capital markets.''

Agency's Response: The Agency acknowledges this comment for consideration. The Agency must ensure that the Lender or Holder retains ownership of the loan. While Lenders can assign all or part of the guaranteed portion of the loan and Holders can reassign the note in full, this final rule does not allow for further subdivision of the loan. The OneRD regulation removes the limit on the number of promissory notes that may be assigned. The regulation does not limit the number of holder transfers that can occur on the maximum of the five notes, though the Agency must be notified when transferred.

One commenter recommended the Agency rate the secondary market debt and include rating agencies in its analysis discussions to create a global market instead of a local market.

Agency's Response: The secondary market has provided analysis of the commenter's suggestion. The process of rating secondary market debt would be outside of USDA's oversight as we work directly with the Lender making the loan, who then choses to engage or not engage the secondary market.

Subsidy Rates

The Agency received comments about balancing subsidy rates within the OneRD programs. One commenter suggested the Agency balance higher subsidy rates versus lower level of funding, while another commenter said that the subsidy rate factor ''is low and on the decline.''

Agency's Response: Sec. 6418 of the 2018 Farm Bill mandated the Secretary of Agriculture to use lender fees to charge and collect various amounts to bring down the costs of subsidies for guaranteed loans under Section 333 of the CONAct. However, the fees must not act as a bar to participation, nor be inconsistent with current practices in the marketplace. The Secretary was directed to conduct a study of several guaranteed lending programs to determine the appropriate fee structure, as a result. Therefore, this final rule implements the 2018 Farm Bill's requirements regarding guaranteed loan fees.

One commenter asked the Agency to share additional information regarding the program's subsidy rates.

Agency's Response: The Federal Credit Reform Act of 1990 (FCRA) requires agencies to estimate the cost to the government of extending or guaranteeing credit. Agencies generally update—or re-estimate—subsidy costs annually to reflect both actual loan performance and changes in expected future loan performance. More information on this can be found in Part 5 of OMB Circular A–11, ''Preparation, Submission and Execution of the Budget.''

A commenter recommended the Agency consider expressly allowing leverage loans to be made on an interest-only basis for up to 7 years. The commenter's reasoning is that ''such loans could provide for a 'balloon' payment at the end of that period to make up for the amortization that would otherwise have occurred during that period.'' The commenter said that ''assurance that the funds would be available when needed to make that balloon payment could be provided, at least in substantial part, by reserves established at the Project Loan level, or perhaps by other means.'' The commenter added that in some NMTC transactions, ''amortization of leverage loans is accomplished by having another (subordinate) Leverage Lender make advances to the Investment Fund during the compliance period, which the Investment Fund uses to make amortization payments on the primary (senior) leverage loan.'' The commenter reasoned that, in these situations, ''the total amount of debt of the Investment Fund remains constant—the junior leverage loan balance just increases as the senior leverage loan decreases.'' The commenter expressed uncertainty as to whether the solution provided would be reasonable in the case of USDA guaranteed loans, ''partly due to the complication of having subordinated debt, and partly due to the fact that the source of funds is not directly related to the underlying Project Loan or the performance of the underlying project,'' and added that, rather, ''it would depend on the credit evaluation of the junior leverage lender.''

Agency's Response: OneRD includes a provision allowing interest-only payments by a borrower pursuant to an interest-only term not to exceed 7 years on a loan made under a NMTC structure if the lender requires: (1) A debt payment reserve fund or sinking fund in an amount equal to the guaranteed loan's principal amortization that would have otherwise applied to the loan if equally amortized payments were collected during the seven year term, and (2) such reserve funds or sinking funds are applied to the guaranteed loan as an additional payment of principal to the guaranteed loan at the end of the interest-only term.

Funding Availability

The Agency received comments about funding availability and managing community resources.

Some commenters expressed a lack of confidence in terms of program availability, which prevents lenders from committing resources.

Agency's Response: The Agency receives funding through Congressional appropriations, and subsidy rates establish the level of program funding available. Program revenues, delinquency rate, losses, anticipated revenues and other factors affect these subsidy rates. The use of Continuing Resolutions instead of a full fiscal year budget also affects when funds are available to the program areas.

Another commenter suggested increasing flexibility on the ability to shift funding between Rural Development loan programs.

Agency's Response: The ability to transfer funds within a program are established by statute and moving funds from one guaranteed loan program to another program requires statutory authorization and Congressional approval. Therefore, the Agency cannot approve loan program transfers without the requisite authority and congressional approval.

One commenter wanted the Agency to allow the approval and issuance of Conditional Commitments, which would be subject to funding availability to help when funding runs out at the end of the fiscal year and projects are waiting for funding obligations.

Agency's Response: Issuing a Conditional Commitment prior to funding availability is not authorized under law.

A commenter suggested additional guidance for lenders from the Agency regarding funding situations and the scoring model.

Agency's Response: The availability of program funding is communicated to field staff on a weekly basis. Priority scoring is essential to determine worthy projects when programs have limited funding, with projects being funded from the highest to lowest scores using the amount of available funds. State Offices are made aware of this process before enactment.

Loan Threshold

One commenter asked the Agency to consider increasing the current cap of

$25 million on REAP, as it is often too low for larger projects.

Agency's Response: The $25 million cap on REAP is statutory; therefore, the cap cannot be increased by the OneRD final rule.

Subpart F—Servicing Provisions

Loan Note Guarantee Construction

The Agency received comments discussing the effects of OneRD on LNG construction projects.

Some commenters suggested that, for the Community Facilities and Water and Environmental Programs, the Agency follow the B&I guaranteed loan system by issuing the LNG at the closing and signing process or during construction instead of at the end of construction. One commenter said that this would create a ''clearer path for holders if default occurs'' and another commenter said this change would ''help smaller lenders mitigate construction risk.'' Other commenters supported the upfront guarantee for some of OneRD's programs.

Agency's Response: The Agency will provide a consistent approach across all programs under OneRD Guarantee to allow for the issuance of the LNG during construction. As this poses more risk to the Agency, it will be mitigated with additional lender documentation and enhanced lender oversight along with a lower guarantee percent and additional lender fee.

Of the comments the Agency received specifically about LNG fees, most of the commenters asked to lower the fees, or to remove them altogether. One commenter said that the current 3-percent fee is too high and asked the Agency to consider reverting to a 1-percent fee that ''resulted in great impact and turned the economy around.'' A commenter suggested that continuing servicing fees will negatively impact borrowers. Other recommendations included raising fees on the largest RD loans while lowering fees on the smaller sized loans; providing fee waivers for loan guarantees in excess of $5 million that promote fresh fruits and vegetables; and reducing initial and annual fees to match the REAP program, which has an initial fee of 1 percent and annual fees of 0.25 percent, while the B&I program has fees of 3 percent initially and 0.50 percent annually.

Agency's Response: The 2018 Farm Bill requires the Agency to ''charge and collect from the lender fees in such amounts as to bring down the costs of subsidies . . .'' The Agency is reviewing its fee structure for all the programs included in the proposed regulation to ensure it meets the requirements set out by Congress.

A commenter asked if this new rule will look at one overall guarantee fee or if it will still be based on the specific program. Another commenter asked if the Agency puts the model in the calculation, could the public see how these fees are calculated so they can also comment on those calculations.

Agency's Response: Subsidies will still be set individually for each program and are internal operations decisions. Therefore, we are not adding a one-size-fits-all fee structure to this final rule. Federal credit polices stipulate that fees should be set at levels that minimize default and other subsidy costs of the loan guarantee, while supporting achievement of the program's policy objectives.

LNG Validity

One comment suggested providing registration or official Government approval on the LNG to evidence the validity of the document.

Agency's Response: The Agency has a form to address certification of approval—currently Form RD 4279–7, ''Certificate of Incumbency and Signature.'' This form can be requested by the lender or secondary market holder.

Servicing Requirements

One commenter suggested streamlining servicing requirements for loans that are performing.

Agency's Response: OneRD has streamlined servicing requirements to include lender discretion regarding submitting annual financial statements for loans totaling $600,000 or less. Furthermore, frequency of borrower visits is not mandated, but this final rule states ''periodic borrower visits'' are required.

One commenter asked that the Agency provide in the sub-CDE operating agreement that, in all decisions and actions with respect to the servicing and enforcement of the Project Loan, the sub-CDE will do so in compliance with the requirements imposed upon a ''lender'' under the regulations. The commenter reasoned that the leverage lender might also be engaged as the servicing agent for the Project Loan, so that it could be involved in the servicing and enforcement of the Project Loan (although due to limitations under the NMTC program, it would not be permitted to control such matters). According to the commenter, such contractual rights and obligations could provide the basis on which a Leverage Lender could be treated as able to carry out its responsibilities as a ''Lender'' under the Guaranty Program, despite the limitations described above. However, the commenter added that, for any such approach to work, the regulations would need to recognize that responsibilities of the ''Lender'' regarding its ''loan'' can only be carried out indirectly through the sub-CDE.

Agency's Response: This final rule includes a provision that the sub-CDE operating agreement allows the investor fund entity approval rights with respect to certain loan servicing actions undertaken by the sub-CDE in their loan to the QALICB.

The same commenter as above said that, consistent with the ''look-through'' provisions in 7 CFR 4279.126(a), the Agency should base the determination of loss on (1) the amount realized from foreclosure and collection at the Project Loan level and (2) a hypothetical distribution of the proceeds to the Investment Fund and then the leverage lender. The commenter suggested that the guaranty payment would be made to the Leverage Lender based on that determination. The commenter said if this approach is acceptable to USDA, the Agency should clarify the regulations to reflect this.

Agency's Response: A determination of loss is made after liquidation of all assets. The lender must identify the borrower's assets in a liquidation plan, and then account for all liquidation proceeds when requesting payment of a guaranteed loan loss. The asset of an investor fund entity is its ownership interest in the sub-CDE; thus, any proceeds paid to the sub-CDE, including and liquidation of the QALICB assets in a default situation, become assets of the sub-CDE, and should be used to reduce any investment balance owed to the investor fund entity.

The same commenter then said that there is nothing in the regulations that recognizes the forbearance limitations, to which leverage loans are almost universally subject.

Agency's Response: The forbearance agreement is typical of a NMTC transaction and must be considered as a credit factor by the lender. A provision has been added to OneRD that the sub-CDE must include in its operating agreement that the investor fund entity has approval rights to certain loan servicing actions by the sub-CDE lender. The intention of this addition is to allow the guaranteed loan lender the ability to monitor any forbearance or servicing actions by the sub-CDE lender and protect their interests in the project.

Collateral Requirements

The Agency received comments regarding collateral requirement concerns. One commenter said that while Community Facilities loans are the most flexible, B&I's loans are the most restrictive. Another commenter suggested that the Agency adopt FDIC supervisory requirements on collateral value (primarily on real estate) for consistent collateral measurement, while another commenter recommended a similar approach instead of maximum requirements set in B&I regulation, adding that lenders can be more conservative if necessary (*i.e.,* if ''specialized equipment'' is involved.).

Agency's Response: The Agency took the comment under consideration and has changed its collateral discounting procedures. Lenders will discount collateral consistent with sound loan-to-discounted value practices as long as adequate security still exists for the guaranteed loan. Satisfactory justification of the discounts being used must be provided as part of the application package. This change will allow the lender to customize the discount for each loan, which will enhance the customer experience of both the lender and applicant.

One commenter suggested that if the non-guaranteed portion of the loan is more than the required 5-percent Lender of Record hold, that portion should have additional or separate credit enhancements, such as a Letter of Credit, another guarantee, or collateral. The commenter added that this would allow smaller and more rural bank lenders to participate in larger loans in their communities and the non-guaranteed portion of the loan can be more easily be sold, traded, or held in the secondary capital markets.

Agency's Response: The Agency partially agrees. Currently, lenders can assign the loan guarantee to other parties and may participate the unguaranteed portion of the loan to other lenders or entities, so long as the lender of record retains a minimum of 5 percent of the loan amount. This will continue under the OneRD regulation except that the minimum amount retained by the lender is raised to 7.5 percent of the loan amount. To the commenter's request that separate credit enhancement be allowed on non-guaranteed loan portions over the minimum retention amount, the Agency specifically prohibits separate collateral for the guaranteed and unguaranteed portions of the guaranteed loan or requiring compensating balances or certificates of deposit as that reduces or possibly eliminates the lender's exposure on the unguaranteed portion of the guaranteed loan.

General OneRD Comments

New Online System

Many commenters suggested the Agency create more online application resources and recommended that Rural Development keep up with the technological advances and industry software that is available on the market for the financial service industry. One commenter specified using ''a program similar to Farmer Mac's online application process, the Mortgagebot program, software solutions used by Moody Analytics and Wolters Kluwer, the Finastra program.'' Furthermore, commenters said there should be an online application system that would ''streamline loan making process, reduce approval time, and save time and money for lenders and RD.'' Some commenters requested the Agency use a secure, encrypted, cloud-based system to upload documents for the application. One commenter, a lender, asked for ''electronic signatures'' to add to security.

Agency's Response: We agree that our application process should be modernized, and that this modernization will save time and money for both the lender and the Agency. With this final rule, the Agency is developing an online application system—one system for all four programs included in the OneRD Guaranteed Loan regulation. The system will automate the application, obligation, loan closing, and servicing of the guarantee process. The system is being designed to improve the Lender experience by addressing concerns related to efficiency, transparency, and consistency that exist in the guarantee programs today. The new online platform will be used by all Rural Development offices that process guarantee loan applications under this final rule establishing the OneRD Guaranteed Loan program. This will save time and money for both the lender and the Agency as noted in the commenter's remarks.

Additionally, the Agency is engaged in evaluating online platforms to address the needs of the guarantee program requirements. The Agency acknowledges remarks regarding ease of uploading, network support, and bandwidth. These factors are being considered in the online solution.

We acknowledge the request to allow the online system to be accessible to multiple people within the lender's organization. The system will be designed with this feature while still maintaining the necessary security and integrity of the system.

The new online application system will have a system that automates the application process, including the ability to upload supporting application documents into a secure shared system, acknowledging commenters who suggested a cloud-based system. The online platform will have a secure and accessible storage system that will be used by all lenders and Rural Development processing offices. Application forms will be designed to work across all four programs associated with the OneRD Guarantee Loan program and will be generated through the online system. This method should address the commenter's request for a format that is flexible and specific to the project. Only information relevant for the application will be entered by the lender.

Rural Development will accept electronic signatures when a wet signature is not required. At any time during the online application process, the lender will have access to a Rural Development local representative to assist them. It is not the intent of the online application system to replace one-on-one contact between Rural Development and its customers, but for that contact to be about more substantive issues.

Regarding communication with applicants, one commenter suggested the Agency provide a verbal confirmation of eligibility. Another commenter inquired about a notice of interest determination letter.

Agency's Response: The Agency's new online application system will allow the lender to view applications in process and track their status. The system will automatically notify the lender when the Agency reaches a key decision point (*i.e.,* application is complete, application is approved, etc.). The system will also generate correspondence documents to the lender including an interest determination letter, also known as a preliminary review letter.

Three commenters discussed the need to improve information on the USDA website regarding guaranteed loan programs under OneRD. Two commenters suggested revising, updating, and streamlining the USDA website to improve information about lending requirements across all programs. The third comment recommended adding a ''chat'' feature to quickly assist site visitors.

Agency's Response: The OneRD project includes development of a new online portal for lenders to input loan application information and service

their guaranteed loans. In addition, borrowers may use the website to research available programs, but they will not be allowed to upload an application because the lenders are the Rural Development customer for purposes of Guarantee programs. The application process will guide lenders to what information is required for their specific project, allow them to upload information, and information will also be uploaded to the Rural Development legacy systems to ensure consistency of the information.

At this time, we are not considering adding a ''chat'' feature due to the implementation and operating costs of that feature. However, phone numbers for offices in the project state will be readily available to the user. The application portal will also have a link to the guaranteed loan regulations located in 7 CFR part 5001.

Some comments were directed toward the current RDApply online application system for the Water and Environmental program. Some suggestions included improving the online application process to remove the burden of paperwork and uploading documents. Others recommended posting USDA deadlines and status updates for application processing within RDApply and offering direct contact with a representative.

Agency's Response: These comments referring to the current RDApply online application system currently used by the Water and Environmental Programs were considered as the Agency identifies system requirements for the OneRD Guarantee online application system. The OneRD Guarantee online application system will be developed specifically for lenders making application for a OneRD guarantee loan request. This new online application system will allow the lender to view applications in process and track their status. In addition, the system will automatically notify the lender when the Agency reaches a key decision point (*i.e.,* application is complete, application is approved, etc.). The online system is accessible to multiple people within the lender's organization but maintains the necessary security and integrity of the system.

As stated earlier, at any time during the online application process, the lender will have access to an RD local representative to assist them. Again, we note that it is not the intent of the online application system to replace one-on-one contact between RD and its customers.

The Agency received comments asking the Agency to develop a decision tree to assist customers to determine whether to pursue a loan guarantee or a direct loan. One commenter added that the decision tree should require RUS to ''encourage private or cooperative lenders to finance rural and waste disposal facilities'' based on the Consolidated Farm and Rural Development Act (CONAct) requirement from the 2014 Farm Bill.

Agency's Response: The Agency understands the commenters' concern to provide the applicant with program eligibility criteria early in the application stage. The Agency understands the second commenter's concern to adhere to the CONAct requirements as well. While we support the development of a decision tree as suggested, this tool would be better utilized in an online application format for the Community Facilities and Water and Environmental direct loan programs.

The Agency received comments that suggested we follow the Small Business Administration's (SBA) ''10-tab system'' to process loans more efficiently. Generally, commenters wanted faster decisions on loans and clear and timely communication.

Agency's Response: As stated earlier, the Agency engaged the services of a contractor to assist in evaluating online platforms to address the needs of the guarantee program requirements. The Agency's new online application system will improve the lender experience by addressing concerns related to efficiency, transparency, and consistency that exist in the guarantee programs today. The Agency evaluated the SBA system in the development of the new online system.

Some commenters expressed concern about rural access to high-speed, broadband internet, which may hinder access to OneRD's new online application system.

Agency's Response: While the regulation requires the use of an online application system, the Agency is aware that not all lenders will have the capacity to use an online application system and will allow, on a case-by-case basis, the submission of paper application packages.

One commenter said that not all States accept electronic forms, which would be an issue when uploading documents for the OneRD online application.

Agency's Response: The Agency's proposed online application system will be used by all Rural Development offices that process guarantee loan applications under this final rule.

Uniformity of New System and Streamlined Processes

The Agency received comments regarding concerns about transparency and complications and inconsistencies during loan processing and approval. Some of the commenters expressed concern that ease and speed of processing differs between State Offices and when applicants use more than one RD loan program. One commenter suggested the Agency develop a standardized closing process checklist to outline all requirements to issue an LNG and solve this issue.

Agency's Response: In addition to addressing concerns related to efficiency, transparency, and consistency that exist in the guarantee programs today, Rural Development has established common processing timeframes. Staff training will be a significant part of the OneRD roll out process and consistency will be a common message. The Agency will create and provide checklists to field staff to ensure a consistent process across states. The implementation of an on-line application portal will also improve consistency between offices.

Rural Development acknowledges the third commenter's concern that the Agency not re-underwrite the lender's package. It is the intent of OneRD Guarantee that the Agency apply a consistent approach to the review of the lender's guarantee request to determine the funding recommendation made by the lender is acceptable and meets the regulations based on the lender's credit evaluation. The Agency will further train staff to address this issue.

The Agency acknowledges remarks about general inconsistencies as well and will consider what internal communication methods it should use in the future to support the OneRD Guarantee program, so all processing offices hear a consistent message from each OneRD Guarantee program area.

One commenter suggested the Agency streamline or simplify the draw process, which appears to be a comment on the Water and Waste Disposal direct loan program.

Agency Response: For guarantee loans, the Agency should be minimally involved with construction draws. There are additional requirements for draws during the construction phase if the loan note guarantee is issued prior to the completion of construction and if a project combines Agency direct and guarantee funding, the more stringent direct requirements will prevail.

The Agency received additional comments asking to streamline the application process so that it is easier

and faster to close loans. Some commenters cited removing the PER requirement again, while others asked for a more ''clear and concise'' application. One commenter suggested that a ''brief project description and budget should be sufficient for guaranteed program.'' Another commenter added that ''additional items needed for individual States should be included as part of the Conditional Commitment items needed prior to issuing the Loan Note Guarantee (LNG).'' One comment said that the ''10-day response time for application process should be shortened.''

Agency's Response: As part of the initial rollout of the proposed regulation, the Agency is implementing a completely new application intake system. The new system will allow us to monitor closely application submission and processing times and provide consistent application package content across offices and programs. The proposed intake system will also provide full service for lenders, negating the requirement to log into different systems for different aspects of the guarantee. See Agency response on PERs under subpart D. In addition, the proposed regulation has pared down the requirements of an application package to program determined essentials. Ultimately, the proposed changes will streamline the application process.

One commenter recommended that the Agency use Regional Coordinators to handle concerns with processing and help lenders navigate the process to ensure a quick turnaround. The commenter's concern stems from projects in some states that ''are not processed quickly'' and ''if regional coordinators could serve as mediators for lenders, the process would flow more smoothly.''

Agency's Response: The Agency has considered this comment. Unfortunately, this is an internal operations item and cannot be addressed through regulatory means.

One commenter asked if the OneRD Guaranteed Loan processing time will be as lengthy as it has been in the past.

Agency's Response: OneRD's goal is to streamline the application, processing, and servicing requirements for all loan programs within OneRD, and ultimately provide consistency among Rural Development guaranteed loan programs. The electronic system the Agency is developing will increase efficiencies for customers as well as Agency staff.

Transparency

One commenter recommended the Agency improve communication throughout the application process so that information can be passed to borrowers. Another commenter wanted the Agency to increase transparency during the approval process. A third commenter suggested improving the speed of the approval process across all programs to enhance transparency.

Agency's Response: The Agency agrees. Staff training will emphasize continuing lender communication. The proposed electronic application process will improve communication with the lender and navigation of the Agency's approval process.

OneRD's Scope—Inclusion of Other Programs

One commenter suggested the Agency include telecom (Telecommunications Infrastructure Loan Program) and electric (Electric Infrastructure Loan Program) as ''rural utilities.''

Agency's Response: RD chose the programs included in this rule based on the commonalities in their current statutory authorization and regulatory implementation. The Agency may add other programs in the future.

Rulemaking Process

The Agency received comments about its rulemaking process. Most of the commenters were concerned about the public's ability to provide input regarding this final rule, suggesting that the Agency publish a proposed or interim rule instead of this final rule. Others suggested providing more opportunities for the public, specifically lenders, to engage with the Agency before publishing this final rule. One commenter was concerned that the Office of General Counsel (OGC) had not yet approved the OneRD program and this final rule.

Agency's Response: The Agency decided to publish OneRD Guarantee as a final rule with comment. The Agency published a notice in the **Federal Register** on September 5, 2018 (83 FR 45091) announcing five listening sessions to be held with stakeholders in month of September 2018. The purpose of the listening session was to gather public input on how to simplify, improve, and enhance the delivery of our guarantee programs. The Agency recorded all listening session comments. Stakeholders were also given the opportunity to submit comments to an email box. All comments have been reviewed and were taken into consideration as this final rule was being drafted. This final rule is being published in the **Federal Register** with a 60-day comment period. During this period, the public can view the entire final rule and provide comment. All comments will be addressed and, if warranted, will result in modifications to this final rule prior to its effective date. This method of publishing a final rule with comments will help realize the benefits of a consolidated regulation quicker than would be achieved by first publishing a proposed rule. In addition, this final rule followed the Agency's clearance process, which included OGC review.

OneRD Marketing and Training

The Agency received comments requesting training programs regarding loan guarantees and additional guidance for offices and lenders for the various programs under OneRD.

Most commenters asked for lender training and coordination with State Offices. The commenters also suggested that the Agency should continue to strengthen the RD programs under OneRD.

Agency's Response: The Agency agrees and has addressed these concerns along with this final rule. The Agency will be holding training sessions with RD staff prior to the effective date. Training needs will continue to be assessed after the OneRD Guarantee final rule is in effect. The regulation process includes training of not only the Agency's area and State Offices but also lenders. Implementing an online application and processing system should help alleviate inconsistencies that exist in the program today. We are confident that, with the publication of this final rule, new coordination amongst programs will occur as well.

Program Launch and Delivery

Some comments discussed the accessibility and rollout of the OneRD program. Most commenters suggested that the Agency avoid creating a more centralized regional office model. Commenters added that, while it may be cost effective to regionalize offices, keeping State Offices in place helps to maintain efficiency. One commenter suggested support for state-level staff involvement. Other commenters suggested that the Agency add more staff and training in certain industries to assist staff in other states who have never processed certain types of loans. However, two commenters did recommend decentralizing offices.

Agency's Response: The Agency is looking at all possible options on how best to deliver all programs. We note that the regulation process includes training of not only the Agency's area and State Offices but also lenders.

One commenter said that a lack of responsiveness is burdensome to the Agency's current processes, resulting in

a lack of a uniform interpretation of OneRD.

Agency's Response: The Agency appreciates the comment provided. While the new regulation will outline items to be reviewed, the level of risk associated with individual loans will always vary to the point that some require much more review than others do. The Agency will be providing training to the staff administering the programs and will emphasize the importance of thorough review of the lender's underwriting.

One commenter supported the concept of repackaging current Water and Waste Disposal Direct Loans and converting those loans to guaranteed loans.

Agency's Response: This final rule will provide one platform across the main Rural Development guarantee programs. We expect that this will increase usage of all the programs by providing a common application and processing base. The Agency cannot repackage existing direct WWD loans and convert them to guaranteed loans at this time; however, direct loan borrowers are required to pursue ''graduation'' to commercial credit when it appears they are able. Refinancing direct Agency WWD loans is an eligible loan purpose under the guarantee program and borrowers are encouraged to take advantage of that provision.

Mission

There were two comments regarding OneRD's mission. One commenter said that the mission should be to provide capital to rural America.

Agency's Response: Under this final rule, OneRD works to provide easier, customer-friendly access and increase lender participation, which will lead to greater access to capital in rural America.

Difference Between Statutory vs. Regulatory Requirements

One commenter asked for clarifications as to the difference between what is considered statutory and what is considered regulatory.

Agency's Response: Statutory requirements are those passed by Congress for each program, while the Agency writes regulations to interpret statutes and provide additional details for program delivery.

Out of Scope

The Agency received some comments that we cannot address with this final rule because they are outside the scope of this final rule, but we have considered them. Some commenters asked questions regarding the direct loan programs, such as the possibility of a graduation or income requirement for direct loans.

Agency's Response: Direct loan programs, graduation requirements, and income data sources for determining loan/grant eligibility of the direct loan program are not within the scope of this final rule.

One commenter inquired about a separate bank account requirement.

Agency's Response: The comment is related to the Community Facilities Direct loan program and is not within the scope of this final rule.

A commenter suggested that the Agency does not need a loan program. Instead, banks should issue the loans operated by USDA.

Agency's Response: The OneRD Guarantee Loan program addresses bank loans guaranteed by USDA and does not change how loans are distributed.

Finally, a commenter asked about OneRD's impact on lenders.

Agency's Response: At the time of comment, the regulation had not been released, so no ''unintended consequences'' had been identified. While the Agency does not believe there will be any unintended consequences, we do believe there will be many benefits for lenders to having a consolidated regulation. This rule will provide a ''one stop'' shop for everything from eligibility to loss claims in any of the four programs. OneRD will provide clarity on what are the common requirements and what is needed for only a specific program, this should make it easier to apply for a guarantee. While the four guaranteed programs will remain independent, since they will share a common platform, it will allow lenders to move more easily from program to program and expand their lending into other programs.

While the rule provides guidance, it moves, in many areas, from dictating form and lender procedures to relying on lender specific and industry standard lending policies and practices, which allows the lender to spend less time on form and more time on the details of loan making. The regulation clarifies Agency requirements, such as when appraisals or feasibility studies are required, which reduces the time lenders must spend determining applicability or worse, revising or completely redoing a document that was completed incorrectly.

Most of all, the rule provides, where allowable, consistency between the four programs. This allows the Agency to provide a more consistent experience for lenders and borrower saving everyone time and frustration.

VI. Regulatory Impact Analysis

A. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches to maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866. In accordance with Executive Order 12866, the Agency conducted a Regulatory Impact Analysis, outlining the costs and benefits of implementing this program in rural America. The complete analysis is available in Docket No. RUS–19–Agency–0030. This analysis consists of a statement of need for a unified Rural Development (RD) guaranteed loan program, a baseline description of the current status of the four guaranteed loan programs administered by RD that are being consolidated under the unified RD guaranteed loan program, a summary of the provisions of the unified guaranteed loan program and alternative approaches that were considered, a list of the affected parties, and an analysis of the benefits and costs.

Much of the analysis is necessarily descriptive of the anticipated effects of this final rule. Benefits are described qualitatively, with some indication of the relative potential size. Most of the costs are quantified. Consequently, the analysis does not provide the exact magnitude of the resulting benefits and costs. Despite this, RD expects this final rule will provide cost savings and net benefits compared to the current situation by improved program and Agency management of the risks associated with the guaranteed loans that will be made under the unified guaranteed loan program.

B. Unfunded Mandates Reform Act

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

C. Environmental Impact Statement

This final rule has been reviewed in accordance with 7 CFR part 1970 ''Environmental Program.'' Rural Development has determined that this action was analyzed and meets the criteria established in 7 CFR 1970.53(f) and does not have any extraordinary circumstances and the action does not have a significant effect on the human environment, and therefore neither an Environmental Assessment nor an Environmental Impact Statement is required.

D. Executive Order 12988, Civil Justice Reform

This final rule has been reviewed under Executive Order 12988 (Civil Justice Reform). The Agency has determined that this rule meets the applicable standards provided in section 3 of the Executive order. In addition, all State and local laws and regulations that conflict with this rule will be preempted. No retroactive effect will be given to this rule.

E. Executive Order 13132, Federalism

The policies contained in this final rule do not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

F. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (5 U.S.C. 601–602) (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act (''APA'') or any other statute. This rule, however, is not subject to the APA under 5 U.S.C. 553(a)(2) and 5 U.S.C. 553(b)(3)(A) nor any other statue.

G. Executive Order 12372, Intergovernmental Consultation

This final rule is excluded from the scope of Executive Order 12372 (Intergovernmental Consultation), which may require a consultation with State and local officials. See the final rule related notice entitled, ''Department Programs and Activities Excluded from Executive Order 12372'' (50 FR 47034).

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

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

The USDA's Office of Tribal Relations (OTR) has assessed the impact of this rule on Indian tribes and concluded that this rule 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. OTR has determined that tribal consultation under E.O. 13175 is not required at this time.

If consultation is requested, OTR will work with the RD to ensure quality consultation is provided.

I. Programs Affected

The Catalog of Federal Domestic Assistance (CFDA) numbers assigned to this program are CFDA 10.760, Water and Waste Disposal Systems for Rural Communities; CFDA 10.766, Community Facilities Loans and Grants; 10.768, Business and Industry Loans; and CFDA 10.775, Renewable Energy Systems and Energy Efficiency Improvements Program.

J. Catalog of Federal Domestic Assistance

The CFDA numbers assigned to the 4 programs within this rule are: 10.766 for Community Facility Programs, 10.760 for Water and Waste Disposal Programs, 10.768 for Business and Industry Programs and 10.868 for Rural Energy for America Program. The Catalog is available on the internet at *https://beta.sam.gov.* The *SAM.gov* website also contains a PDF file version of the Catalog that, when printed, has the same layout as the printed document that the Government Publishing Office (GPO) provides. GPO prints and sells the CFDA to interested buyers. For information about purchasing the Catalog of Federal Domestic Assistance from GPO, call the Superintendent of Documents at 202–512–1800 or toll free at 866–512–1800, or access GPO's online bookstore at *http://bookstore.gpo.gov.*

K. Paperwork Reduction Act and Recordkeeping Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), RD invites comments on this information collection for which approval from the Office of Management and Budget (OMB) will be requested. These requirements have been approved by emergency clearance under OMB Control Number 0572–0155. Upon approval of this new final rule information collection package, RD will discontinue the following information collection packages: Community Facility Program (OMB No. 0570–0137), Water and Waste Disposal Program (OMB No. 0570–0122), Business and Industry Program, (OMB No. 0570–0069), and Renewable Energy Systems and Energy Efficiency Improvements Program, (OMB No. 0570–0067).

Comments must be received by September 14, 2020.

Comments are invited on (a) whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of burden including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques on other forms of information technology.

Title: 7 CFR 5001, OneRD Guarantee Loan Program.

OMB Control Number: 0572–0155.

Abstract: Rural Development is implementing a new consolidated guaranteed loan platform. The new guaranteed loan platform would combine the following four existing guaranteed loan regulations into a consolidated rule: (1) The Community Facility Program, (2) the Water and Waste Disposal Program, (3) the Business and Industry Program, and (4) the Renewable Energy Systems and Energy Efficiency Improvements Program under Title IX, Section 9006 of the Farm Security and Rural Investment Act of 2002 (FSRIA 2002). These programs provide loan guarantees for a

variety of projects intended to improve the economies of rural America.

The information required under this final rule is similar to much of the information currently being required under the four separate regulations. Under those four separate regulations, the current information being collected is approved under OMB control numbers 0570–0067, 0570–0069, 0572–0122, and 0575–0137. The final rule, however, requests some new information from lenders. The two primary examples are: (1) Lenders are required to supply information to Rural Development to be approved for participation in the program, and (2) lenders are required to more frequently report loans that are in default. On the other hand, the final rule does not include certain information previously requested. This is most evident for the Renewable Energy Systems and Energy Efficiency Improvements guaranteed loan program, where, under the final rule, technical reports are required only for higher cost renewable energy systems projects. This is because renewable energy projects of less than $200,000 are less complex, so the technical reports for these projects have only marginal value, and the energy audit requirements from energy efficiency improvement projects are sufficient so that separate technical reports also have only marginal value. The final rule creates a single set of common forms that lenders can use across all four programs, thereby creating efficiencies in reporting. On balance, the information requested to support the consolidated program is estimated to reduce burden and cost to lenders and borrowers compared to the information requested to support all four individual guaranteed loan programs combined.

As noted in the preceding paragraph, the information requirements contained in this final rule require information from lenders and borrowers. Rural Development requires this information to make prudent lending decisions regarding the eligibility of projects, borrowers, and lenders, to reduce the risks associated with making loan guarantees, to ensure compliance with the final rule and relevant statutory requirements, to ensure that the funds obtained from the Federal Government are used appropriately, and to effectively monitor the borrowers and lenders to protect the financial interests of the Federal Government. In summation, this collection of information is necessary to implement the consolidated guaranteed loan provisions in this final rule.

The following estimates are based on the average over the first 3 years the program is in place.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 3.42 hours per response.

Respondents: Rural developers, farmers and ranchers, rural businesses, public bodies, local governments, lenders.

Estimated Number of Respondents: 740.

Estimated Number of Responses per Respondent: 17.

Estimated Number of Responses: 12,380.

Estimated Total Annual Burden (hours) on Respondents: 50,242.

Copies of this information collection may be obtained from Thomas P. Dickson, Regulatory Division Team 2, Rural Development Innovation Center, U.S. Department of Agriculture, 1400 Independence Ave. SW, Stop 1522, Washington, DC 20250; telephone, 202–690–4492; email, *Thomas.dickson@usda.gov.*

All responses to this information collection and recordkeeping notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

L. E-Government Act Compliance

Rural Development is committed to complying with the E-Government Act of 2002, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

M. Civil Rights Impact Analysis

Rural Development has reviewed this final rule in accordance with USDA Regulation 4300–4, Civil Rights Impact Analysis,'' to identify any major civil rights impacts this final rule might have on program participants on the basis of age, race, color, national origin, sex or disability. After review and analysis of this final rule and available data, it has been determined that based on the analysis of the program purpose, application submission and eligibility criteria, issuance of this final rule will not likely adversely nor disproportionately impact very low, low and moderate-income populations, minority populations, women, Indian tribes, or persons with disability, by virtue of their race, color, national origin, sex, age, disability, or marital or familial status.

List of Subjects

7 CFR Part 1779

Loan programs, Waste treatment and disposal, Water supply.

7 CFR Part 3575

Loan programs-agriculture.

7 CFR Part 4279

Loan programs-business, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 4287

Loan programs-business, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 5001

Business and industry, Community facility, Energy efficiency improvement, Loan programs, Renewable energy, Rural areas, Rural development, Water and waste disposal.

For the reasons set forth in the preamble, under the authority at 5 U.S.C. 301 and 7 U.S.C. 1989, Chapters XVII, XXXV, and XLII of title 7 of the Code of Federal Regulations are amended and Chapter L is established as follows:

Chapter XVII—Rural Utilities Service, Department of Agriculture

PART 1779—[REMOVED AND RESERVED]

■ 1. Under the authority of 5 U.S.C. 301 and 7 U.S.C. 1989, remove and reserve part 1779, consisting of §§ 1779.1 through 1779.100.

Chapter XXXV—Rural Housing Service, Department of Agriculture

PART 3575—[REMOVED AND RESERVED]

■ 2. Under the authority of 5 U.S.C. 301 and 7 U.S.C. 1989, remove and reserve part 3575, consisting of §§ 3575.1 through 3575.100.

CHAPTER XLII—Rural Business—Cooperative Service and Rural Utilities Service, Department of Agriculture

PART 4279—GUARANTEED LOANMAKING

■ 3. The authority citation for part 4279 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

Subpart A—[Removed and Reserved]

■ 4. Remove and reserve subpart A, consisting of §§ 4279.1 through 4279.100.

Subpart B—[Removed and Reserved]

■ 5. Remove and reserve subpart B, consisting of §§ 4279.101 through 4279.200.

PART 4287—SERVICING

■ 6. The authority citation for part 4287 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1932(a); 7 U.S.C. 1989.

Subpart B—[Removed and Reserved]

■ 7. Remove and reserve subpart B, consisting of §§ 4287.101 through 4287.200.

PART 5001—GUARANTEED LOANS

■ 8. Add chapter L, consisting of part 5001 to subtitle B, to read as follows:

Chapter L—Rural Business—Cooperative Service, Rural Housing Service, and Rural Utilities Service, Department of Agriculture

PART 5001—GUARANTEED LOANS

Subpart A—General Provisions

Sec.
5001.1 General.
5001.2 Structure.
5001.3 Definitions.
5001.4 Exception authority.
5001.5 Appeal and review rights.
5001.6 General Lender responsibilities.
5001.7 Agency's special initiatives.
5001.8 Approvals, regulations, and forms.
5001.9 Standards for financial information.
5001.10 Federal Register notices and amendments.
5001.11–5001.99 [Reserved]
5001.100 OMB control number.

Subpart B—Eligibility Provisions

5001.101 Introduction.
5001.102 Project eligibility—general.
5001.103 Eligible CF projects and requirements.
5001.104 Eligible WWD projects and requirements.
5001.105 Eligible B&I projects and requirements.
5001.106 Eligible REAP—Renewable Energy System (RES) projects and requirements.
5001.107 Eligible REAP—Energy Efficiency Improvement (EEI) projects and requirements.
5001.108 Eligible REAP—Energy Efficient Equipment and Systems (EEE) projects and requirements.
5001.109–5001.114 [Reserved]
5001.115 Ineligible projects—general.
5001.116 Ineligible CF projects.
5001.117 Ineligible WWD projects.
5001.118 Ineligible B&I projects.
5001.119 Ineligible REAP projects.
5001.120 [Reserved]
5001.121 Eligible uses of loan funds.
5001.122 Ineligible uses of loan funds.
5001.123–5001.125 [Reserved]
5001.126 Borrower eligibility.
5001.127 Borrower ineligibility conditions.
5001.128–5001.129 [Reserved]
5001.130 Lender eligibility requirements.
5001.131 Lender's agreement.
5001.132 Maintenance of approved lender status.
5001.133–5001.139 [Reserved]
5001.140 Cooperative stock/cooperative equity.
5001.141 New Markets Tax Credit.
5001.142–5001.200 [Reserved]

Subpart C—Origination Provisions

5001.201 General origination requirements.
5001.202 Lender's credit evaluation.
5001.203 Appraisals.
5001.204 Personal, partnership, and corporate guarantees.
5001.205 General project monitoring requirements.
5001.206 Compliance with USDA Departmental Regulations, Policies, and other Federal laws.
5001.207 Environmental responsibilities.
5001.208 Conflicts of interest.
5001.209–5001.300 [Reserved]

Subpart D—Guarantee Application Provisions

5001.301 Beginning the application process.
5001.302 Preliminary eligibility review.
5001.303 Applications for loan guarantee.
5001.304 Specific application requirements for CF projects.
5001.305 Specific application requirements for WWD projects.
5001.306 Specific application requirements for B&I projects.
5001.307 Specific application requirements for REAP projects.
5001.308–5001.314 [Reserved]
5001.315 Application evaluation and award provisions.
5001.316 CF project priority point system and reservation of funds.
5001.317 WWD project priority points system.
5001.318 B&I project priority points system.
5001.319 REAP project priority points system.
5001.320–5001.400 [Reserved]
Appendix A to Subpart D of Part 5001—Feasibility Study Components
Appendix B to Subpart D of Part 5001–Financial Feasibility Reports
Appendix C to Subpart D of Part 5001—Technical Reports for Energy Efficiency Improvement (EEI) Projects with Total Project Costs of more than $80,000
Appendix D to Subpart D of Part 5001—Technical Reports for Renewable Energy System (RES) Projects with Total Project Costs of Less Than $200,000 but More Than $80,000
Appendix E to Subpart D of Part 5001—Technical Reports for Renewable Energy System (RES) Projects with Total Project Costs of $200,000 and Greater

Subpart E—Loan and Guarantee Provisions

Loan Provisions

5001.401 Interest rate provisions.
5001.402 Term length, loan schedule, repayment.
5001.403 Lender fees.
5001.404–5001.405 [Reserved]
5001.406 Guaranteed loan amounts.
5001.407 Percent of guarantee.
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5001.409–5001.449 [Reserved]

Guarantee Provisions

5001.450 General.
5001.451 Conditional commitment.
5001.452 Loan closing and conditions precedent to issuance of loan note guarantee.
5001.453 Issuance of the loan note guarantee.
5001.454 Guarantee fee.
5001.455 Periodic guarantee retention fee.
5001.456 Other fees.
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Authority: 5 U.S.C. 301; 7 U.S.C. 1926(a); 7 U.S.C. 1932(a); and 7 U.S.C. 8107.

Subpart A—General Provisions

§ 5001.1 General.

(a) This part contains the regulations for Community Facilities, Water and Waste Disposal, Business and Industry, and Rural Energy for America Program loans guaranteed by the Agency and applies to lenders, holders, borrowers, and other parties involved in making, guaranteeing, holding, servicing, and liquidating such loans. The loan guarantee programs covered by this regulation are more fully described as:

(1) Community Programs Guaranteed Loans (5 U.S.C. 301 and 7 U.S.C. 1989) as authorized by Section 306(a)(1) of the

Consolidated Farm and Rural Development Act, 7 U.S.C. 1926(a)(1), as administered by the Rural Housing Service (RHS), herein after referred to as CF.

(2) Water and Waste Disposal Program Guaranteed Loans (5 U.S.C. 301, 7 U.S.C. 1989, and 16 U.S.C. 1005) as authorized by Section 306(a)(1) of the Consolidated Farm and Rural Development Act, 7 U.S.C. 1926(a)(1), as administered by the Rural Utilities Service (RUS), herein after referred to as WWD.

(3) Business and Industry Guaranteed Loans (7 U.S.C. 1932) as authorized by Section 310B, Business and Industry Direct and Guaranteed Loans, of the Consolidated Farm and Rural Development Act, 7 U.S.C. 1932, as administered by the Rural Business-Cooperative Service (RBCS), herein after referred to as B&I.

(4) Rural Energy for America Program Guaranteed Loans (5 U.S.C. 301, and 7 U.S.C. 8107) as authorized by Section 9007, Title IX of the Food, Conservation, and Energy Act of 2008, as administered by the Rural Business-Cooperative Service (RBCS), herein after referred to as REAP.

(b) The applicability of the provision of this part for processing and approving applications and for servicing guaranteed loans depend on when a complete application is received. The Agency will process and approve applications, and service guaranteed loans according to the provisions of this part for all complete guaranteed loan applications that it receives on or after October 1, 2020, including guaranteed loan applications submitted under any of the programs whose authorization is identified in this section. All complete Applications received before October 1, 2020 will be processed and awarded and guaranteed loans serviced in accordance with the existing regulatory provisions in effect at the complete application date for the program under which the Application was submitted.

§ 5001.2 Structure.

This part is divided into six subparts as described in paragraphs (a) through (f) of this section. The provisions are applicable to each guaranteed loan made under this part, except as may be otherwise indicated. This part also contains several appendices as identified in paragraph (g) of this section.

(a) *Subpart A.* Subpart A contains provisions that are applicable to each guaranteed loan made under this part, except as may be otherwise indicated. Topics covered include definitions; exception authority; appeal and review rights; general lender responsibilities; special initiatives; approvals, regulations, and forms; and standards for financial information.

(b) *Subpart B.* This subpart contains provisions for determining project, borrower, and lender eligibility that are applicable to each guaranteed loan made under this part. It also contains a list of eligible and ineligible uses of loan funds, ineligible Projects and conditions that would make an otherwise eligible borrower ineligible. The lender's agreement is addressed as well as maintenance of approved lender status.

(c) *Subpart C.* This subpart contains provisions for general origination requirements, credit evaluation, appraisals, various types of guarantees, monitoring requirements, compliance with other laws, environmental responsibilities, and conflicts of interest that are applicable to each guaranteed loan made under this part.

(d) *Subpart D.* This subpart contains provisions relating to applications for a Loan Guarantee under this part, including preliminary eligibility reviews, the application process, Application evaluation, and the application award processes that are applicable to each Guaranteed Loan made under this part.

(e) *Subpart E.* This subpart contains loan and guarantee provisions that are applicable to each guaranteed loan made under this part. Loan provisions cover interest rates, term length, loan schedule, repayment, lender fees, loan amounts, percentage of guarantee, and sale or assignment of a guaranteed loan. Guarantee provisions cover the conditional commitment, conditions precedent to issuing the loan note guarantee, the issuance of the loan note guarantee, guarantee and other fees, replacement of documents, borrower reorganizations, and other legal requirements.

(f) *Subpart F.* This subpart applies to provisions for servicing the loans guaranteed under this part, including oversight, monitoring and reporting requirements and project completion requirements that are applicable to each guaranteed loan made under this part, except as may be otherwise indicated. Servicing topics covered include audits and financial reports; collateral; loan transfers and assumptions; lender transfers; mergers; servicing fees; subordinations of lien position; repurchases; additional expenditures and loans; interest rate changes; lender failures; borrower defaults; protective advances; liquidation; bankruptcy; litigation; loss calculations and payments; future recovery; property acquired by the lender; and termination of the loan note guarantee.

(g) *Appendices.* These appendices provide specific information on various reports associated with applying for a loan guarantee under this part.

§ 5001.3 Definitions.

The following definitions are applicable to the capitalized terms used in this part.

Administrator means the Administrator of the Rural Housing Service, the Rural Utilities Service, or the Rural Business-Cooperative Service (or the applicable Service's successor), as applicable, within the Rural Development mission area of the U.S. Department of Agriculture (USDA).

Affiliates means persons who control or have the power to control another entity, or a third party or parties that control or have the power to control both.

Agency means USDA Rural Development, which includes the Rural Housing Service; the Rural Utilities Service; and the Rural Business-Cooperative Service or their successors.

Agricultural producer means a person, including non-profits, directly engaged in the production of agricultural products through labor management and operations, including the cultivating, growing, and harvesting plants and crops (including farming); breeding, raising, feeding, or housing of livestock (including ranching); forestry products; hydroponics; nursery stock; or aquaculture, whereby 50 percent or greater of their gross income is derived from the operations. The percentage is calculated as the average of gross agricultural operations income of the concern divided by the gross non-farm income of the concern for the five most recent years. If the concern has been operation for less than 60 months but for at least 12 months, use average gross agricultural operations income and gross non-farm income for as long as the concern has been in operation.

Agricultural production means the cultivation, growing, or harvesting of plants and crops (including farming) breeding, raising, feeding, or housing of livestock (including ranching); forestry products, hydroponics, or nursery stock; or aquaculture.

Anaerobic digester means a renewable energy system that uses animal waste or other renewable biomass and may include other organic substrates to produce biogas that is sold in a gaseous or compressed liquid state or used to produce thermal or electrical energy.

Applicant lender debt means an existing debt owed by a borrower to the

same lender that is applying for or has received the Agency guarantee.

Appraisal surplus means the excess between the market value of an asset and its cost or depreciated book value when the market value is higher.

Architectural report means a report, prepared by a professional, licensed architect, or other qualified party that describes the existing situation, analyzes alternatives and proposes a specific course of action from an architectural perspective.

Arm's length transaction means a transaction in which the buyer and seller act independently and have no relationship to each other. The concept of an arm's length transaction allows the market to ensure that both parties in the deal are acting in their own self-interest and are not subject to any pressure or duress from the other party.

Assignment guarantee agreement means a signed, Agency-approved agreement between the Agency, the lender, and the holder setting forth the terms and conditions of an assignment of a guaranteed portion of a loan.

Biofuel means a fuel derived from renewable biomass.

Biogas means a gaseous fuel (including landfill and sewage waste treatment gas) derived from the degradation and decomposition of renewable biomass.

Bond means a form of debt security in which the authorized issuer (borrower) owes the bond holder (lender) a debt and is obligated to repay the principal and interest (coupon) at a later date(s) (maturity). An explanation of the type of bond and other bond stipulations must be attached to the bond issuance.

Borrower means the person that borrows, or seeks to borrow, money from the lender (including any party or parties liable for the guaranteed loan except guarantors) through a loan guaranteed under this part.

Business plan means a comprehensive document that clearly describes the borrower's ownership structure and management experience including, if applicable, discussion of a parent company, any subsidiaries and affiliates of the borrower and discussion of how the borrower will operate the proposed project. If a business or industry is in decline or financial distress, the business plan must describe in detail how the project differs from the current industry trends or improves the borrower's financial position.

Byproduct means an incidental or secondary product, regardless of whether it has a readily identifiable commercial use or value, generated under normal operations of the proposed Project that can be reasonably measured and monitored.

Certificate of incumbency means an Agency-approved form used to validate authenticity of Agency representatives' signature and title.

Collateral means the asset(s) pledged by the borrower to the lender as security for the guaranteed loan.

Commercially available means a system that meets the requirements of either paragraph (1) or (2) of this definition.

(1) A domestic or foreign system that:

(i) Has both a proven and reliable operating history and proven performance data for at least one year specific to the use and operation to the proposed application;

(ii) Is based on established design and installation procedures and practices and is replicable;

(iii) Has professional service providers, trades, large construction equipment providers, and labor who are familiar with installation procedures and practices;

(iv) Has proprietary and balance of system equipment and spare parts that are readily available;

(v) Has service that is readily available to properly maintain and operate the system; and

(vi) Has an existing established warranty that is valid in the United States for major parts and labor; or

(2) A domestic or foreign system that has been certified by a recognized industry organization whose certification standards are acceptable to the Agency.

Complete application means an application that contains all parts necessary for the Agency to determine borrower and project eligibility, the financial feasibility and technical merit of the project, and contains sufficient information to determine a priority score for the application, if applicable.

Conditional commitment means an Agency-approved form in which the Agency agrees that, in accordance with applicable provisions of the program regulations contained in this part and related forms, it will execute the loan note guarantee, subject to the conditions and requirements specified in applicable provisions of the program regulations contained in this part and in the conditional commitment itself.

Conflict of interest means a situation in which a person has personal, professional, or financial interests that prevent, or appears to prevent the person from acting impartially. For purposes of this part, conflict of interest also includes, but is not limited to:

(1) A person acting as a compensated agent of the borrower and the lender on the same guaranteed loan,

(2) Distribution or payment of guaranteed loan funds to an individual owner, partner, stockholder, or member of the borrower, or to a beneficiary or immediate family member of the borrower;

(3) Refinancing debt that is owned by a loan packager, broker, or referral agent or its affiliates.

Cooperative means an entity that is legally chartered by the State in which it operates as a cooperatively-operated business, or an entity that is not legally chartered as a cooperative but is owned and operated for the benefit of its members, with returns of residual earnings paid to such members on the basis of patronage.

Credit evaluation means the analysis and evaluation by the lender of the credit factors associated with each application to ensure loan repayment through the use of credit documentation procedures and an underwriting process that is consistent with industry standards and the lender's written policy and procedures.

Debt Collection Improvement Act means the Debt Collection Improvement Act of 1996, 31 U.S.C. 3701 *et seq.*

Debt service coverage ratio means the ratio obtained when taking earnings before interest, taxes, depreciation, and amortization less reasonably expected replacement capital expenditures divided by the annual debt service (principal and interest payments) of the borrower.

Default means the condition that exists when a borrower is in non-compliance under the terms of any of the promissory notes, the loan agreements, security documents, program regulations, or other documents evidencing or collateralizing the loan. Default can be a monetary or non-monetary default.

Deficiency judgment means a monetary judgment rendered by a court of competent jurisdiction after foreclosure and liquidation of all collateral securing the loan.

Delinquency means a situation that exists when a scheduled loan payment on a guaranteed loan made under this part is more than 30 calendar days past due and cannot be cured within the next 30 calendar days.

Departmental regulations means the regulations of the Agency's Office of Chief Financial Officer (or successor office) as codified in 2 CFR chapter IV.

Eligible project costs means those expenses approved by the Agency for the project as eligible uses of funds.

Energy assessment means an Agency-approved report assessing energy use, cost, and efficiency by analyzing energy bills and surveying the target building and/or equipment sufficiently to provide an Agency-approved energy assessment.

Energy assessor means a qualified consultant who has at least 3 years of experience and completed at least five energy assessments or energy audits on similar type projects and who adheres to generally recognized engineering principles and practices.

Energy audit means a comprehensive report that meets an Agency-approved standard prepared by an energy auditor or an individual supervised by an energy auditor that documents current energy usage; recommended potential improvements (typically called energy conservation measures) and their costs; energy savings from these improvements; dollars saved per year; and simple payback. The methodology of the energy audit must meet professional and industry standards. The final energy audit must be validated and signed off by the energy auditor who conducted the audit or by the supervising energy auditor of the individual who conducted the audit, as applicable.

Energy auditor means a qualified consultant that meets one of the following criteria:

(1) A certified energy auditor certified by the Association of Energy Engineers;

(2) A certified energy manager certified by the Association of Energy Engineers;

(3) A licensed professional engineer in the State in which the audit is conducted with at least 1 year of experience and who has completed at least two similar type energy audits; or

(4) An individual with a 4-year engineering or architectural degree with at least three years of experience and who has completed at least five similar type energy audits.

Energy efficiency improvement (EEI) means improvements to or replacement of an existing building or systems, or equipment that reduces measurable energy consumption on an annual basis.

Energy efficient equipment and systems (EEE) means equipment or systems for agricultural production or processing that exceed any of the following standards:

(1) Energy efficiency building codes, if available;

(2) Federal or State energy efficiency standards, if available;

(3) Energy efficiency standards determined appropriate by the Secretary. If no codes or standards described in paragraphs (1) through (3) of this definition apply to the EEE proposed, then the Secretary shall require such equipment or system to meet the same efficiency measurement as the most efficient available equipment or system in the market and the Secretary shall not provide such a loan guarantee for the purchase and installation of any energy efficient equipment or system unless more than one type of such equipment or system is available in the market.

Engineering documentation means a document, normally prepared by the borrower's consulting engineer or other qualified party, that describes the existing system, analyzes alternatives, and proposes a specific course of action from an engineering perspective.

Essential community facility means a public improvement, operated on a non-profit basis, needed for the orderly development of a rural community where the rural community is a city or town, or its equivalent county or multi-county area. The term ''facility'' refers to both the physical structure financed, and the resulting service provided to rural residents or rural businesses. Facilities may include, but are not be limited to, courthouses, community centers, libraries, firehouses, health care, education, transportation, and industrial parks. An industrial park consists of land and the necessary access ways and utilities to the site, but not improvements erected on such site.

Existing business means a business that has been in operation for at least one full year. The following will be treated as existing businesses provided there is not a significant change in operations of the existing business: Mergers by an existing business with a new or existing businesses, a change in the business name, or a new business and an existing business applying as co-borrowers,

Farmer or rancher cooperative means an entity that is owned and controlled by agricultural producers and that is incorporated, or otherwise recognized by the State in which it operates as a cooperatively-operated business or an entity that is not legally chartered as a cooperative but is owned and operated for the benefit of its members, with returns of residual earnings paid to such members on the basis of patronage.

Feasibility study means a report including an opinion or finding conducted by an independent qualified consultant(s) evaluating the economic, market, technical, financial, and management feasibility of the proposed project or operation in terms of its expectation for success as outlined in appendix A to subpart D of this part.

Federal debt means debt owed to the Federal Government that is subject to collection under the Debt Collection Improvement Act.

Federal fiscal year means the 12-month period beginning October 1 of each year and ends on September 30 of the following year; it is designated by the calendar year in which it ends.

Final loss claim means the Agency's payment of a final settlement amount with the lender after the collateral is liquidated or after settlement and compromise actions have been completed and as further set forth in § 5001.521(d)(3)(e).

Financial feasibility means the ability of a project to achieve sufficient income, credit, and cash flow to financially sustain the project over the long term and meet all debt obligations.

Future recovery means funds to be collected by the lender after a final loss claim is processed as set forth in § 5001.522.

Geothermal direct generation means a system that uses thermal energy directly from a geothermal source.

Geothermal electric generation means a system that uses thermal energy from a geothermal source to produce electricity.

Guaranteed loan means a loan made and serviced by a lender for which the Agency and lender have entered into a lender's agreement and for which the Agency has issued a loan note guarantee. Unless otherwise specified, guaranteed loan refers to a loan that the Agency has guaranteed under this Part.

Guarantor means a person giving assurance to the Agency under an Agency-approved written agreement that the borrower's obligations will be fulfilled and promising repayment of a guaranteed loan if the borrower should default.

Holder means a person, other than the lender, who owns all or part of the guaranteed portion of the guaranteed loan with no servicing responsibilities.

Hospital. (1) For the purpose of refinancing rural hospital debt in accordance with § 5001.102(d)(5), hospital means the following types of facilities defined in the Social Security Act, Section 1861 (42 U.S.C. 1395x):

(i) Hospital (section 1861(e)).

(ii) Psychiatric hospital (section 1861(f)).

(iii) Long-term care hospital (section 1861(ccc)); and shall also include the following other provider types defined in the Social Security Act, Section 1861 (42 U.S.C. 1395x):

(A) Critical access hospital (section 1861(mm)(1)).

(B) Religious nonmedical health care institution (section 1861(ss)(1)).

(2) The Agency will use the applicant provider's CMS Certification Number (CCN) to verify the applicant provider is listed as a ''Hospital'' for the ''Provider or Supplier Type'' category on the Centers for Medicare and Medicaid Services' Quality Certification and Oversight Reports (QCOR) website *https://qcor.cms.gov/index_new.jsp.*

Hybrid means a combination of two or more renewable energy technologies that are incorporated into a unified system to support a single project.

Hydroelectric source means a renewable energy system producing electricity using various types of moving water including, but not limited to, diverted run-of-river water, in-stream run-of-river water, and in-conduit water.

Hydrogen project means a system that produces hydrogen derived from renewable biomass or water using wind, solar, ocean (including tidal, wave, current, and thermal), geothermal, or hydroelectric sources; or that uses hydrogen derived from renewable biomass or water using wind, solar, ocean (including tidal, wave, current, and thermal), geothermal or hydroelectric sources as an energy transport medium in the production of mechanical or electric power or thermal energy.

Immediate family(ies) means individuals who live in the same household or who are closely related by blood, marriage, or adoption, such as a spouse, domestic partner, parent, child, sibling, aunt, uncle, grandparent, grandchild, niece, nephew, or first cousin.

Indian tribe means the term as defined in 25 U.S.C. 5304(e).

In-house expenses means expenses associated with activities that are routinely the responsibility of a lender's internal staff, including in-house lawyers, or its agents and that are normally incurred for administration of the loan. In-house expenses include, but are not limited to, employees' salaries, staff lawyers, travel, and overhead.

Inspector means a qualified consultant who has at least 3 years of experience and has completed at least five inspections on similar type projects.

Insurance means a means of protection from financial loss by which a company provides a guarantee of compensation for a specified loss, damage, illness, or death in return for payment of a premium.

Intangible assets means an asset that lacks physical substance. This includes, but is not limited to, copyrights, patents, capitalized franchise fees, goodwill, customer lists, software, organizational expenses, loan closing expenses, social media assets, and bond fees.

Interconnection agreement means a contract containing the terms and conditions governing the interconnection and parallel operation of the borrower's electric generation equipment and the utility's electric power system or a borrower's biogas production system and a gas pipeline.

Interest means an amount paid by a borrower to a lender as a form of compensation for the use of money. When money is borrowed, interest is typically paid over a certain period of time (typically months or years) to the lender as percentage of the principal amount owed. The term interest does not include default charges, penalty interest, or late payment fees.

Interest termination date means the date on which no further interest will be payable by the Agency under the loan note guarantee.

Interim financing means a temporary or short-term loan made with the clear intent when the loan is made that it will be repaid through another loan that provides permanent financing. Interim financing is frequently used to pay construction and other costs associated with the proposed project, with permanent financing to be obtained after project completion.

Lender means a lending entity that the Agency has approved to originate, service, and collect payments on loans guaranteed under this part.

Lender's agreement means the Agency-approved form of contract between the Agency and the lender setting forth the lender's guaranteed loan responsibilities.

Liquidation expenses means costs directly associated with the liquidation of collateral, including, without limitation, costs associated with preparing collateral for sale (*e.g.,* repairs and transport), the sale (*e.g.,* advertising, public notices, auctioneer expenses, and foreclosure fees), and conducting appraisals. Legal fees are considered liquidation expenses provided that the fees are reasonable as determined by the Agency and cover legal issues pertaining to the liquidation that could not be properly handled by the lender and its in-house legal staff. Liquidation expenses do not include in-house expenses.

Loan agreement means the agreement between the borrower and lender containing the specified terms and conditions of the guaranteed loan and the responsibilities of the borrower and lender.

Loan classification means the process by which loans are examined and categorized by the probability of default and degree of potential loss in the event of default.

Loan documents mean the loan agreement, promissory note, mortgage/deed of trust, and other security documents entered into by the borrower and the lender in connection with the guaranteed loan.

Loan note guarantee means the Agency-approved form containing the terms and conditions of the guarantee of an identified guaranteed loan.

Loan packager means a person, including a loan referral agent, broker, or an agent other than the borrower or lender that prepares a guaranteed loan application on behalf of the borrower or lender.

Local government means a county, municipality, town, township, village, or other unit of general government below the State level. The term also includes Tribal governments when tribal lands are within the service area.

Local owner means an individual who owns any portion of an entity that is the eligible borrower and whose primary residence is located within the normal commuting area of the guaranteed loan project.

Locally or regionally produced agricultural food product means any agricultural food product that is raised, produced, and distributed in the locality or region in which the final product is marketed, so that the distance the product is transported is less than 400 miles from the origin of the product, or within the State in which the product is produced. Food products could be raw, cooked, or a processed edible substance, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.

Market value means the most probable price that an asset should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby—

(1) Buyer and seller are typically motivated;

(2) Both parties are well informed or well advised, and each acting in what he or she considers his or her own best interest;

(3) A reasonable time is allowed for exposure in the open market;

(4) Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and

(5) The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

Matching funds means those project funds required by 7 U.S.C. 8107 to be eligible to receive the guaranteed loan. Funds provided by the borrower in excess of matching funds are not matching funds.

Material adverse change means any change in circumstances associated with a guaranteed loan, including, without limitation, any change in the purpose of the loan, the borrower's financial condition or collateral that, individually or in the aggregate, have jeopardized, or could be reasonably expected to jeopardize, the borrower's repayment of the guaranteed loan.

Monetary default means a failure to make a scheduled or required payment on a guaranteed loan.

Multi-note system means an option for the lender to provide one promissory note for the unguaranteed portion and a separate promissory note(s) for the guaranteed portion of the loan. All promissory notes must reflect the same payment terms.

National Appeals Division (NAD) means the division of the United States Department of Agriculture pursuant to 7 CFR part 11.

Natural resource value-added product means a product derived from any naturally occurring resource, including agricultural resources, that is further processed to add value or used to generate energy or renewable energy.

Negligent loan origination means the failure of a lender to perform those services or actions that a reasonably prudent lender would perform in originating its own portfolio of loans that are not guaranteed. The term includes the concepts of failure to act, not acting in a timely manner, and acting in a manner contrary to the manner in which a reasonably prudent lender would act.

Negligent loan servicing means the failure of a lender to perform those services that a reasonably prudent lender would perform in servicing (including liquidation of) its own portfolio of loans that are not guaranteed. The term includes the concepts of failure to act, not acting in a timely manner, and acting in a manner contrary to the manner in which a reasonably prudent lender would act.

New business means a business that has been in operation for less than one full year, including a new enterprise or new affiliate of an existing business moving or expanding into a new location involving new market or labor areas.

Non-monetary default means a situation where a borrower is not in compliance with the covenants or requirements of the loan documents, program requirements or loan.

Non-regulated lending entity means a lending entity that is not subject to supervision and examination by an agency of the United States or a State; or a lending entity created specifically by State statute and operating under the direct supervision of a State government authority.

Ocean energy means energy created by use of various types of moving water in the ocean and other large bodies of water (*e.g.,* Great Lakes) including, but not limited to, tidal, wave, current, and thermal changes.

Off-take agreement means the terms and conditions governing the sale and transportation of products produced by the borrower and sold to another party.

Otherwise improve means, but is not limited to, the following:

(1) The purchase of necessary equipment that will itself provide an essential service to the rural community, such as vehicles, emergency and medical equipment, telecommunication equipment, computers, water meters and pumps;

(2) The purchase of equipment necessary to maintain, protect, operate, or use the eligible facility or service;

(3) The purchase of existing eligible facilities, when necessary, to either improve or prevent a loss of service provided the price paid for the facility is fair and reasonable and not directly related to the dollar amount of any debt to be retired by the seller; and

(4) Payment of tap fees and other utility connection charges as provided in utility purchase contracts.

Parity means a lien position whereby two or more separate lending entities or separate loans share a security interest of equal priority in collateral.

Participation means the sale of an interest in a loan by the lead lender to one or more participating lenders wherein the lead lender retains the note, collateral securing the note, and all responsibility for managing and servicing the loan. Participants have credit risk and are dependent upon the lead lender for protection of their interests in the loan. The relationship is typically formalized by a participation agreement between the lenders. The participant lender(s) and the borrower have no rights or obligations to one another.

Passive investor means an equity investor who does not actively participate in management and operation decisions of the borrower or any affiliate of the borrower as evidenced by a contractual agreement.

Person means an individual or entity organized under the laws of a State or a Tribe.

Power purchase agreement means the terms and conditions governing the sale and transportation of electricity produced by the borrower to another party.

Professional service means services used by the borrower for planning and developing a project, including, but not limited to, appraisals, architectural services, surveys, environmental impact analyses, implementing mitigation measures, and establishing or acquiring property rights. Such services are generally rendered by persons licensed or certified by States or accreditation associations, such as architects, engineers, accountants, attorneys, or appraisers, and those rendered by loan packagers, but not including loan finders.

Project means the activity identified by a lender in its application for a loan guarantee for which the guaranteed loan funds will be used.

Promissory note means the legal instrument evidencing debt executed by the borrower to a lender with stipulated repayment terms. The term promissory note includes bonds and other related debt instruments issued by the lender to a borrower.

Protective advance means an advance made by the lender for the purpose of preserving and protecting the collateral where the borrower has failed to, and will not or cannot, meet its obligations to protect or preserve collateral. Protective advances include, but are not limited to, advances for property taxes, rent, hazard and flood insurance premiums, emergency repairs and annual assessments that protect the collateral. Legal and accounting fees are not a protective advance.

Public body means a state, county, city, township, incorporated town or village, borough, authority, district, or other political subdivision of a State, or Indian tribe.

Qualified consultant(s) means an independent third-party person possessing the knowledge, expertise, and experience to perform the specific task required.

Rated power means the maximum amount of energy that can be created at any given time.

Refurbished means a piece of equipment or renewable energy system that has been brought into a commercial facility, thoroughly inspected, and worn parts replaced and has a warranty that is approved by the Agency or its designee.

Regulated lending entity means a lending entity that is subject to

supervision and examination by an agency of the United States or a State; or a lending entity created specifically by State statute and operating under the direct supervision of a State government authority.

Renewable biomass means—

(1) Materials, pre-commercial thinning, or invasive species from National Forest System land or public lands (as defined in Section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702)) that—

(i) Are by-products of preventive treatments that are removed to reduce hazardous fuels; to reduce or contain disease or insect infestation; or to restore ecosystem health;

(ii) Would not otherwise be used for higher-value products; and

(iii) Are harvested in accordance with applicable law and land management plans and the requirements for old-growth maintenance, restoration, and management direction of paragraphs (2), (3), and (4) of subsection (e) of section 102 of the Healthy Forests Restoration Act of 2003 (16 U.S.C. 6512) and large-tree retention of subsection (f) of section 102; or

(2) Any organic matter that is available on a renewable or recurring basis from non-Federal land or land belonging to an Indian or Indian tribe that is held in trust by the United States or subject to a restriction against alienation imposed by the United States, including the following items:

(i) Renewable plant material (including feed grains, other agricultural commodities, other plants and trees, and algae); and

(ii) Waste material (including crop residue, other vegetative waste material (including wood waste and wood residues), animal waste and byproducts (including fats, oils, greases, and manure), and food and yard waste).

Renewable energy means energy derived from—

(1) A wind, solar, renewable biomass, ocean (including tidal, wave, current, and thermal), geothermal or hydroelectric source; or

(2) Hydrogen derived from renewable biomass or water using an energy source described in paragraph (1) of this definition.

Renewable energy site assessment means a report providing information regarding and recommendations for the use of commercially available renewable energy technologies in the borrower's operation. The report must be prepared by a qualified consultant for the specific energy system and project proposed.

Renewable energy system (RES) means a system that produces usable energy from a Renewable Energy source and may include:

(1) Distribution components necessary to move energy produced by such system to the initial point of sale; and

(2) Other components and ancillary infrastructure of such system, such as a storage system; however, such system may not include a mechanism for dispensing energy at retail.

Report of loss means an Agency-approved form used by lenders when reporting a financial loss under a guaranteed loan.

Retrofitting means a modification to an existing building or installed equipment that incorporates a function or feature(s) not included in the original design when built or for the replacement of existing components with components that improve the original design and does not affect original warranty if the warranty is still in existence.

Rural and *rural area* means any area of a State not in a city or town that has a population of more than 50,000 inhabitants, and which excludes certain populations pursuant to 7 U.S.C. 1991(a)(13)(H), according to the latest decennial census of the United States and not in the urbanized area contiguous and adjacent to a city or town that has a population of more than 50,000 inhabitants. In making this determination, the Agency will use the latest decennial census of the United States. The following exclusions apply:

(1) Any area in the urbanized area contiguous and adjacent to a city or town that has a population of more than 50,000 inhabitants that has been determined to be ''rural in character'' as follows:

(i) The determination that an area is ''rural in character'' will be made by the Under Secretary of Rural Development. The process to request a determination under this provision is outlined in paragraph (1)(ii) of this definition. The determination that an area is ''rural in character'' under this definition will apply to areas that are within:

(A) An urbanized area that has two points on its boundary that are at least 40 miles apart, which is not contiguous or adjacent to a city or town that has a population of greater than 150,000 inhabitants or the urbanized area of such a city or town; or

(B) An urbanized area contiguous and adjacent to a city or town of greater than 50,000 inhabitants that is within ¼ mile of a rural area.

(ii) Units of local government may petition the Under Secretary of Rural Development for a ''rural in character'' designation by submitting a petition to the appropriate Rural Development State Director for recommendation to the Administrator on behalf of the Under Secretary. The petition shall document how the area meets the requirements of paragraph (1)(i)(A) or (B) of this definition and discuss why the petitioner believes the area is ''rural in character,'' including, but not limited to, the area's population density, demographics, and topography and how the local economy is tied to a rural economic base. Upon receiving a petition, the Under Secretary will consult with the applicable governor or leader in a similar position and request comments to be submitted within 5 business days, unless such comments were submitted with the petition. The Under Secretary will release to the public a notice of a petition filed by a unit of local government not later than 30 days after receipt of the petition by way of publication in a local newspaper and posting on the Agency's website at *https://www.rd.usda.gov/onerdguarantee,* and the Under Secretary will make a determination not less than 15 days, but no more than 60 days, after the release of the notice. Upon a negative determination, the Under Secretary will provide to the petitioner an opportunity to appeal a determination to the Under Secretary, and the petitioner will have 10 business days to appeal the determination and provide further information for consideration. The Under Secretary will make a determination of the appeal in not less than 15 days, but no more than 30 days.

(iii) Rural Development State Directors may also initiate a request to the Under Secretary to determine if an area is ''rural in character.'' A written recommendation should be sent to the Administrator, on behalf of the Under Secretary, that documents how the area meets the statutory requirements of paragraph (1)(i)(B) of this definition and discusses why the State Director believes the area is ''rural in character,'' including, but not limited to, the area's population density, demographics, topography, and how the local economy is tied to a rural economic base. Upon receipt of such a request, the Administrator will review the request for compliance with the ''rural in character'' provisions and make a recommendation to the Under Secretary. Provided a favorable determination is made, the Under Secretary will consult with the applicable Governor and request comments within 10 business days, unless gubernatorial comments were submitted with the request. A public notice will be published by the State Office in accordance with

paragraph (1)(ii) of this definition. There is no appeal process for requests made on the initiative of the State Director.

(2) An area that is attached to the urbanized area of a city or town with more than 50,000 inhabitants by a contiguous area of urbanized census blocks that is not more than two census blocks wide. Applicants from such an area should work with their Rural Development State Office to request a determination of whether their project is located in a rural area under this provision.

(3) For the Commonwealth of Puerto Rico, the island is considered Rural and eligible except for the San Juan Census Designated Place (CDP) and any other CDP with greater than 50,000 inhabitants. Areas within CDPs with greater than 50,000 inhabitants, other than the San Juan CDP, may be determined to be Rural if they are ''not urban in character.''

(4) For the State of Hawaii, all areas within the State are considered rural and eligible except for the Honolulu CDP within the County of Honolulu and any other CDP with greater than 50,000 inhabitants. Areas within CDPs with greater than 50,000 inhabitants, other than the Honolulu CDP, may be determined to be Rural if they are ''not urban in character.''

(5) For the purpose of defining a rural area in the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands, the Agency shall determine what constitutes rural and rural Area based on available population data.

Rural small business means a small business that is located in a rural area or that can demonstrate the proposed project for which assistance is being applied for under this part is located in a rural area.

Service area means the area identified to be served.

Significant ties means, as determined by the agency, a facility under private control will carry out a public purpose and continue to primarily serve rural areas for CF projects (not applicable to public bodies and Federally Recognized Tribes) as evidenced by the following: Association with or control by a public body or bodies; or Broadly based membership and controlled primarily by members residing in the project service area. Membership must be open without regard to race, color, religion, national origin, sex, age, disability, sexual orientation, or marital or familial status.

Simple payback means the estimated simple payback of a project funded under this part as calculated using paragraph (1), (2), or (3), as applicable, of this definition.

(1) Energy efficiency improvement projects simple payback = (Total Project Costs) ÷ (Dollar value of energy saved).

(i) Energy saved will be determined by subtracting the projected energy (determined by the method in paragraph (1)(i)(B) of this definition) to be consumed from the historical energy consumed (determined by the method in paragraph (1)(i)(A) of this definition), and converting the result to a monetary value using a constant value or price of energy (determined by the method in paragraph (1)(i)(C) of this definition).

(A) Actual energy used in the original building and/or equipment, as applicable, prior to the EEI project, must be based on the actual average annual total energy used in British thermal units (BTU) over the most recent 12, 24, 36, 48, or 60 consecutive months of operation.

(B) Projected energy use if the proposed EEI project had been in place for the original building and/or equipment, as applicable, for the same time period used to determine that actual energy use under paragraph (1)(i)(A) of this definition.

(C) Value or price of energy must be the actual average price paid over the same time period used to calculate the actual energy used under paragraph (1)(i)(A) of this definition.

(ii) Energy efficiency improvement projects simple payback does not allow EEI to monetize benefits other than the dollar amount of the energy savings the agricultural producer or rural small business realizes as a result of the improvement.

(2) Renewable energy systems projects simple payback = (total project costs) ÷ (dollar value of energy units replaced, credited, sold, or used and fair market value of byproducts as applicable in a typical year).

(i) Value of energy replaced will be calculated based on the borrower entity's historical energy consumption with actual average price paid for the energy replaced, following the methodology outlined in paragraph (1)(i) of this definition.

(ii) Value of energy credited or sold will be calculated based on the amount of energy units to be sold at the proposed rate per unit, as documented in utility net metering or crediting policies and/or a purchase agreement.

(iii) If proposed energy will be used in a new facility, value of energy used will be calculated based on the amount of energy units to be used at the documented price per unit of conventional fuel alternative.

(iv) Value of byproducts produced by and used in the project or related enterprises should be documented at the fair market value to be received for the byproducts in a typical year.

(v) Renewable energy systems projects simple payback does not include any one-time benefits such as but not limited to construction and investment-related benefits, nor credits which do not provide annual income to the project, such as tax credits.

(3) Energy efficiency equipment and systems projects simple payback = (total project costs) ÷ (dollar value of efficiency savings). Efficiency savings will be determined by subtracting the annual value of energy to be consumed by the proposed energy efficient equipment from the annual value of energy that a conventional equipment alternative would have consumed. Adequate documentation must be provided for all consumption estimates and values utilized in the calculation.

Small business means:

(1) An entity or utility, as applicable, as further defined in paragraphs (1)(i) through (iv) and meeting the requirements in paragraph (2) of this definition. With the exception of the entities identified in this paragraph, all other non-profit entities are not small businesses for the purposes of REAP program eligibility:

(i) A private for-profit entity, including a sole proprietorship, partnership, or corporation;

(ii) A cooperative (including a cooperative qualified under section 501(c)(12) of the Internal Revenue Code);

(iii) An electric utility (including a Tribal or governmental electric utility) that provides service to rural consumers and operates independent of direct government control; or

(iv) A Tribal corporation or other Tribal business entities that are chartered under Section 17 of the Indian Reorganization Act (25 U.S.C. 477) or have similar structures and relationships with their Tribal governments and are acceptable to the Agency. The Agency will determine the small business status of such Tribal entity without regard to the resources of the Tribal government; and

(2) An entity that meets Small Business Administration (SBA) size standards in accordance with 13 CFR part 121 and criteria of 13 CFR 121.301 as applicable to financial assistance programs, including paragraph (2)(i) or (ii) of this section. The size of the concern alone and the size of the concern combined with other entity(ies) it controls or entity(ies) it is controlled by, must not exceed the size standard

thresholds designated for the industry in which the concern alone or the concern and its controlling entity(ies), whichever is higher, is primarily engaged.

(i) The concern's tangible net worth is not in excess of $15 million and average net income (excluding carry-over losses) for the preceding two completed fiscal years is not in excess of $5.0 million; or

(ii) The size of the concern does not exceed the SBA size standard thresholds designated for the industry in which it is primarily engaged, as measured by number of employees or annual receipts. Industry size standard designations to be utilized are listed in the SBA's table of size standards found in 13 CFR 121.201. Number of employees and annuals receipts are calculated as follows:

(A) Number of employees is calculated as the average number of all individuals employed by a concern on a full-time, part-time, or other basis, based upon numbers of employees for each of the pay periods for the preceding completed 12 calendar months. If a concern has not been in business for 12 months, the average number of employees is used for each of the pay periods during which it has been in business.

(B) Annual receipts are calculated as average total income plus cost of goods sold for the five most recent years. If a concern has been in operation for less than 60 months, average annual receipts for as long as the concern has been in operation are used.

State means any of the 50 States of the United States, the Commonwealth of Puerto Rico, the District of Columbia, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Federated States of Micronesia, and the Republic of the Marshall Islands.

State bond banks and *State bond pools* mean an entity authorized by the State to issue State debt instruments and use the funds received to finance eligible projects under this part.

Steady state operating level means that there is an adequate and consistent supply of the applicable renewable energy resource(s) for the project, both on a short-term (current) and long-term basis, and the renewable energy system and process(es) are operating at projected capacity, consistently yielding an adequate quantity and quality of renewable energy.

Subordination means the reduction of the lender's lien priority on certain assets pledged by the borrower to secure payment of the guaranteed loan to a position junior to, or on parity with, the lien position of another loan.

Total eligible project costs means the sum of all eligible project costs.

Total project costs means the sum of all costs associated with a completed project.

Transfer and assumption means the Agency-approved conveyance by a borrower to an assuming borrower of the assets, collateral, and liabilities of the borrower in return for the assuming borrower's binding promise to pay the outstanding debt.

Underserved communities mean communities (including urban or rural communities and Indian tribal communities) that have limited access to affordable, healthy foods, including fresh fruits and vegetables, in grocery retail stores or farmer-to-consumer direct markets and that have either a high rate of hunger or food insecurity or a high poverty rate as reflected in the most recent decennial census or other Agency-approved census.

Uniform Standards of Professional Appraisal Practice (USPAP) means the appraisal standards promulgated by the Appraisal Standards Board of the Appraisal Foundation.

Used equipment means any equipment that has been used and is provided in an ''as is'' condition.

Useful life means estimated durations of utility placed on a variety of assets, including buildings, machinery, equipment, vehicles, electronics, and furniture. Useful life estimations terminate at the point when assets are expected to become obsolete, require major repairs, or cease to deliver economical results.

Veteran means a person who served in the active military, naval, or air service and was discharged or released therefrom under conditions other than dishonorable as defined in 38 U.S.C. 101(2).

Waste disposal means sanitary sewer (treatment and collection), solid waste, or storm drainage facilities.

Working Capital means current assets available to support a business' operations and growth. Working capital is calculated as current assets less current liabilities.

§ 5001.4 Exception authority.

The Administrator may, on a case-by-case basis, grant an exception to any requirement or provision of this subpart provided that such an exception is in the best financial interests of the Federal Government. Exercise of this authority cannot be in conflict with applicable law.

§ 5001.5 Appeal and review rights.

Borrowers, lenders, and holders may have appeal or review rights for Agency decisions made under this part. Agency decisions that are adverse to the individual participant are appealable, while matters of general applicability are not subject to appeal; however, such decisions are reviewable for appealability by the National Appeals Division (NAD). All appeals will be conducted by NAD and will be handled in accordance with 7 CFR part 11.

(a) The borrower, lender, and holder can appeal any Agency decision that directly and adversely affects them.

(1) For an adverse decision that affects the borrower, the lender and borrower must jointly execute a written request for appeal of an adverse decision made by the Agency.

(2) An adverse decision that affects only the lender can be appealed by the lender only.

(3) An adverse decision that affects only the holder can be appealed by the holder only.

(b) In cases where the Agency has denied or reduced the amount of final loss payment to the lender, the adverse decision can be appealed only by the lender.

(c) A decision by a lender adverse to the interest of the borrower is not a decision by the Agency, even if it was concurred in by the Agency, and therefore cannot be reviewed for appealability or appealed to NAD.

§ 5001.6 General lender responsibilities.

(a) Lenders are responsible for originating and servicing loans guaranteed by the Agency under this part in accordance with the provisions of this part and, for those guaranteed loans issued under one of the guaranteed loan programs identified in § 5001.1(a)(1) through (4), with the provisions of the applicable guaranteed loan program. Any action or inaction on the part of the Agency does not relieve the lender of its responsibilities.

(b) Lenders can contract for services, but such contracting does not relieve a Lender from its responsibilities as identified in this part or, where applicable, in the applicable guaranteed loan program identified in § 5001.1.

(c) If a lender fails to comply with the requirements of this part, the Agency may reduce any loss payment in accordance with the lender's agreement and loan note guarantee.

§ 5001.7 Agency's special initiatives.

Applicants submitting applications that support the implementation of strategic or special initiatives are encouraged to review the Agency's

annual notice to determine if their projects are eligible for receiving priority for projects. These projects may also support the implementation of strategic economic development and community development plans on a multi-jurisdictional and multi-sectoral basis in accordance with section 6401 of the Agricultural Improvement Act of 2018 (Pub. L. 115–334).

§ 5001.8 Approvals, regulations, and forms.

(a) When Agency approval or concurrence is required, it must be in writing and must be obtained prior to the action for which approval or concurrence is required is taken.

(b) All references to statutes and regulations include any and all successor statutes and regulations.

(c) All references to forms include any and all predecessor and successor forms as specified by the Agency.

(d) Copies of all regulations and forms referenced in this part can be obtained through the Agency and from the Agency's website at *https://www.rd.usda.gov/onerdguaranteed.*

§ 5001.9 Standards for financial information.

(a) All financial information (*e.g.,* financial statements, balance sheets, financial projections, and income statements) must be prepared and submitted in accordance with accounting practices acceptable to the Agency. Such practices can include, but are not limited to, Generally Accepted Accounting Principles (GAAP) and the industry's standard accounting practice.

(b) For sole proprietorships and other situations where business assets are held personally, financial statements must be prepared using only the assets and liabilities directly attributable to the applicant's project. Assets, plus any improvements, must be valued at the lower of cost or market value.

§ 5001.10 Federal Register notices and amendments.

Rural Development will issue annual **Federal Register** notices each year specifying the amount of funds available under this part for OneRD guarantees. Notices may also include the following information applicable to projects specifically funded under a particular notice: Maximum loan amounts, fees, and priority scoring for discretionary points.

§§ 5001.11–5001.99 [Reserved]

§ 5001.100 OMB control number.

The report and recordkeeping requirements contained in this part have been approved by the Office of Management and Budget and have been assigned OMB control number 0572–0155.

Subpart B—Eligibility Provisions

§ 5001.101 Introduction

This subpart addresses the eligibility provisions for projects, borrowers, and lenders. This subpart also includes provisions for projects involving the purchase of cooperative stock or cooperative equity, the conversion of businesses to cooperatives or Employee Stock Ownership Plans (ESOP), and New Markets Tax Credits (NMTC).

(a) *Project eligibility.* Sections 5001.102 through 5001.108 identify requirements for projects to be eligible to receive a loan guarantee under this part. Section 5001.115 identifies types of projects that are not eligible for a loan guarantee under this part. The Agency will not issue a loan guarantee under this part for any project that does not meet the applicable eligibility criteria as specified.

(b) *Borrower eligibility.* Section 5001.126 identifies the types of borrowers that are eligible to receive a loan guarantee for their projects under this part. The types of borrowers eligible to receive loan guarantees for their Projects vary based on the guaranteed loan program they are applying under and that guaranteed loan program's authorizing statute as set forth in § 5001.1. Section 5001.127 identifies conditions that would make an otherwise eligible borrower ineligible for receiving a loan guarantee for its project under this part.

(c) *Lender eligibility.* Section 5001.130 identifies the requirements for a lending entity to be an eligible lender under this part. Section 5001.131 addresses the lender's agreement, which each approved lender must execute with the Agency in order to originate and service guaranteed loans under this part. Section 5001.132 addresses provisions necessary for a lender to maintain its approved lender status.

(d) *Cooperative stock/cooperative equity/conversions.* Section 5001.140 identifies requirements associated with issuing loan guarantees in connection with the purchase of cooperative stock, transferable stock shares, and cooperative equity and for the conversions of businesses to either cooperatives or Employee Stock Ownership Plans (ESOP).

(e) *New Markets Tax Credits.* Section 5001.141 identifies the requirements specific to guaranteed loans involving projects that include NMTC available under the NMTC program authorized by the U.S. Department of the Treasury.

§ 5001.102 Project eligibility—general.

To be eligible for a loan guarantee under this part, a project must meet the requirements specified in this section and those in the applicable section in §§ 5001.103 through 5001.108.

(a) *Service area.* For projects with a defined service area, the boundaries for the proposed service area must be chosen in such a way that no user or area will be excluded because of race, color, religion, sex, marital status, age, disability, or national origin. This does not preclude financing or constructing:

(1) Projects in phases (each phase must be financially sustainable without consideration of future phases) when it is not practical to finance or construct the entire project at one time; and

(2) Projects where it is not economically feasible to serve the entire service area, provided the economic feasibility is determined on the basis of the entire system or facility and not by considering the cost of separate extensions to, or parts thereof.

(b) *Location.* A project must be located in a State and meet the rural or rural area requirements of the applicable section in §§ 5001.103 through 5001.108.

(c) *Tax-exempt financing.* The agency is prohibited from guaranteeing a project funded with tax-exempt financing. In cases where a project involves both tax-exempt and taxable financing, the portion of the project that involves taxable financing is eligible to receive a loan guarantee if that portion of the project is separate and distinct from the part that is financed by the tax-exempt obligation, and the guaranteed loan is not essential to issuance of the tax-exempt obligation.

(d) *Debt refinancing.* The Agency can guarantee loans for debt refinancing as described in paragraphs (d)(1) through (5) of this section. An eligible debt refinancing project is:

(1) Refinancing of debt on one or more loans owed to another creditor;

(2) Refinancing of debt owed to the applicant lender or any part thereof provided that the applicant lender debt being refinanced does not exceed 50 percent of the total use of funds in the new aggregated federally-guaranteed debt, the applicant lender debt being refinanced is in a current status for the past six months and the new guaranteed loan is providing better rates or repayment terms. The current status cannot be achieved by the lender forgiving the borrower's debt or by servicing actions that impact the borrower's repayment schedule; or

(3) Refinancing of debt owed directly to the Federal Government or that is federally-guaranteed, including any

guaranteed debt owed to the applicant lender, when a refinance of this debt is consistent with sections 333 and 306(a)(24)(C) of the Consolidated Farm and Rural Development Act (as amended by the Agricultural Act of 2018, Pub. L. 115–334). Such guaranteed debt shall not be included in the amount of applicant lender debt when calculating the maximum percentage of the total use of funds in the new guaranteed loan as stated in paragraph (d)(2) of this section.

(4) When the refinancing is in accordance with paragraphs (d)(1) through (3) of this section, the following requirements must be met:

(i) The Agency has determined that the project is viable and debt refinancing is necessary to improve cash flow;

(ii) The debt is reflected on the borrower's balance sheet and the original loan funds were used for project-eligible purposes. Refinancing of existing of lines of credit is considered an eligible purpose for debt refinancing in the B&I program;

(iii) For loans where debt refinancing is a majority purpose of the guaranteed loan, the borrower must demonstrate historical actual cash available to provide a total debt service coverage ratio of not less than 1.1 times its new debt service requirements or that the borrower's current financial performance demonstrates it has corrected or recovered from impacts or issues adversely effecting its past financial performance.

(5) Refinancing of debt incurred by a rural hospital to preserve access to a health service when the refinancing will meaningfully improve the financial position of the hospital. The debt can be existing Agency direct loan debt, Agency guaranteed debt, or another lender's debt. Loan requests to refinance rural hospital debt must demonstrate that the new amount of annual debt repayment on the debt being refinanced will be less than the existing amount of annual debt repayment and provide a total debt service coverage ratio of 1.1 to 1.0 based on historical cash flow. To calculate the ratio, the new debt service amount will include annual capital expense reserve and annual debt repayment reserve requirements.

§ 5001.103 Eligible CF projects and requirements.

For a CF projects to be eligible for a loan guarantee under this part, it must meet the criteria specified in § 5001.102 and this section and be for a borrower eligible to submit an application for the project in accordance with § 5001.126.

(a) *Type of project.* The project must be for the construction, enlargement, extension, or to otherwise improve an essential community facility. Essential community facilities include, but are not limited to:

(1) Health care facilities and services, including but not limited to hospitals;

(2) Fire, rescue, and public safety facilities and services;

(3) Community, public, social, educational, or cultural facilities or services;

(4) Transportation facilities such as streets, bridges, roads, ports, and airports;

(5) Utility projects such as hydroelectric generating facilities and related connecting systems and appurtenances; supplemental and supporting structures for other rural electrification or telephone systems including facilities such as headquarters, office buildings, storage facilities, and maintenance shops when not eligible for RUS financing; natural gas distribution systems; and recycling or transfer centers or stations.

(6) Telecommunications end-user equipment as it relates to public safety, medical, or educational telecommunications links when not eligible for RUS financing;

(7) Water infrastructure facilities such as levees, dams, reservoirs, inland waterways, canals, and irrigation systems;

(8) The purchase and installation of renewable energy systems for use by an essential community facility when:

(i) The renewable energy system will help defray the cost of facility operation over the life of the system;

(ii) The renewable energy system will improve the borrower's ability to provide the underlying essential community service, such as providing backup facilities or extending fuel supplies of backup facilities;

(iii) The borrower does not, and will not, have any contract to sell power generated by the renewable energy system; however, receiving credit for excess production is permitted;

(iv) The borrower does not anticipate, and has no plan for, generation of more energy than it will use in a consecutive 12-month period. The borrower may receive credits from a utility for energy production that happens to exceed facility usage during a particular month;

(v) The renewable energy system is commercially available with proven operating history specific to the proposed application; and

(vi) The borrower provides a technical report as part of the financial feasibility study in accordance with § 5001.307(e)(1) and (2), as applicable of subpart D.

(9) Land acquisition and necessary site preparation including access ways and utility extensions to and throughout an industrial park site; and

(10) Community parks, community activity centers, and similar types of facilities that are an integral part of the orderly development of a community (meaning a development that is addressing a need in the community). Recreational components including, but not limited to, playground equipment of an otherwise non-recreational eligible community facility such as childcare, educational, or health care facilities are also eligible.

(b) *Public use.* All facilities financed under the provisions of this section will be for public use.

(1) To demonstrate availability for public use, the borrower may not restrict use of or membership to its facility or service based on race, color, religion, sex, national origin, age, disability, sexual orientation, or marital or familial status.

(i) However, 7 CFR 15a.215(b) provides that the membership practices of the Young Men's Christian Association (YMCA), the Young Women's Christian Association (YWCA), the Girl Scouts, the Boy Scouts, and Camp Fire Girls are exempt from open membership practices on the basis of sex.

(ii) If membership or admission is customarily required to access and use the facility or service, any individual who applies for membership or admission must be given membership, admitted, or be placed on a waiting list to join as space becomes available on a first-come, first-served basis. This does not preclude an essential community facility from having a threshold admission requirement, such as a college or university requiring their applicants to have a certain grade point average before they are considered for admission. The standard must be applied consistently to all applicants and be common to the industry.

(c) *Project location.* The project must be located in a rural area as defined in § 5001.3 of this part, except that utility projects serving both rural and non-rural areas are eligible for a loan guarantee regardless of project location. For such utility projects, the Agency will guarantee the rural area portion of the project and only the portion of the project necessary to provide the essential services to rural areas. The part of the facility located in a non-rural area must be necessary to provide the essential services to rural areas. The availability of funds for CF projects is contingent on its rural area population

and the reservation of funds outlined in § 5001.316(e).

§ 5001.104 Eligible WWD projects and requirements.

For a WWD project to be eligible for a loan guarantee under this part, it must meet the criteria specified in § 5001.102 and this section and be for a borrower eligible to submit an application for the project in accordance with § 5001.120.

(a) *Type of project.* The project must be for one or more of the following:

(1) To construct, enlarge, extend, or otherwise improve the following types of facilities:

(i) Drinking water facilities;

(ii) Sanitary sewage facilities;

(iii) Solid waste disposal facilities; or

(iv) Storm wastewater disposal facilities.

(2) Purchase of equipment to operate, maintain, or protect facilities.

(b) *Public use.* The project must be for a public purpose.

(c) *Project location.* The project must be located in a rural area as defined in § 5001.3 of this part. For utility service projects serving both rural and non-rural areas the Agency will guarantee only the portion of the project necessary to provide the essential services to rural areas.

(d) *Service area.* (1) The project must be installed to serve any user within the Service Area who desires service and can be feasibly and legally served.

(2) The lender must determine that, when feasible and legally possible, inequities within the project's service area for the same type service proposed will be remedied by the borrower on, or before, completion of the project. Inequities are defined as unjustified variations in availability, adequacy, or quality of service. User rate schedules for portions of existing systems or facilities that were developed under different financing, rates, terms, or conditions do not necessarily constitute inequities.

§ 5001.105 Eligible B&I projects and requirements.

For a B&I project to be eligible for a loan guarantee under this part, it must meet the criteria specified in § 5001.102 and this section and be for a borrower eligible to submit an application for the project in accordance with § 5001.126.

(a) *Purpose.* The purpose of the project must be to improve, develop, or finance business, industry, and employment and improve the economic and environmental climate in rural communities; the conservation, development, and use of water for aquaculture purposes; and reducing reliance on nonrenewable energy resources through development and construction of solar energy and other renewable energy systems.

(b) *Type of project.* The project must be for one or more of the uses described in paragraphs (b)(1) through (22) of this section.

(1) Purchase and development of land, buildings, and associated infrastructure for commercial or industrial properties, including expansion or modernization.

(2) Business acquisitions, start-ups, and expansions if jobs will be created or saved. A business acquisition is considered the acquisition of an entire business, not a partial stock acquisition in a business. However, acquisition or change of ownership between existing owners is an eligible project when the remaining owner(s) held their ownership and actively participated in the business operation for at least the past 24 months and the selling owner will not retain any ownership interest in the business directly or indirectly including through other entities or trusts or property rights.

(3) Purchase and installation of machinery and equipment.

(4) Startup costs, working capital, inventory, and supplies in the form of a permanent working capital term loan.

(5) Pollution control and abatement.

(6) Purchase of membership, stocks, bonds, or debentures necessary to obtain a loan from a member owned lending institution provided the purchase is required for all their borrowers and is the minimum amount required.

(7) Agricultural production, when not eligible for Farm Service Agency (FSA) farm loan programs assistance and when it is part of an integrated business also involved in the processing of agricultural products. Any agricultural production considered for guaranteed loan financing must be owned, operated, and maintained by the business receiving the guaranteed loan.

(i) The agricultural production portion of any loan must not exceed 50 percent of the total loan or $5 million, whichever is less.

(ii) This paragraph does not preclude financing the following types of businesses:

(A) Commercial nurseries engaged in the production of ornamental plants, trees, and other nursery products, such as bulbs, flowers, shrubbery, flower and vegetable seeds, sod, and the growing of plants from seed to the transplant stage;

(B) Forestry, which includes businesses primarily engaged in the operation of timber tracts, tree farms, forest nurseries, harvesting of forest products, and related activities, such as reforestation;

(C) The growing or harvesting of mushrooms;

(D) The growing of hydroponics;

(E) The boarding and/or training of animals;

(F) Commercial fishing; and

(G) Production of algae and aquaculture, including conservation, development, and utilization of water for aquaculture.

(8) Tourist and recreation facilities, including hotels, motels, bed and breakfast establishments, and resort trailer parks and campgrounds.

(9) Educational or training facilities.

(10) CF projects consistent with § 5001.103 when not eligible for financing through Rural Housing Service or Community Facilities programs.

(11) Industries undergoing adjustment from terminated Federal agricultural price and income support programs or increased competition from foreign trade.

(12) Constructing or equipping facilities for lease to private businesses engaged in commercial or industrial operations.

(13) Financing for mixed-use properties involving both commercial business and residential space is authorized, provided that not less than 50 percent of the business's projected revenue will be generated from business use.

(14) Leasehold improvements when the lease contains no reverter clauses or restrictive clauses that would impair the use or value of the property as security for the loan. The term of the lease must be equal to or greater than the term of the loan, unless otherwise mitigated by the lender and approved by the Agency.

(15) Projects that process, distribute, aggregate, store, and/or market locally or regionally produced agricultural food products to support community development and farm and ranch income.

(i) Subject to each of the following, projects may be located in non-rural areas as well as in rural areas if the project:

(A) Expands or preserves the availability of staple food in underserved areas with moderate and low-income populations by maintaining or increasing the number of retail or institutional outlets that offer an assortment of healthy perishable foods and staple food items;

(B) The project will create or retain quality jobs for low-income residents of the community;

(C) A significant amount of the food is locally or regionally produced and sold; and

(D) Includes an appropriate agreement with retail and institutional clients to

inform consumers that they are purchasing or consuming locally or regionally produced agricultural food products.

(ii) The Agency will give funding priority to projects that provide a benefit to underserved communities in accordance with § 5001.318(d)(5) of this part.

(16) The purchase of cooperative stock by individual farmers or ranchers in a farmer or rancher cooperative or the purchase of transferable cooperative stock in accordance with § 5001.140(a) and (b); or the purchase of stock in a business by employees forming an ESOP or worker cooperative in accordance with § 5001.140(d).

(17) The purchase of preferred stock or similar equity issued by a cooperative or a loan to a fund that invests primarily in cooperatives in accordance with § 5001.140(c).

(18) Loans to cooperatives:

(i) Guaranteed loans to eligible cooperative may be made in principal amounts up to $40 million if the project is located in a rural area, the cooperative facility being financed provides for the value-added processing of agricultural commodities, and the total amount of guaranteed loans exceeding $25 million does not exceed 10 percent of the funds available for the fiscal year. Guaranteed loans in excess of $25 million in accordance with this provision may only be approved by the Secretary, whose authority may not be redelegated.

(ii) Guaranteed loans to eligible cooperative may also be made in non-rural Areas provided:

(A) The primary purpose of the guaranteed loan is for a facility to provide value-added processing for agricultural producers that are located within 80 miles of the facility;

(B) The borrower satisfactorily demonstrates that the primary benefit of the guaranteed loan will be to provide employment for rural residents;

(C) The principal amount of the guaranteed loan does not exceed $25 million; and

(D) The total amount of guaranteed loans guaranteed under this paragraph does not exceed 10 percent of the funds available for the fiscal year.

(iii) An eligible cooperative may refinance an existing B&I guaranteed loan if the existing loan is current and performing, the existing loan is not and has not been in monetary default or the collateral has not been converted, and there is adequate security and collateral for the new guaranteed loan.

(19) Taxable corporate bonds when the bonds are fully amortizing and comply with all provisions of this part, bond proceeds were used for an eligible purpose in this part, and the lender as bond holder retains the percent of the bond in accordance with § 5001.408(3)(i) of this part. The bonds must be fully secured with collateral in accordance with § 5001.202(b)(4) of this part. The bonds must only provide for a trustee when the trustee is totally under the control of the lender. The bonds must provide no rights to bond holders other than the right to receive the payments due under the bond. For instance, the bonds must not provide for bond holders replacing the trustee or directing the trustee to take servicing actions, such as accelerating the bonds. In accordance with § 5001.127(f), convertible bonds are not eligible under this paragraph due to the potential conflict of interest of a lender having an ownership interest in the borrower. An explanation of the type of bond and other bond stipulations must be attached to the bond.

(i) The bond issuer must obtain the services and opinion of an experienced bond counsel, who must present a legal opinion stating that the bonds are legal, valid, and binding obligations of the issuer and that the issuer has adhered to all applicable laws.

(ii) The bond holder (lender) must purchase all the bonds issued pursuant to the guaranteed and comply with all Agency regulations. There must be a bond purchase agreement between the issuer and the bond holder. The bond purchase agreement must contain similar language to that required in a loan agreement and must not conflict with this part. The bond holder is responsible for all servicing of the guaranteed loan evidenced by the bond, although the bond holder may contract for servicing assistance, including contracting with a trustee who remains under the lender's total control.

(20) Nursing homes and assisted living facilities where constant medical care is provided and available onsite to the residents. Independent living facilities are not eligible in accordance with § 5001.118(a).

(21) Development and construction of RES, including modification of existing systems that are commercially available and that are not otherwise eligible under REAP, or if funding is and not available in the eligible REAP.

(22) Integrated processing equipment and systems, such as biorefineries, renewable energy systems, and chemical manufacturing facilities, must utilize commercially available technology, equipment, and systems and demonstrate technical merit. The Agency will evaluate the following areas in making the technical merit determination:

(i) Qualifications of the project team;

(ii) Agreements and permits;

(iii) Resource assessment;

(iv) Design and engineering;

(v) Project development;

(vi) Equipment procurement and installation; and

(vii) Operations and maintenance.

(c) *Facility location.* The project must be located in a rural area, except for loans to cooperative in accordance with paragraph (b)(18)(ii) of this section and for loans to local foods projects in accordance with paragraph (b)(15)(i) of this section where such projects may also be located in non-rural areas. For an eligible project that located in both rural and non-rural areas, the Agency will guarantee only the amount necessary to finance that portion of the project located in the eligible rural area.

(d) *Capital and equity.* Borrowers are required to have sufficient capital or equity to mitigate the ongoing financial and operational risks of the business. Balance sheet equity will be determined based upon current and projected borrower financial statements. The following capital and equity requirements must be met at the time of lender's closing of the guaranteed loan.

(1) Existing businesses must meet one of the following requirements:

(i) A minimum of 10 percent balance sheet equity (including subordinated debt when subject to a standstill agreement), or a maximum debt-to-balance sheet equity ratio of 9 to 1, at loan closing;

(ii) A 10 percent or more of total eligible project costs, borrower investment of equity or other funds into the project including grants or subordinated debt when subject to a standstill agreement;

(iii) Balance sheet equity includes owner-contributed capital of ten percent or more of total fixed assets (net total fixed assets plus depreciation.)

(2) New businesses with sales contract(s) with proceeds in an amount adequate to meet debt service and the term of the sales contract(s) are at least equal to the term of the guaranteed loan, and subject to Agency acceptance of the credit worthiness of the counterparty, the borrower must meet one of the following requirements:

(i) A minimum of 10 percent balance sheet equity (including subordinated debt when subject to a standstill agreement), or a maximum debt-to-balance sheet equity ratio of 9 to 1 at loan closing; or

(ii) Borrower investment of equity or other funds (including subordinated debt when subject to a standstill agreement and grants) into the project in

an amount of 10 percent or more of total eligible project cost;

(3) New businesses with a project involving construction and when the lender will request the loan note guarantee prior to completion of construction must meet one of the following requirements:

(i) A minimum of 25 percent balance sheet equity at guaranteed loan closing; or

(ii) Borrower investment of equity or other funds into the project in an amount of 25 percent or more of total eligible project cost;

(4) All other borrowers that are new businesses must meet one of the following requirements:

(i) A minimum of 20 percent balance sheet equity, or a maximum debt-to-equity ratio of 4 to 1, at guaranteed loan closing, or;

(ii) Borrower investment of equity or other funds into the project in an amount of 25 percent or more of total eligible project cost;

(5) Variances in capital and equity requirements:

(i) *Increases.* The Agency may increase the capital or equity requirement specified under paragraphs (d)(1) through (4) of this section for guaranteed loans the Agency determines carry a higher risk. In determining whether a project or guaranteed loan carries a higher risk, the Agency will consider the current status of the industry, concentration of the industry in the Agency's portfolio, collateral coverage, value of personal or corporate guarantees, cash flow, and contractual relationships with suppliers and buyers; credit rating of the borrower; and the strength of the feasibility study and experience of management. The Agency may also increase the capital or equity requirement for new businesses using integrated processing equipment and systems such as biorefineries, renewable energy systems, chemical manufacturing facilities, and businesses producing new products to sell into new and emerging markets.

(ii) *Reductions.* The Agency may reduce the minimum equity requirement for an existing business when personal or corporate guarantees are obtained in accordance with § 5001.204 of this part; and all pro forma and historical financial statements indicate the business to be financed meets or exceeds the median quartile (as identified in the Risk Management Association's Annual Statement Studies or similar publication) for the current ratio, quick ratio, debt-to-worth ratio, and debt service coverage ratio.

(6) Certification: The lender must certify that, as of the date the guaranteed Loan was closed, its credit analysis indicated that the borrower had sufficient capital or equity to mitigate the financial and operational risks of the business, and that the borrower met the minimum equity required by the Agency in its conditional commitment, or that the minimum borrower capital contribution toward project costs, as applicable and required by the Agency, was met. A copy of the borrower's loan closing balance sheet must be included with the lender's certification.

TABLE 1 TO § 5001.105(d)—CAPITAL EQUITY REQUIREMENTS SUMMARY

Borrower	Borrower must meet one of the following at the time of the closing of the guaranteed loan:		
	Percent balance sheet equity:	Borrower investment as percent of total eligible project cost:	Balance sheet equity includes owner contributed capital as percentage of total fixed assets:
Existing Business	≥10	≥10	≥10
Borrowers that are new businesses with sales contract(s) adequate to meet debt service and the term of the sales contract(s) are at least equal to the term of the guaranteed loan.	≥10	≥10	N/A
Borrowers that are new businesses for a project involving construction and the lender will request the loan note guarantee prior to completion of construction.	≥25	≥25	N/A
All other borrowers that are new businesses	≥20	≥25	N/A

§ 5001.106 Eligible REAP—Renewable Energy System (RES) projects and requirements.

For a REAP RES Project to be eligible for a loan guarantee under this part, it must meet the criteria specified in § 5001.102(a) through (c) and in paragraphs (a) through (e) of this section and be for a borrower eligible to submit an application for the project in accordance with § 5001.126. If taxable bonds are utilized as debt instruments the provisions of § 5001.105(b)(19) must be met.

(a) The project must be for—

(1) The purchase of a new or existing RES;

(2) The purchase of a refurbished RES; or

(3) The retrofitting of an existing RES.

(4) For the purposes of this section, only those hydroelectric sources with a rated power of 30 megawatts or less are an eligible RES.

(b) The RES project must use commercially available technology.

(c) The RES project must be located in a rural area unless the borrower is an agricultural producer and the application supports the production, processing, vertical integration, or marketing of agricultural products. If the agricultural producer's operation is in a non-rural area, then the application can only be for RES components that are:

(1) Directly related to, and their use and purpose is limited to the agricultural production operation, such as vertically integrated operations; and

(2) Part of and co-located with the agricultural production operation.

(d) Where a residence is closely associated with an agricultural operation or rural small business to be served by the RES project, 50 percent or more of the energy to be generated by the RES project must be used by the agricultural operation or rural small business. This provision must be documented with the application and can be demonstrated using either of the methods identified in paragraphs (d)(1) and (2) of this section.

(1) Provide a renewable energy site assessment or other documentation and calculations that demonstrate based on historical energy use that 50 percent or more of the energy to be produced by the RES project will be used in the agricultural operation or rural small business. This includes documentation on historical residential energy use. The

Agency may request additional data to determine residential versus business or agricultural operation usage. The actual percentage of energy determined to benefit the rural small business or agricultural operation will be the basis to determine eligible project costs.

(2) The borrower may install or elect to conditionalize funding upon the installation of a device (such as a second meter) that results in 100 percent of the energy generated by the RES Project to be used only by the agricultural operation or rural small business.

(e) The RES project must have technical merit. The Agency will use the information provided in the technical report submitted with the application (see § 5001.307(e) of this part) to determine if the project has technical merit. In making this determination, the Agency may engage the services of other Government agencies or other recognized industry experts in the applicable technology field, at its discretion, to evaluate the technical report.

(1) *Technical report areas.* When making its technical merit determination, the Agency will evaluate the technical report using the areas specified in paragraphs (e)(1)(i) through (iii) of this section as applicable.

(i) *RES projects with total project costs of $80,000 or less.* For these projects, the Agency will evaluate the following areas in making the technical merit determination:

(A) Project description;

(B) Resource assessment;

(C) Project economic assessment; and

(D) Qualifications of key service providers.

(ii) *RES projects with total project costs of less than $200,000, but more than $80,000.* For these projects, the Agency will evaluate the following areas in making the technical merit determination:

(A) Project description;

(B) Resource assessment;

(C) Project economic assessment;

(D) Project construction and equipment; and

(E) Qualifications of key service providers.

(iii) *RES projects with total project costs of $200,000 and greater.* For these projects, the Agency will evaluate the following areas in making the technical merit determination:

(A) Qualifications of the project team;

(B) Agreements and permits;

(C) Resource assessment;

(D) Design and engineering;

(E) Project development;

(F) Equipment procurement and installation; and

(G) Operations and maintenance.

(2) *Pass/pass with conditions/fail assignments.* The Agency will assign each area of the technical report, as specified in paragraph (e)(1) of this section, a ''pass,'' ''pass with conditions,'' or ''fail.'' An area will receive a ''pass'' if the information provided for the area has no weaknesses and meets or exceeds any requirements specified for the area. An area will receive a ''pass with conditions'' if the information provided for the area has minor weaknesses which could be conditioned and reasonably resolved by the borrower. Otherwise, if the information provided for the area is conclusively deemed to be a major weakness, the area will receive a fail.

(3) *Determination.* The Agency will compile the results for each area of the technical report to determine if the Project has technical merit.

(i) A project whose technical report receives a ''pass'' in each of the applicable areas will be considered to have ''technical merit.''

(ii) A project whose technical report receives a ''pass with conditions'' in one or more the applicable areas will be considered to have ''conditional technical merit.''

(iii) A project whose technical report receives a ''fail'' in any one area will be considered to be ''without technical merit.''

(4) *Further processing of applications.* A project that is determined to have ''technical merit'' or ''conditional technical merit'' is eligible for further consideration for funding. Projects with ''conditional technical merit'' would be subject to funding conditions that would need to be met to ensure full technical merit prior to completion of the project. A project that is determined to be ''without technical merit'' is not eligible to compete for funding.

§ 5001.107 REAP—Energy Efficiency Improvement (EEI) projects and requirements.

For a REAP EEI project to be eligible for a loan guarantee under this part, it must meet the criteria specified in § 5001.102(a) through (c) and also specified in paragraphs (a) through (d) of this section and be for a borrower eligible to submit an application for the project in accordance with § 5001.126. If taxable bonds are utilized as debt instruments the provisions of § 5001.105(b)(19) must be met.

(a) The EEI project must use less energy on an annual basis than the original building and/or equipment that it will improve or replace as demonstrated in an energy Assessment or energy Audit as applicable.

(1) If the project's total project cost is greater than $80,000, the energy assessment must be conducted by an energy auditor, an energy assessor, or an individual supervised by either an energy assessor or energy auditor. The final energy assessment must be validated and signed by the energy assessor, the energy auditor who conducted the energy assessment, or by the supervising energy assessor or energy auditor of the individual who conducted the assessment, as applicable.

(2) If the project's total project cost is $80,000 or less, the energy assessment may be conducted in accordance with paragraph (a)(1) of this section or by a person that has at least 3 years of experience and completed at least five energy assessments or energy audits on similar type projects. Eligible EEI include, but are not limited to:

(1) Efficiency improvements to existing RES; and

(2) Construction of a new building only when the new building is used for the same purpose as the existing building and if, based on an energy assessment or energy audit, as applicable, it is more cost effective to construct a new building that will use less energy on annual basis than to improve the energy efficiency of the existing building.

(b) The EEI project must be for a commercially available technology.

(c) The EEI project must be located in a rural area unless the borrower is an agricultural producer and the Application supports the production, processing, vertical integration, or marketing of agricultural products. If the agricultural producer's operation is in a non-rural area, then the application can be for only EEI components that are:

(1) Directly related to and have a use and purpose limited to an agricultural production operation such as vertically integrated operations; and

(2) Part of and co-located within the agricultural production operation.

(d) The EEI project must have technical merit. The Agency will use the information provided in the technical report submitted with the application (see § 5001.307(e)) to determine whether the project has technical merit. In making this determination, the Agency may, at its discretion, engage the services of other Government agencies or other recognized industry experts in the applicable technology field to evaluate and rate the technical report.

(1) *Technical report areas.* When making its technical merit determination, the Agency will evaluate the technical report using the areas

specified in paragraphs (d)(1)(i) and (ii) of this section as applicable.

(i) *EEI project with total project costs of $80,000 or less.* For these projects, the Agency will evaluate the following areas to determine the technical merit:

(A) Project description;

(B) Qualifications of EEI provider(s); and

(C) Energy assessment (or energy audit if applicable).

(ii) *EEI projects with total project costs of greater than $80,000.* For these projects, the Agency will evaluate the following areas to determine the technical merit:

(A) Project information;

(B) Energy assessment (or energy audit as applicable); and

(C) Qualifications of the contractor or installers.

(2) *Pass/pass with conditions/fail assignments.* The Agency will assign each area of the technical report, as specified in paragraph (d)(1) of this section, a ''pass,'' ''pass with conditions,'' or ''fail'' according to provisions of § 5001.106(e)(2).

(3) *Determination.* The Agency will compile the results for each area of the technical report to determine if the project has technical merit in accordance with provisions of § 5001.106(e)(3).

(4) *Further processing of applications.* Projects will be further processed in accordance with provisions of § 5001.106(e)(4).

§ 5001.108 Eligible REAP—Energy Efficient Equipment and Systems (EEE) projects and requirements.

For a REAP EEE project to be eligible for a loan guarantee under this part, it must meet the criteria specified in § 5001.102(a) through (c) and in paragraphs (a) through (d) of this section and be for a borrower that is an agricultural producer eligible to submit an application for the project in accordance with § 5001.126. If the borrower plans to use taxable bonds as debt instruments the provision § 5001.105(b)(19) must be met.

(a) The project must be for the purchase and installation of energy efficient equipment or systems for agricultural production or processing that exceed the following standards:

(1) Energy efficiency building codes, if available;

(2) Federal or State energy efficiency standards, if available; and

(3) Other energy efficiency standards determined appropriate by the Secretary.

(i) If no codes or standards described in such subparagraph apply to the energy efficient equipment or system to be purchased or installed pursuant to such subparagraph, the Secretary shall require, to the maximum extent practicable, such equipment or systems to meet the same efficiency measurements as the most efficient available equipment or system in the market; and

(ii) The Secretary shall not provide such a loan guarantee for the purchase or installation of any energy efficient equipment or system unless more than one type of such equipment or system is available in the market.

(b) The EEE project must be for commercially available technology.

(c) The EEE project must have technical merit as certified by the vendor/installer. An application that does not include said certification will be deemed incomplete and therefore is not eligible to compete for funding.

§§ 5001.109–5001.114 [Reserved]

§ 5001.115 Ineligible projects—general.

The Agency will not issue a loan guarantee under this part for any of the projects identified in this section, unless otherwise noted. The following are ineligible projects for the CF, WWD, B&I and REAP programs:

(a) Any investment or arbitrage, or any speculative real estate investment other than cooperative stock, transferable stock, cooperative equity in accordance with § 5001.140 and NMTC projects in accordance with § 5001.141.

(b) Golf courses and golf course infrastructure, including par-3 and executive golf courses; racetracks or facilities for the conduct of races by animals, professional or amateur drivers or jockeys; for-profit zoos or safaris; and publicly-owned or non-profit amusement parks, water parks, and similar recreational type facilities inherently commercial in nature and primarily used for recreational purposes.

(c) Motion pictures and theatrical productions.

(d) Funding of political or lobbying activities.

(e) Guaranteeing loans made by other Federal agencies, lines of credit, or lease payments.

(f) Projects that the Agency determines create, directly or indirectly, a conflict of interest.

(g) Properties to be used for primarily commercial rental when the borrower has no control over tenants and services offered, except for industrial-site infrastructure development.

(h) Projects that utilize technology, equipment, or systems that are not commercially available.

(i) Projects that will violate the requirements of 7 CFR part 1970, or any statutes or Executive Orders regarding environmental requirements.

(j) Projects used primarily for the purpose of housing Federal, State, or quasi-Federal agencies, unless it is typical of the area for communities to provide this space.

(k) Community antenna television and radio services or facilities.

(l) Telephone systems.

(m) New combined sanitary and storm water sewer facilities.

(n) Owner-occupied housing or self-storage facilities.

(o) Loans on which the interest is excludable from income under current or a successor statute of the Internal Revenue Code. Funds generated through the issuance of tax-exempt obligations cannot be used to purchase the guaranteed portion of any Agency guaranteed loan and an Agency guaranteed loan cannot serve as collateral for a tax-exempt issue.

(p) Residential EEI projects.

(q) Except as provided in § 5001.106(d), residential RES projects.

(r) Loans supporting inherently religious activities, such as worship, religious instruction, proselytization, or to pay costs associated with acquisition, construction, or rehabilitation of structures for inherently religious activities, including the financing of multi-purpose facilities where religious activities will be among the activities conducted. However, religious organizations may participate in projects eligible for funding under section 306(a)(24) of the Consolidated Farm and Rural Development Act, 7 U.S.C. 1926(a)(24), provided they do not use Agency assistance for inherently religious activities in accordance with 7 CFR part 16, ''Equal Opportunity for Religious Organizations.''

§ 5001.116 Ineligible CF projects.

The following are ineligible projects for the CF program only:

(a) For industrial park sites, the financing of on-site utility systems or business and industrial buildings.

(b) Inherently commercial enterprises: This type of project is typically operated by a private enterprise with an essential characteristic to produce profits. This term does not include projects operated by private enterprises on a not-for-profit basis that provide education, childcare, geriatric care, or health care to rural communities. Inherently commercial enterprises include but are not limited to grocery stores; television and radio services or facilities; that portion of a water and/or waste disposal facility normally provided by a business or industrial user; and telecommunication facilities or services, including

broadband or fiber network services that do not meet the requirements of § 5001.103(a)(6);

(c) Projects where construction is completed prior to filing an application with the Agency. This restriction applies to construction completed by or for the borrower and does not preclude the purchase or acquisition of a building constructed by an independent third party or refinancing of debt in accordance with § 5001.102(d).

(d) Projects where the borrower acts to circumvent the regulations provided in this subpart, causing the borrower or project being eligible when, previously, the borrower or project was ineligible.

(e) Projects involving the purchase of existing facilities in which the transaction's purpose is to primarily retire the debt of the seller in order for the seller to continue to use the facility at a lower cost.

§ 5001.117 Ineligible WWD projects

The following are ineligible projects for the WWD programs only:

(a) That portion of a project normally provided by a business or industrial user, such as wastewater pretreatment.

(b) Provided the existing borrower has the capacity to provide adequate service to their service territory, guaranteed loan funds may not be used to take away customers or service areas of existing USDA WWD Program direct or guaranteed loan borrowers. The requirements and limitations of 7 U.S.C. 1926(b) only apply to this section.

(c) Projects where the borrower acts to circumvent the regulations provided in this subpart, causing the borrower or project being eligible when, previously, the borrower or project was ineligible.

(d) Projects involving the purchase of existing facilities in which the transaction's purpose is to primarily retire the debt of the seller in order for the seller to continue to use the facility at a lower cost.

§ 5001.118 Ineligible B&I projects

The following are ineligible projects for the B&I program only:

(a) The financing of timeshares, residential trailer parks, apartments, duplexes, or other residential housing where the primary purpose is independent housing except as authorized in § 5001.105(b)(8), or housing development sites except as authorized in § 5001.105(b)(1).

(b) Projects eligible for funding under B&I that are in excess of $1 million that would either:

(1) Likely result in the transfer of jobs from one area to another and increase direct employment by more than 50 employees. However, this limitation is not to be construed to prohibit assistance for the expansion of an existing business entity through the establishment of a new branch, affiliate, or subsidiary of such entity if the establishment of such branch, affiliate, or subsidiary will not result in an increase in unemployment in the area of original location or in any other area where such entity conducts business operations. An exception is when there is reason to believe that such branch, affiliate, or subsidiary is being established with the intention of closing down the operations of the existing business entity in the area or its original location or in any other area where it conducts such operations; or

(2) Increase direct employment by more than 50 employees, which is calculated to or likely to result in an increase in the production of goods, materials, commodities, or the availability of services or facilities in the area when there is not sufficient demand for such goods, materials, commodities, services, or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area.

(3) The financing of timeshares, residential trailer parks, apartments, duplexes, or other residential housing where the primary purpose is independent housing except as authorized in § 5001.105(b)(8), or housing development sites except as authorized in § 5001.105(b)(1).

§ 5001.119 Ineligible REAP projects.

Owner occupied bed and breakfasts are ineligible projects in the REAP program.

§ 5001.120 [Reserved]

§ 5001.121 Eligible uses of loan funds.

Guaranteed loan funds can only be used for the items specified in this section.

(a) *CF projects.* Guaranteed loan funds for an essential CF project receiving a loan guarantee under § 5001.1 may be used to pay the expenses identified in paragraphs (a)(1) through (3) of this section.

(1) When necessary to ensure the successful operation or protection of the project authorized in § 5001.103, subpart B:

(i) Costs for the construction or relocation of public buildings, roads, bridges, fences, utilities, or to make other public improvements; and

(ii) Costs for the relocation of private buildings, roads, bridges, fences, or utilities, and other private improvements.

(2) To pay the cost of conduit, such as pipe, tube, or tile for protecting electric wires or cables, and its installation in conjunction with financing facilities authorized in § 5001.103, subpart B, when the cost of the conduit is less than 25 percent of the total project cost. The Borrower must be the owner of the conduit. The conduit must be installed at the time of project construction and must be for public use.

(3) When necessary as part of a guaranteed loan to finance a project:

(i) Guarantee fees, as determined under § 5001.454;

(ii) Lender fees, as provided in § 5001.403;

(iii) Professional service fees and charges provided the Agency agrees that the amounts are reasonable and customary in the area;

(iv) Interest on guaranteed loans until the facility is self-supporting, but not for more than three years; interest on guaranteed loans secured by general obligation bonds until tax revenues are available for payment, but not for more than two years; and interest on interim financing;

(v) Costs of acquiring interests in land, rights (*e.g.,* water rights, leases, and permits), rights-of-way, and other evidence of land or water control necessary for development of the project;

(vi) Costs of purchasing or renting equipment necessary to install, maintain, extend, protect, operate, or utilize facilities;

(vii) Obligations for construction worked performed prior to filing an Application with the Agency. Construction work must not be started (and obligations for such work or materials must not be incurred) before the conditional commitment is issued. If there are compelling reasons for proceeding with construction before the conditional commitment is issued, lenders may request Agency approval to pay such obligations and not jeopardize receipt of a loan guarantee from the Agency. Such request must comply with the following conditions:

(A) Provide conclusive evidence that the contract was entered into without intent to circumvent the Agency regulations, including but not limited to 7 CFR part 1970;

(B) Modify the outstanding contract to conform to the provisions of this part. When this is not possible, modifications will be made to the extent practicable and, at a minimum, the contract must comply with all State and local laws and regulations as well as statutory

requirements and Executive Orders related to the Agency guarantee.

(C) When construction is complete and it is impracticable to modify the contract, the borrower and lender must provide a certification by an engineer or architect that any construction performed complies fully with the plans and specifications; and

(D) The borrower and the contractor must have complied with all statutory and Executive Order requirements related to the Agency guarantee for construction already performed even though the requirements may not have been included in the contract documents.

(b) *WWD projects.* Guaranteed loan funds for a WWD project receiving a loan guarantee may be used to pay the expenses identified in paragraphs (b)(1) through (10) of this section when they are a necessary part of the WWD project.

(1) Guarantee fees, as determined under § 5001.454.

(2) Lender fees, as provided in § 5001.403.

(3) Professional service fees and charges provided the Agency approves the amounts as reasonable and customary in the area.

(4) Costs of acquiring interests in land, rights (*e.g.,* water rights, leases, permits, rights-of-way), and other evidence of land or water control or protection necessary for development of the project.

(5) Purchasing or renting equipment necessary to install, maintain, extend, protect, or operate the project.

(6) Cost of additional borrower labor and other expenses necessary to install and extend service.

(7) Interest incurred during construction in conjunction with interim financing.

(8) Initial operating expenses, including interest, for a period ordinarily not exceeding one year when the borrower is unable to pay such expenses.

(9) The purchase of existing facilities when it is necessary either to improve service or prevent the loss of service.

(10) Purchase of equipment to operate, maintain, or protect facilities.

(c) *B&I projects.* Guaranteed loan funds for a project receiving a loan guarantee under § 5001.1 may be used to pay the expenses identified in paragraphs (c)(1) through (12) of this section.

(1) Purchase and development of land, buildings, and associated infrastructure for commercial or industrial properties, including expansion or modernization.

(2) Business acquisitions provided that jobs will be created or saved. A business acquisition is considered the acquisition of an entire business, not a partial stock acquisition in a business. However, acquisition or change of ownership between existing owners is an eligible use of loan funds when the remaining owner(s) held their ownership and actively participated in the business operation for at least the past 24 months and the selling owner will not retain any ownership interest in the business directly or indirectly including through other entities or trusts or property rights.

(3) Purchase of machinery and equipment.

(4) Startup costs, working capital, inventory, and supplies in the form of a permanent working capital term loan.

(5) Pollution control and abatement.

(6) Takeout of interim financing: Guaranteeing a loan that provides for permanent, long-term financing after project completion to pay off a lender's interim loan will not be treated as debt refinancing provided that the lender submits a complete preapplication or application that proposes such interim financing prior to closing the interim loan. The borrower must take no action until the conclusion of the environmental review process prior to any action that would have an adverse effect on the environment or limit the choices of any reasonable alternatives to be considered by the Agency.

(7) Guarantee fees, as determined under § 5001.454.

(8) Lender fees, as determined under § 5001.403.

(9) Professional service fees and charges, provided the Agency approves the amounts as reasonable and customary in the area and fees for construction permits and licenses.

(10) Feasibility studies and business plans.

(11) Interest (including interest on interim financing) during the period before the first principal payment becomes due or when the facility becomes income producing, whichever is earlier.

(d) *REAP projects.* Guaranteed loan funds for a Project receiving a loan guarantee under REAP may be used to pay the expenses associated with the items identified in paragraphs (d)(1) through (14) of this section, provided such items are directly related to and their use and purpose are limited to the RES, EEI, or EEE project. The expenses associated with the items specified in paragraphs (d)(8) through (11) of this section cannot exceed more than ten percent of the loan amount.

(1) Purchase and installation of new or refurbished RES.

(2) Purchase and installation of energy efficient equipment and systems by eligible agricultural producers.

(3) Construction, retrofitting, replacement, and improvements.

(4) Energy efficiency improvements (EEI) identified by vendor/installer certification or in the applicable energy assessment or energy audit.

(5) Fees for construction permits and licenses, including fees required by an interconnection agreement.

(6) Guarantee fees, as determined under § 5001.454.

(7) Professional service fees and charges related to the project, which may include non-deferred developer fees, provided the Agency approves the amounts as reasonable and customary in the area.

(8) Lender fees, as provided in § 5001.403.

(9) Working capital, which may include interest on interim financing, debt reserves, rent payments, insurance, and packaging and origination fees.

(10) Land acquisition.

(11) Energy assessments, energy audits, technical reports, business plans, and feasibility studies completed and acceptable to the Agency, provided no portion was financed by any other Federal or State grant or payment assistance, including, but not limited to, a REAP energy audit or renewable energy development assistance grant.

(12) For an eligible RES project in which a residence is closely associated with the rural small business or agricultural operation, the installation of a second meter to separate the residence from the portion of the project that benefits the rural small business or agricultural operation, as applicable.

(13) Land, building, and equipment for an existing RES.

(14) Refinancing outstanding debt when—

(i) The original purpose of the debt being refinanced meets the eligible project requirements of § 5001.106, § 5001.107 or § 5001.108, as applicable, of this part;

(ii) Debt being refinanced does not exceed 50 percent of the total use of funds in the new REAP guaranteed loan;

(iii) Refinancing is necessary to improve cash flow and viability of the project;

(iv) At the time of application, the loan being refinanced has been current for at least the past 6 months (unless such status is achieved by the lender forgiving the borrower's debt); and

(v) The lender is providing better rates or terms for the loan being refinanced.

§ 5001.122 Ineligible uses of loan funds.

Projects that receive a loan guarantee under this part cannot use the

guaranteed loan funds for those expenses or purposes identified in paragraphs (a) through (m) of this section and for any other item the Agency identifies in accordance with § 5001.10.

(a) Payment in excess of actual costs (*e.g.,* profit, overhead, indirect costs, and wages to owners) incurred by the contractor or other service provider on a contract or agreement that has been entered into at less than an arm's length transaction or has a potential for a conflict of interest. In situations where there is common ownership or an otherwise closely-related company is being paid to do construction or installation work for a borrower, only documented costs associated with the construction or installation can be paid with guaranteed loan funds and cannot include any profit or wages to such related Person.

(b) Notwithstanding § 5001.102(d), payment on any other Federal loan or debt.

(c) Payment of a Federal judgment, State or Federal tax lien, or other debt owed to the United States.

(d) Loan finder or broker fees.

(e) Refinancing debt that is owned by a loan packager or broker or their respective affiliates.

(f) For loans as specified under CF and WWD, costs normally provided by a business or industrial user (*e.g.,* wastewater pretreatment).

(g) For loans as specified under CF and WWD, any portion of the cost of a project that does not serve a rural area.

(h) Rental for the use of equipment or machinery owned by the borrower.

(i) For purposes not directly related to operating and maintaining the project.

(j) Any EEI not identified in the applicable energy assessment or energy audit.

(k) Agricultural tillage equipment, used equipment, and vehicles are ineligible for loans as specified under REAP.

(l) Guaranteed loan funds cannot be used for the distribution or payment to a member of the immediate family of an owner, partner, stockholder, or member of the borrower except for a change in ownership of the business where the selling person does not retain an ownership interest and the Agency determines in writing the price paid to be reasonable based upon an independent appraisal. This prohibition does not apply to transfers of ownership for ESOPs or worker cooperatives, to cooperatives where the cooperative pays the member for product or services, or where member stock is transferred among members of the cooperative in accordance with § 5001.140 of this part.

(m) For loans as specified under CF, initial operating expenses, short-term, working capital or operating loans; or annual recurring costs, including purchases or rentals that are generally considered to be operating and maintenance expenses.

§§ 5001.123–125 [Reserved]

§ 5001.126 Borrower eligibility.

To be eligible for a loan guarantee under this part, a Borrower must meet the requirements specified in this section at the time of each guaranteed loan's approval and through issuance of the loan note guarantee. A borrower must meet the eligibility requirements specified in paragraph (a) of this section and in paragraphs (b) through (e), as applicable, of this section.

(a) *Legal authority and responsibility.* The borrower must have, or obtain before issuance of the loan note guarantee, the legal authority necessary to construct, operate, and maintain the proposed Project and services and to obtain, give security for, and repay the proposed loan.

(1) *Operating, maintaining, and managing the facility.* The borrower is responsible for operating, maintaining, and managing the facility and providing for its continued availability and use. The borrower will retain this responsibility even though the facility may be operated, maintained, or managed by a third party under contract, management agreement, or written lease. Leases may be used for certain projects when they are the only feasible way to provide the service or facility, are the customary practice to provide such service or facility within the industry or in the State, and provide for the borrower's management control of the Project. Contracts, management agreements, or written leases must not contain options or other provisions for transfer of ownership unless approved by the Agency.

(2) *Co-borrowers.* Except for CF guaranteed loans in situations where any business or affiliate is dependent upon another's operations and are effectively one business or rely upon one another for loan repayment, they must be co-borrowers, unless waived by the Agency in writing when the Agency determines that adequate justification exists to not require the entities to be co-borrowers. Both co-borrowers must meet all requirements in this part. If the operating entity is truly independent and not reliant on another operation to remain viable or repay the debt, the Agency will allow one entity to be the sole borrower.

(b) *CF loan guarantees.* To be eligible for a loan guarantee under CF, a borrower must meet the requirements identified in paragraphs (b)(1) through (4) of this section.

(1) *Borrower type.* Be a public body, including Indian tribes on Federal and State reservations and other federally recognized Indian tribes, or non-profit organization.

(i) Borrowers organized under the applicable State or Tribal for-profit corporation laws may be eligible if they will be operated on a not-for-profit basis for the duration of the guaranteed loan;

(ii) Single member not-for-profit corporations or not-for-profit corporations owned or substantially controlled by other corporations or associations are eligible if the member organization has significant ties with the project service area and provides a payment guarantee.

(2) *Significant ties.* Have significant ties with the project service area (not applicable to public bodies and federally recognized Tribes) as evidenced by the following:

(i) Association with or control by a public body or bodies; or

(ii) Broadly based membership and controlled primarily by members residing in the project service area. Membership must be open without regard to race, color, religion, national origin, sex, age, disability, sexual orientation, or marital or familial status.

(3) *Credit elsewhere.* In accordance with 7 U.S.C. 1983, certify in writing, subject to Agency verification, that the borrower is unable to finance the proposed project from their own resources or through commercial credit without a guarantee, at reasonable rates and terms. A loan guarantee will not be provided to borrowers who are able to obtain sufficient credit elsewhere to finance project costs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near where the borrower resides, for loans for similar purposes and periods of time, or to borrowers who are able to finance project costs from their own resources.

(4) *Evidence of significant community support.* In accordance with 7 U.S.C. 2009h, the evidence shall be in the form of a certification of support for the project from each affected local government. The certification of support should include sufficient information to determine that the essential community facility will provide needed services to the community or communities and will have no adverse impact on other community facilities providing similar services.

(c) *WWD loan guarantees.* To be eligible for a loan guarantee under WWD, a borrower must meet the requirements identified in paragraphs (c)(1) through (3) of this section.

(1) *Borrower type.* Be a public body, including Indian tribes on Federal and State reservations and other Federally recognized Indian tribes, or non-profit organization.

(2) *Credit elsewhere.* In accordance with 7 U.S.C. 1983, certify in writing, subject to Agency verification, that the borrower is unable to finance the proposed project from their own resources or through commercial credit without a guarantee, at reasonable rates and terms. A loan guarantee will not be provided to borrowers who are able to obtain sufficient credit elsewhere to finance project costs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in the community in or near where the borrower resides, for loans for similar purposes and periods of time, or to borrowers who are able to finance project costs from their own resources.

(3) *Evidence of significant community support.* In accordance with 7 U.S.C. 2009h, the evidence shall be in the form of a certification of support for the project from each affected local government.

(d) *B&I loan guarantees.* To be eligible for a loan guarantee under B&I, a borrower must meet the requirements specified in paragraphs (d)(1) through (4), as applicable, of this section.

(1) The borrower must be:

(i) A cooperative, corporation, partnership, or other legal entity organized and operated on a profit or nonprofit basis;

(ii) An Indian Tribe

(iii) A Public Body; or

(iv) An individual.

(2) The borrower must be engaged in or proposing to engage in a business. A business may include manufacturing, wholesaling, retailing, providing services, or other activities that will provide employment or improve the economic or environmental climate in rural communities.

(3) A borrower who is an individual must:

(i) Be a citizen of the United States;

(ii) Reside in the United States after being legally admitted for permanent residence and must provide a permanent green card as evidence of eligibility; or

(iii) Be a citizen or resident of the Republic of Palau, the Federated States of Micronesia, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Republic of the Marshall Islands.

(4) A borrower must demonstrate, to the Agency's satisfaction, that guaranteed loan funds will remain in the United States and the Project being financed will primarily create new or save existing jobs for rural U.S. residents.

(e) *REAP loan guarantees.* To be eligible for a loan guarantee under REAP, a borrower must meet the requirements specified in paragraphs (e)(1) through (4) of this section.

(1) *Type of borrower.* The borrower must be either an agricultural producer or a rural small business.

(2) *Ownership.* The borrower must:

(i) Own the project; and

(ii) Own or control the site for the project at the time of application and for the term of the guaranteed loan.

(3) *Revenues and expenses.* The borrower must have available or be able to demonstrate, at the time of application, satisfactory sources of revenue in an amount sufficient to provide for the operation, management, maintenance, and any debt service of the project for the term of the loan. In addition, the borrower must control the revenues and expenses of the project, including its operation and maintenance. The borrower may employ a qualified consultant under contract to manage revenues and expenses of the project and its operation and/or maintenance.

(4) *Matching funds.* The borrower must demonstrate evidence of injection of matching funds in the project of not less than 25 percent of total eligible project costs. Passive third-party contributions are acceptable as matching funds for RES projects, including those raised from the sale of Federal tax credits.

§ 5001.127 Borrower ineligibility conditions.

A potential borrower is ineligible for a guaranteed loan under this part as identified in paragraphs (a) through (g) of this section. The borrower remains ineligible until the condition causing ineligibility is resolved.

(a) An entity is ineligible if any of the conditions identified in paragraphs (a)(1) through (4) of this section applies to the borrower, any owner with more than 20 percent ownership interest in the borrower, or any owner with control of the borrower.

(1) There is an outstanding judgment obtained by the U.S. in a Federal Court (other than U.S. Tax Court).

(2) Delinquency on the payment of Federal income taxes.

(3) Delinquency on a Federal Debt.

(4) Debarment or suspension from receiving Federal assistance.

(b) An entity is ineligible if it derives more than 15 percent of its annual gross revenue (including any lease income from space or machines) from gambling activity, excluding State-authorized lottery proceeds or Tribal-authorized gaming proceeds, as approved by the Agency, conducted for the purpose of raising funds for the approved project.

(c) An entity is ineligible if it derives income from activities of a prurient sexual nature.

(d) An entity is ineligible if it derives income from illegal drugs, drug paraphernalia, or any other illegal product or activity as defined under Federal statute.

(e) An entity is ineligible under B&I projects if it is a charitable or fraternal organization. For purposes of this section, an organization that derives more than 10 percent of its annual gross revenue from tax deductible charitable donations, based on historical financial statements, is considered a charitable organization. Fees for services rendered or that are otherwise ineligible for deduction under the Internal Revenue Code are not considered tax deductible charitable donations.

(f) An entity is ineligible if its lender or any of the lender's officers has an ownership interest in the borrower or is an officer or director of the borrower with management control or where the borrower or any of its officers, directors, stockholders, or other owners have more than a five percent ownership Interest in the lender. Any of the lender's directors, stockholders, or other owners that are officers, directors, stockholders, or other owners of the borrower must be recused from any decision-making process associated with the guaranteed loan.

(g) A borrower is ineligible if it is a lending institution, investment institution, or insurance company with exception of REAP or projects for a fund that invests primarily in cooperatives in accordance with § 5001.140, and NMTC projects in accordance with § 5001.141.

§§ 5001.128–5001.129 [Reserved]

§ 5001.130 Lender eligibility requirements.

To become a lender under this part, the lending entity must meet the requirements specified in paragraphs (a) through (d) of this section, as applicable, and become an approved participant in the Agency's electronic system. Paragraph (e) of this section contains provisions associated with lenders that have already been approved by the Agency under one of the guaranteed loan programs identified in § 5001.1of this part. If not yet an Agency-approved lender, the lending entity must include with the application

a request for lender approval in accordance with this section.

(a) *General.* The lending entity must:

(1) Be domiciled in a State;

(2) Not be debarred or suspended by the Federal Government or be an affiliated person of such entity that was suspended or debarred;

(3) Inform the Agency if it is under a consent order, or similar constraint, from a Federal or State agency. The Agency will evaluate the lending entity's eligibility on a case-by-case basis, and assess the risk of loss posed by the consent order or similar constraint, as applicable;

(4) Maintain written standards of conduct covering conflicts of interest; and

(5) Maintain internal audit and management control systems to evaluate and monitor the overall quality of its loan origination and servicing activities.

(b) *Regulated lending entities.* Regulated lending entities identified in paragraphs (b)(1) through (9) of this section are eligible to receive a loan guarantee under this part without documentation to the Agency provided they are subject to supervision and credit examination by the applicable agency of the United States or a State, or were created specifically by State statute and operate under the direct supervision of a State government authority.

(1) Federal and State chartered banks.

(2) Farm Credit Bank of the Federal Land Bank and other Farm Credit System institutions with direct lending authority to make loans of the type guaranteed under this part.

(3) Bank for Cooperatives.

(4) Savings and Loan Associations.

(5) Savings banks.

(6) Mortgage companies that are part of a bank-holding company.

(7) The National Rural Utilities Cooperative Finance Corporation.

(8) Credit unions.

(9) State Bond Banks or State Bond Pools.

(c) *Non-regulated lending entities.* The Agency may approve a lending entity that does not meet the criteria of paragraph (b) of this section to become a lender for a period up to five years. Non-regulated lending entity eligibility will expire on January 31 of the fifth year after the date of Agency approval.

(1) *Conditions.* When the lending entity is a multi-tiered entity, the Agency will consider the lending entity in its entirety. In order to be approved as a lender, a non-regulated lending entity must:

(i) Have the legal authority to operate a lending program;

(ii) Be a financially sound institution that has a record of successfully originating at least five commercial loans annually totaling at least $1 million for each of the last three years, with the lending entity's commercial loan portfolio in last five years not exceeding:

(A) Six percent average delinquency of all commercial loans, and

(B) Three percent in commercial loan losses (based on the original principal loan amount);

(iii) Have and agree to maintain balance sheet equity in accordance with Section 5001.105(d) of this part of at least 10 percent of assets and sufficient funds available to disburse the guaranteed loans it proposes to approve within the first six months of being approved as a Lender;

(iv) Have and agree to maintain a line of credit issued by a regulated lending entity that is acceptable to the Agency;

(v) Agree to establish and maintain an Agency-approved loan loss reserve equal to one percent reserve of the unguaranteed portion of all guaranteed loans plus an amount equal to the identified anticipated losses.

(vi) Have written policies and procedures to ensure that internal credit controls provide adequate loan making and servicing guidance that adheres to Federal and State fair lending practices;

(vii) Document and assure to the Agency that the lending entity has the capacity to fulfill the lender functions and responsibilities identified in this part, including, but not limited to §§ 5001.201, 5001.202, 5001.207, and 5001.501.

(2) *Written request.* A non-regulated lending entity that seeks to become a lender must submit a written request to the Agency including the following information:

(i) The request must clearly define the multiple-entity organizational and control structure with a listing of each entity under its control, including any Community Development Entity (CDE) that may request guaranteed loans under § 5001.141. In addition, the non-regulated lending entity must include each such sub-entity in their audited financial statements, commercial loan portfolio, and commercial loan performance statistics;

(ii) Bylaws;

(iii) Audited financial statements for the most recent fiscal year that evidences the required balance sheet equity and that the lending entity has available resources to successfully meet its responsibilities;

(iv) Auditor's most recent management letter and management's response;

(v) An interim financial statement dated within 90 days of the written request, if applicable;

(vi) A copy of any license, charter, State statute, or other third-party evidence of authority to engage in the proposed guaranteed loan making and servicing activities. If licensing by the State is not required, an attorney's opinion stating that licensing is not required and that the lending entity has the legal authority to engage in the proposed guaranteed loan making and servicing activities must be submitted;

(vii) The lender's loan classification scale including their loan classification criteria;

(viii) Information on lending experience, including—

(A) Length of time in the lending business;

(B) Range and volume of lending and servicing activities for the last five years, including a list of the industries for which it has provided financing;

(C) Status of its loan portfolio, including a summary of loans in the portfolio by current loan classification code, a list of any loans restructured or charged off in the previous five years, and the calculated delinquency and loss rates as outlined in paragraph (c)(1)(ii) of this section;

(D) Lending experience of management and loan officers, including staff organizational chart, including names and titles for senior staff;

(E) Largest sources of funds for the last five years and source of funds for the proposed guaranteed loans;

(F) Office location(s) and proposed lending area(s);

(G) An estimate of the number, size, and type of applications the lending entity will develop over the next six months; and

(H) Proposed Interest rate structure and loan fees, including any loan origination, loan preparation, and servicing fees.

(ix) Description of programs, financial, and non-financial products and services.

(x) Its lending policies including underwriting standards, credit analysis policies and procedures, and its problem credit management policies and procedures.

(xi) A third-party external loan origination, lending portfolio, and management review acceptable to the Agency conducted in the previous two years, or a copy of a credit examination less than two years old conducted under an approved credit examination criterion such as CAMELS.

(3) *Approval or disapproval.* The Agency will notify the non-regulated

lending entity whether its request to become a lender is approved or rejected. If the Agency rejects the request, the Agency will include in the notification the reason(s) for the rejection.

(4) *Renewals.* To maintain its status as an approved lender, the non-regulated lending entity must submit a request to the Agency for renewal of its approved lender status at least 60 calendar days prior to the expiration of the existing lender's agreement to be assured of a timely renewal. The lender must provide in this written request the information specified in paragraphs (c)(2)(i) and (iii) through (v) of this section; and

(i) A written update of any change in the persons designated to process and service Agency guaranteed loans or change in the operating methods used in the processing and servicing of loans since the original or last renewal date of lender status.

(ii) A description of how the lender is complying with each of the required criteria described in (c)(1) of this section and § 5001.501.

(iii) A new executed lender's agreement.

(iv) The Agency may require lenders with limited guaranteed loan activity over the previous five years, or a lender that has originated guaranteed loans with servicing issues or a loss to the Agency, to resubmit all the information required by paragraph (c)(2) of this section.

(d) *Non-regulated lending entities serving tribal trust lands.* The Agency may approve a lending entity serving tribal trust lands that does not meet the criteria of paragraph (b) or (c) of this section to become a lender for a five-year period. A non-regulated lending entity approved to originate and service guaranteed loans for projects located only on tribal trust lands is restricted to such areas. To make and service guaranteed loans not on tribal trust lands, the lending entity must meet the criteria of paragraph (b) or (c) of this section. When the lending entity is a multi-tiered entity, the Agency will consider the lending entity in its entirety for approval.

(1) *Conditions.* To be approved as a lender, a non-regulated lending entity serving only tribal trust lands must—

(i) Have the legal authority necessary to operate a lending program to borrowers located on tribal trust lands.

(ii) Meet the requirements of paragraph (c)(1) of this section, and prove to be a financially sound institution, as determined by the Agency, on a case by case basis, based on the Agency's risk assessment of the lending entity's capital, adequate liquidity, management capabilities, repayment ability, credit underwriting, balance sheet equity and other financial factors as determined appropriate. On a case-by-case basis, the Agency may reduce the loan origination requirements of paragraph (c)(1)(ii) of this section for lenders serving only projects located on tribal trust lands.

(2) *Written request.* A non-regulated lending entity serving tribal trust lands must submit a written request to the Agency that includes the following information:

(i) Documentation required by paragraph (c)(2) of this section;

(ii) Written certification that the lender intends to only originate guaranteed loans under the regulation for projects located in certain (or specified) tribal lands held in trust for tribes and for tribal members not in such tribal lands but are in their service area;

(iii) Bylaws; and

(iv) Lending experience of management and loan officers, including staff organizational chart, including names and titles for senior staff.

(3) *Approval or disapproval.* The Agency will notify the non-regulated lending entity servicing tribal trust land whether its request to become a lender is approved or rejected. If the Agency rejects the request, the Agency will include in the notification the reason(s) for the rejection.

(4) *Renewals.* To maintain its status as an approved lender, the non-regulated lending entity serving tribal trust land must submit a request to the Agency for renewal of its approved lender status at least 60 calendar days prior to the expiration of the existing lender's agreement to be assured of a timely renewal. The lender must provide in this written request the information specified in paragraphs (c)(2)(i) and (iii) through (v) of this section; and

(i) A written update of any change in the persons designated to process and service Agency guaranteed loans or change in the operating methods used in the processing and servicing of loans since the original or last renewal date of lender status.

(ii) A description of how the lender is complying with each of the required criteria described in (c)(1) of this section and § 5001.501.

(iii) A new executed lender's agreement.

(iv) The Agency may require lenders with limited guaranteed loan activity over the previous five years, or a lender that has originated guaranteed loans with servicing issues or a loss to the Agency, to resubmit all information required by paragraph (c)(2) of this section.

(e) Previously approved lenders. Lenders that have been previously approved by the Agency under one of the guaranteed loan programs identified in § 5001.1(b)(1) through (4) of this part cannot originate new guaranteed loans after the effective date of this rule unless the lender is approved under the applicable conditions of paragraphs (a) through (d), as applicable, of this section.

§ 5001.131 Lender's agreement.

When approved to participate as a lender under this part, the Lender must execute a lender's agreement before the Agency will issue a loan note guarantee. A new lender's agreement must be executed with any existing lender making new loans on or after October 1, 2020.

§ 5001.132 Maintenance of approved lender status.

Continuation of approved lender status under this part is not automatic. Lenders may lose their approved lender status as described in paragraph (a) of this section. The Agency may also revoke a lender's status as an approved lender or debar the approved lender, as described in paragraph (b) of this section.

(a) *Loss of approved lender status.* A lender will lose its approved status if it—

(1) Fails to conform with the provisions of this part or the applicable guaranteed loan program identified in § 5001.1 of this part;

(2) Has no outstanding guaranteed loans with the Agency for five consecutive years;

(3) A regulated lending entity fails to remain in good standing with its regulator;

(4) A non-regulated lending entity fails to renew its approval status 5 years from the date the Agency executes the lender's agreement.

(b) *Revocation of approved status and debarment of lender.* The Agency can revoke a lender's status as an approved lender at any time for cause as specified in the lender's agreement. A decision to revoke a lender's approved status will be made by the Agency and the lender will be notified in writing. Cause for revoking lender status includes, but is not necessarily limited to, the circumstances identified in paragraphs (b)(1) through (14) of this section.

(1) Guaranteed loans originated by the lender cause substantial financial loss to the Agency.

(2) Failure to maintain status as an approved lender under the applicable

regulations in effect when the lender obtained approved lender status. For lenders approved under this part, this means maintaining compliance with the requirements set forth in § 5001.130.

(3) Conviction of the lender or any of its officers for criminal acts in connection with any loan transaction, whether or not the loan was guaranteed by the Agency.

(4) Violation of usury laws in connection with any loan transaction whether or not the loan was guaranteed by the Agency.

(5) Negligent loan origination.

(6) Knowingly submitting false information when requesting a loan guarantee or basing a loan guarantee request on information known to be false or which the lender should have known to be false.

(7) Failure to correct any Agency-cited deficiency in loan documents in a timely manner.

(8) Failure to provide for adequate construction planning and monitoring in connection with any guaranteed loan to ensure that the project will be completed with the available funds.

(9) Negligent loan servicing.

(10) Failure to obtain and maintain the required collateral for any guaranteed loan.

(11) Using guaranteed loan funds for purposes other than those specifically approved by the Agency in the conditional commitment or amendment thereof.

(12) Violation of any term of the lender's agreement.

(13) Failure to submit reports required by the Agency in a timely manner.

(14) Violation of applicable nondiscrimination laws, including, but not limited to, statutes, regulations, USDA Departmental Regulations, the USDA Non-Discrimination Statement, and the Equal Credit Opportunity Act. USDA's Non-Discrimination Statement is located on the Agency's website, see *https://www.usda.gov/non-discrimination-statement.* In addition to revoking the Lender's status, the Agency may debar a Lender in compliance with 2 CFR part 180.

(c) *Servicing of outstanding loans.* Any lender who loses its status as an approved Lender under any of the conditions identified in paragraph (a) or (b) of this section must reapply under the provisions of § 5001.130 to be reinstated as an approved lender. A lender who loses its approved lender status must continue to service any outstanding guaranteed loans in conformance with the lender's agreement last in effect and the applicable regulation under which the lender became an approved lender. In addition, such lenders cannot submit requests for new loan guarantees.

§§ 5001.133–5001.139 [Reserved]

§ 5001.140 Cooperative stock/cooperative equity.

Loan guarantees described in paragraphs (a) through (d) of this section are only available under B&I guaranteed loans.

(a) *Cooperative stock purchase program.* The Agency may guarantee loans for the purchase of cooperative stock by individual farmers or ranchers in a farmer or rancher cooperative established for the purpose of processing an agricultural commodity. The cooperative may contract for services to process agricultural commodities or otherwise process value-added agricultural products during the five-year period beginning on the operation startup date of the cooperative in order to provide adequate time for the planning and construction of the processing facility of the cooperative.

(1) The proceeds from the stock sale may be used to recapitalize, to develop a new processing facility or product line, or to expand an existing production facility. Guaranteed loan funds must remain in the cooperative from which stock was purchased, and the cooperative must not reinvest those funds into another entity.

(2) The maximum guaranteed loan amount is $600,000 and all applications will be processed in accordance with §§ 5001.301 through 5001.303, 5001.306, 5001.315, and 5001.318 of this part, as applicable.

(3) The maximum term of the guaranteed loan is seven years when the proceeds from the stock sale are used by the cooperative to recapitalize or are used for working capital. The maximum term allowable for final guaranteed loan maturity is limited to the justified useful life of the assets the cooperative purchases with the proceeds of the stock sale not to exceed 40 years or applicable State statutory limitations, whichever is less.

(4) The lender will, at a minimum, obtain a valid lien on the stock, an assignment of any patronage refund, and the ability to transfer the stock to another party, or any other right or ability necessary to liquidate and dispose of the collateral in the event of a default by the borrower.

(5) The lender must complete a written credit evaluation of each stock purchase loan and a complete credit evaluation of the cooperative prior to making its first stock purchase loan.

(6) The borrower may provide financial information in the manner that is generally required by commercial agricultural lenders.

(7) A feasibility study of the cooperative is required for startup cooperatives and may be required by the Agency for existing cooperatives when the cooperative's operations will be significantly affected by the proceeds that were generated from the stock sale.

(8) The Agency will conduct an appropriate environmental review on the processing facility and will not process individual applications for the purchase of stock until the environmental review on the cooperative processing facility is completed.

(b) *Purchase of transferable stock shares.* The Agency may also guarantee loans for the purchase of transferable stock shares of any type of existing cooperative, which would primarily involve new or incoming members. Such stock may provide delivery or some form of participation rights and may only be traded among cooperative members.

(1) The maximum loan amount is $600,000 and all applications will be processed in accordance with §§ 5001.301 through 5001.303, 5001.306, 5001.315, and 5001.318 of this part, as applicable.

(2) The maximum term of the loan is seven years.

(3) The lender will, at a minimum, obtain a valid lien on the stock, an assignment of any patronage refund, and the ability to transfer the stock to another party, or any other right or ability necessary to liquidate and dispose of the collateral in the event of a default by the borrower.

(4) The lender must complete a written credit evaluation of each stock purchase loan and a complete credit evaluation of the cooperative prior to making its first stock purchase loan.

(c) *Cooperative equity security guarantees.* The Agency may guarantee loans for the purchase of preferred stock or similar equity issued by a cooperative or may guarantee loans to a fund that invests primarily in cooperatives. In either case, the project must significantly benefit one or more entities eligible for assistance under B&I guaranteed loans.

(1) ''Similar equity'' is any special class of equity stock that is available for purchase by non-members and/or members and lacks voting and other governance rights.

(2) A fund that invests ''primarily'' in cooperatives is determined by its percentage share of investments in and loans to cooperatives. A fund portfolio must have at least 50 percent of its loans and investments in cooperatives to be

considered eligible for loan guarantees for the purchase of preferred stock or similar equity.

(3) The principal amount of the guaranteed loan cannot exceed $10 million.

(4) The maximum term of the guaranteed loan is seven years when the proceeds are used by the cooperative for working capital and;

(i) In all other cases the maximum term of the guaranteed loan is equal to the lesser of the following but not exceeding 40 years:

(ii) The justified useful life of the funded project assets,

(iii) The maximum term under any applicable State statute; or

(iv) The specified holding period for redemption as stated by the stock offering.

(5) All borrowers purchasing preferred stock or similar equity must provide documentation of the terms of the offering that includes compliance with State and Federal securities laws and financial information about the issuer of the preferred stock to both the lender and the Agency.

(6) Issuer(s) of preferred stock must be a cooperative organization and must be able to issue preferred stock to the public that, if required, complies with State and Federal securities laws.

(7) The lender will, at a minimum, obtain a valid lien on the preferred stock, an assignment of any patronage refund, and the ability to transfer the stock to another party, or otherwise liquidate and dispose of the collateral in the event of a default by a borrower. For the purpose of recovering losses from guaranteed loan defaults, lenders may take ownership of all equities purchased with such loans, including additional shares derived from reinvestment of dividends.

(8) Shares of preferred stock that are purchased with guaranteed loan funds cannot be converted to common or voting stock.

(9) In the absence of adequate provisions for investors' rights to early redemption of preferred stock or similar equity, a borrower must request from a cooperative or fund issuing such equities a contingent waiver of the holding or redemption period in advance of share purchases. This contingent waiver provides that in the event a default by a borrower on a B&I guaranteed loan, the borrower waives any ownership rights in the stock, and the lender and Agency will then have the right to redeem the stock.

(10) Guaranteed loans for the purchase of preferred stock must be prepaid in the event a cooperative that issued the stock exercises an early redemption. If the cooperative enters into bankruptcy, to the extent the cooperative can redeem the preferred stock, the Borrower is required to repay the guaranteed loan from the redemption of the stock.

(d) *Employee ownership succession.* The Agency may guarantee loans for conversions of businesses to either cooperatives or ESOP within five years from the date of initial transfer of stock.

(1) The maximum loan amount is $600,000 and all applications will be processed in accordance with §§ 5001.301 through 5001.303, 5001.306, 5001.315, and 5001.318 of this part, as applicable.

(2) The maximum term is 10 years.

(3) The lender must, at a minimum, obtain a valid lien on the stock, an assignment of any patronage refund, and the ability to transfer the stock to another party, or otherwise liquidate and dispose of the collateral in the event of a default by a borrower.

(4) The lender must complete a written credit evaluation of each stock purchase loan and a complete credit evaluation of the cooperative or ESOP prior to making its first stock purchase loan.

(5) If a cooperative is organized, each selling owner becomes a member with special control rights to protect their stake in the business while a succession plan is implemented. At the completion of the stock transfer, selling owners may retain their membership in the cooperative provided that their control rights are the same as all other members. Any special covenants that selling owners may have held must be extinguished upon completion of the transfer.

(6) If an ESOP is organized for transferring ownership to employees, selling owner(s) may not retain ownership in the business after five years from the date of the initial transfer of stock.

§ 5001.141 New markets tax credits.

The New Markets Tax Credit (NMTC) program is administered by the U.S. Department of the Treasury's (Treasury) Community Development Financial Institutions (CDFI) Fund with NMTC credits allocated to Treasury-certified Community Development Entities (CDEs) across the United States to make Qualified Equity Investments (QEIs) in low-income communities. NMTC related definitions and terms in this section are governed by section 45(D) of the Internal Revenue Code (26 U.S.C. 45D), and applicable Treasury regulations (26 CFR 1.45D–1). A CDE will generally establish a new subsidiary of a CDE (sub-CDE) for individual NMTC projects. Lenders and their borrowers with guaranteed loan Projects that include NMTC investments must comply with the provisions in this section. To be a lender for a guaranteed loan project that involves financing under the NMTC provisions, the lending entity must meet the applicable eligibility criteria in § 5001.130. The Agency will not waive its servicing rights to a guaranteed loan or be a party to any forbearance agreement in conjunction with a NMTC project.

(a) *Guaranteed Loans Directly to Qualified Active Low-Income Community Businesses (QALICB).* (1) A lender that is CDE or sub-CDE under the direct control of a regulated lender or an approved non-regulated lender does not need to separately meet the requirements of § 5001.130 to make a guaranteed loan directly to a qualified active low-income community business (QALICB).

(2) The provisions of § 5001.121(c)(2) notwithstanding, a lender that is a CDE or sub-CDE may have an ownership interest in the borrower provided that each condition specified in paragraphs (a)(2)(i) through (iii) of this section is met.

(i) The lender does not have an ownership interest in the borrower prior to the application.

(ii) The lender does not take a controlling interest in the borrower.

(iii) The lender does not provide equity or take an ownership interest in a borrower at a level that would result in the lender owning 20 percent or more interest in the borrower.

(3) Notwithstanding § 5001.115(f), a lender that is a CDE or sub-CDE taking an ownership interest in the borrower does not constitute a conflict of interest. The Agency will mitigate the potential for a conflict of interest by requiring appropriate loan covenants establishing, at a minimum, limitations on dividends and distributions of earnings in the loan agreement between the lender and borrower. The Agency will also ensure that the lender limits any waivers of loan covenants and future modifications of loan documents in compliance with this part.

(4) Guaranteed loans made by a lender directly to a QALICB must meet all other program and project eligibility requirements as specified in this part.

(5) For purposes of calculating borrower equity in compliance with § 5001.105(d)(1), the CDE (or sub-CDE's) amount of the principal balance of the loan from NMTC investor funds that is subordinated to the guaranteed loan may be considered as equity.

(b) *Guaranteed loans to a NMTC leveraged equity structure.* Tax benefits

to a NMTC investor are based on the total amount of funds utilized in the project. The tax benefit calculation includes the sum of the investor's cash investment plus loan proceeds from a leveraged lender into a NMTC investor fund entity. The investor fund entity is generally a new entity established to make a qualified equity investment (QEI) into one or more CDEs or sub-CDEs to support a qualified low-income community investment (QLICI) to a QALICB. The investor fund entity, through its investment, has ownership rights in the sub-CDE that will be making secured QLICI loans to the QALICB. The provisions of § 5001.127(g) notwithstanding, either a leveraged lender entity lending to an investor fund entity, or an investor fund entity such as an investor partnership or investor limited liability corporation, may be an eligible borrower for a specific NMTC project as specified in paragraph (b)(1) of this section. For purposes of this section only, the stated term ''borrower'' in paragraphs (b)(1) through (13) of this section applies to both a leveraged lender entity or an investor fund entity as the guaranteed loan borrower in the NMTC project. Paragraphs (b)(2) through (13) of this section identify modifications to this part that apply when the eligible borrower is a leveraged lender entity or investor fund entity in a NMTC project.

(1) To be an eligible borrower using the leveraged equity structure of a NMTC project each condition identified in paragraphs (b)(1)(i) through (v) of this section must be met.

(i) The investor fund entity must be established for a single specific NMTC investment.

(ii) The lender is not an affiliate of the borrower.

(iii) When the borrower is a leveraged lender entity it must relend one hundred percent of the guaranteed loan funds to an investor fund entity. In all cases one hundred percent of the guaranteed loan funds are or will be invested by the investment fund entity in one or more sub-CDEs that will then be loaned directly to a QALICB through a direct tracing method, and such guaranteed loan funds are, or will be, used by the QALICB in accordance with the eligibility requirements in subpart B of this part. The QALICB's project must be the ultimate use of one hundred percent of the guaranteed loan funds.

(iv) The QALICB must meet the requirements of an eligible borrower as found in § 5001.126.

(v) The sub-CDE operating agreement with the QALICB must include a provision that the guaranteed lender has approval rights with respect to any substantial loan servicing actions that may be taken by the sub-CDE regarding the collateral or repayment terms of their QLICI loans to the QALICB.

(2) The guaranteed loan amount and percentage of guarantee provisions found in §§ 5001.406 and 5001.407 of this part, respectively, apply to the QALICB and not to the investor fund entity or leveraged lender entity, who would actually be the borrower as defined under this part.

(3) For purposes of calculating borrower equity in compliance with § 5001.105(d)(1), the leveraged lender entity's note from the investor fund may be considered a tangible asset and when the lien associated with the sub-CDE's loan is subordinated, the principal balance of the sub-CDE's loan made to the QALICB from NMTC investor funds may be considered as equity.

(4) The loan terms found in § 5001.402 of this part apply to both the borrower and the QALICB. The maturity and related payment schedule of the lender's guaranteed loan to the borrower must be no longer than the maturity and related payment schedule of the sub-CDE's loan to the QALICB. An Agency approved unequal or escalating schedule of principal and interest payments can be used for a NMTC loan. The lender may require additional principal repayment by a co-borrower, such as an owner or principal participant of the QALICB. The provisions of § 5001.402(b)(3) notwithstanding, the Agency may consider interest-only payments by a borrower pursuant to an interest-only term not to exceed seven years on a loan made under an NMTC structure if the lender requires:

(i) A debt repayment reserve fund or sinking fund in an amount at least equal to the guaranteed loan's principal amortization that would have otherwise applied to the loan if equally amortized payments were collected during the seven year term; and

(ii) Such reserve funds or sinking funds are applied to the guaranteed loan as an additional payment of principal at the end of such interest-only term.

(5) Except for the collateral provisions, § 5001.202(b)(4), § 5001.202(b) of this part applies to both the lender's guaranteed loan to the borrower and the sub-CDE's loan to the QALICB. The collateral provisions found in § 5001.202(b)(4) of this part apply only to the sub-CDE's loan to the QALICB.

(6) The personal, partnership and corporate guarantee provisions of § 5001.204 of this part apply when the guaranteed loan borrower is a leveraged lender entity in a NMTC project. Guaranteed loans made directly to an investor fund entity as the borrower do not require a personal, partnership, or corporate guarantee from the investor fund entity's owner, who is the NMTC tax credit investor and considered a passive investor. The Agency shall obtain the personal, partnership or corporate guarantee from the QALICB ownership for a guaranteed loan to an investor fund entity in compliance with § 5001.204, subject to the eligibility requirements of the NMTC program. The Agency may require additional personal, partnership or corporate guarantees if warranted by an Agency evaluation of potential financial risk.

(7) The insurance provisions of § 5001.205(d) of this part apply only to the QALICB and the sub-CDE's secured loan to the QALICB.

(8) The financial report provisions of Section 5001.504 of this part apply to both the borrower and the QALICB.

(9) The application requirements found in subpart D to this part, as applicable, apply to both the borrower and the QALICB, including the application analysis and evaluation components of § 5001.303. The Agency also requires submission of the loan terms and documents between the sub-CDE and QALICB. As part of the application completed by the lender, the documentation must include comparable industry information and a summary of the NMTC project's funding path and an explanation of the relationships between all parties in the NMTC transaction (an accompanying schematic is encouraged for complicated transactions).

(10) The environmental responsibilities specified in § 5001.207 of this part apply to the NMTC project.

(11) For any application that the Agency assigns a priority score, when assigning the priority score to a NMTC loan application, the Agency will score the project based on the entire NMTC structure and the QALICB's project as the ultimate use of guaranteed loan funds.

(12) The lender is responsible for ensuring that the NMTC project complies with the planning, performing, development and project monitoring provisions in § 5001.205 of this part and the lender is also responsible for ensuring the NMTC project complies with all applicable Treasury NMTC requirements.

(13) Sections 5001.401 through 5001.408 of this part apply to both the borrower and the QALICB in a NMTC transaction.

§§ 5001.142–5001.200 [Reserved]

Subpart C—Orgination Provisions

§ 5001.201 General origination requirements.

The lender is responsible for originating a guaranteed loan in accordance with the requirements of this part and in accordance with its internal origination policies and procedures to the extent they do not conflict with the requirements of this part. For each application, the lender must prepare a credit evaluation that is consistent with Agency standards found in this part. The Agency reserves the right to review the lender's credit evaluation and request additional information. Lender approval does not constitute Agency approval.

§ 5001.202 Lender's credit evaluation

For each application, the lender must prepare a credit evaluation that is consistent with Agency standards found in this part.

(a) *Lender's evaluation guidelines.* The lender must conduct a credit evaluation using credit documentation procedures and underwriting processes that are consistent with generally accepted prudent lending practices for commercial, public and project financing and also consistent with the lender's own policies, procedures, and lending practices. The underwriting process must include a review of each loan for which a loan guarantee is being sought under this part. Applications involving affiliated entities must include a global credit evaluation and if applicable a global historical and projected debt service coverage analysis. Applications involving guarantor(s) must also include a global debt service coverage analysis of the guarantor(s) including the cash flow of the guarantor(s). In addition, the lender must review all applicable contracts, management agreements, and leases to determine they will not adversely affect either the borrower's repayment ability or the value of the collateral securing the guaranteed loan. The lender's evaluation must address any financial or other credit weaknesses of the borrower and project and discuss risk mitigation requirements imposed by the lender.

(b) *Credit factors.* In performing its credit evaluation, the lender must analyze all credit factors associated with each proposed guaranteed loan and apply its professional judgment to determine that the credit factors and guaranteed loan terms and conditions, considered in combination, ensure guaranteed loan repayment. Credit factors to be analyzed include, but are not necessarily limited to, those areas identified and defined in paragraphs (b)(1) through (5) of this section.

(1) *Character.* Those qualities that generally impel the borrower to meet its obligations as demonstrated by its credit history, including project and borrower debt structure and debt repayment ability. When applicable, an evaluation may include the character of persons with management control or a 20 percent or more ownership interest in the borrower. When the borrower's credit history or character is negative, the lender will provide satisfactory explanations to indicate that any problems are unlikely to recur. The ownership or membership structure of the project and borrower (including membership, sponsors, other equity investors), and the historical performance and experience of ownership and management specific to the project and industry. The historical performance and experience of any entities providing management or administrative services pursuant to contract should also be evaluated. For CF projects the commitment of the rural community or rural area to be served by the project should be evaluated. Borrower's management, and its for-profit, non-profit or governing board, as applicable, will be evaluated to ensure key management personnel are adequately trained and experienced.

(2) *Capacity.* A borrower's ability to produce sufficient cash to repay the guaranteed loan as agreed, including the feasibility and likelihood of the project and borrower to produce sufficient revenues to service the project's debt obligations over the life of the guaranteed loan and, when applicable, result in sufficient returns to investors to ensure successful repayment of the guaranteed loan. The lender shall address any economic safeguards of the project, including capital expenditure budgeting or reserve funds and other contingency reserve funds such as maintenance reserve funds or debt service reserve funds, intended to protect and safeguard the Agency and lender in the event of default. The lender must make all efforts to:

(i) Ensure that the borrower has adequate working capital, operating capital and reserves for capital expenditures, debt service, and maintenance as applicable; and

(ii) Structure or restructure debt so the borrower has adequate debt coverage, documenting as applicable the necessity of any debt refinancing. The evaluation will be supported by a cash flow analysis.

(3) *Capital.* The borrower must have the resources to adequately capitalize the project and demonstrate the ability to generate and maintain sufficient cash flow for its operations. The extent to which project costs are funded by the borrower in relation to project costs funded by the guaranteed loan or other Federal and non-Federal governmental assistance such as grants, tax credits, or other loans must be analyzed.

(4) *Collateral.* This criterion refers to the security pledged for the guaranteed loan. The lender is responsible for obtaining and maintaining proper and adequate collateral for the guaranteed loan. All collateral must secure the entire guaranteed loan. The lender is prohibited from taking separate collateral for the guaranteed and unguaranteed portions of the guaranteed loan or requiring compensating balances or certificates of deposit as a means of eliminating the lender's exposure on the unguaranteed portion of the guaranteed loan. Collateral can include, but is not limited to: General obligation bonds; revenue bonds; pledges of taxes or assessments; assignments of facility revenue and byproduct revenue, as well as other assets such as land, easements, rights-of-way, water rights, buildings, machinery, equipment, inventory; accounts receivable, other accounts, contracts, cash, assignments of leases and leasehold interests. Intangible assets may serve as collateral, provided they do not serve as primary collateral. For purposes of determining compliance with this requirement, leasehold improvements such as buildings and other structures on leased property are considered tangible assets and can serve as primary collateral. It is the lender's responsibility to obtain, document, file, record and take all actions necessary to properly perfect and maintain adequate collateral to protect the interests of the lender and the Agency.

(i) The lender must determine the market value of collateral as established by an appraisal in accordance with § 5001.203.

(ii) The lender should discount collateral consistent with sound loan-to-discounted value practices which must be adequate to secure the guaranteed loan in accordance with this section. To assess collateral adequacy and appropriate levels of discounting, the lender should give consideration to the type, quality, location, marketability, and alternative uses of the collateral and the basis for the valuation of the collateral, *e.g.* collateral valued on a cost or replacement valuation or market or comparable sales valuation may require variance of discount factors. The lender must provide satisfactory justification of the discounts being used. Only under exceptional circumstances for WWD

projects with a loan guarantee under the provisions of § 5001.126(c) will the Agency guarantee a loan where the guaranteed loan amount is greater than the market value of the collateral.

(5) *Conditions.* This factor refers to the general business environment, including the regulatory environment affecting the business or industry, and status of the Borrower's industry. Consideration will be given to items listed below and, when applicable, the lender should submit supporting documentation (*e.g.,* feasibility study, market study, preliminary architectural or engineering reports, etc.):

(i) Availability and depth of resource/feedstock market, strength and duration of purchase agreements and availability of substitutes;

(ii) Analysis of current and future market potential and off-take agreements, competition, type of project (service, product, or commodity based),

(iii) Energy infrastructure, availability and dependability, transportation and other infrastructure, and environmental considerations;

(iv) Technical feasibility including demonstrated performance of the technology and integrated processing equipment and systems, developer system performance guarantees, or technology insurance;

(v) Complexity of construction and completion, terms of construction contracts, experience and financial strength of the construction contractor or engineering, procurement, and construction (EPC) contractor;

(vi) Contracts and intellectual property rights, licenses, permits, and state and local regulations;

(vii) Creditworthiness of any counterparties, as applicable;

(viii) Industry-related public policy issues; and

(ix) Other criteria that the lender or Agency deems relevant to the project.

(6) *Content.* The credit evaluation must be sufficiently detailed to describe the proposed loan, business and project scenario and document that the proposed loan is sound. The credit evaluation must include:

(i) A written evaluation of each credit factor listed in paragraphs (b)(1) through (5) of this section and any additional factors as appropriate; and

(ii) A written evaluation of the feasibility study, business plan, technical report, and engineering and architectural reports, as applicable; and

(iii) Spreadsheets and analysis of the financial statements provided in accordance with § 5001.303, with appropriate ratios and comparisons with industry standards (such as Dun & Bradstreet or the Risk Management Association). The spreadsheets should enable a reviewer to easily scan the data, spot trends, and make comparisons.

(iv) Financial projections deviating from historical financial performance must be substantiated and documented.

(v) Projected operational cash flow analysis on a quarterly basis for borrowers with seasonal cyclical cash flow.

(vi) Operational cash flow analysis on a quarterly basis from the current financial statements through start-up or occupancy for projects involving construction when lenders are requesting the loan note guarantee prior to completion of construction.

§ 5001.203 Appraisals.

Appraisals of collateral are required as set forth in this section. The lender is responsible for ensuring that appraisal values adequately reflect the actual value of the collateral based on an arm's length transaction. Completed appraisals should be submitted when the application is filed. If the appraisal has not been completed when the application is filed, the lender must submit an estimated appraised value. Prior to the issuance of the loan note guarantee, the estimated value must be supported with an appraisal acceptable to the agency.

(a) *Newly-acquired chattel.* A bill of sale may be submitted to support the value of newly-acquired chattel.

(b) *Existing chattel.* The lender must obtain appraisal(s) for existing chattel collateral when its value exceeds $250,000.

(c) *Real estate.* The lender must obtain appraisals for real estate collateral when the value of the collateral exceeds $500,000 or the current limitation established under the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) Public Law 101–73, 103 Stat. 183 (1989). Real estate and chattels with a value below these thresholds must be evaluated in accordance with the lender's primary regulator's policies relating to appraisals and evaluations or, if the lender is not regulated, in accordance with normal banking practices and generally accepted methods of determining value.

(1) For construction projects, the lender must:

(i) Obtain the ''As Is'' market value and the ''prospective'' market value as of the date of construction completion to determine the value of the real estate property, or

(ii) Obtain an income-based appraisal as of the date of completion to determine the value of revenues to be generated by the real estate.

(d) *Appraisal standards.* (1) Each real estate appraisal must be conducted by an independent qualified appraiser in accordance with the USPAP or successor standards. All real estate appraisals must meet the requirements contained in the FIRREA, and the appropriate guidelines contained in Standards 1 and 2 of the USPAP and be performed by a State Certified General Appraiser licensed in the state in which the real estate is located.

(2) Chattel appraisals must be conducted by an independent qualified appraiser and must be based on industry recognized standards and reflect the age, condition, and remaining useful life of the equipment.

(e) *Interagency appraisal and evaluations guidelines.* Notwithstanding any exemption that may exist for transactions guaranteed by a Federal Government agency, all appraisals obtained by the lender under this part must conform to the interagency appraisal and evaluations guidelines established by the lender's primary Federal or State regulator, if applicable.

(f) *Environmental considerations.* When the Agency will take a lien on real property, the real estate appraisals must include consideration of the potential effects from a release of hazardous substances or petroleum products or other environmental hazards on the market value of the collateral, as determined in accordance with the appropriate ASTM International Real Estate Assessment and Management environmental standards.

(g) *Appraisal review report.* The lender must submit its complete technical review of the appraisal in an appraisal review report prepared in compliance with USPAP Standards 3 and 4 to the Agency before guaranteed loan closing.

(1) Appraisals must not be more than one year old. However, the Agency may request a more recent appraisal in order to reflect more current market conditions.

(2) The lender must provide documentation that, in addition to the other requirements of this section pertaining to appraisers, the appraiser has the necessary experience and competency to appraise collateral.

(h) *Appraisal fees.* Unless otherwise stated in this part, appraisal fees or any other associated costs will not be paid by the Agency.

§ 5001.204 Personal, partnership, and corporate guarantees.

The provisions of this section do not apply to passive investors.

(a) Except as provided in paragraph (c) of this section, Agency-approved, unsecured personal, partnership, and corporate guarantees for the full term of the guaranteed loan and at least equal to the guarantor's percent interest or membership in the borrower times the guaranteed loan amount are required from any person or entity owning a 20-percent or greater interest or membership in the borrower. In the event a portion of the borrower's ownership interest stock is sold or transferred, the Agency reserves the right to require personal or corporate guarantees from the new owners of a 20-percent or more interest in the borrower.

(b) When warranted by an Agency assessment of potential financial risk to the Government in accordance with the Federal Credit Reform Act of 1990 (FCRA), the Agency may require the following:

(1) Guarantees to be secured;

(2) Guarantees from any person or entity owning less than a 20-percent Interest or membership in the borrower; and

(3) Guarantees from persons whose ownership Interest in the borrower is held indirectly through intermediate or affiliated entities.

(c) Exceptions to the requirement for personal, partnership or corporate guarantees may be requested by the lender. The lender must document, to the Agency's satisfaction, that collateral, equity, cash flow, and profitability indicate an above-average ability of the borrower to repay the loan. The Agency will evaluate these requests on a case-by-case basis.

(d) Each guarantor must execute an Agency-approved guarantee form in addition to any guarantee form required by the lender.

(e) Any amounts paid by the Agency pursuant to a claim by a guaranteed program lender will constitute a Federal debt owed to the Agency by a guarantor of the loan, to the extent of the amount of the guarantor's guarantee.

§ 5001.205 General project monitoring requirements.

In complying with the requirements of this section, the lender may rely on written materials and other reports provided by an independent engineer and other qualified consultants.

(a) *Design requirements.* The lender must ensure that all facilities constructed with guaranteed loan funds are:

(1) Designed using accepted architectural, engineering, and design practices, taking into consideration any Agency comments when the facility is being designed;

(2) Designed in conformance to applicable Federal, Tribal, State, and local codes and requirements; and

(3) Constructed to support operations at the level and quality contemplated by the borrower using accepted architectural and engineering practices.

(b) *Rights-of-ways, easements, and property rights.* The lender is responsible for ensuring that the borrower has:

(1) Obtained valid, continuous, and adequate rights-of-way and easements needed for the construction, operation, and maintenance of a project; and

(2) Obtained and recorded such releases, consents, or subordinations to such property rights from holders of outstanding liens or other instruments as may be necessary for the construction, operation, and maintenance of the project and to provide the required security.

(c) *Permits, agreements, and licenses.* It is the lender's responsibility to ensure the borrower obtains all permits, agreements, and licenses that are applicable to the project.

(d) *Insurance.* It is the lender's responsibility to ensure the borrower obtains and maintains borrower and project insurance in substance and amount similar to that ordinarily required by lenders in the industry.

(e) *Construction monitoring requirements.* The lender, or its designated agent, will monitor the progress of construction of the project and undertake the reviews and inspections necessary to ensure that construction conforms to applicable Federal, Tribal, State, and local code requirements and that construction proceeds in accordance with the plans, specifications, and contract documents.

(1) *Construction inspections.* The lender must notify the Agency of any scheduled field inspections during construction. The Agency may attend any field inspections the lender may conduct. Any Agency inspection, including those with the lender, are for the benefit of the Agency only (and not for the benefit of other parties in interest) and do not relieve any parties of interest of their responsibilities to conduct necessary inspections.

(i) On a case-by-case basis in the event that the Agency determines that there is additional risk to the government, the Agency may require the use of a qualified, independent inspector to inspect construction to ensure the project is being adequately built to meet the borrower's requirements of the borrower's approved project and comply with all applicable codes and legal requirements.

(2) *Issuance of loan note guarantee prior to completion of the project.* Except for projects utilizing non-proven technologies, the lender may request that the loan note guarantee be issued prior to construction or completion of a project. If the lender chooses to close the construction loan prior to completion of the project or project acquisition, the loan can only be sold on the secondary market after all funds have been disbursed for eligible project costs which have previously been incurred by the borrower. The lender's request will be considered by the Agency, who may require credit risk mitigation. An additional fee for issuance of the loan note guarantee prior to completion of the project will be assessed in accordance with § 5001.454(c) in subpart E. The lender must verify and include evidence of the following in its request:

(i) The promissory note specifying the full term of the note and containing the terms and conditions of each draw period;

(ii) The borrower and lender have entered into a contract with an independent disbursement and monitoring firm with a construction monitoring plan acceptable to and approved by the Agency;

(iii) The borrower and lender have agreed to a detailed timetable for the project with a corresponding budget of costs setting forth the parties responsible for payment. The timetable and budget will be confirmed as adequate for the planned development by a qualified independent consultant (*e.g.,* the project architect or engineer) with demonstrated experience relating to the project's industry.

(iv) The borrower has entered into a firm, fixed-price construction contract with an independent general contractor with costs outlined in detail and terms specifying change order approvals, the agreed retainage percentage, and the disbursement schedule;

(v) Evidence the lender has properly vetted the financial feasibility and past performance of the contractor to show they are able to complete the project or that the lender has mitigated risk in the event the project is never completed, such as requiring a 100-percent performance/payment bond on the borrower's contractor to be maintained until the contractor is released from its obligation. The bonding agent must be listed on Treasury Circular 570;

(vi) Evidence, which the Agency at its sole discretion determines is satisfactory, that the lender has completed the due diligence necessary to confirm that the contractor is able to complete the project based on

information including but not limited to the financial statements and past performance of the contractor;

(vii) When applicable, the borrower has entered into a contract with an independent technology development firm guaranteeing the following: Completion of the project with the necessary technology to successfully run the project and system performance for projects that utilize integrated processing equipment and systems, such as biorefineries, renewable energy systems, and chemical manufacturing plants. The credit underwriting of the independent technology development firm must be satisfactory to and approved by the Agency; and;

(viii) Evidence, in form and substance satisfactory to the Agency, that there is sufficient contingency funding in place to handle unforeseen cost overruns without seeking additional guaranteed assistance.

(f) *Reporting during construction.* Regardless of when the loan note guarantee is issued, all lenders must report any problems in project development to the Agency within 15 calendar days of identifying the problem. If the loan note guarantee has been issued prior to construction or completion of the project, the lender must provide monthly construction reports that contain:

(1) Certifications for each draw request as follows:

(i) Certification by the independent engineer or qualified consultant to the Lender that the work referred to in the draw has been successfully completed; and

(ii) Certification by the borrower and independent engineer or qualified consultant that the guaranteed loan funds of the prior draw have been applied to eligible project costs in accordance with the draw request and that the contractors have delivered mechanics lien waivers in connection with such draw;

(2) List of invoices;

(3) Details regarding the borrower's equity, other funds, and guaranteed loan funds disbursed to date;

(4) Status of construction and inspection reports;

(5) Inspection reports; and

(6) Concerns, potential problems, cost overruns, etc.

(g) *Use of guaranteed loan funds.* The lender must ensure that:

(1) All borrower funds are utilized prior to guaranteed loan funds;

(2) Guaranteed loan funds are only used for eligible project costs in accordance with the purposes approved by the Agency in the conditional commitment and in accordance with the plans, specifications, and contract documents; and

(3) The project will be completed within the approved budget.

(h) *Project completion.* Once construction of the project is completed, the lender must obtain and have on file all mechanics lien waivers or releases from all contractors and materialmen. The lender will provide to the Agency:

(1) A copy of the notice of completion or similar document issued by the relevant jurisdiction;

(2) Certification that all funds were used for authorized purposes; and

(3) A written certification that the project will be used for its intended purpose and will meet the borrower's needs and guaranteed loan purposes in accordance with the application approved by the Agency.

(4) RES or EEI projects and projects that utilize integrated processing systems and equipment, such as biorefineries, renewable energy systems, and chemical manufacturing facilities, unless utilizing the provisions of paragraph (e)(2) of this section, must be constructed, installed, and operated as described in the technical report or on the vendor certification prior to disbursement of guaranteed loan funds. For RES, the system must be operating at the steady state operating level described in the technical report or on the vendor certification for a period of not less than 30 calendar days, unless this requirement is modified by the Agency, prior to disbursement of funds.

§ 5001.206 Compliance with USDA Departmental Regulations, Policies, and other Federal laws.

(a) *Departmental regulations.* All projects receiving a loan guarantee under this part are subject to the provisions of USDA's Departmental Regulations, as applicable.

(b) *Other Federal laws.* Lenders and borrowers must comply with other applicable Federal laws including, but not limited to, Equal Employment Opportunities, Americans with Disabilities Act, Equal Credit Opportunity Act, and the Fair Housing Act.

§ 5001.207 Environmental responsibilities.

Actions taken under this part must comply with 7 CFR part 1970. The Agency is responsible for ensuring that the requirements of the National Environmental Policy Act of 1969 (under 40 CFR part 1500) and related compliance actions, such as Section 106 of the National Historic Preservation Act (under 36 CFR part 800) and section 7 of the Endangered Species Act, are met. The Agency will complete the appropriate level of environmental review in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures.''

(a) *Borrower and lender responsibilities.* Both the borrower and lender must take into consideration the potential environmental impacts of the project at the earliest planning stages. The Agency recommends that the lender contact the Agency to determine environmental requirements as soon as practicable after deciding to apply for a guarantee under this part.

(1) *Lender.* The lender is responsible for becoming familiar and ensuring compliance with Federal environmental requirements. The lender must alert the Agency to any environmental issues related to a project or items that may require extensive environmental review. Proposals that minimize the potential of any project to adversely impact the environment must be developed and provided upon request by the Agency.

(2) The lender must ensure that the borrower has—

(i) Provided the necessary environmental information to enable the Agency to undertake its environmental review process in accordance with 7 CFR part 1970, including the provision of all required Federal, State, and local permits;

(ii) Not taken any actions or incurred any obligations with respect to the project that would either limit the range of alternatives to be considered during the Agency's environmental review process or which would have an adverse impact on the environment, such as the initiation of construction. Taking any such actions or incurring any such obligations could result in project ineligibility; and

(iii) Complied with any environmental mitigation measures required by the Agency.

(b) *Environmental reviews.* The Agency must complete all required environmental reviews, identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects on minority populations and low-income populations, in accordance with 7 CFR part 1970.

(1) The Agency may schedule a site visit if the Agency determines one is necessary in order to determine the scope of the environmental review.

(2) The Lender must assist in the collection of additional data when the Agency needs such data to complete its environmental review of the project and mitigation of environmental issues.

§ 5001.208 Conflicts of interest.

The lender must report all conflicts of interests, in writing, to the Agency.

§§ 5001.209–5001.300 [Reserved]

Subpart D—Guarantee Application Provisions

§ 5001.301 Beginning the application process.

(a) The lender must file applications and related documents through the Agency online application system located at *https://www.rd.usda.gov/onerdguaranteed.*

(b) The lender may complete either a request for preliminary eligibility review in accordance with § 5001.302 or a full application in accordance with §§ 5001.303 through 5001.307, as applicable, to begin the process for obtaining a guaranteed loan. The Agency encourages, but does not require, lenders to file requests for preliminary eligibility reviews in order to obtain Agency comments before submitting a full Application.

§ 5001.302 Preliminary eligibility review.

(a) *Contents.* Except as otherwise indicated, each request for a preliminary eligibility review must contain the material identified in paragraphs (a)(1) through (3) of this section. This information may be submitted in a narrative format or utilizing the lender's preliminary lender's analysis or preliminary credit memo.

(1) Regardless of format, the lenders must provide the following information:

(i) Name of the proposed borrower and co-borrower(s) as applicable, organization type, address, contact person, email address, and telephone number;

(ii) Name of the proposed lender, address, telephone number, contact person, email address;

(iii) Amount of the guaranteed loan request; and if known, the percentage of guarantee requested; the proposed rates and terms of the guaranteed loan; and the source(s) of other funding;

(iv) If known, a description of collateral to be offered with estimated value(s), identity of guarantors, and the amount and source of equity, other capital, and matching funds to be contributed to the project; and

(v) A brief description of the project, its location, products or services provided, service area, and, as applicable, availability of raw materials and supplies.

(2) Sufficient information and documentation to enable the Agency to assess borrower, lender, and project eligibility, including summaries or spreadsheets of financial statements or audits, relationships and identity of any affiliates; and copies of organizational documents, organizational charts, and existing debt instruments.

(3) For REAP projects:

(i) Borrower information as outlined in § 5001.307(a) and (b), and project information as outlined in § 5001.307(c).

(ii) For REAP RES projects where a residence is located at or is closely associated with and shares an energy metering devise with a rural small business or agricultural operation, demonstration that 50 percent or greater of the energy to be generated by the RES will benefit the rural small business or agricultural operation.

(b) *Assessment.* Based on the information submitted for the preliminary eligibility review, the Agency will make an informal assessment of the types of guarantee funding applicable to the request, and the eligibility of the borrower, project, and lender. The Agency will provide written informal comments. The assessment may change based on subsequently submitted information, is solely advisory in nature, does not obligate the Agency to approve a guarantee request, and is not considered a favorable or adverse decision by the Agency.

§ 5001.303 Applications for loan guarantee.

The Agency will accept applications on a continuous basis. For each loan guarantee request, the lender must submit to the Agency a complete application that is in conformance with this section, and §§ 5001.304 through 5001.307, as applicable.

(a) *Complete applications.* Lenders must submit complete applications in order to be considered for loan guarantees. Lenders are encouraged to submit a complete application in a single package; however, the Agency may accept the environmental information required by the Agency and initiate and complete its environmental reviews in advance of receiving a complete application. If an application is incomplete, the Agency will notify the lender in writing of the items necessary to address the incomplete application. Upon receipt of a complete application, the Agency will complete its evaluation.

(b) *Content.* Lenders must provide an analysis of the scope of the project in relation to the borrower's overall operations. The application and lender's analysis should be supported by adequate documentation as applicable to the project and as listed in paragraph (c) of this section. The Agency reserves the right to request additional documentation to support the funding request. All complete applications must contain at a minimum:

(1) Agency-approved application form or system that includes all items noted in this section;

(2) Credit evaluation (conforming to § 5001.202).

(3) Environmental information required by the Agency to conduct its environmental reviews (as specified in § 5001.207(a)(2)(i)).

(4) Required financial statements including:

(i) Current Agency-acceptable balance sheet and year-to-date income statements of the borrower, and any guarantor(s) dated within 90 days of submission of the complete application;

(ii) Agency-acceptable historical balance sheet, income statements, and cash flow statements of the borrower, and any guarantor(s) for the lesser of the last three fiscal years or all years of operation; and

(iii) Projected balance sheets, income statements, and cash flow statements or a financial model starting from the current financial statements through a minimum of two years of the project performing at full operational capacity or stable operations. Based on the type of project or at the discretion of the Agency, financial projections or models may be required from current financial statements up to the end of the term of the guaranteed loan. Financial projections must be supported by a list of assumptions showing the basis for the projections. Projected financial statements must include a pro forma balance sheet projected for guaranteed loan closing.

(iv) The Agency may request additional financial statements, financial models, cash flow information, updated financial statements, and other related financial information to determine the financial feasibility of a project and evaluate the credit underwriting of borrower, its affiliates, and any guarantors.

(5) For all applications of $600,000 or greater, a draft loan agreement for the guaranteed loan that addresses the following:

(i) Repayment term and amortization provisions of the guaranteed loan;

(ii) Description of real property collateral, list of other collateral and identification of the lender's lien priority in the collateral;

(iii) A list of persons and entities guaranteeing payment of the guaranteed loan and their percentage of guarantee;

(iv) Type and frequency of borrower and guarantor financial statements to be required for the duration of the

guaranteed loan (guarantor statements must be updated at least annually);

(v) Prohibition against borrower assuming liabilities or obligations of others;

(vi) Limitations on borrower dividend payments and compensation of officers, owners and members of borrower;

(vii) Limitations on the purchase and sale of equipment and other fixed assets;

(viii) Restrictions concerning mergers, consolidations, or other circumstances including significant management changes and a limitation on selling the business, project, or guarantee loan collateral without the concurrence of the lender;

(ix) Maximum debt-to-net worth ratio, when required by the lender or by this part;

(x) Minimum debt service coverage ratio, when required by the lender or by this part;

(xi) A reserved section for any requirements imposed by the Agency in its conditional commitment;

(xii) A reserved section for any Agency environmental requirements; and

(xiii) A provision for the lender and the Agency to have reasonable access to the project and its performance information during the term of the guaranteed loan including the periodic inspection of the project by a representative of the lender or the Agency.

(6) Identify whether or not the borrower has a known relationship or association with an Agency employee. If there is a known relationship, identify each Agency employee with whom the borrower has a known relationship.

(7) At the time of the loan application, the lender must submit its loan classification and credit risk rating classification scale.

(c) *Provisional content.* The following items may also be required based on the type of project being financed or if deficiencies exist in the credit evaluation and more information is needed to adequately determine risk:

(1) Appraisals in accordance with § 5001.203.

(2) Current credit reports or the equivalent on the borrower, any payment guarantors and any person or entity owning greater than a 20 percent or more interest in the borrower or controls the borrower, except for passive investors and those corporations listed on a major stock exchange. A credit report or its equivalent are not required for elected and appointed officials when the borrower is a public body, or Indian Tribe, or for members of a non-profit organization. Credit reports must be submitted to the Agency for all applications for guaranteed loans in the amount of $200,000 or more. For lenders that are submitting smaller requests, the lender must keep the credit report on file with the lender's application.

(3) Feasibility study: If the Agency is unable to determine a basis for successful repayment of a guaranteed loan based on the documentation and analysis of the five feasibility study components provided in the lender's analysis, borrower's business plan, or other project information, or if the proposed project will have significant impacts on existing operations, the Agency may require an independent feasibility study. The elements of an acceptable feasibility study may vary by project scope and should be prepared by a qualified, independent third party using applicable elements of the project, including but not limited to those outlined in appendix A to subpart D of this part.

(4) Intergovernmental consultation comments in accordance with 2 CFR part 415, subpart C, or successor regulation, unless exemptions have been granted by the State's single point of contact.

(5) Engineering documentation.

(6) Architectural reports.

(7) Energy audits or energy assessments in accordance with § 5001.107.

(8) Energy efficient equipment and systems data in accordance with § 5001.108.

(9) Business plan: Unless the information is contained in the feasibility study or in the credit evaluation, a business plan should be submitted to show how the project will operate and remain viable. This requirement may be omitted when guaranteed loan funds are used exclusively for debt refinancing.

(10) If the application is for five or more residential units, including nursing homes and assisted-living centers, an Affirmative Fair Housing Marketing Plan that is in conformance with 7 CFR 1901.203(c)(3).

(11) If the application is for financing of health care facilities, a certificate of need, if required by Federal or State law.

(12) Department of Labor form as noted in § 5001.306(a)(1).

(13) Pro-forma balance sheet for closing as noted in § 5001.306(a)(2).

(14) SEC Form 10–K as noted in § 5001.306(a)(4).

(15) Technical reports in accordance with § 5001.307(e).

(16) Certification regarding credit elsewhere in accordance with § 5001.126(b)(3) and (c).

(d) *Application modification.* Once a complete application is accepted by the Agency and prior to Agency award of a loan note guarantee, any modification to the application will be treated as a new Application and the Agency will process the information accordingly. The submission date of record for a modified application is the date the Agency receives the modified application information.

§ 5001.304 Specific application requirements for CF projects.

In addition to the requirements specified in § 5001.303 as applicable, a lender seeking a loan guarantee for a CF project must submit a financial feasibility report prepared by a qualified firm or individual acceptable to the Agency. All projects financed under this section must meet the financial feasibility requirements of this section and must be based on projected taxes, assessments, revenues, fees, or other sources of revenues in an amount sufficient to provide for project operation and maintenance, debt payments, and compliance with lender reserve requirements, when applicable. Other sources of revenue or existence of payment guarantors are particularly important in considering the feasibility of eligible recreation projects. The financial feasibility report must take into consideration any interest rate adjustment that may be instituted under the terms of the promissory note. Financial projections for projects that are assisted living facilities, skilled nursing facilities, or similar types of eligible residential facilities must be based on no more than 90 percent occupancy. Utility projects dependent on user fees for debt repayment shall base their income and expense forecast on user estimates supported by either a state statute or local ordinance requiring mandatory hookup or signed and enforceable user agreements. If the primary use of the essential community facility is by a business and the success or failure of the facility is dependent on that business, then the economic viability of that business must also be assessed. For projects that include the purchase and installation of RES that meet the eligibility requirements of § 5001.103(a)(8), a technical report on the RES as outlined in § 5001.307(e)(1) and (2), as applicable, will be included with the applicable financial feasibility report. The type of financial feasibility report required will depend upon the size of the guaranteed loan, the collateral o securing the guaranteed loan, and the financial history of the borrower. The two types of financial feasibility report and when they are

required are described in paragraphs (a) and (b) of this section.

(a) *Financial feasibility analysis.* The financial feasibility analysis will be prepared by a qualified firm or individual who may be the lender. Financial feasibility analysis requirements are outlined in appendix B to subpart D of this part. The lender's credit evaluation may serve as the financial feasibility analysis provided it includes the items outlined in appendix B to subpart D of this part. A financial feasibility analysis will be required if any of the following circumstances exist:

(1) Guaranteed loans of $5 million or less;

(2) Guaranteed loans secured by a general obligation bond, or other tax supported income sufficient to pay the debt service for the life of the loan; or

(3) Borrowers with audited financial statements, if the last three years indicate the ability to pay all existing and new debt service.

(b) *Financial feasibility study with examination opinion.* The report must be prepared in accordance with the standards of attestation of the American Institute of Certified Public Accountants, and the preparer must have the requisite professional liability insurance in place. A financial feasibility study with examination opinion will be required for all guaranteed loans that do not meet the requirements for a financial feasibility analysis outlined in paragraph (a) of this section. The financial feasibility study with examination opinion will typically include the items outlined in appendix B to subpart D of this part.

§ 5001.305 Specific application requirements for WWD projects.

In addition to the requirements specified in § 5001.303, a lender seeking a loan guarantee for a WWD project must submit the documents specified in paragraphs (a) through (c) of this section.

(a) *Engineering documentation.* (1) Engineering documentation must meet the level of detail the lender would typically require for a standard commercial loan, and include, at a minimum, a description of the proposed project, a cost estimate, the number of residential and non-residential connections, and the population served. The lender may request assistance to clarify the Agency's requirements and regulations; however, the Agency does not provide technical oversight or recommendations as to the technical feasibility of the project.

(2) The lender must ensure that the project is designed utilizing accepted architectural and engineering practices and conforms to applicable Federal requirements (*e.g.* the seismic requirements of Executive Order 12699 (55 FR 835, 3 CFR, 1990 Comp., p. 269), the debarment requirements of 2 CFR part 417, American Iron and Steel (Section 746 of Title VII of the Consolidated Appropriations Act of 2017), and the Copeland Anti-Kickback Act (18 U.S.C. 874)); State, local and Tribal codes and requirements; and facility plans or plans and specifications reviewed and approved by the applicable State, local and/or Tribal regulatory agency. The lender must also ensure that the planned project will be completed within the available funds and, once completed, will be suitable for the borrower's needs. Upon completion of the project, the lender must certify that all applicable Federal requirements were met.

(b) *Feasibility considerations.* All projects financed under this part must be based on projected taxes, assessments, revenues, fees, or other sources of revenues in an amount sufficient to provide for project operation and maintenance, any reserves required by the lender, and debt payment. The lender's financial credit analysis must take into consideration any interest rate adjustment that may be instituted under the terms of the loan note guarantee.

(c) *Credit analysis requirements.* In addition to the requirements of § 5001.202, if the majority user of the system is a business and the financial success of the system is dependent on that business, then the economic viability of that business must be assessed.

§ 5001.306 Specific application requirements for B&I projects.

In addition to the requirements specified in § 5001.303, as applicable, a lender requesting a B&I loan guarantee must submit the information specified in paragraph (a) of this section if the guaranteed loan amount is more than $600,000, or in (b) of this section if the guaranteed loan amount is $600,000 or less.

(a) *Applications requesting a guaranteed loan in an amount greater than $600,000.* (1) The Agency is required to submit project information to the United States Department of Labor for their concurrence if the proposed guaranteed loan is in excess of $1,000,000.00 and will increase direct employment by more than 50 employees. The lender must provide sufficient project and demographic information to the Agency for completion of a Department of Labor review.

(2) A pro forma balance sheet projected for loan closing.

(3) The Agency may require a Feasibility Study when the lender's analysis, borrower's business plan, or project information is not sufficient to determine the technical feasibility, market feasibility, or economic viability of the project.

(i) For guaranteed loans greater than $1,000,000.00 to a new business, a feasibility study prepared by an independent qualified consultant acceptable to the Agency is required. The scope of the feasibility study will be determined by the Agency and is dependent on the complexity of the project and the borrower.

(ii) For loans of $1,000,000.00 or less to new and existing businesses, the Agency may require a feasibility study when the lender's analysis or other borrower information is not sufficient to determine the technical feasibility or economic viability of the project, or if the project will significantly affect the operations of a borrower who is an existing business and its historic cash flow.

(iii) A technical report is required for RES identified in § 5001.307(e) and for projects utilizing other integrated processing equipment and systems. The contents of the technical report must be consistent with the requirements of § 5001.307(e)(1) and must provide sufficient detail to enable the Agency to determine technical merit. The report can be provided in the technical feasibility section of a feasibility study or in a separate technical report.

(4) For companies listed on a major stock exchange or subject to the Securities and Exchange Commission (SEC) regulations, a copy of their most recent SEC Form 10–K, ''Annual Report Pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934.''

(5) Current financial statements of affiliates.

(b) *Applications requesting a guaranteed loan in an amount of $600,000 or less.* Guaranteed loan applications may be processed under this paragraph (b) if the amount of the guaranteed loan does not exceed $600,000, provided the Agency determines that the lender's analysis, borrower's business plan, or other project or borrower information submitted by the lender is sufficient to determine the technical feasibility, market feasibility, and economic viability of the project. If any of the items in paragraphs (a)(1) through (4) of this section apply, the lender must collect the information and maintain it

in their file. A Lender may need to resubmit or modify an application if the application does not contain sufficient information for the Agency to make an informed loan approval decision.

(1) Lenders submitting applications under this paragraph (b) must include the following information:

(i) Narrative description of the project including the history of the borrower and adequacy of cash flow and borrower equity;

(ii) Required financial statements including a current Agency-acceptable balance sheet and year-to-date income statements;

(iii) Security available for the guaranteed loan including collateral and payment guarantees;

(iv) Strengths and weaknesses of the guaranteed loan and the Lender's need for the loan guarantee to mitigate specific risks.

(2) The lender may elect to not submit the following application documentation to the Agency, but must have the information available in its file for review:

(i) Narrative description of management capabilities and corporate structure of the borrower;

(ii) Environmental information for the project and any environmental reviews;

(iii) Agency-acceptable historical balance sheets and income statements of the borrower and its affiliates;

(iv) Financial statements of any personal, partnership, or corporate guarantors.

§ 5001.307 Specific application requirements for REAP projects.

In addition to the requirements specified in § 5001.303, a lender seeking a loan guarantee for a REAP project must submit the information identified below based on total project costs.

(a) *Borrower eligibility information.* (1) Eligible borrowers must meet the definition of agricultural producer or rural small business as defined in § 5001.3. Agricultural producers seeking funding for a RES or EEI project may apply as either a rural small business or as an agricultural producer, provided they meet the applicable eligibility requirements. Agricultural producers seeking funding for an EEE project must be eligible and apply as an Agricultural Producer.

(2) The Borrower must provide the primary NAICS code applicable to the borrower's business concern and certify on the Agency approved application form or system that it meets the definition of agricultural producer or rural small business. The Agency reserves the right to request supporting documentation to verify borrower eligibility.

(b) *Borrower description.* Describe the ownership of the Borrower, including the information specified in paragraphs (b)(1) through (3) of this section, as applicable. Include a description of the Borrower's existing farm, ranch, or business operation, including how long the borrower has been in operation.

(1) Describe how the borrower meets the ownership and control requirements as identified in § 5001.126(e)(2).

(2) For each entity(ies) the borrower controls or entity(ies) it is controlled by, provide a list of the individual owners with their contact information. Describe the relationship between the borrower and the other entity(ies), including percentage of ownership and control, management, passive investor ownership, and any products exchanged. Organizational charts to demonstrate the structure of the borrower should be submitted when available.

(3) Identify the ethnicity, race, and gender of the borrower. Identify if the borrower is a veteran. This information is optional and is not required for a complete application but may be used by the Agency to award priority points.

(c) *Project information.* Provide information concerning the project as a whole and its relationship to the borrower's operations, including:

(1) Identification as to whether the project is an RES, EEI, or EEE project. Include a description and the location of the project;

(2) Description of how the project will have a positive effect on resource conservation, public health, and the environment;

(3) Identification of the amount of funds and the source(s) of funds the borrower is proposing to use for the project. Provide written commitments for funds at the time the application is submitted to receive points under this scoring criterion.

(i) For project funding provided by the borrower, documentation may include bank statements that demonstrates availability of funds.

(ii) For project funding that comes from a third party, a commitment letter signed by an authorized official of the third party. The letter must be specific to the project and must identify the dollar amount of any loan or other funding and any applicable rates and terms. If the third-party commitment is for a loan, the commitment must be firm; a letter-of-intent or pre-qualification letter subject to underwriting requirements or contingencies is not acceptable.

(d) *Feasibility study.* For RES projects only, when deemed necessary by the lender or Agency, an analysis conducted in conformance with the definition of feasibility study found in § 5001.3 and with applicable content in appendix A to subpart D of this part.

(e) *Technical report.* All eligible projects must have technical merit and provide information as identified in § 5001.106(e), § 5001.107(d), or § 5001.108(d) and (e)(1) through (3) of this section.

(1) *Level of detail.* Information provided must be in sufficient detail to enable the Agency to determine the technical merit of the project. Design drawings and process flowcharts are encouraged as exhibits. The technical report requirements can be provided in the technical feasibility section of a feasibility study, instead of completing a separate technical report.

(i) Sufficient information to enable the calculation of simple payback as defined in § 5001.3;

(ii) For RES Projects, sufficient information to enable the calculation of the percentage of historical use of energy compared to the amount of renewable energy that will be generated once the project is operating at its steady state operating level. If the project is closely associated with a residence, satisfactory demonstration must be made that 50 percent or more of the projected renewable energy will benefit the agricultural operation or rural small business; and

(iii) Demonstrate that the RES, EEI, or EEE project will operate or perform over the project's useful life in a reliable, safe, and a cost-effective manner, which may include but is not limited to addressing project design, installation, operation, maintenance, and warranties.

(iv) In addition, the following technologies, must provide a technical report in accordance with paragraphs (e)(1)(v) through (viii) of this section, as applicable:

(A) Hydrogen;

(B) Ocean energy;

(C) Geothermal electric generation;

(D) Anaerobic digesters and biogas;

(E) Biomass;

(F) Hybrid applications;

(G) Renewable energy systems with storage components; and

(H) Energy efficiency improvements

(v) For total project costs in the amount of $80,000 or less, a technical report, as identified in § 5001.303(c)(15), prepared in accordance with the following paragraphs, as applicable:

(A) *EEI technical reports.* Each EEI technical report submitted under this section must provide:

(*1*) A description of the proposed EEI, including its intended purpose;

(*2*) Vendor/Installer certification that the EEI project uses commercially available technology;

(*3*) Vendor/Installer certified projections on the quantity of energy to be saved;

(*4*) Certification by vendor/installer that they are qualified to complete the project as intended;

(*5*) Vendor/installer certification that the EEI system will operate and perform over the project's useful life in a reliable and cost-effective manner; and

(*6*) An estimate of simple payback, including all calculations, documentation, and any assumptions.

(B) *RES technical reports.* Each RES technical report submitted under this section must provide:

(*1*) A description of the proposed RES project, including its intended purpose;

(*2*) Vendor/installer certified projections on energy to be replaced and/or generated, including the quality and availability of the renewable resource to the project; if there is a residence closely associated with the RES project, the historical amount of energy used by the residence and the historical amount of energy used by the agricultural operation or rural small business, as applicable, to satisfactorily demonstrate 50 percent or more of proposed generation will benefit the agricultural operation or rural small business;

(*3*) Vendor/installer certification that the RES project uses commercially available technology;

(*4*) Certification that the vendor/installer is qualified to complete the project as intended;

(*5*) Certification that the project will perform over its useful life in a reliable and cost-effective manner; and

(*6*) The projected financial performance of the project. The description must address total project costs, revenues accrued from the sale or crediting of energy, quantity and value of energy offset, and revenue from byproducts. Include applicable investment and other production incentives and indicate if they are one time or reoccurring incentives. Provide an estimate of simple payback, including all calculations, documentation, and any assumptions.

(C) *EEE technical reports.* Each EEE technical report submitted under this section, regardless of total project costs, must provide:

(*1*) A description of the proposed EEE and its intended purpose, including baseline data, specifications, and efficiency data;

(*2*) Vendor/Installer certification that the EEE project uses commercially available technology;

(*3*) Vendor/Installer certification of the proposed energy consumption quantity and price per unit of the energy efficiency equipment to be installed;

(*4*) Certification by vendor/installer that they are qualified to complete the project as intended;

(*5*) Vendor/installer certification that the EEE system will operate and perform over the project's useful life in a reliable and cost-effective manner; and

(*6*) An estimate of simple payback, including all calculations, documentation, and any assumptions.

(vi) For EEI guaranteed loan projects with total project costs greater than $80,000, the technical report identified in paragraph (e)(1)(v)(A) of this section applies, except that appendix C to subpart D of this part is to be followed to prepare the report.

(vii) For RES guaranteed loan projects with total project costs greater than $80,000 and up to but not including $200,000, the technical report identified in paragraph (e)(1)(v)(B) of this section applies, except that appendix D to subpart D of this part is to be followed to prepare the report.

(viii) For RES guaranteed loan projects with estimated total project costs of $200,000 or greater, the technical report identified in paragraph (e)(1)(v)(B) of this section applies, except that appendix E to subpart D of this part is to be followed to prepare the report.

(2) *Modifications.* If the technical report is prepared prior to the borrower's selection of a final design, equipment vendor, or contractor, or other significant decision, the borrower may modify the report and resubmit it to the Agency, provided that the overall scope of the project is not materially changed as determined by the Agency. Changes in the technical report may require additional environmental documentation in accordance with 7 CFR part 1970.

(3) *Hybrid projects.* If the application is for a hybrid project, technical reports must be prepared for each technology that comprises the hybrid project.

§§ 5001.308–5001.314 [Reserved]

§ 5001.315 Application evaluation and award provisions.

(a) *General.* The Agency will evaluate all Applications according to the provisions of this part and may require the lender to obtain additional assistance in those areas where the lender does not have the necessary expertise to originate or service the guaranteed loan. For the purposes of this paragraph (a), ''those areas'' mean:

(1) The type and complexity of the financing (*e.g.,* asset-based financing, cash flow financing, and bond financing); and

(2) Loans to borrowers engaged in industries where the lender has little or no origination and/or servicing experience.

(b) *Evaluation and eligibility determinations.* The Agency will review each application to make a formal determination as to: The eligibility of the borrower, lender, project, and guaranteed loan purpose and proposed use of funds; if there is a reasonable assurance of repayment ability; if sufficient collateral and equity exists; if the proposed guaranteed loan complies with all applicable statutes and regulations; and if the environmental review is complete.

(1) If the Agency's evaluation and determination in accordance with this paragraph (b) is favorable, the Agency will proceed in accordance with paragraph (c) of this section.

(2) If the Agency's evaluation and determination in accordance with this paragraph (b) is unfavorable, the Agency will notify the lender, in writing, as applicable, identifying the reason(s) for determining ineligibility and any applicable appeal or review rights. No further processing of the application will occur.

(c) *Priority score.* The Agency will score each eligible application based on the point system for the respective program identified in §§ 5001.316 through 5001.319.

(1) Lenders must provide necessary information related to determining the score, if requested by the Agency. To the extent possible, lenders should consider the established priorities of the Agency when submitting projects for a loan guarantee. Higher scoring applications will receive first consideration for funding.

(2) The Agency may establish a minimum priority score for each guarantee program. The Agency will, if established, publish the minimum score in a document in the **Federal Register**. Applications that do not meet the applicable minimum score will compete with all other guaranteed loan applications for each specific program in a competition on the first business day of September of the Federal fiscal year in which the application is ready for funding.

(d) *Funding selected applications.* Each program identified in § 5001.1 will consider applications for funding in the order they are received by the Agency. If the Agency approves the application and guaranteed funds are available, the Agency will issue a conditional commitment to the lender in accordance with § 5001.451 of subpart E. In the event total loan requests exceed the amount of funding available the

applications will be ranked for priority by each program. As applications are funded, the remaining guaranteed loan funding authority may be insufficient to fund the next highest scoring application or applications (where two or more applications receive the same priority score). The Agency will use the procedures described in paragraphs (d)(1) and (2) of this section as often as necessary to consider all applications as appropriate.

(1) If the remaining funds are insufficient to fund the next highest scoring application completely, the Agency will notify the lender and offer the lender the opportunity to accept the remaining funds. If the lender does not accept the offer, the Agency will process the next highest scoring application.

(2) If the remaining funds are insufficient to fund each application that receives the same priority score, the Agency will notify each lender and offer the lenders the opportunity to accept a prorated share of the remaining funds.

(3) Any lender offered less than the full amount requested under either paragraph (d)(1) or (2) of this section can either accept the funds available or request to compete in the next funding cycle. There is no assurance that the application(s) will be funded in a subsequent funding cycle.

(4) If a lender agrees to the lower loan guarantee amount offered by the Agency under either paragraph (d)(1) or (2) of this section, the lender must certify that the purpose(s) of the project can still be met at the lower funding level and must provide documentation that the borrower has obtained the remaining funds needed to complete the Project as originally proposed.

(e) *Handling of ranked applications not funded.* The Agency will withdraw from consideration ranked applications that have not received funding as follows:

(1) If an unfunded application has a priority score equal to or greater than any applicable minimum score, the Agency will retain the application for consideration in subsequent funding cycles. If the unfunded application is not selected for funding after 12 months, including the first month in which the application was considered, the Agency will withdraw the application from further funding consideration.

(2) If an unfunded application has a priority score less than any applicable minimum score, and remains unfunded after the competition held on the first business day of September of the fiscal year in which the application is ready for funding, the Agency will withdraw the application from further funding consideration.

(f) *Commencement of the project.* The borrower assumes all risks if the borrower purchases real property or equipment or starts construction of the project to be financed by a guaranteed loan after the complete application has been received by the Agency, but prior to the Agency's issuance of the conditional commitment and the lender and borrower's acceptance of the conditional commitment.

(g) *Application withdrawal.* During the period between the submission of an application and prior to issuance of the conditional commitment, the lender must notify the Agency, in writing, if the project is no longer viable or the borrower no longer is requesting financial assistance for the project. When the lender notifies the Agency, the Agency will rescind the selection and withdraw the application, as applicable.

§ 5001.316 CF project priority point system and reservation of funds.

This section applies to CF projects seeking a loan guarantee. Paragraphs (a) through (d) of this section outline the criteria and amount of priority points that may be awarded to an application. The highest possible priority score is 55. Paragraph (e) of this section outlines the reservation of funds for projects located in rural areas of 20,000 population or less.

(a) *Population priority.* If the project will be located in a rural community having a population of less than 20,000—15 points.

(b) *Project priority.* If the project will construct, enlarge, extend or otherwise improve a public safety, health clinic, early education, primary or secondary education facility—10 points.

(c) *Leveraging priority.* If the applicant commits other funds to the project in the following percentages:

(1) 50 percent or more–15 points
(2) 20% up to 49%–10 points
(3) 5% up to 19%–5 points

(d) *Administrator priority.* When guaranteed loan funds are requested from a National Office reserve, the Administrator may assign up to 15 points to address:

(1) Geographic distribution of funds;

(2) Emergency conditions caused by economic problems or natural disasters; or

(3) Initiatives that support the Agency's strategic plan.

(e)(1) Of the funds available each Federal fiscal year, as published on the Agency's website, the following amounts shall be reserved for projects in rural areas with a population of not more than 20,000 inhabitants:

(i) 100 percent of the first $200,000,000 so made available;

(ii) 50 percent of the next $200,000,000 so made available; and

(iii) 25 percent of all amounts exceeding $400,000,000 so made available.

(2) On July 1 of each year, the Agency will evaluate the dollar amount of complete applications on hand for projects in rural areas with a population of not more than 20,000 inhabitants. The dollar amount of the complete applications will be subtracted from the reserved allocation identified in this paragraph (e) and the remaining amount will be made available through the end of the Federal Fiscal Year for projects in rural areas with a population of not more than 50,000 inhabitants.

§ 5001.317 WWD project priority points system.

This section applies to WWD projects seeking a loan guarantee. The highest possible priority point score is 150.

(a) *Population priority.* If the project will primarily serve a rural area having a population under 10,000, 20 points will be awarded.

(b) *Health priorities.* If the proposed project is:

(1) Needed to alleviate an emergency situation, correct unanticipated diminution or deterioration of a water supply, or to meet Safe Drinking Water Act requirements which pertain to a water system, 25 points will be awarded;

(2) Required to correct inadequacies of a wastewater disposal system, or to meet health standards which pertain to a wastewater disposal system, 25 points will be awarded; or

(3) Required to meet administrative orders issued to correct local, State, or Federal solid waste violations, 15 points will be awarded.

(c) *Service area priorities.* An application is eligible to receive points under each of the categories identified in paragraphs (c)(1) through (3) of this section if the service area includes:

(1) An eligible area of long-term population decline according to the last three decennial censuses, 5 points will awarded.

(2) A rural county that has had 20 percent or more of its population living in poverty, as defined by the United States Census Bureau, for the last 30 years, 5 points will be awarded.

(3) For a city or county with a current unemployment rate, as determined by the Department of Labor, that is 125 percent of the State-wide rate or greater, 5 points will be awarded. For projects located in certain territories that may not have unemployment rates by

localities, if the applicant's proposed service area has an unemployment rate exceeding 125 percent of the national unemployment rate, 5 points will be awarded.

(d) *Other priorities.* Applications are eligible for points under each of the following priorities:

(1) If the proposed project will merge ownership, management, and operation of smaller facilities providing for more efficient management and economical service, 10 points will be awarded.

(2) If the proposed project will enlarge, extend, or otherwise modify existing facilities to provide service to additional rural areas, 10 points will be awarded.

(3) If the applicant is a public body or Indian tribe, 5 points will be awarded;

(4) If the amount funds committed to the project from sources other than Rural Development is:

(i) 50 percent or more, 15 points will be awarded;

(ii) 20 percent to 49 percent, 10 points will be awarded;

(iii) 5 percent to 19 percent, 5 points will be awarded;

(5) If the project will serve Agency identified target areas, 5 points will be awarded;

(6) If the project primarily recycles solid waste products thereby limiting the need for solid waste disposal, 5 points will be awarded; and

(7) If the project will serve an area that has an unreliable quality or supply of drinking water, 10 points will be awarded.

(e) In certain cases, the approval official may award up to 15 points to a project. The points may be awarded to projects in order to improve compatibility and coordination between WWD and other agencies' selection systems, to ensure effective RUS fund utilization, and to assist those projects that are the most cost effective. A written justification must be prepared and placed in the project file each time these points are assigned.

(f) *National office priorities.* The Administrator may assign up to 15 additional points to account for items such as geographic distribution of funds, the highest priority projects within a state, and emergency conditions caused by economic problems or natural disasters. The Administrator may delegate the authority to assign the 15 points to appropriate National Office staff.

§ 5001.318 B&I project priority point system.

This section applies to B&I projects seeking a loan guarantee. When applications on hand have the same priority score, the Agency will give preference to applications involving guaranteed loans from veterans. A maximum of 105 points can be awarded.

(a) *Population priority.* If the project is located in an unincorporated area or in a city with a population under 25,000, 5 points will be awarded.

(b) *Location priority.* An application is eligible to receive points under each of the categories identified in paragraphs (b)(1) through (3) of this section if the Project is located within:

(1) A distressed community in accordance with the Economic Innovation Group distressed community index. The list can be found on the Agency's website at: *https://www.rd.usda.gov/onerdguarantee,* 5 points will be awarded.

(2) A rural county that has had 20 percent or more of its population living in poverty, as defined by the United States Census Bureau, for the last 30 years, 5 points will be awarded.

(3) For a city or county with a current unemployment rate, as determined by the Department of Labor, 125 percent of the State-wide rate or greater, 5 points will be awarded. For projects located in certain territories that may not have unemployment rates by localities, if the applicant's proposed service area has an unemployment rate exceeding 125 percent of the national unemployment rate, 5 points will be awarded.

(4) The boundaries of a federally recognized Indian Tribe's reservation, within Tribal trust lands, or within land owned by an Alaska Native Regional or Village Corporation as defined by the Alaska Native Claims Settlement Act, 5 points will be awarded.

(c) *Guaranteed Loan features.* An application is eligible to receive points under each of the categories identified in paragraphs (c)(1) through (4) of this section as follows:

(1) If the lender will price the guaranteed loan at an interest rate equal to or less than the equivalent of the *Wall Street Journal* published Prime Rate plus 1.5 percent, 5 points will be awarded.

(2) If the guaranteed loan is less than 60 percent of the total project cost, 5 points will be awarded.

(3) For guaranteed loans not requesting an exception under § 5001.456(c)(2), if the percentage of guarantee is 10 or more percentage points less than the maximum allowable, 5 points will be awarded.

(4) If the business is owned by a qualified veteran, 5 points will be awarded.

(d) *High impact business development investment priorities.* An application is eligible to receive points under each of the categories identified in paragraphs (d)(1) through (7) of this section below:

(1) If the industry is not already present in the local community, 5 points will be awarded.

(2) If the business has 20 percent or more of its sales in international markets, 5 points will be awarded.

(3) If the business is locally owned and managed, 5 points will be awarded.

(4) If the business will produce a natural resource value-added product, 5 points will be awarded.

(5) If the business processes, distributes, aggregates, stores, and/or markets locally or regionally produced agricultural food products to underserved communities in accordance with § 5001.105(b)(15)(ii), 5 points will be awarded.

(6) If the business creates or saves a minimum of five jobs with an average wage exceeding 150 percent of the Federal minimum wage, 5 points will be awarded.

(7) If the business offers a healthcare benefits package to all employees and pays at least 50 percent of the healthcare premium, 5 points will be awarded.

(e) *Administrative points.* An application is eligible to receive points under paragraphs (e)(1) through (3) of this section.

(1) For projects awarded under State allocations the State Director may assign up to 10 additional points to an application to account for state-wide distribution of funds for natural disasters, local economic emergency conditions, community economic development strategies, State strategic plans, fundamental structural changes in a community's economic base, or projects that will fulfill an Agency special initiative.

(2) For projects requesting funds from the national reserve account, the State Director may request up to 10 administrative points from the Administrator.

(3) If an application is for a loan in excess of 10 million dollars, the Administrator may assign up to an additional 10 points to account for the nationwide geographic distribution of funds, or projects that will fulfill an Agency special initiative.

§ 5001.319 REAP project priority point system.

This section applies to REAP projects seeking a loan guarantee. On a periodic basis, the Agency will compete each complete and eligible RES, EEI, and EEE application that is ready to be funded and whose priority score, as determined in this section, meets or exceeds the minimum priority score. Applications that do not meet the applicable

minimum score will be considered as provided in § 5001.315(c)(2). A maximum score of 90 points is possible.

(a) *Environmental benefits.* The Agency will award up to 5 points under this criterion based on documentation in the application that the project will have a positive effect on resource conservation, public health, and the environment. If the project will have a positive impact on:

(1) All three impact areas, 5 points will be awarded;

(2) Any two of the three impact areas, 3 points will be awarded; or

(3) Any one of the three impact areas, 1 point will be awarded.

(b) *Energy generated, replaced, saved, or percent efficiency.* The Agency will award up to 25 points under this criterion. Each application is eligible for points under both paragraphs (b)(1) and (2) of this section.

(1) *Quantity of energy generated or saved per RES/EEI loan amount requested, or percent efficiency of EEE project.* The Agency will award up to 10 points under this sub-criterion. Points will be awarded for either the amount of renewable energy generation per dollar of loan amount requested, which includes those projects that are replacing energy usage with a renewable source; or the actual annual average energy savings over the most recent 12, 24, 36, 48, or 60 consecutive months of operation per dollar of guaranteed loan amount requested; or the percent efficiency of the EEE project. The Agency will not award points for more than one category.

(i) *Renewable energy systems.* The quantity of energy generated or replaced per guaranteed loan dollar requested will be determined by dividing the projected total annual energy generated or replaced by the RES or RES retrofit (minus energy for residential use), which will be converted to BTUs, by the guaranteed loan dollars requested. Points will be awarded under this sub-criterion based on the annual amount of energy generated or replaced (minus energy for residential use) per dollar of guaranteed loan amount requested for the RES project. The Agency will award up to 10 points as determined under paragraph (b)(1)(i)(A) and (B) of this section below. If the annual amount of energy generated per dollar of guaranteed loan amount requested calculated under paragraph (b)(1)(ii) of this section is:

(A) 50,000 BTUs or higher average annual energy generated or replaced per dollar of guaranteed loan amount requested or higher, 10 points will be awarded; or

(B) Less than 50,000 BTUs annual energy generated or replaced per dollar of guaranteed loan amount requested, points will be awarded according to the result of taking the energy generated or replaced per guaranteed loan dollar requested ÷ 50,000 × 10 points. The points awarded are rounded to the nearest hundredth of a point.

(ii) *Energy efficiency improvements.* The Agency will award up to 10 points under this sub-criterion based on the average annual energy saved per dollar of guaranteed loan amount requested for the EEI project. The Agency will award up to 10 points as determined under paragraph (b)(1)(ii)(A) and (B) of this section.

(A) 50,000 BTUs or higher average annual energy saved per dollar of guaranteed loan amount requested, 10 points will be awarded; or

(B) Less than 50,000 BTUs average annual energy saved per dollar of guaranteed loan amount requested, points will be awarded according to the result of taking the energy generated per loan dollar requested ÷ 50,000 × 10 points. The points awarded are rounded to the nearest hundredth of a point.

(iii) *Energy efficient equipment and systems.* If the increased energy efficiency of the proposed equipment and systems is—

(A) 75 percent or greater, award 10 points;

(B) Less than 75 percent but equal to or greater than 50 percent, award 5 points;

(C) Less than 50 percent but equal to or greater than 25 percent, award 2.5 points; or

(D) Less than 25 percent, award 0 points.

(2) *Quantity of energy replaced, generated, or saved, or percentage of energy efficiency.* The Agency will award up to 15 points under this sub-criterion. Points will be awarded based on whether the project is for energy replacement, energy generation, or energy savings, or percentage of energy efficiency; points will not be awarded for more than one category.

(i) *Energy replacement.* The Agency will award points under this sub-criterion for an RES project based on the amount of energy replaced by the project compared to the amount of energy used by the applicable process(es) over a 12-month period. If the estimated energy produced is more than 150 percent of the energy used by the applicable process(es), the project will be scored as an energy generation project under paragraph (b)(2)(ii) of this section.

(A) *Documentation for energy replacement.* For a RES project to qualify as energy replacement, the borrower must provide documentation in its application on prior energy use incurred by the borrower. Proposed energy use, such as that attributed to an expansion, is not considered in the replacement calculation. For a RES project involving new construction and being installed to serve the new facility, the project can be classified as energy replacement only if the borrower can document prior energy use from a facility that is within plus or minus 10 percent of the size of the facility it is replacing. The estimated quantities of energy must be converted to either BTUs, watts, or similar energy equivalents to facilitate scoring.

(B) *Calculation.* Energy replacement is determined by dividing the quantity of renewable energy that the RES project is estimated would have been generated if it were in place over the most recent 12-month period by the quantity of energy actually consumed over the same period by the applicable energy process(es) that is(are) consuming energy.

(C) *Awarding of points.* Using the results from paragraph (b)(2)(ii)(B) of this section, if the percentage of energy replacement is—

(*1*) Greater than 50 percent, 15 points will be awarded;

(*2*) Greater than 25 percent, but equal to or less than 50 percent, 10 points will be awarded; or

(*3*) Equal to or less than 25 percent, 5 points will be awarded.

(ii) *Energy generation.* If the RES project is intended for production of energy or is a proposed retrofitting of an existing RES which increases the amount of energy generated, the Agency will award 10 points.

(iii) *Energy saved.* The Agency will award up to 15 points under this sub-criterion for an EEI project based on the percentage of estimated energy saved by the installation of the project as determined by the projections in the applicable energy assessment or energy audit. If the estimated energy expected to be saved over the same period used in the energy assessment or energy audit, as applicable, will be—

(A) 50 percent or greater, 15 points will be awarded;

(B) 35 percent up to, but not including 50 percent, 10 points will be awarded;

(C) 20 percent up to, but not including 35 percent, 5 points will be awarded; or

(D) Less than 20 percent, no points will be awarded.

(iv) *Energy efficiency.* If the percentage of energy efficiency is—

(A) Greater than 50 percent, 15 points will be awarded;

(B) Greater than 25 percent, but equal to or less than 50 percent, 10 points will be awarded; or

(C) Equal to or less than 25 percent, 5 points will be awarded.

(c) *Commitment of funds.* The Agency will award up to 15 points under this criterion based on the percentage of acceptable written commitment a borrower has from its other funding sources that are documented with a complete application.

(1) *Calculation.* The percentage of written commitment is calculated as follows: Percentage of written commitment = total amount of funds for which written commitments have been submitted with the application ÷ Total amount of matching funds and other funds required.

(2) *Awarding of points.* Using the result from paragraph (c)(1) of this section, the Agency will award points as shown in paragraphs (c)(2)(i) through (iii) of this section.

(i) If the percentage of written commitments is 100 percent of the matching funds, 15 points will be awarded.

(ii) If the percentage of written commitments is less than 100 percent, but more than 50 percent, points will be awarded as follows: ((Percentage of written commitments − 50 percent) ÷ (50 percent)) × 15 points, where points awarded are rounded to the nearest hundredth of a point.

(iii) If the percentage of written commitments is 50 percent or less, no points will be awarded.

(d) *Previous grantees or borrowers.* The Agency will award up to 15 points under this criterion based on whether the borrower has received and accepted a REAP grant award under 7 CFR part 4280 or a guaranteed loan commitment under either this part or 7 CFR part 4280.

(1) If the borrower has never received and accepted a grant award under 7 CFR part 4280 or a guaranteed loan commitment under either this part or 7 CFR part 4280, 15 points will be awarded.

(2) If the borrower has not received and accepted a grant award under 7 CFR part 4280 or a guaranteed loan commitment under either this part or 7 CFR part 4280 within the previous two Federal fiscal years, 10 points will be awarded.

(3) If the borrower has received and accepted a grant award under 7 CFR part 4280 or a guaranteed loan commitment under either this part or 7 CFR part 4280 within the previous two Federal fiscal years, no points will be awarded.

(e) *Existing businesses.* A maximum of 5 points will be awarded for an existing agricultural producer business or rural small business that meets the definition of existing business in § 5001.3.

(f) *Simple payback.* A maximum of 15 points will be awarded for this criterion based on the simple payback of the project as defined in § 5001.3. Points will be awarded for either RES, EEI, or EEE; points will not be awarded for more than one category.

(1) *Renewable energy systems.* If the simple payback of the project is—

(i) Less than 10 years, 15 points will be awarded;

(ii) 10 years up to but not including 15 years, 10 points will be awarded;

(iii) 15 years up to and including 25 years, 5 points will be awarded; or

(iv) Longer than 25 years, no points will be awarded.

(2) *Energy efficiency improvements.* If the simple payback of the project is:

(i) Less than 4 years, 15 points will be awarded;

(ii) 4 years up to but not including 8 years, 10 points will be awarded;

(iii) 8 years up to and including 12 years, 5 points will be awarded; or

(iv) Longer than 12 years, no points will be awarded.

(3) *Energy efficient equipment and systems.* If the simple payback of the project is—

(i) Less than 4 years, 15 points will be awarded;

(ii) 4 years up to but not including 8 years, 10 points will be awarded;

(iii) 8 years up to and including 12 years, 5 points will be awarded; or

(iv) Longer than 12 years, no points will be awarded.

(g) *Administrator priority points.* Under this criterion, the Administrator may award up to 10 points to an application based on the conditions specified in paragraphs (g)(1) through (5) of this section. Under no circumstances will an application receive more than 10 points under this criterion.

(1) The application is for an under-represented technology.

(2) Selecting the application helps achieve geographic diversity.

(3) The borrower is a member of an unserved or under-served population.

(i) The borrower is a veteran or veterans own 20 percent or more in interest in the borrower. In order to receive points, the borrower must sign a certification in its application to indicate that the borrower has veteran status; or

(ii) The borrower is a member of a socially disadvantaged group or members of socially disadvantaged group(s) own 20 percent or more in interest in the borrower socially disadvantaged groups are groups whose members have been subjected to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities. In order to receive points, the application must include a statement to indicate that borrower is a member of a socially disadvantaged group.

(4) Selecting the application helps further a Presidential initiative or a Secretary of Agriculture priority.

(5) The proposed project is located in a federally declared disaster area. Declarations must be within the last 3 calendar years.

(6) The project is located in an area where 20 percent or more of its population is living in poverty, as defined by the United States Census Bureau; an underserved community; or an area which has experienced long-term population decline, or loss of employment.

(h) *Unused funding.* After each periodic competition, the Agency will roll any remaining guaranteed loan funding authority into the next competition. At the end of each Federal fiscal year, the Agency may elect at its discretion to allow any remaining multi-year funds to be carried over to the next Federal fiscal year rather than selecting a lower scoring application.

§§ 5001.320–5001.400 [Reserved]

Appendix A to Subpart D of Part 5001—Feasibility Study Components

BILLING CODE 3410–15–P

ELEMENTS OF AN ACCEPTABLE FEASIBILITY STUDY

EXECUTIVE SUMMARY
Provide an overview to describe the nature and scope of the proposed project, including the purpose, project location, design features, capacity, and estimated capital costs. Include a summary of the feasibility determinations made for each applicable component.

ECONOMIC	
What is it?	Cost benefit analysis
What are the factors to consider?	Minimum amount of inputs (labor, infrastructure, utilities, renewable resources, feedstocks) to operate successfully Contracts in place and contracts to be negotiated, including terms and renewals Environmental risks Cost of project relative to the increase in revenues or benefits provided Overall economic impact of project including new markets created and economic development

MARKET	
What is it?	Analysis of the current and future market potential, competition, sales or service estimations including current and prospective buyers or users
What are the factors to consider?	Competition Type of project: service, product or commodity based Target market, new versus established End user analysis, captive versus competitive By-product revenue streams Industry risk

TECHNICAL	
What is it?	Analyzing the reliability of the technology to be used and/or the analysis of the delivery of goods or services, including transportation, business location, and the need for technology, materials, and labor.
What are the factors to consider?	Commercial availability Product and process success record and duplication of results Experience of the service providers Roads, rail, airport infrastructure Need for local transportation Labor market Availability of materials Use, age, and reliability of technology Construction risk

FINANCIAL	
What is it?	Analysis of the operation to achieve sufficient income, credit, and cashflow to financially sustain the project over the long term and meet all debt obligations.
What are the factors to consider?	Commercial or project underwriting Management's assumptions Accounting policies Source of repayment Dependency on other entities Equity contribution Market demand forecast Peer industry comparison Cost-accounting system Availability of short-term credit Adequacy of raw materials and supplies Sensitivity analysis

MANAGEMENT	
What is it?	Analysis of the legal structure of the business or operation; ownership, board and management analysis.
What are the factors to consider?	History of the business or organization Professional and educational background Experience Skills Qualifications necessary to implement the project

RECOMMENDATION
Conclude with an opinion and recommendation presented by the consultant

QUALIFICATIONS
Provide a resume or statement of qualifications of the author of the feasibility study, including prior experience.

Appendix B to Subpart D of Part 5001—
Financial Feasibility Reports

ELEMENTS OF FINANCIAL FEASIBILITY REPORTS

FINANCIAL FEASIBILITY ANALYSIS	
The following is a guide of the minimum items to be addressed in the preparation of the financial feasibility analysis. The level of effort required to prepare the report and the depth of analysis within the report are proportional to the size and complexity of the proposed project. The preparer is expected to fully disclose and analyze all significant factors that may have favorable or adverse effect on the financial success of the proposed facility.	
Existing facility	Explain current capacities; rates or usage; activities; suitability for continued use; alternate usage; deficiencies in servicing; staffing or physical conditions; and any other pertinent information.
Proposed facility	Description of construction and renovation by component parts including capacity of each component part and physical limiting factors.
Need for facility	Explain and document the need for the facility. Include comments regarding: • Service area • Population trends • Similar facilities and services in the area • Usage trends • Community support • Regulatory agency approval • Economy in the service area • Analysis of staff and consultants
Financial information	Explain all assumptions, underlying and expected demand, use, and projections of financial data, such as: • Changes in usage • All income and expenses • Rate structure • Allowance for collectible accounts • Depreciation life and method • Description of long-term debts
Financial statements	The following financial statements must be prepared reflecting 5 years' projections: • Balance sheet for all funds • Statement of income and expense • Statement of cash flow (cash receipts and disbursements) • Comparison data for facilities in similar industry or service (most recent year only)
Qualifications	Provide a resume or statement of qualifications of the preparer of the financial feasibility analysis

FINANCIAL FEASIBILITY STUDY WITH EXAMINATION OPINION
The financial feasibility study with examination opinion is the examination of the prospective financial information provided by the borrower ("management") culminating in an examination opinion on the reliability of the borrower's financial statements and management's underlying assumptions. The examination opinion provides a high level of assurance. The examination opinion will be prepared by a CPA with the necessary expertise to perform the study and backed by their professional liability insurance. Following are the items typically included in a financial feasibility study with examination opinion.
• Signed and dated opinion letter • 5 years historic and 5 years forecasted financial statements • Schedule of ratios pertinent to the industry • Summary of significant financial forecast assumptions and accounting policies • Summary of significant demand forecast assumptions • Sensitivity analysis • Other information deemed appropriate by the preparer

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Appendix C to Subpart D of Part 5001—Technical Reports for Energy Efficiency Improvement (EEI) Projects With Total Project Costs of More Than $80,000

Technical Reports for Energy Efficiency Improvement (EEI) Projects With Total Project Costs of More Than $80,000

For all EEI projects with Total Project Costs of more than $80,000, provide the information specified in Sections A and D and in Section B or Section C, as applicable. If the application is for an EEI project with Total Project Costs of $80,000 or less, please see § 5001.307 (e) for the technical report information to be submitted with your application.

If the application is for an EEI project with Total Project Costs of $200,000 and greater, you must conduct an Energy Audit (EA). However, if the application is for an EEI project with a Total Project Costs of less than $200,000, you may conduct either an Energy Assessment or an Energy Audit. Energy Audits that meet the American Society of Heating, Refrigeration and Air-Conditioning Engineers (ASHREA) Level II Energy Survey; Analysis and American National Standards Institute (ANSI); or American Society of Agricultural and Biological Engineers (ASABE)_S162 Standard for performing on farm Energy Audits will be considered by the Agency to be acceptable audits.

Section A. Project Information

Describe how all the improvements to or replacement of an existing building and/or equipment meet the requirements of being Commercially Available. Describe how the design, engineering, testing, and monitoring are sufficient to demonstrate that the proposed project will meet its intended purpose, ensure public safety, and comply with applicable laws, regulations, agreements, permits, codes, and standards. Describe how all equipment required for the EEI(s) is available and able to be procured and delivered within the proposed project development schedule. In addition, present information regarding component warranties and the availability of spare parts.

Section B. Energy Audit

If conducting an EA, provide the following information.

(1) Situation Report. Provide a narrative description of the existing building and/or equipment, its energy system(s) and usage, and activity profile. Also include average price per unit of energy (electricity, natural gas, propane, fuel oil, renewable energy, etc.) paid by the customer for the most recent 12 months, or an average of 2, 3, 4, or 5 years, for the building and equipment being audited. Any energy conversion should be based on use rather than source.

(2) Potential Improvement Description. Provide a narrative summary of the potential improvement and its ability to reduce energy consumption or improve energy efficiency, including a discussion of reliability and durability of the improvements.

(i) Provide preliminary specifications for critical components.

(ii) Provide preliminary drawings of project layout, including any related structural changes.

(iii) Identify significant changes in future related operations and maintenance costs.

(iv) Describe explicitly how outcomes will be measured.

(3) Technical Analysis. Give consideration to the interactions among the potential improvements and the current energy system(s).

(i) For the most recent 12 months, or an average of 2, 3, 4, or 5 years, prior to the date the application is submitted, provide both the total amount and the total cost of energy used for the original building and/or equipment, as applicable, for each improvement identified in the potential project. In addition, provide for each improvement identified in the potential project an estimate of the total amount of energy that would have been used and the total cost that would have been incurred if the proposed project were in operation for this same time period.

(ii) Calculate all direct and attendant indirect costs of each improvement;

(iii) Rank potential improvements measures by cost-effectiveness; and

(iv) Provide an estimate of Simple Payback, including all calculations, documentation, and any assumptions.

(4) Qualifications of the Auditor. Provide the qualifications of the individual or entity which completed the Energy Audit.

Section C. Energy Assessment

If conducting an Energy Assessment, provide the following information.

(1) Situation Report. Provide a narrative description of the existing building and/or equipment, its energy system(s) and usage, and activity profile. Also include average price per unit of energy (electricity, natural gas, propane, fuel oil, renewable energy, etc.) paid by the customer for the most recent 12 months, or an average of 2, 3, 4, or 5 years, for the building and equipment being evaluated. Any energy conversion shall be based on use rather than source.

(2) Potential Improvement Description. Provide a narrative summary of the potential improvement and its ability to reduce energy consumption or improve energy efficiency.

(3) Technical Analysis. Giving consideration to the interactions among the potential improvements and the current energy system(s), provide the information specified in paragraphs (3)(i) through (iii) of this appendix.

(i) For the most recent 12 months, or an average of 2, 3, 4, or 5 years, prior to the date the application is submitted, provide both the total amount and the total cost of energy used for the original building and/or equipment, as applicable, for each improvement identified in the potential project. In addition, provide for each improvement identified in the potential project an estimate of the total amount of energy that would have been used and the total cost that would have been incurred if the proposed project were in operation for this same time period.

(ii) Document baseline data compared to projected consumption, together with any

explanatory notes on source of the projected consumption data. When appropriate, show before-and-after data in terms of consumption per unit of production, time, or area.

(iii) Provide an estimate of Simple Payback, including all calculations, documentation, and any assumptions.

(4) Qualifications of the Assessor. Provide the qualifications of the individual or entity that completed the assessment. If the Energy Assessment for a project with Total Project Costs of $80,000 or less is not conducted by Energy Auditor or Energy Assessor, then the individual or entity must have at least 3 years of experience and completed at least five Energy Assessments or Energy Audits on similar type projects.

Section D. Qualifications

Provide a resume or other evidence of the contractor or installer's qualifications and experience with the proposed EEI technology. Any contractor or installer with less than 2 years of experience may be required to provide additional information in order for the Agency to determine if they are qualified installer/contractor.

Appendix D to Subpart D of Part 5001—Technical Reports for Renewable Energy System (RES) Projects With Total Project Costs of Less Than $200,000 but More Than $80,000

Technical Reports for Renewable Energy System (RES) Projects With Total Project Costs of Less Than $200,000 but More Than $80,000

Provide the information specified in Sections A through D for each technical report prepared under this appendix. A Renewable Energy Site Assessment may be used in lieu of Sections A through C if the Renewable Energy Site Assessment contains the information requested in Sections A through C. In such instances, the technical report would consist of Section D and the Renewable Energy Site Assessment.

Note: If the Total Project Cost for the RES project is $80,000 or less, this appendix does not apply. Instead, for such projects, please provide the information specified in § 5001.307(e).

Section A. Project Description

Provide a description of the project, including its intended purpose and a summary of how the project will be constructed and installed. Describe how the system meets the definition of Commercially Available. Identify the project's location and describe the project site.

Section B. Resource Assessment

Describe the quality and availability of the renewable resource to the project. Identify the amount of Renewable Energy generated that will be generated once the proposed project is operating at its steady state operating level. If applicable, also identify the percentage of energy being replaced by the system.

If the application is for a Bioenergy Project, provide documentation that demonstrates that any and all woody biomass feedstock from National Forest System land or public lands cannot be used as a higher value wood-based product.

Section C. Project Economic Assessment

Describe the projected financial performance of the proposed project. The description must address Total Project Costs, energy savings, and revenues, including applicable investment and other production incentives accruing from Government entities. Revenues to be considered shall accrue from the sale of energy, offset or savings in energy costs, byproducts, and green tags. Provide an estimate of Simple Payback, including all calculations, documentation, and any assumptions.

Section D. Project Construction and Equipment Information

Describe how the design, engineering, testing, and monitoring are sufficient to demonstrate that the proposed project will meet its intended purpose, ensure public safety, and comply with applicable laws, regulations, agreements, permits, codes, and standards. Describe how all equipment required for the RES is available and able to be procured and delivered within the proposed project development schedule. In addition, present information regarding component warranties and the availability of spare parts.

Section E. Qualifications of Key Service Providers

Describe the key service providers, including the number of similar systems installed and/or manufactured, professional credentials, licenses, and relevant experience. When specific numbers are not available for similar systems, estimations will be acceptable.

Appendix E to Subpart D of Part 5001—Technical Reports for Renewable Energy System (RES) Projects With Total Project Costs of $200,000 and Greater

Technical Reports for Renewable Energy System (RES) Projects With Total Project Costs of $200,000 and Greater

Provide the information specified in Sections A through G for each technical report prepared under this appendix. Provide the resource assessment under Section C that is applicable to the project. For hybrid projects, technical reports must be prepared for each technology that comprises the hybrid project.

Section A. Qualifications of the Project Team

Describe the project team, their professional credentials, and relevant experience. The description shall support that the project team key service providers have the necessary professional credentials, licenses, certifications, and relevant experience to develop the proposed project.

Section B. Agreements and Permits

Describe the necessary agreements and permits (including any for local zoning requirements) required for the project and the anticipated schedule for securing those agreements and permits. For example, Interconnection Agreements and Power Purchase Agreements are necessary for all Renewable Energy projects electrically interconnected to the utility grid.

Section C. Resource Assessment

Describe the quality and availability of the renewable resource and the amount of Renewable Energy generated through the deployment of the proposed system. For all Bioenergy Projects, except Anaerobic Digesters Projects, complete Section C.3 of this appendix. For Anaerobic Digester Projects, complete Section C.6 of this appendix.

(1) *Wind.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the source of the wind data and the conditions of the wind monitoring when collected at the site or assumptions made when applying nearby wind data to the site.

(2) *Solar.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the source of the solar data and assumptions.

(3) *Bioenergy/Biomass Project.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the type, quantity, quality, and seasonality of the Renewable Biomass resource, including harvest and storage, where applicable. Where applicable, also indicate shipping or receiving method and required infrastructure for shipping. For proposed projects with an established resource, provide a summary of the resource. Document that any and all woody biomass feedstock from National Forest System land or public lands cannot be used as a higher value wood-based product.

(4) *Geothermal Electric Generation.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the quality of the geothermal resource, including temperature, flow, and sustainability and what conversion system is to be installed. Describe any special handling of cooled geothermal waters that may be necessary. Describe the process for determining the geothermal resource, including measurement setup for the collection of the geothermal resource data. For proposed projects with an established resource, provide a summary of the resource and the specifications of the measurement setup.

(5) *Geothermal Direct Generation.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the quality of the geothermal resource, including temperature, flow, and sustainability and what direct use system is to be installed. Describe any special handling of cooled geothermal waters that may be necessary. Describe the process for determining the geothermal resource, including measurement setup for the collection of the geothermal resource data. For proposed projects with an established resource, provide a summary of the resource and the specifications of the measurement setup.

(6) *Anaerobic Digester Project/Biogas.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the substrates

used as digester inputs, including animal wastes or other Renewable Biomass in terms of type, quantity, seasonality, and frequency of collection. Describe any special handling of feedstock that may be necessary. Describe the process for determining the feedstock resource. Provide either tabular values or laboratory analysis of representative samples that include biodegradability studies to produce gas production estimates for the project on daily, monthly, and seasonal basis. If an anerobic digester project, identify the type of operation (*e.g.,* dairy, swine, layer, etc.), along with breed, herd population size and demographics, and the type of waste collection method and frequency information available. For the biogas produced, identify the type of digester (*e.g.,* mixed, plug-flow, attached film, covered lagoon, etc.), if applicable, or the method of capture (landfill, sewage waste treatment, etc.) and treatment. Identify the system designer and determine the digester design assumptions such as the number and type of animals, the bedding type and estimated annual quantity used, the manure and wastewater volumes, and the treatment of digester effluent (*e.g.,* none, solids separation by screening, etc. with details including use or method of disposal).

(7) *Hydrogen Project.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the type, quantity, quality, and seasonality of the Renewable Biomass resource. For solar, wind, or geothermal sources of energy used to generate hydrogen, indicate the renewable resource where the hydrogen system is to be installed. Local resource maps may be used as an acceptable preliminary source of renewable resource data. For proposed projects with an established renewable resource, provide a summary of the resource.

(8) *Hydroelectric/Ocean Energy Projects.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the quality of the resource, including temperature (if applicable), flow, and sustainability of the resource, including a summary of the resource evaluation process and the specifications of the measurement setup and the date and duration of the evaluation process and proximity to the proposed site. If less than 1 year of data is used, a Qualified Consultant must provide a detailed analysis of the correlation between the site data and a nearby, long-term measurement site.

(9) *Renewable Energy Systems with Storage Components.* Provide adequate and appropriate data to demonstrate the amount of renewable resource available. Indicate the type, quantity, quality, and seasonality of the Renewable Energy resource, where applicable. Indicate the storage system specifications and the integrity of the system in conjunction with the renewable energy system it is integrated with, including application, size, lifetime, response time, capital and maintenance costs associated with the operation as well as the distribution of the stored resource(s).

Section D. Design and Engineering

Describe the intended purpose of the project and the design, engineering, testing, and monitoring needed for the proposed project. The description shall support that the system will be designed, engineered, tested, and monitored so as to meet its intended purpose, ensure public safety, and comply with applicable laws, regulations, agreements, permits, codes, and standards. In addition, identify that all major equipment is Commercially Available, including proprietary equipment, and justify how this unique equipment is needed to meet the requirements of the proposed design. In addition, information regarding component warranties and the availability of spare parts must be presented.

Section E. Project Development

Describe the overall project development method, including the key project development activities and the proposed schedule, including proposed dates for each activity. The description shall identify each significant historical and projected activity, its beginning and end, and its relationship to the time needed to initiate and carry the activity through to successful project completion. The description shall address Applicant project development cash flow requirements. Details for equipment procurement and installation shall be addressed in Section F of this Appendix. Applications should include a concise development schedule with timelines for activities.

Section F. Equipment Procurement and Installation

Describe the availability of the equipment required by the system. The description shall support that the required equipment is available and can be procured and delivered within the proposed project development schedule. Describe the plan for site development and system installation, including any special equipment requirements. In all cases, the system or improvement shall be installed in conformance with manufacturer's specifications and design requirements, and comply with applicable laws, regulations, agreements, permits, codes, and standards.

Section G. Operations and Maintenance

Describe the operations and maintenance requirements of the system, including major rebuilds and component replacements necessary for the system to operate as designed over its useful life. The warranty must cover and provide protection against both breakdown and a degradation of performance. The performance of the RES or EEI shall be monitored and recorded as appropriate to the specific technology.

Subpart E—Loan and Guarantee Provisions

Loan Provisions

§ 5001.401 Interest rate provisions.

Interest rates, interest rate caps, and incremental interest rate adjustment limitations on a guaranteed loan are negotiated between the Lender and the borrower. The interest rate for a guaranteed loan can be either fixed or variable, or a combination thereof, as long as it is a legal rate. Interest rates cannot be more than those rates the lender customarily charges its borrowers for non-guaranteed loans in similar circumstances in the ordinary course of business. The Agency encourages each lender to use the secondary market and pass interest-rate savings on to the borrower.

(a) *Different rates on guaranteed and unguaranteed portion of the* guaranteed *loan.* It is permissible to have different interest rates on the guaranteed and unguaranteed portions of the loan.

(b) *Variable interest rates.* A variable interest rate must be an interest rate that is tied to a published base rate, as published in a national or regional financial publication, and is agreed to by the Agency.

(1) The variable interest base rate must be specified in the promissory note along with any interest factors (*e.g.,* National Prime plus 1.0 percent).

(2) The lender may adjust the variable interest rate at different intervals during the term of the loan, but not more often than quarterly.

(3) The lender must incorporate, within the variable rate promissory note, a provision for adjustment of payment installments to fully amortize the loan by its maturity date.

(c) *Multi-rates.* When multi-rates are used, the lender must provide the Agency with the overall effective Interest rate for the entire loan.

(d) *Interest rate changes.* Any change in the base rate or fixed interest rate between issuance of the conditional commitment and the issuance of the loan note guarantee must be approved by the Agency. Approval of such a change must be shown as an amendment to the conditional commitment and must be reflected on the guaranteed loan closing report form.

§ 5001.402 Term length, loan schedule, and repayment.

(a) *Term length.* The lender, with Agency concurrence, will establish and justify the guaranteed loan term based on the use of guaranteed loan funds, the useful economic life of the assets being financed and those used as collateral, and the borrower's repayment ability. The maximum term allowable for final guaranteed loan maturity is limited to the justified useful life of the project or assets used as collateral but may not exceed 40 years or limitations in the applicable State statute, whichever is less.

(b) *Guaranteed loan schedule and repayment.* The lender must structure repayment in consideration of the borrower's cash flow and in accordance with the provisions of this section and

the loan agreement. Scheduled guaranteed loan payments shall be made no less frequently than annually. In addition:

(1) Both the guaranteed and unguaranteed portions of the loan must be amortized over the same term.

(2) Guaranteed loans must require a periodic payment schedule that will retire the debt over the term of the loan without a balloon payment.

(3) If the promissory note provides for an interest-only period, interest must be paid at least annually starting on a date that is no more than one year from the date of the promissory note. The first full payment on the guaranteed loan including principal and interest must be due and payable within three years from the date of the promissory note or as soon as the project is operational and has begun to generate income, whichever occurs first.

(4) There must be no ''due-on-demand'' clauses without cause. Regardless of any ''due-on-demand'' with cause provision in a lender's promissory note, the Agency must concur in any acceleration of the guaranteed loan unless the basis for acceleration is monetary default.

§ 5001.403 Lender fees.

(a) The lender may charge the borrower reasonable, routine, and customary charges and fees for the guaranteed loan provided they are similar to those charges the lender assesses other borrowers for the same type of loan not subject to a loan guarantee. The lender must document such fees in the application. The lender may also charge routine and customary prepayment penalties and late payment fees for the guaranteed loan, which must be stated in the guaranteed loan documents.

(b) Default charges, penalty interest, late payment fees, and additional interest expenses are not covered by the loan note guarantee and cannot be added to the principal or Interest due under any loan note guarantee in the event of a loss claim as prescribed in § 5001.521or a repurchase as prescribed in § 5001.511.

§§ 5001.404–5001.405 [Reserved]

§ 5001.406 Guaranteed loan amounts.

Applicable guaranteed loan amounts depend on the type of project and the source of its funding.

(a) *CF projects.* The maximum amount of a CF guaranteed loan that may be made to a borrower, including the guaranteed and unguaranteed portions of any CF guaranteed loans, the outstanding principal and interest balance of any existing CF guaranteed loans, and any new CF guaranteed loan that is the subject of an application must not exceed $100 million.

(b) *WWD projects.* The maximum amount of a WWD guaranteed loan that may be made to a borrower, including the guaranteed and unguaranteed portions of any WWD guaranteed loans, the outstanding principal and interest balance of any existing WWD guaranteed loans, and any new WWD guaranteed loan that is the subject of an application must not exceed $50 million.

(c) *B&I project*s. The maximum total amount of B&I guaranteed loans (including the guaranteed and unguaranteed portions of any B&I guaranteed loans, the outstanding principal and interest balance of any existing B&I guaranteed loans, and any new B&I guaranteed loan that is the subject of an application) that may be made to a borrower is limited to a maximum amount of $25 million. The Secretary, whose authority may not be redelegated, may approve, at the Secretary's discretion, guaranteed loans in excess of $25 million and up to $40 million for rural cooperatives that process value-added agricultural commodities in accordance with § 5001.105(b)(18)(i).

(d) *REAP projects.* The amount of a guaranteed loan that will be made available to an eligible project and borrower under this part will be at least $5,000 not to exceed 75 percent of eligible project costs.

(1) The maximum total amount of REAP guaranteed loans made to a borrower, including the guaranteed and unguaranteed portions of all REAP guaranteed loans, the outstanding principal and interest balance of any existing REAP guaranteed loans and the new REAP guaranteed loan that is the subject of an application, must not exceed $25 million.

(2) The total amount of funds available to agricultural producers for energy efficient equipment and systems will not exceed 15 percent of annual funds available to the program.

§ 5001.407 Percentage of loan guarantee.

The percent of loan guaranteed may vary from program to program. The maximum guarantee is 90 percent of eligible guaranteed loan loss The Agency will set annually a guarantee percentage by program that will apply to loans guaranteed within each program. The annual guarantee percentage will take current Federal credit policy into consideration and may be set at or below the maximum allowed authorized by statute. The Agency will announce annual guarantee percentages each fiscal year by publishing a document in the **Federal Register** in accordance with § 5001.10.

§ 5001.408 Participation or assignment of guaranteed loan.

(a) *General.* The lender may participate or assign all or part of the guaranteed portion of the guaranteed loan on the secondary market subject to the conditions specified in paragraphs (a)(1) through (5) of this section or retain the entire guaranteed loan.

(1) *Participation.* The lender may obtain participation in the loan under its normal operating procedures; however, the lender must retain title to and possession of the promissory note(s) and retain the lender's interest in the collateral.

(2) *Assignment.* Any sale or assignment by the lender of the guaranteed portion of the loan must be accomplished in accordance with the conditions in the lender's agreement and the provisions of this section. The holders and the borrower have no rights or obligations to one another.

(3) *Minimum retention by the lender.* Minimum retention at all times must be from the unguaranteed portion of the loan and cannot be participated to another person.

(i) The lender must hold a minimum of 7.5 percent of the total loan amount.

(ii) The lender must retain its security interest in the collateral and retain the servicing responsibilities for the guaranteed loan.

(iii) The Agency can approve a reduction of the minimum retention requirement below the applicable percentage on a case-by-case basis when the lender establishes to the Agency's satisfaction that reduction of the minimum retention percentage is necessary to meet compliance with the lender's regulatory authority.

(4) *Prohibition.* The lender must not sell or participate any amount of the guaranteed or non-guaranteed portion of the loan to the borrower, to members of the borrower's immediate families, the borrower's officers, directors, stockholders, other owners, or to a parent company, an affiliate, or a subsidiary of the borrower.

(5) *Secondary market.* The lender must properly close their loan and fully disburse loan funds for the purposes intended prior to sale of the promissory note(s) or loan note guarantee on the secondary market. The lender can sell all or part of the guaranteed portion of the loan only if the loan is not in default.

(b) *Lender's servicing fee to holder.* The assignment guarantee agreement

must clearly state the guarantee portion of loan as a percentage and corresponding dollar amount of the guaranteed portion of the guaranteed loan it represents and the lender's servicing fee. The lender must maintain a minimum servicing fee of 50 basis points from any holder. The lender cannot charge the Agency a servicing fee and servicing fees are not eligible expenses for loss claim.

(c) *Distribution of proceeds.* The lender must apply all loan payments and collateral proceeds received to the guaranteed and unguaranteed portions of the loan on a pro rata basis. If multiple types of Agency guaranteed loans exist for the same project, these will also be paid on a pro rata basis.

(d) *Promissory note(s).* A loan note guarantee is issued to the lender for a specific promissory note(s) executed between the lender and the borrower. The lender must retain title to and possession of the guaranteed promissory note(s), retain the lender's interest in the collateral, and retain the servicing responsibilities for the guaranteed loan. The lender is prohibited from issuing any additional promissory notes at a later date for the same guaranteed loan.

(1) The lender may assign all or part of the guaranteed portion of the loan, including interest strips, to one or more holders by using an assignment guarantee agreement for each holder. The lender must complete and execute the assignment guarantee agreement and return it to the Agency for execution prior to holder execution.

(2) The lender or holder may request a certificate of incumbency and signature from the Agency.

(3) A holder, upon written notice to the lender and the Agency, may reassign the unpaid guaranteed portion of the loan, in full, sold under the assignment guarantee agreement. Holders can only reassign the complete block they have received and cannot subdivide or further split their interest in the guaranteed portion of a loan or retain an interest strip.

(4) Upon notification and completion of the assignment through the use of the assignment guarantee agreement, the assignee succeeds to all rights and obligations of the holder thereunder. Subsequent assignments require notice to the lender and Agency using any format, including that used by the Securities Industry and Financial Markets Association (formerly known as the Bond Market Association), together with the transfer of the original assignment guarantee agreement.

(5) The Agency will not execute a new assignment guarantee agreement to affect a subsequent reassignment.

(6) The Agency will not reissue a duplicate assignment guarantee agreement unless:

(i) The original was lost, stolen, destroyed, mutilated, or defaced; and

(ii) The reissue is made in accordance with § 5001.459.

(e) *Rights and liabilities.* When a guaranteed portion of a loan is sold to a holder using an assignment guarantee agreement, the holder succeeds to all rights of the lender under the loan note guarantee to the extent of the portion purchased. The full, legal interest in the promissory note must remain with the lender, and the lender remains bound to all obligations under the loan note guarantee, lender's agreement, and Agency regulations applicable to the guarantee.

(1) A guarantee and right to require purchase in accordance with § 5001.511 will be directly enforceable by a Holder notwithstanding any fraud or misrepresentation by the lender or any unenforceability of the loan guarantee by the lender, except for fraud or misrepresentation of which the holder had actual knowledge at the time it became the holder or in which the holder participates or condones.

(2) The lender must not represent a conditional commitment of guarantee as a loan guarantee.

(3) The lender must reimburse the Agency for any payments the Agency makes to a holder on the lender's behalf under the loan note guarantee, given the lender would not be entitled to the payments had they retained the entire interest in the loan.

§§ 5001.409–5001.449 [Reserved]

Guarantee Provisions

§ 5001.450 General.

(a) *Full faith and credit.* A loan note guarantee issued under this part constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which a lender or holder has actual knowledge at the time it becomes such lender or holder, or which a lender or holder participates in or condones.

(b) *Conditions of guarantee.* A guaranteed loan under this part will be evidenced by a loan note guarantee issued by the Agency.

(1) The entire loan must be secured by the same collateral with equal lien priority for the guaranteed and unguaranteed portions of the loan. The unguaranteed portion of the guaranteed loan will neither be paid first nor given any preference or priority over the guaranteed portion. A parity or junior lien position in the guaranteed loan collateral may be considered on a case-by-case basis and must be approved by the Agency. The minimum security taken for the purchase of cooperative stock includes a lien on the stock acquired with loan funds, an assignment of any patronage refund and personal or corporate guarantees.

(2) The lender must remain mortgagee and secured party of record notwithstanding the fact that another party may hold a portion of the guaranteed loan.

(3) The lender will receive all payments of principal and interest on account of the entire guaranteed loan and must promptly remit to each holder and participant, if any, its pro rata share of any payment within 30 days of the lender's receipt thereof from the borrower. Holder or participant payments are determined according to their respective interest in the guaranteed loan, less only the lender's servicing fee.

(4) Any claim against a loan note guarantee or assignment guarantee agreement that is attached to, or relating to, a promissory note that provides for payment of interest-on-interest, default charges, penalty interest, or late payment fees will be reduced to remove such interest, fees and charges.

(5) The loan note guarantee is unenforceable by the lender to the extent that any loss is occasioned by:

(i) The violation of usury laws;

(ii) Use of guaranteed loan funds for unauthorized loan purposes in accordance with § 5001.122 or to the extent that those funds are used for purposes other than those specifically approved by the Agency in its conditional commitment or amendment thereof;

(iii) Failure to obtain, perfect, document, and or maintain the required collateral or security position regardless of the time at which the Agency acquires knowledge thereof; and

(iv) Negligent loan origination or negligent loan servicing as determined and documented by the Agency.

(6) The Agency will guarantee payment as follows:

(i) To any holder, 100 percent of any loss sustained by the holder on the guaranteed portion of the guaranteed loan it owns and on interest due (as determined under paragraph (g) of this section) on such portion less any outstanding servicing fee.

(ii) To the lender: Any loss sustained by the lender on the guaranteed portion of the guaranteed loan, including principal and interest (as determined under paragraph (c) of this section) evidenced by the promissory note(s) or assumption agreements entered into in

connection with an Agency approved transfer and assumption, and secured advances for protection and preservation of collateral made with the Agency's authorization if applicable.

(c) *Accrued interest payments.* If a loan has been guaranteed by the Agency prior to October 1, 2020, the Agency will guarantee the lender and any holders accrued interest in accordance with the applicable regulations in effect for the respective program at the time the loan was guaranteed. For all guaranteed loans closed on or after October 1, 2020, the Agency will guarantee accrued interest in accordance with paragraph (c)(1) or (2), as applicable, of this section.

(1) If the lender owns all or a portion of the guaranteed portion of the guaranteed loan or makes a protective advance, the Agency, in its sole discretion, may cover interest on the guaranteed portion for the 90 days from the most recent delinquency effective date, and up to a total of 180 days, only if:

(i) The lender, and not the Agency, has repurchased all holder interests in the guaranteed loan in accordance with § 5001.511;

(ii) The lender is actively engaged in a credit resolution with the borrower to bring the account current or fully liquidate the collateral under the terms of a liquidation plan approved by the Agency; and

(iii) Concurrence for inclusion of the extended period of interest to the lender is received from the Agency.

(2) If the guaranteed loan has one or more holders, the lender will issue an interest termination letter to each holder establishing the termination date for interest accrual. The loan note guarantee will not cover interest to any holder accruing after 90 days from the date of the interest termination letter. The Agency at its sole discretion may notify each holder of the interest termination provisions if it is determined that lender correspondence to holders is inadequate.

§ 5001.451 Conditional commitment.

(a) *Issuance.* Upon selection of an application in accordance with § 5001.315 in subpart D, the Agency will issue a conditional commitment to the lender, to be accepted by the lender and the borrower, containing conditions under which the Agency will issue a loan note guarantee.

(1) Upon acceptance of the conditional commitment, the lender agrees not to modify the scope of the project, overall facility concept, project purpose, use of guaranteed loan funds, or other terms and conditions without Agency written concurrence in accordance with paragraph (c) of this section.

(2) If the lender decides at any time after receiving a conditional commitment that it no longer wants a loan guarantee, the lender must immediately advise the Agency of the cancellation in writing. Upon written notification from the lender, the Agency will de-obligate the funds associated with the conditional commitment.

(b) *Content.* The conditional commitment will address information required for issuing a loan note guarantee, including but not limited to:

(1) Approved use of guaranteed loan funds (source and use of funds);

(2) Rates and terms of the loan;

(3) Loan agreement requirements;

(4) Loan closing requirements;

(5) Lender and borrower certifications;

(6) Collateral and lien position requirements; and

(7) Other requirements necessary to protect the Agency.

(c) *Change requests.* The lender can request, in writing, changes to the conditional commitment with justification. The Agency can deny, solely at its discretion, changes to the conditional commitment even if the changes are otherwise in compliance with this part. All changes to the conditional commitment must be documented by written amendment to the conditional commitment executed by all parties.

(d) *Acceptance or withdrawal of conditional commitment.* The lender and borrower must complete and sign the conditional commitment and return a copy to the Agency within 60 days. If the conditional commitment is not accepted by both the lender and borrower within 60 days, the conditional commitment becomes null and void and the Agency will withdraw the conditional commitment and de-obligate the associated funds.

(e) *Modification, and expiration of conditional commitment.* The conditional commitment issued by the Agency will be effective for a period of 1 year or sufficient time to complete the guaranteed loan project prior to loan closing. The lender must submit a written request to the Agency to extend the conditional commitment at least 30 days prior to its expiration date and obtain Agency approval for the extension. The Agency will consider this request only if no major changes have been made in the lender's loan conditions and requirements and no material adverse changes in the borrower or the borrower's financial condition have occurred since issuance of the conditional commitment. If a conditional commitment expires, the Agency will notify the lender in writing and may de-obligate the funds. Any additions or modifications to conditions stated in the original conditional commitment must be agreed upon between the lender, the borrower, and the Agency.

§ 5001.452 Loan closing and conditions precedent to issuance of loan note guarantee.

(a) The lender must not close the guaranteed loan until all conditions of the conditional commitment are met.

(b) Simultaneously with or immediately after the guaranteed loan closing, the lender must provide to the Agency the guarantee fee, any secondary market sale documents, and the following forms and documents:

(1) An Agency-approved, ''Guaranteed Loan Closing Report'';

(2) A copy of each executed promissory note and collateral security documents;

(3) A copy of the executed final loan agreement, which must include any additional requirements imposed by the Agency in the conditional commitment;

(4) The original, executed Agency-approved guarantee form(s) for any required personal, partnership or corporate guarantees;

(5) The borrower's loan closing balance sheet, if required;

(6) For loans to public bodies, an opinion from recognized bond counsel regarding the adequacy of the preparation, issuance, and enforceability of the debt instruments;

(7) Any other documents required to comply with applicable law or required by this part, the conditional commitment or the Agency; and

(8) When requesting issuance of a loan note guarantee, the lender must certify to each condition identified in paragraphs (b)(8)(iii)(A) through (V) of this section, as applicable.

(i) In making its certification, the lender can rely on certain written materials (*e.g.,* certifications, evaluations, appraisals, financial statements, and other reports) provided by the borrower or other qualified third parties (*e.g.,* independent engineers, appraisers, accountants, attorneys, consultants, or other experts).

(ii) If the lender is unable to provide any of the certifications required under this section, the lender must provide an explanation satisfactory to the Agency.

(iii) The lender may request the loan note guarantee prior to construction in accordance with this part; however, the lender must still certify to all applicable conditions of this paragraph (b)(8)(iii).

(A) All requirements of the conditional commitment have been met.

(B) The financial criteria specified in § 5001.303(b)(4) of this part and any financial criteria contained in the conditional commitment were:

(*1*) Determined in accordance with any applicable requirements in § 5001.9 of this part, and

(*2*) Have been maintained through the issuance of the loan note guarantee. Failure to maintain or attain the minimum financial criteria will result in the Agency not issuing a loan note guarantee.

(C) No major changes have been made in the applicant, project or lender's loan conditions and requirements since the issuance of the conditional commitment, unless such changes have been approved by the Agency.

(D) There has been neither any material adverse change in the borrower's financial condition nor any other material adverse change in the borrower during the period of time from the Agency's issuance of the conditional commitment to issuance of the loan note guarantee regardless of the cause or causes of the change and whether or not the change or causes of the change were within the lender's or borrower's control.

(*1*) The borrower is a legal entity in good standing with its regulator (as applicable) and operating in accordance with the laws of the State(s) or Tribe where the borrower was organized or has a place of business.

(*2*) The borrower meets the eligibility requirements as outlined in § 5001.126(a) and (b) through (e), as applicable.

(E) There is a reasonable prospect that the guaranteed loan and other project debt will be repaid on time and in full (including interest) from project cash flow according to the terms proposed in the application.

(F) The guaranteed loan has been properly closed, and the required security instruments have been properly executed and all security interests obtained by the lender have been or will be properly perfected in accordance with applicable law.

(G) All planned property acquisition has been or will be completed; all development has been or will be substantially completed in accordance with plans and specifications and conforms to applicable Federal, State, and local codes; all equipment required for the project is available, can be procured and delivered within the project development schedule, and will be installed in conformance with manufacturer's specifications and design requirements; and costs have not exceeded the amount approved by the lender and the Agency.

(H) The proposed project complies with all current Federal, State, and local laws and regulatory rules that affect the project, the borrower, and lender activities, including, but not limited to, equal opportunity and Fair Housing Act requirements and design and construction requirements.

(I) Lender-required insurances are in effect.

(J) All truth-in-lending and equal credit opportunity requirements have been met.

(K) The borrower has marketable title to the collateral then owned by the borrower, subject to the rights of the guaranteed loan and to any other exceptions approved in writing by the Agency.

(L) Where required, necessary or prudent, the borrower has obtained—

(*1*) A legal opinion relative to the title and accessibility to any rights-of-way and easements; and

(*2*) A title opinion or title insurance showing the borrower has good and marketable title to real property and other collateral and all mortgages or other lien defects, restrictions, or encumbrances, if any.

(M) All project funds have been or will be disbursed for purposes and in amounts consistent with the conditional commitment (or Agency-approved amendment thereof) and the application submitted to the Agency. Appropriate lender controls were used to ensure that all funds were properly disbursed, including funds for working capital. A copy of a settlement statement by the lender detailing the use of loan and matching/equity funds must be attached to support this certification.

(N) When applicable, the entire amount of the loan for working capital or initial operating expenses have been disbursed to the borrower, except in cases where the Agency has approved disbursement over an extended period of time and funds are escrowed so that the settlement statement reflects the full amount to be disbursed.

(O) When required, personal and/or corporate guarantees have been obtained in accordance with § 5001.204 of this part.

(P) Lien priorities are consistent with the requirements of the conditional commitment. No claims or liens of laborers, subcontractors, suppliers of machinery and equipment, materialmen, or other parties have been filed against the collateral and no suits are pending or threatened that would adversely affect the collateral.

(Q) Neither the lender nor any of the lender's officers has an ownership interest in the borrower or is an officer or director of the borrower, and neither the borrower nor its officers, directors, stockholders, or other owners have more than a 5 percent ownership interest in the lender.

(R) The loan agreement includes all borrower compliance measures identified in the Agency's environmental review for avoiding or reducing adverse environmental impacts of the project's construction or operation.

(S) The lender will comply with the requirements of the Debt Collection Improvement Act.

(T) The lender has executed and delivered the lender's agreement, completed registration in the Agency's electronic reporting system, and electronically submitted the closing report for the guaranteed loan along with the appropriate guarantee fee.

(U) For all RES and EEI projects, the lender must provide certification that the project has been performing at a steady state operating level in accordance with the technical requirements, plans, and specifications. Any modification to the 30-day steady state operating level requirement will be based on the Agency's review of the technical report or vendor certification and will be incorporated into the conditional commitment.

(V) For CF and WWD projects, the lender must also certify that the lender would not make the loan without an Agency loan guarantee.

(c) For RES projects where applicable, the lender must provide to the Agency a copy of the executed power purchase agreement.

(d)(1) For all CF projects before the Agency will issue a loan note guarantee on a guaranteed loan to a borrower other than a public body, the articles of incorporation or other organizing documents of the borrower or the loan agreement must include a condition similar to the following:

(2) If the corporation dissolves or ceases to perform the community facility objectives and functions, the board of directors shall distribute all business property and assets to one or more nonprofit corporations or public bodies. This distribution must be approved by 75 percent of the users or members and must serve the public welfare of the community. The assets may not be distributed to any members, directors, stockholders, or others having a financial or managerial interest in the corporation. Nothing herein shall prohibit the corporation from paying its debts.

(e) For all B&I projects a borrower whose project involves locally or

regionally produced agricultural food products and is not located in a rural area must include in an appropriate agreement with retail and institutional facilities to which the borrower sells locally or regionally produced agricultural food products a requirement to inform consumers of the retail or institutional facilities that the consumers are purchasing or consuming locally or regionally produced agricultural food products.

§ 5001.453 Issuance of the loan note guarantee.

The Agency, at its sole discretion, will determine if the conditions specified in the conditional commitment have been met and whether to issue the loan note guarantee.

(a) *Issuance.* When the Agency is satisfied that all of the conditions specified in the conditional commitment have been met and it receives all the required fees plus the executed lender's agreement from the lender, the Agency will issue the documents identified in paragraphs (a)(1) through (3) of this section, as appropriate.

(1) *Loan note guarantee.* The Agency will provide the lender the original loan note guarantee document which the lender must attach to the promissory note. If the lender elected to use the multi-note system, the Agency will issue an original loan note guarantee for each promissory note.

(2) *Assignment guarantee agreement.* If the lender assigns any guaranteed portion of a guaranteed loan to a holder, the lender, holder, and the Agency will execute an assignment guarantee agreement for each assignment.

(3) *Certificate of incumbency and signature.* The Agency will provide the lender an executed certificate of incumbency form to verify the signature and title of the Agency official who signs the loan note guarantee, lender's agreement, and assignment guarantee agreement.

(b) *Agency review of closing.* The Agency will review the closing documents submitted by the lender for completeness and if all conditions have been met and all documents have been provided, the Agency will issue the loan note guarantee. If the Agency determines that it cannot issue the loan note guarantee, the Agency will notify the lender, in writing, of the reasons and give the lender a reasonable period within which to satisfy the objections. If the lender satisfies the objections within the time allowed, the Agency will issue the loan note guarantee.

(c) *Cancellation of obligation.* A lender can submit a written request to the Agency for a partial cancellation. The lender must include in this request the reason for the partial cancellation, the effective date, and the portion to be canceled. If the Agency conditions for issuance of the loan note guarantee are rejected, cannot be met or funds are, in whole or in part, no longer needed, the Agency will cancel the obligation.

§ 5001.454 Guarantee fee.

The guarantee fee is a one-time, non-refundable fee paid by the lender to the Agency at or before loan closing and is required to be paid before the Agency will issue the loan note guarantee. The lender may pass the guarantee fee on to the borrower.

(a) *Guarantee fee calculation.* The one-time guarantee fee is calculated by multiplying the total loan amount by the percentage of guarantee by the guarantee fee rate, which may vary by program.

(b) *Guarantee fee rates.* The guarantee fee rate is established by the Agency in an annual document published in the **Federal Register**. While the fee rate may vary annually, they will not exceed the limits in table 1:

TABLE 1 TO § 5001.454(b)—GUARANTEE FEE

	Maximum guarantee fee (percent)
Community Facilities	4
Water and Waste Disposal	3
Business and Industry	5
Rural Energy for America Program	3

(c) *Loan note guarantee prior to completion.* If the loan note guarantee is issued prior to completion of the project's construction under § 5001.205(e)(2), an additional guarantee fee of 0.50 percent will be added. This additional 0.50 percent fee may not be passed on to the borrower.

(d) *Reduced fee.* Subject to annual limits set by the Agency and published in an annual **Federal Register** document, the Agency may charge a reduced guarantee fee if requested by the lender when the borrower's project meets any one of the following criteria:

(1) Is located in a rural community that—

(i) Is a distressed community in accordance with the Economic Innovation Group distressed community index. The list can be found on the Agency's website at: *https://www.rd.usda.gov/onerdguarantee;*

(ii) Is experiencing long-term population decline according to the last three decennial censuses;

(iii) Is in a persistent poverty county. A persistent poverty county is any county that has had 20 percent or more of its population living in poverty over the past 30 years, as measured by the 1990 and 2000 decennial census and 2007–2011 American Community Survey 5-year average, or any territory or possession of the United States;

(iv) Is in a presidentially declared disaster area, declared within the 24 months preceding the date of the application, and is experiencing trauma as a result of natural disaster;

(v) Is located in a city, county, or state with an unemployment rate, as determined by the Department of Labor, 125 percent or greater of the current national rate; or

(vi) Is located within the boundaries of a federally recognized Indian tribe's reservation or within Tribal trust lands or within land owned by an Alaska Native Regional or Village Corporation as defined by the Alaska Native Claims Settlement Act.

(2) Processes, distributes, aggregates, stores, and/or markets locally or regionally produced agricultural food products and promotes access to healthy foods;

(3) Is locally owned and managed, and either

(i) Supports value-added agriculture and provides a market for locally or regionally produced agricultural food product; or

(ii) Produces a natural resource value-added product/manufactures a product from a natural resource.

(4) Is part of a strategic economic development and community development plan on a multi-jurisdictional and multi-sectoral basis in accordance with Section 6401 of the Agricultural Improvement Act of 2018 (Pub. L. 115–334); or

(5) Provides an additional market for existing local businesses by purchasing substantial amounts of products or services from, selling product to, or providing services to existing local and regional businesses.

§ 5001.455 Periodic guarantee retention fee.

The Agency will collect a periodic guarantee retention fee from the lender for as long as the loan note guarantee is outstanding in accordance with the annual notice published in the **Federal Register** in accordance with § 5001.10. Payment of the periodic guarantee retention fee is required to maintain the validity of the loan note guarantee. The lender may pass the fee on to the borrower but may not delay payment of the fee to the Agency while collecting the payment from the borrower. The fee

rates may differ by program as published annually in a document in the **Federal Register** in accordance with § 5001.10. The annual **Federal Register** notification will include the frequency of payment for the fees.

(a) *Calculation.* The guarantee retention fee is calculated by multiplying the full outstanding principal guaranteed loan balance as of a date(s) as published in the annual **Federal Register** notification, by the percentage of guarantee, by the fee rate as noted in the guaranteed loan conditional commitment.

(b) *Effective fee rate.* The effective guarantee retention fee rate that is published in a **Federal Register** document in accordance with § 5001.10 at the time the guaranteed loan is obligated will be noted in the guarantee loan conditional commitment and the fee will remain in effect for the life of the loan note guarantee.

(c) *Payments.* The guarantee retention fee payment frequency and related due date provisions will be published in the annual **Federal Register** notification.

(1) Guarantee retention fee payments not received within 60 days after their due date are considered delinquent and, at the Agency's discretion, may result in cancellation of the loan note guarantee to the lender. The Agency will provide the lender 30 calendar days' written notice that the fee is delinquent before canceling the loan note guarantee. Holders' rights will continue in effect as specified in the loan note guarantee and assignment guarantee agreement, unless the holder took possession of an interest in the loan note guarantee knowing guarantee retention fees had not been paid.

(2) Until the loan note guarantee is canceled by the Agency, any delinquent periodic guarantee retention fee will bear interest at the promissory note rate.

(3) When the Agency repurchases 100 percent of the guaranteed portion of the guaranteed loan as prescribed in § 5001.511(c), the Agency will discontinue collection of the periodic guarantee retention fee.

(d) *Secondary market prohibition.* Lenders are prohibited from selling any portion of the guaranteed loan on the secondary market if there are unpaid periodic guarantee retention fees.

§ 5001.456 Other fees.

The Agency has the authority and may at its discretion charge additional fees in order to maintain adequate levels of program funding. Prior to the Agency charging any additional fees, the Agency will publish a notice of those fees in the **Federal Register** in accordance with § 5001.10. All fees will be disclosed in the conditional commitment specific to the project as issued to the lender at the time approval.

(a) Until the loan note guarantee is canceled by the Agency, any delinquent fees will bear interest at the promissory note rate.

(b) Lenders are prohibited from selling any portion of the guaranteed loan on the secondary market if there are unpaid fees.

§ 5001.457 Changes prior to loan closing.

(a) *Change in borrower prior to closing.* Any change in borrower ownership or organization prior to the issuance of the loan note guarantee must meet the applicable guaranteed program's eligibility requirements and must be approved by the Agency.

(b) *Transfer to new lender prior to issuance of the loan note guarantee.* Prior to issuance of the loan note guarantee, a lender can request a transfer of an outstanding conditional commitment to a new lender by providing the Agency with a letter from the lender, the borrower, and the proposed new lender. The request must include the reason(s) the current lender no longer desires to be the lender for the project.

(1) The Agency may approve the transfer from the current lender to the proposed new lender provided the new proposed lender is an eligible lender (see paragraph (b)(2) of this section) and no material adverse changes have occurred in the:

(i) Ownership, control or legal structure of the borrower; and

(ii) Borrower's written plan, scope of work, or the purpose or intent of the Project.

(2) The Agency will determine if the proposed new lender is eligible in accordance with § 5001.130 of this part prior to approving the transfer of lender. The new lender must execute a new application form and a lender's agreement (unless the new lender already has a valid lender's agreement with the Agency) and must complete a new credit evaluation in accordance with § 5001.202 of this part. The Agency may require the new lender to provide other updated application items as specified by the Agency.

(3) If the Agency approves the transfer to the new lender, the Agency will issue a letter of amendment to the original conditional commitment reflecting the new lender who must acknowledge acceptance of the amended conditional commitment in writing.

§ 5001.458 Other Federal, State, and local requirements.

Beginning on the date of issuance of the loan note guarantee, lenders and borrowers must—

(a) Coordinate with all appropriate Federal, State, local and Tribal agencies that may have jurisdiction or involvement in each project; and

(b) Comply with all current Federal, State, local, and Tribal laws and rules, as well as applicable regulatory commission rules, that affect the project, the borrower, or lender. Compliance activities include, but are not limited to—

(1) Organization and borrower's authority to design, construct, develop, operate, and maintain the proposed facilities;

(2) Borrowing money, giving security, and raising revenues for repayment;

(3) Land use zoning;

(4) Health, safety, and sanitation standards as well as design and installation standards; and

(5) Protection of the environment and consumer affairs.

§ 5001.459 Replacement of loan note guarantee and assignment guarantee agreement.

If a loan note guarantee or assignment guarantee agreement has been lost, stolen, destroyed, mutilated, or defaced while in the custody of the lender or holder, the Agency may issue a replacement to the lender or holder, as applicable under the conditions described in paragraphs (a) through (c) of this section. The lender is prohibited from altering or modifying or approving any alterations to or modifications of any loan documents without the prior written approval of the Agency.

(a) *Replacement requirements.* The lender must coordinate the activities of the party who seeks the replacement documents and must submit the required documents to the Agency for processing. The requirements for replacement are as follows:

(1) A written statement of loss which includes:

(i) Legal name and present address of either the lender or the holder who is requesting the replacement forms;

(ii) Legal name and address of the lender of record;

(iii) Capacity of person certifying;

(iv) Full identification of the loan note guarantee or assignment guarantee agreement including the name of the borrower, the Agency's case number, date of the loan note guarantee or assignment guarantee agreement, face amount of the promissory note in which an interest was purchased, date of the promissory note, present balance of the

guaranteed loan, percentage of guarantee, and, if an assignment guarantee agreement, the original named holder and the percentage of the guaranteed portion of the guaranteed loan assigned to that holder. Any existing parts of the document to be replaced must be attached to the certificate;

(v) A full statement of circumstances of the loss, theft, destruction, defacement, or mutilation of the loan note guarantee or assignment guarantee agreement; and

(vi) For the holder, evidence demonstrating current ownership of the assignment guarantee agreement. If the present holder is not the same as the original holder, the lender must include a copy of the endorsement of each successive holder in the chain of transfer from the initial holder to present holder. If copies of the endorsement cannot be obtained, the lender must submit the best available records of transfer (*e.g.,* order confirmation, canceled checks, etc.).

(b) *Indemnity bond.* An indemnity bond acceptable to the Agency must accompany the request for replacement except when the holder is the United States, a Federal Reserve Bank, a Federal Government corporation, a State or territory, the District of Columbia or a federally recognized tribal entity. The indemnity bond must:

(1) Be issued by a qualified surety company holding a certificate of authority from the Secretary of the Treasury and listed in Treasury Department Circular 570, except when the outstanding principal balance and accrued Interest due the present holder, in accordance with § 5001.450(c), is less than $1 million as verified by the lender via a written letter of certification of balance due;

(2) Be issued and payable to the United States of America acting through the Agency;

(3) Be in an amount not less than the unpaid principal and interest; and

(4) Hold the Agency harmless against any claim or demand that might arise or against any damage, loss, costs, or expenses that might be sustained or incurred by reason of the loss or replacement of the instruments.

(c) *Multi-note system.* Where the guaranteed loan was closed under the provisions of the multi-note system, the Agency will not attempt to obtain, or participate in the obtaining of, replacement promissory notes from the borrower. The holder is responsible for bearing the costs of promissory note replacement if the borrower agrees to issue a replacement instrument. When the promissory note is replaced, its terms cannot be changed. If the promissory note has been lost, stolen, destroyed, mutilated or defaced, such promissory note must be replaced before the Agency will replace any instruments.

§§ 5001.460–5001.500 [Reserved]

Subpart F—Servicing Provisions

§ 5001.501 General.

The lender is responsible for servicing the entire loan and taking all servicing actions that a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The lender must certify that it will service the guaranteed loan in accordance with this part, its loan servicing policies and procedures, and the lender's agreement. Where a lender's loan servicing policies and procedures address a corresponding requirement in this part or in the lender's agreement, the lender must comply the corresponding requirement in this part, unless otherwise approved by the Agency.

(a) A lender's servicing responsibilities include, but are not limited to,

(1) Periodic borrower visits;

(2) Distribution of guaranteed loan funds;

(3) Collecting payments on guaranteed loans;

(4) Ensuring compliance with the covenants and provisions in the loan agreement, security instruments, and other supplemental agreements relating to the guaranteed loan;

(5) Obtaining and analyzing financial statements;

(6) Ensuring payment of taxes and insurance premiums;

(7) Maintaining liens and lien priority on collateral;

(8) Keeping an inventory of all collateral items, and reconciling the inventory of all collateral sold during guaranteed loan servicing, including liquidation;

(9) Obtaining Agency approvals or concurrence as required; and

(10) Cooperating fully with all oversight and monitoring efforts of the Agency or its representatives as specified in § 5001.502.

(b) The lender must remain mortgagee and secured party of record, notwithstanding the fact that another party may hold a portion of the loan.

(c) The lender must ensure that the borrower has obtained and will maintain all necessary insurance coverage appropriate to the proposed project.

(d) If the Agency determines that the lender is not in compliance with its servicing responsibilities, the Agency reserves the right to take any action the Agency determines necessary to protect the Agency's interests with respect to the guaranteed loan. If the Agency exercises this right, the lender must cooperate with the Agency to rectify the situation.

§ 5001.502 Oversight and monitoring.

The Agency will employ various oversight and monitoring activities in order to ensure compliance with this part. All lenders involved in any manner with any loan note guarantee issued under this part or under a loan note guaranteed previously issued under a guaranteed loan program identified in § 5001.1 of this part must cooperate fully with the Agency in its oversight and monitoring efforts, including, but not necessarily limited to, those identified in paragraphs (a) through (c) of this section.

(a) *Reports and notifications.* Lenders must submit to the Agency reports and notifications as required by this part. To facilitate the Agency's oversight and monitoring including, but not necessarily limited to, those identified in paragraphs (a)(1) through (4), as applicable, of this section.

(1) *Status reports.* No less than semi-annual status reports as of June 30 and December 31 each year (unless more frequent reports are needed as determined by the Agency to protect the financial interests of the government) regarding the condition of the lender's guaranteed loan portfolio (including borrower status and loan classification) and any material change in the general financial condition of any borrower since the last report was submitted. The lender must submit these reports within 30 calendar days after the reporting period, using the appropriate Agency online reporting system.

(2) *Default reports.* Monthly default reports for each guaranteed loan in monetary default using the appropriate Agency online reporting system are due on the 15th working day of each month.

(3) *Notifications.* The lender(s) must notify the Agency by written notification within 15 calendar days of any:

(i) Loan agreement violation by any borrower, including when the borrower is 30 days past due or is otherwise in default of the covenants in the loan agreement;

(ii) Permanent or temporary reduction in the interest rate;

(iii) Downgrade in the lender's loan classification of any guaranteed loan; and

(iv) Protective advances in accordance with § 5001.516.

(4) *Collection activities report.* If a lender is liquidating the assets of a borrower, the lender must also evaluate and provide a report of collection activities regarding the collectability of personal and corporate guarantees.

(b) *Records*—(1) *Lenders.* Upon request by the Agency, the lender must permit representatives of the Agency (or other authorized persons) to inspect and make copies of any of the records of the lender pertaining to each guaranteed loan issued under this part or previously issued under one of the programs identified in § 5001.1 of this part. Such inspection and copying may be made during regular office hours of the lender or at any other time the lender and the Agency agree upon.

(2) *Borrowers.* Except as provided by law, upon request by the Agency, the borrower must permit representatives of the lender (or other authorized persons) to inspect and make copies of any of the records relating to the borrower's project. Such inspection and copying may be made during regular office hours of the borrower or at any other time agreed upon between the borrower and the lender.

(c) *Agency and lender conference.* When requested by the Agency, the lender must consult with the Agency to ascertain how the guaranteed loan is being serviced and that the conditions and covenants of the loan agreement are being enforced.

(d) *Access to the project.* Until the loan note guarantee is terminated, the borrower must allow the lender and therefore the Agency access to the project and its performance information and permit periodic inspections of the project by an authorized representative of the Lender or the Agency.

§ 5001.503 REAP RES or EEI project completion requirements.

Once a REAP RES or EEI project has been completed, the lender or borrower is required to submit the applicable project performance report as identified in paragraphs (a) and (b) of this section by January 31 each year.

(a) *Renewable energy systems.* For RES projects, commencing the first full calendar year following the year in which project construction was completed and continuing for three full years, the borrower must provide an outcome project performance certification noting that either the system has or has not performed at the steady state operating level as described in the technical report filed with the REAP guaranteed loan application, and whether projected jobs created or saved have occurred. If it has not performed as intended, a report detailing the circumstances affecting performance must be provided to the Agency along with the actual energy production of the system (in BTUs, kilowatt-hours, or similar energy equivalents) and the actual number of jobs created or saved as a direct result of the RES project for which guaranteed loan funds were used.

(b) *Energy efficiency improvements.* For EEI projects, commencing the first full calendar year following the year in which project construction was completed and continuing for two full years, the borrower must provide an outcome project performance certification noting that either the energy efficiency improvements have or have not been utilized at or above the projected operating levels as described in the technical report filed with the REAP guaranteed loan application, and whether projected jobs created or saved have occurred. If it has not performed as intended, a report detailing the circumstances affecting performance must be provided to the Agency along with the actual energy savings of the system and the actual number of jobs created or saved as a direct result of the EEI project for which guaranteed loan funds were used.

§ 5001.504 Financial reports.

(a) The lender must obtain the borrower's and any guarantor's financial statements required by this part and the loan agreement. The Agency may require an annual audited financial statement based on a project's circumstances. States, local government, Indian tribes, institution of higher education, and nonprofit organization borrowers who meet the Federal awards expended threshold established in 2 CFR part 200, subpart F, ''Audit Requirements,'' during their fiscal year must submit an audit conducted in accordance with 2 CFR part 200, subpart F.

(b) The lender must submit financial statements obtained under this section to the Agency within 120 days of the end of the borrower's fiscal year. When the borrower's audit is conducted in accordance with 2 CFR part 200, subpart F, audits must be submitted no later than nine months after the end of the borrower's fiscal year or 30 days after the borrower's receipt of the auditor's report, whichever is earlier. If a lender makes reasonable documented attempts to obtain financial statements but is unable to obtain the borrower's (or guarantor's) cooperation, the failure to obtain financial statements does not impair the validity of the loan note guarantee.

(c) Annual financial statements must be in accordance with accounting practices acceptable to the Agency as prescribed in § 5001.9 for all borrowers with a guaranteed loan balance in excess of $600,000. The lender may determine the type and frequency of financial statements for borrowers with a total guaranteed loan balance below $600,000 upon notification and justification to the Agency. This section does not supersede the borrower financial statement requirements of 2 CFR part 200, subpart F.

(d) The lender must analyze the financial statements obtained under paragraph (a) of this section and provide the Agency with a financial analysis including a credit evaluation of trends, strength and weaknesses, ratio analysis, and conclusions, plus any extraordinary transactions; borrower violations of loan covenants and covenant waivers proposed by the lender, any routine servicing actions performed; and other indications of the financial condition of the borrower.

(e) Following the Agency's review of the lender's financial analysis, the Agency will notify the lender in writing of any concerns. The lender must address each concern identified in the Agency's findings by the due date stated in the correspondence.

(f) The lender should routinely confirm the outstanding principal balance of a guarantee held by a holder to avoid any discrepancy and delay in reconciliation in the event of a lender or Agency repurchase of the guaranteed loan from a holder in accordance with § 5001.511.

§ 5001.505 Collateral inspection and release.

(a) *Inspection of collateral.* The lender must inspect the collateral as often as necessary to properly service the guaranteed Loan.

(b) *Release of collateral.* The lender must provide written justification for the release and obtain Agency approval before releasing any collateral. The lender is not required to provide justification for the release of collateral when the loan is not in default or liquidation and the collateral being released is a working asset, such as accounts receivable, inventory, and work-in-progress, that are routinely depleted or sold and proceeds used for the normal course of business operations.

(1) *Exceptions to prior approval.* Lenders are not required to obtain Agency approval prior to releasing collateral when the collateral sale proceeds are used to pay down debt in order of lien priority, pay down the guaranteed loan principal, or to acquire replacement collateral.

(2) *Appraisals.* Current appraisals are required on all transactions pursuant to the requirements of § 5001.203 of this part.

(3) *Sale or release transaction.* The sale or release of collateral must be based on an arm's length transaction, unless otherwise approved by the Agency in writing. There must be adequate consideration at market value for the release of collateral. Such consideration may include, but is not limited to:

(i) Application of the net proceeds from the sale of collateral to the borrower's debts in order of their lien priority against the sold collateral;

(ii) Use of the net proceeds from the sale of collateral to purchase other collateral of equal or greater value which the lender will obtain as security for the benefit of the guaranteed loan with a lien position equal or superior to the position previously held;

(iii) Application of the net proceeds from the sale of collateral to the borrower's guaranteed loan or to its business operation in such a manner that a significant improvement to the borrower's debt service ability will be clearly demonstrated. The Lender's written request must detail how the borrower's debt service ability will be improved; and

(4) *No adverse impact.* Any release of collateral must not materially cause an adverse effect to the project's operation or financial condition and the remaining collateral must be sufficient to provide for adequate collateral coverage. Such assurance must be supported by written documentation from the lender and be acceptable to the Agency. If the Agency determines that the project may be adversely affected by a release of collateral, the Agency may, at its discretion, require an appraisal on the remaining collateral in accordance with § 5001.203 of this part.

§ 5001.506 Loan transfers and assumptions.

(a) *General.* A lender must obtain prior written Agency approval in accordance with paragraph (c) of this section before the lender conducts a transfer and assumption of a guaranteed loan. The transferee will assume a loan amount at least equal to the outstanding loan balance or the present market value of the collateral, whichever is less. If the transferor is to receive a payment for their equity, the total debt must be assumed. The following conditions must be met:

(1) All transfers and assumptions will have a fee as provided by § 5001.509(b).

(2) For each transfer and assumption, the lender must concur in plans for the disposition of funds, if any, in the transferor's debt service, operations and maintenance, or other reserve accounts.

(3) The lender must confirm that the transfer and assumption can be completed in accordance with applicable laws.

(4) The lender must confirm that the conveyance instruments will be filed, registered, and recorded as appropriate and legally permissible. The transfer and assumption must be made on the Lender's form of assumption agreement and contain the Agency case number of the transferor and transferee. The lender must provide the Agency with a copy of the assumption agreement.

(5) The lender may request a transfer and assumption when the total indebtedness, or less than the total indebtedness, of the guaranteed loan is assumed by another borrower. If the assumption is for less than the total indebtedness, the transfer and assumption must be an arm's length transaction and the transfer must be of all loan collateral.

(6) In the event of default of the guaranteed loan, a transfer and assumption of the borrower's operation and guaranteed loan can be accomplished before or after the loan goes into liquidation. However, if the collateral has been purchased through foreclosure or the borrower has conveyed title to the lender, no transfer and assumption is permitted.

(7) No transfer and assumption is permitted when the Agency has repurchased any guaranteed portion of the guaranteed portion of the loan.

(8) If the transfer is for less than the total indebtedness, the pro rata share of an eligible loss will be paid to the lender after execution of the transfer and assumption documents.

(b) *Documentation.* The lender will provide to the Agency documentation to support the transferee's status as an eligible borrower, and such other documentation as the Agency may request to determine eligibility and credit evaluation.

(1) The new borrower must sign an Agency-approved application form.

(2) The Agency will require personal and/or corporate guarantee(s) in accordance with § 5001.204 of this part, as applicable. Any required new personal, partnership or corporate guarantors of the transferred guaranteed loan must sign an Agency approved guarantee form.

(c) *Agency approval.* The Agency will only approve a transfer and assumption if the transferee will continue the eligible purpose of the guaranteed loan and such transfer and assumption complies with the conditions specified in paragraphs (c)(1) through (3) of this section, as applicable.

(1) Whenever the transferor and transferee are affiliates or related parties, the transfer and assumption must:

(i) Be to an eligible borrower to continue the project for eligible purposes;

(ii) Transfer all the loan collateral; and

(iii) Be for the full amount of the guaranteed loan indebtedness.

(2) A transfer and assumption may be approved when the present borrower is unable or unwilling to accomplish the objectives of the guaranteed loan, and the transfer will be in the best financial interest of the borrower and the Agency.

(3) The Agency prefers to transfer to an eligible borrower subject to the policies and procedures governing the type of guaranteed loan being made, however the Agency will consider approving a transfer of a guaranteed loan to an ineligible borrower only if:

(i) The sale price is greater than it would be if the transfer was to an eligible borrower;

(ii) The transfer to an ineligible borrower is needed as a method for servicing a problem case; or

(iii) When an eligible borrower is not available. All transfers to an ineligible borrower must meet the following requirements:

(A) Transfer fees will be collected, and payments applied, in accordance with § 5001.509(b);

(B) The ineligible borrower agrees to pay the loan balance within the remaining term of the original guaranteed loan in periodic installments that will not result in a balloon payment at the loan's maturity;

(C) Interest rates are at the rate specified in the promissory note of the transferor or at rates customarily charged borrowers in similar circumstances in the ordinary course of business. The rates can be either fixed or variable, and are subject to Agency review and approval;

(D) The ineligible borrower must have the legal authority to enter into the contract and have the ability to repay the loan, as determined by the lender and the Agency. The ineligible borrower must submit a current balance sheet to the lender. The lender must obtain and analyze the credit history of the ineligible borrower.

(d) *Release of liability.* The transferor, including any guarantor, can be released from liability only with prior Agency written approval when the transfer and assumption is for the full outstanding balance of the guaranteed loan. If the assumption is for less than the full

amount of the loan and the Agency pays a loss to the lender, the transferor, including any guarantor, are specifically subject to the Debt Collection Improvement Act provisions unless other workout arrangements have been made.

(e) *Loan agreement.* A new loan agreement or an assumption agreement, acceptable to the Agency must be executed to establish the terms and conditions of the loan being assumed

(f) *Changes in loan terms.* When a transfer or assumption is made to an eligible borrower continuing the project for eligible purposes, the loan terms may remain the same or may be changed whether the transfer is for the total indebtedness or less than the total indebtedness. If the loan terms are to be changed, the lender must submit a request in accordance with this paragraph (f). The changed loan terms must be concurred to by the Agency, all holders, and the transferee (including guarantors). If there are changes in loan terms, the lender's request will require the following:

(1) An explanation of the reasons for the proposed change in the loan terms, and

(2) Certification that the lien position securing the guaranteed loan will be maintained or improved, and proper insurances will continue to be in effect.

(g) *Loan note guarantee.* The lender is responsible for noting each transfer and assumption on all originals of the loan note guarantee.

(h) *Proceeds.* Before the transfer and assumption is closed, the lender must credit any proceeds received from the sale of collateral to the transferor's guaranteed loan debt in order of lien priority.

(i) *Additional loans.* Guaranteed loans may be used to provide additional funds in connection with a transfer and assumption. The Agency will consider approving a guaranteed loan to provide additional funds in connection with a transfer and assumption pursuant to the lender's submission of a complete application in accordance with 7 CFR part 5001, subpart D.

(j) *Credit quality.* The lender must make a complete credit evaluation in accordance with § 5001.202 of this part to determine viability of the project (subject to the Agency review and approval) including any requirement for deposits in an escrow account as security to meet the applicable equity requirements for the project.

(k) *Appraisals.* If the proposed Transfer and Assumption is for less than the full amount of the guaranteed loan, an appraisal is required on all the collateral being transferred, and the amount of the assumption must not be less than this appraised value. The lender is responsible for obtaining the appraisal, which must conform to the requirements of § 5001.203 of this part. However, if the original appraisal is more than one year old, but less than two years old, the lender may provide an appraisal with a new effective date of evaluation in lieu of a completely new appraisal.

(l) *Legal opinion.* Prior to Agency approval, the lender must provide the Agency a preliminary written legal opinion that the guaranteed loan can be properly and legally transferred and assurance that the conveyance instruments will be appropriately filed, registered, and recorded. Upon execution of the transfer and assumption, the lender must provide the Agency with a final legal opinion that the assumption is completed, valid, and enforceable, and the assumption is consistent with the conditions outlined in the Agency's conditions of approval for the transfer and complies with all Agency regulations.

(m) *Promissory notes.* The lender must not issue any new promissory notes, release any mortgages and/or deeds of trust on the existing debt being transferred. An allonge may be attached to existing promissory notes as needed.

(n) *Loss/repurchase resulting from transfer and assumption.* (1) Any resulting loss must be processed in accordance with § 5001.521.

(2) If a holder owns any of the guaranteed portion of the loan, such portion must be repurchased by the lender or the Agency in accordance with § 5001.511.

(o) *Cash down payment.* The lender may allow the transferee to make cash down payments directly to the transferor provided:

(1) The transfer and assumption are made for the total indebtedness to an eligible borrower to continue the project for eligible purposes;

(2) The lender recommends that the cash be released, and the Agency concurs prior to the assumption being completed. The lender can require that an amount be retained for a defined period of time as a reserve against future defaults. Interest on such account may be paid periodically to the transferor or transferee as agreed; and

(3) The lender determines that the transferee has the repayment ability to meet the obligations of the assumed guaranteed loan as well as any other indebtedness.

(p) *Change in control of borrower.* The Agency will deem that a transfer and assumption has occurred whenever there is a significant change in the control of the borrower.

§ 5001.507 Lender transfer.

(a) After the issuance of a loan note guarantee, a lender may sell or transfer the entire loan to a new lender with prior written approval of the Agency. The Agency may approve the sale or transfer to a new lender if the following conditions are met. The new lender:

(1) Is an eligible lender in accordance with § 5001.130 of this part and is approved as such;

(2) Is able to service the loan in accordance with the original loan documents;

(3) Agrees in writing to acquire title to the unguaranteed portion of the loan held by the original Lender and assumes all original loan requirements, including liabilities and servicing responsibilities; and

(4) The transfer to the new lender is requested in writing by the borrower, the proposed new lender, and the original lender of record, if still in existence.

(b) Upon Agency approval, the original lender must transfer to the new lender the:

(1) Original promissory note and loan security documents;

(2) Original loan note guarantee;

(3) Original personal and corporate guarantee(s);

(4) Loan payment history; and

(v) The new lender must agree to accept the current loan terms, including the interest rate, secondary market holder (if any), collateral, loan agreement terms, and guarantors. The new lender can modify the loan terms after acquisition only by submitting a written request to the Agency and receiving Agency approval.

(vi) The new lender must certify to the Agency that the loan transfer has been completed in accordance with applicable laws and all provisions of the original loan remain in full force and effect.

(c) The Agency will not pay any loss or share in any costs (*e.g.,* legal fees, appraisal fees and environmental assessments) for a voluntary transfer of lender. This includes situations where a lender is merged with or acquired by another lender and situations where the lender has failed and been taken over by a Federal regulatory agency such as the Federal Deposit Insurance Corporation (FDIC) and the loan is subsequently sold to another lender. However, in situations where the lender has failed and been taken over by a Federal regulator and the loan is liquidated rather than being sold to another lender, the Agency will pay losses and share in

costs as if the Federal regulatory agency were an approved new lender.

(d) In cases when there is a transfer to a new lender or when a lender has been merged with or acquired by another Lender, the Agency and the new lender must execute a new lender's agreement, unless the new lender already has a valid lender's agreement with the Agency.

(e) After Agency approval of a transfer of lender, all terms of the original loan note guarantee shall transfer to the benefit of the new lender.

§ 5001.508 Mergers.

Agency approval. All borrower mergers or consolidations (herein referred to as ''mergers'') require approval by the Agency and the lender. The Agency may approve a merger when—

(a) The resulting organization will be eligible for a guaranteed loan and assumes all the liabilities and acquires all the assets of the merged borrower;

(b) The merger is in the best interest of the government and the merging organization;

(c) The resulting organization can meet all required conditions as contained in specific loan agreements; and

(d) All property can be legally transferred to the resulting organization.

§ 5001.509 Servicing fees.

The lender may pass the servicing fees on to the borrower but may not delay payment of the fee to the Agency while collecting the payment from the borrower.

(a) *Guarantee retention fees.* Where the lender is required to pay a periodic guarantee retention fee (see § 5001.455), the fee is due for the entire payment period even if the loan note guarantee is terminated or transferred before the next retention fee payment is due.

(b) Borrower *transfer fee.* The Agency will charge the following fees:

(1) A one-time, $1,500 nonrefundable transfer fee at the time of transfer to an eligible borrower.

(2) Payment of a one-time nonrefundable transfer fee of 1 percent of the guaranteed loan balance to ineligible borrowers.

§ 5001.510 Subordination of lien position.

(a) *Request for subordination.* A lender seeking a subordination of its lien position in collateral must submit a written request to the Agency. The lender must include in the request a financial analysis of the servicing action. The financial analysis must be fully supported by current financial statements, less than 90 calendar days old, of the borrower and guarantors. The lender must receive written Agency approval prior to the subordination.

(b) *Agency approval.* Agency approval of the subordination request requires that:

(1) The subordination of the lender's lien position enhances the borrower's business and is in the best financial interest of the Agency;

(2) The lien to which the guaranteed loan is subordinated is for a fixed dollar amount or fixed credit limit and for a fixed term, after which the guaranteed loan lien priority will be restored;

(3) Remaining collateral is sufficient to provide for adequate collateral coverage of the guaranteed loan. The Agency may require a current independent appraisal in accordance with § 5001.203 of this part. However, if the original appraisal is more than one year old, but less than two years old, the lender may provide an appraisal with a new effective date of evaluation in lieu of a completely new appraisal;

(4) Lien priorities remain for the portion of the loan collateral that was not subordinated;

(5) The subordination of collateral to a line of credit does not extend beyond the term of the line of credit and in no event exceeds more than three years.

(6) Subordination to a tax-exempt obligation is strictly prohibited in compliance with OMB Circular A–129, ''Policies for Federal Credit Programs and Non-Tax Receivables.''

§ 5001.511 Repurchases from holders.

(a) *General.* A holder can make written demand on either the lender or the Agency to repurchase the unpaid guarantee portion of the loan when the borrower is in monetary default or when the lender has failed to pay the holder its pro-rata share of any payment made by the borrower within 30 days of the lender's receipt thereof from the borrower. When making written demand on the lender, the holder must concurrently send a copy of the demand letter to the Agency.

(1) The lender is encouraged to repurchase the guarantee to facilitate the accounting of funds, resolve any loan problem, and resolve the monetary default, where and when reasonable. The benefit to the lender is that it may re-sell the guaranteed portion of the loan and then continue collection of its servicing fee, if any, when the monetary default is cured.

(2) When the lender and the Agency determine that repurchase is necessary to adequately service the loan, the holder must sell the guaranteed portion to the requesting entity.

(3) If the lender does not repurchase the guaranteed portion from the holder, the Agency may, at its option, purchase such guaranteed portion of the loan for servicing purposes.

(4) If a repurchase of a guaranteed loan includes the capitalization of interest, interest accrued on the capitalized interest will not be paid to the holder.

(b) *Repurchase by lender.* If the lender, borrower, and holder are unable to agree to restructuring of loan repayment, interest rate, or loan terms to resolve any loan problem or resolve any default, and repurchase of the guaranteed portion of the loan is necessary to adequately service the loan, the holder must sell the guaranteed portion of the loan to the lender. The sale must be for an amount equal to the unpaid principal and accrued Interest, in accordance with § 5001.450(c) of this part, on such portion less the lender's servicing fee.

(1) When a lender receives a written demand for repurchase from a holder, the lender must notify any other holder and the Agency within 30 calendar days of receipt of the written demand. The lender must inform all parties if the lender will repurchase the unpaid guaranteed portion of the loan from the requesting holder.

(2) When the lender repurchases the unpaid guaranteed portion from the holder for servicing purposes, and any default is not cured within 90 calendar days, the lender must discontinue interest accrual.

(3) Upon repurchase the holder will assign the assignment agreement to the lender without recourse.

(4) The lender must not repurchase from the holder for arbitrage or other purposes to further its own financial gain.

(5) Any repurchase from a holder may only be made after the lender obtains the Agency's written approval.

(c) *Agency repurchase.* A holder can submit a written demand to the Agency for repurchase only if the lender declines to repurchase. If a prior written demand was not made upon the lender, the Agency will notify the lender and allow up to seven calendar days for the lender to exercise their option to repurchase as provided in this section.

(1) *Lender does not repurchase.* If the lender does not repurchase the unpaid guaranteed portion of a loan as provided in paragraph (a) of this section, the Agency will, within 30 calendar days after written demand to the Agency from the holder, purchase from the holder the unpaid principal balance of the guaranteed portion together with accrued interest to date of repurchase or

the interest termination date, whichever is sooner, less the lender's servicing fee. The guarantee will not cover the accrued interest to the holder on the loan as determined under § 5001.450(c) of this part.

(2) *Written demand content.* The holder must include in its written demand to the Agency:

(i) A copy of the written demand made upon the lender;

(ii) A copy of the lender's denial to repurchase the unpaid guaranteed portion of the guaranteed loan;

(iii) Evidence of the right to require payment from the Agency as provided by the holder or duly authorized agent. Such evidence must consist of the original assignment guarantee agreement properly assigned to the Agency without recourse including all rights, title, and interest in the loan;

(iv) The amount due including unpaid principal, unpaid interest to date of demand, and interest subsequently accruing from date of demand to proposed payment date; and

(v) When the initial holder has sold its interest, the original assignment guarantee agreement and an original of each Agency-approved reassignment document in the chain of ownership, with the latest reassignment being assigned to the Agency without recourse, including all rights, title, and interest in the guarantee.

(3) *Payment.* Unless otherwise agreed upon, payment will not be later than 30 calendar days from the date of demand.

(i) Upon request by the Agency, the lender must promptly furnish (within 30 calendar days of such request) a current statement, certified by an appropriate authorized officer of the lender, of the unpaid principal and interest then owed by the borrower on the loan and the amount then owed to any holder, along with the information necessary for the Agency to determine the appropriate amount due the holder.

(ii) Any discrepancy between the amount claimed by the holder and the information submitted by the lender must be resolved between the lender and the holder before payment will be approved. The Agency will notify both parties and such conflict will suspend the running of the 30-calendar-day payment requirement.

(4) *Subrogation.* When the Agency purchases a loan from a holder it assumes all rights that were previously held by the holder.

(5) *Servicing fee.* When the Agency purchases the guaranteed portion of the loan from a holder, the lender's servicing fee will stop on the date that interest was last paid by the borrower. The lender can neither charge a servicing fee to the Agency nor collect such fee from the Agency.

(6) *Payments and proceeds.* The lender must apply all loan payments and collateral proceeds received to the guaranteed and unguaranteed portions of the loan on a pro rata basis.

(7) *Accrued interest.* If Federal or State regulators place the loan in non-accrual status, the lender must also discontinue interest accrual. If the Agency repurchases 100 percent of the guaranteed portion of a loan and becomes the holder, interest accrual on the loan will cease until the lender resumes remittance of the pro rata payments to the Agency.

(8) *Establishing interest termination date.* When a guaranteed loan has been delinquent more than 60 calendar days and no holder comes forward or when the lender has accelerated the account, and subject to the expiration of any forbearance or workout agreement, the lender, or the Agency at its sole discretion, must issue a letter to the holder(s) establishing the interest termination date. Accrued interest paid to the holder(s) will not exceed 90 calendar days and will be calculated from date when interest was last paid on the loan.

(9) *Obligations and rights.* Purchase by the Agency neither changes, alters, or modifies any of the lender's obligations to the Agency arising from the lender's agreement, guaranteed loan or loan note guarantee, nor does it waive any of the Agency's rights against the lender. The Agency will have the right to set-off against the lender all rights inuring to the Agency as the holder of the instrument against the Agency's obligation to the lender under the loan note guarantee.

(10) *Accelerated loan.* When the lender has accelerated the loan and the lender holds all or a portion of the guaranteed loan, an estimated loss claim must be filed by the Lender with the Agency within 60 calendar days from the date the loan was accelerated. Accrued interest paid to the lender will not exceed 90 calendar days and will be calculated from date when interest was last paid on the loan.

(11) *Interest termination during bankruptcy.* When a borrower files a Chapter 7 liquidation plan, the lender shall immediately notify the Agency and submit a liquidation plan. The Agency will establish an interest termination date based on the date Interest was last paid to the lender. When a borrower files either a Chapter 9 or Chapter 11 bankruptcy restructuring plan, the Agency and lender shall meet to discuss the bankruptcy procedure, the ability of the borrower to meet their restructuring plan, the lender's treatment of accruing interest, and potentially establish an interest termination date for the guaranteed loan. If the restructuring bankruptcy Chapter 9 or Chapter 11 is converted to a liquidation bankruptcy Chapter 7 by court order, the interest termination date will be the date of such conversion.

§ 5001.512 Additional expenditures and loans.

The lender shall not make additional expenditures on behalf of, or provide new loans to, the borrower without notification to the Agency even though such expenditures or loans will not be guaranteed. The lender shall not approve additional expenditures or new loans where the expenditure or loan will violate, or cause a violation of, any of the loan covenants in the borrower's loan agreement.

§ 5001.513 Interest rate changes.

(a) *Interest rate freezes.* The guaranteed loan interest rate will freeze at the earliest uncured default date and will remain unchanged until the cancellation of the loan note guarantee in compliance with § 5001.524.

(b) *Reductions.* The borrower, lender, and holder (if any) may collectively initiate a permanent or temporary reduction in the interest rate of the guaranteed loan at any time during the life of the loan upon written agreement among these parties. After a permanent reduction, the loan note guarantee will only cover losses of interest at the reduced interest rate.

(1) When the Agency is a holder, the lender must obtain Agency approval before implementing the reduction. The lender must provide a copy of the modification agreement to the Agency for approval. The Agency will approve the reduction only when it is demonstrated that the change is more viable than liquidation and that the government's financial interests are not adversely affected.

(2) Factors that the Agency will consider in determining whether to approve the change are the Government's cost of borrowing money; the monetary recovery is greater than the liquidation recovery; and the project's continued viability as demonstrated by a financial feasibility analysis.

(c) *Increases.* Unless a temporary interest rate reduction occurred, increases in fixed interest rates and increases in variable interest rate structure are prohibited.

(d) *Fixed rate to variable rate change.* Fixed rates can be changed to variable

rates to reduce the borrower's interest rate only when the variable rate has a ceiling that is less than or equal to the original fixed rate.

(e) *Variable rate to fixed rate change.* Variable rates can be changed to a fixed rate that is lower or equal to the current variable rate.

(f) *After adjustments.* The interest rates, after adjustments, must comply with the requirements for interest rates on new loans as established by paragraph § 5001.401.

(g) *Documentation.* The lender is responsible for the legal documentation of interest rate changes by an endorsement or any other legally effective amendment to the promissory note; however, no new promissory notes can be issued. The lender must provide copies of all such documents to the Agency within 10 calendar days of the change.

(3) In a final loss settlement when qualifying interest rate changes are made in compliance with this part, the lender must calculate interest based on the periods the given rates were in effect. The lender must maintain records that adequately document the accrued interest claimed, which must be determined in accordance with § 5001.450(c).

§ 5001.514 Lender failure.

(a) *General.* In the event a lender fails or ceases to service a guaranteed loan, the Agency will make the successor lending entity aware of the statutory and regulatory requirements and will provide instruction to the successor lending entity on a case-by-case basis. Such instructions may include the Agency's determination that the Agency will service the entire loan or the guaranteed portion of the loan.

(1) Any successor lender must take such action that a reasonable lender would take if it did not have a loan note guarantee to protect the lender and Agency's mutual interest.

(2) A successor entity approved by the Agency as a lender will be afforded the benefits of the loan note guarantee in the sharing of any loss and eligible expenses subject to the limits that are set forth in the regulations governing the loan guarantee.

(b) *Non-regulated lender.* If the successor lending entity is a non-regulated lender, the lending entity is prohibited from making changes to the lender's agreement and related documents on the guaranteed loan. The successor lending entity must comply with the provisions of this part, including promptly applying to become a lender if not already an eligible lender. If the successor lending entity is not or fails to become a lender as set forth in § 5001.130 of this part within 60 calendar days, the loan note guarantee will not be enforceable.

(c) *Regulated lender.* Where the failed lending entity is an FDIC regulated lender, the FDIC and the Agency will enter into an Inter-Agency Agreement regarding the FDIC's role as the successor lending entity, and all parties are to abide by this agreement or successor document(s). This agreement sets forth the duties and responsibilities of each Agency when a lender fails. When the FDIC is not the successor to a failed regulated lender, the regulatory agency serving as the successor lending entity and the Agency will abide by terms of the lender's agreement as executed by the originating lender. The Agency reserves the right to request a meeting with the successor lending entity to further define the duties and responsibilities of each agency when a lender fails.

(d) *No successor entity.* In the event no successor lending entity can be determined, the Agency reserves the right to enforce the provisions of the loan documents on behalf of the lender or to purchase the lender's interest in the loan.

§ 5001.515 Default by borrower.

When there is a default by a borrower, the lender must act prudently and expeditiously in working with the borrower to bring the account current or cure the default through restructuring if a realistic plan can be developed, or to accelerate the account and conduct a liquidation in accordance with § 5001.517 and in a manner that will minimize any potential loss.

(a) *Default notification and meetings.* The lender must notify the Agency within the timeframe as provided in § 5001.502(a)(3)(i).

(1) The lender will provide this notification by submitting the guaranteed loan borrower default status report in the Agency's electronic reporting system. The lender must update the loan's status each month until such time as the loan is no longer in default.

(2) If a monetary default exceeds 30 calendar days, the lender must meet with the borrower and, if necessary, the Agency within 45 calendar days of the date of the default to discuss the situation. The lender must provide the Agency with a written summary of the meeting, including any decisions and actions agreed upon within 10 calendar days of the meeting.

(b) *Curative options.* In considering curative actions, providing a permanent cure without adversely affecting the risk to the Agency and the lender is the paramount objective. The lender may consider temporary curative actions (*e.g.,* payment deferments or collateral subordination) provided they strengthen the loan and are in the best financial interest of the lender and the Agency.

(1) Curative actions (subject to the rights of any holder and Agency concurrence) include, but are not limited to, the following options:

(i) Deferment of principal and/or interest payments;

(ii) An additional unguaranteed temporary loan by the lender to bring the account current;

(iii) Re-amortization of or rescheduling the payments on the loan excluding capitalization of accrued interest;

(iv) Transfer and assumption of the loan in accordance with § 5001.506;

(v) Reorganization;

(vi) Liquidation;

(vii) Changes in interest rates in accordance with § 5001.513. Any interest payments must be adjusted proportionately between the guaranteed and unguaranteed portion of the loan; and

(viii) Troubled debt restructure.

(2) The term of any deferment, rescheduling, re-amortization, or moratorium cannot exceed the lesser of the remaining useful life of the collateral or remaining term of the loan as set forth in § 5001.402(b) of this part.

(i) During a period of deferment or moratorium on the guaranteed loan, the lender's non-guaranteed loan(s) and any stockholder or affiliate loans must also be under deferment or moratorium.

(ii) Balloon payments are permitted as a loan servicing option as long as there is a reasonable prospect for successful repayment of the guaranteed loan and the remaining life of the collateral supports the action.

(c) *Multi-note system.* If the loan was closed with the multi-note system, the lender may need to possess all promissory notes to take some servicing actions. In situations where the Agency is a holder of some of the promissory notes, the Agency may endorse the promissory notes back to the lender, provided the lender provides the Agency with a receipt identifying the reason for the transfer. The Agency will not endorse the original loan note guarantee to the lender under any circumstances.

§ 5001.516 Protective advances.

Protective advances are allowed only when they are necessary to preserve the value of the collateral. Therefore, a lender must exercise sound judgment in determining that the protective advance

preserves collateral and recovery is actually enhanced by making the advance.

(a) Protective advances must be reasonable with respect to the outstanding loan amount and the value of the collateral being preserved.

(b) A lender cannot make protective advances in lieu of additional loans.

(c) A lender must obtain written Agency approval for any protective advance that will cumulatively amount to more than $200,000, or 10 percent of the aggregate outstanding balance of principal and interest, whichever is less, to the same borrower.

(d) Protective advances constitute an indebtedness of the borrower to the lender and must be secured by collateral to the same extent as the original guaranteed loan.

(e) Notwithstanding § 5001.22(c) of this part, upon Agency approval, protective advances can be used to pay Federal tax liens or other Federal debt.

(f) A Protective advance claim will be paid only at the time of the final payment as indicated in the report of loss. In the event of a final loss, protective advances may accrue interest at the promissory note rate from the date of such advance and will be guaranteed at the same percentage of loss as provided for in the loan note guarantee. The loan note guarantee will not cover interest on the protective advance accruing after the interest termination date.

(g) The maximum loss to be paid by the Agency will never exceed the original loan amount plus accrued interest times the percentage of guarantee regardless of any protective advances made.

(h) Holders do not have an interest in protective advances.

§ 5001.517 Liquidation.

In the event of one or more incidents of default or third-party actions that the borrower cannot or will not cure or eliminate within a reasonable period of time, the lender, with Agency consent, must provide for liquidation in accordance with paragraphs (a) through (n) of this section. The lender is responsible for initiating actions immediately and as necessary to assure a prompt, orderly liquidation that will provide maximum recovery. The Agency reserves the right to unilaterally conclude that liquidation is necessary and require the lender to assign the collateral to the Agency and the Agency will then liquidate the loan per paragraph (o) of this section.

(a) *Decision to liquidate.* A decision to liquidate a loan or proceed otherwise must be made when the lender determines that the default cannot be cured or when the Agency and the lender determine that it is in the best interest of the Agency and the lender to liquidate. The decision to liquidate or proceed otherwise with the borrower must be made as soon as possible when one or more of the following exist:

(1) The loan is 90 calendar days behind on any scheduled payment and the lender and the borrower have not been able to cure the delinquency;

(2) Delaying liquidation will jeopardize full or maximum recovery on the loan; or

(3) The borrower or lender is uncooperative in resolving the problem or the Agency or lender has reason to believe the borrower is not acting in good faith, and immediate liquidation would minimize loss to the Agency.

(b) *Repurchase of loan.* When the decision to liquidate a loan is made, if any portion of the loan has been sold or assigned under § 5001.408 of this part and has not already been repurchased, the lender must make provisions for repurchase in accordance with § 5001.511.

(c) *Lender's liquidation plan.* Within 30 calendar days after the lender decides to liquidate a loan, the lender must submit a written, proposed plan of liquidation to the Agency for approval. The liquidation plan must be detailed and include at least the following information:

(1) Such proof as the Agency requires to establish the lender's ownership of the guaranteed loan promissory note and related security instruments;

(2) A copy of the payment ledger, if available, or other documentation that reflects the current outstanding loan balance, accrued interest to date, and the method of computing the accrued interest;

(3) A full and complete list of all collateral and a listing of all liens held and status of such liens, plus any personal and corporate guarantees;

(4) The recommended liquidation methods for making the maximum collection possible on the indebtedness and the justification for such methods, including recommended action for acquiring and disposing of all collateral and collecting from guarantors;

(5) Necessary steps for preservation of the collateral including any anticipated protective advances;

(6) The market value and the potential liquidation value, or estimates thereof, of all the collateral securing the loan.

(i) These values or estimates of the collateral must be obtained by the lender through an independent appraisal. If the outstanding balance of principal and interest is less than $250,000, the lender may, instead of an appraisal, obtain these values or estimates by using their primary regulator's policies relating to appraisals and evaluations or, if the lender is not regulated, normal banking practices and generally accepted methods of determining value.

(ii) The procedure used to obtain these values or estimates of the collateral must include an evaluation of the impact of any release of hazardous substances, petroleum products, or other environmental hazards.

(iii) Any independent appraiser's fee, including the cost of the environmental site assessment if necessary, will be shared equally by the Agency and the lender;

(7) Proposed protective bid amounts on collateral to be sold at auction and a description to show how the amounts were determined.

(i) A protective bid can be made by the lender, with prior Agency written approval, at a foreclosure sale to protect the lender's and the Agency's interest.

(ii) The protective bid must not exceed the amount of the loan balance plus applicable foreclosure expenses and must be based on the liquidation value and estimated net recovery considering prior liens and outstanding taxes, expenses of foreclosure, and estimated expenses for holding and reselling the property. Foreclosure expenses include, but are not limited to, expenses for resale, interest accrual, length of time necessary for resale, maintenance, guard service, weatherization, and prior liens;

(8) Copies of the borrower's latest available financial statements;

(9) Copies of each guarantor's latest available financial statements;

(10) An itemized list of estimated liquidation expenses expected to be incurred along with justification for each expense;

(11) Estimated protective advance amounts with justification;

(12) If a voluntary conveyance is considered, the proposed amount to be credited to the guaranteed debt;

(13) Legal opinions, if needed by the lender's legal counsel; and

(14) A schedule to periodically report to the Agency on the progress of liquidation, not to exceed every 60 days.

(d) *Partial liquidation plan.* If actions are necessary to immediately preserve and protect the collateral, the lender may submit a partial liquidation plan and, when approved by the Agency, submit a complete liquidation plan prepared by the Lender in accordance with paragraph (c) of this section.

(e) *Approval of liquidation plan.* The lender cannot implement its liquidation

plan before obtaining written approval from the Agency. The Agency will approve or disapprove the plan within 30 calendar days of its receipt. In order to ensure prompt action, the lender may submit its liquidation plan with an estimate of collateral value, and the Agency may approve the liquidation plan subject to the results of the final liquidation appraisal.

(1) If the Agency approves the lender's liquidation plan, the lender must:

(i) Proceed expeditiously with liquidation;

(ii) Take all legal action necessary to liquidate the loan in accordance with the approved liquidation plan; and

(iii) Update or modify the liquidation plan when conditions warrant, including a change in value based on a liquidation appraisal.

(iv) If changed circumstances after submission of the liquidation plan require a revision of liquidation costs, the lender must obtain the Agency's written approval prior to proceeding with the proposed changes if the revised liquidation costs exceed 10 percent of the amount proposed in the liquidation plan approved by the Agency.

(2) If the Agency does not approve the lender's liquidation plan, the Agency will meet with the lender to resolve the concern(s). Until the concerns are resolved, the lender must take such actions that a reasonable lender would take without a guarantee and keep the Agency informed, in writing, of those actions. Once the revised liquidation plan is approved by the Agency, the lender must proceed in accordance with paragraphs (e)(1)(i) through (iii) of this section.

(f) *Acceleration.* The lender must proceed to accelerate the loan as expeditiously as possible when acceleration is necessary, including giving any notices and taking any other required legal actions. The guaranteed loan will be considered in liquidation once it has been accelerated and a demand for payment has been made upon the borrower.

(1) If the sole basis for acceleration is a non-monetary default, the lender must obtain concurrence from the Agency prior to accelerating the loan. In the case of monetary default, the lender may accelerate the loan without prior approval by the Agency, although Agency concurrence must still be given no later than the time the Agency approves the liquidation plan.

(2) The Lender must provide the Agency a copy of the acceleration notice or other acceleration document sent to the borrower.

(g) *Estimated loss claim and payment.* If the lender is conducting the liquidation and owns any or all the guaranteed portion of the loan, the lender must file an estimated loss claim once a decision has been made to liquidate if the liquidation will exceed 90 calendar days. The Agency will process the estimated loss claim and will make final loss payments in accordance with § 5001.521.

(h) *Liquidation expenses.* (1) The guarantee will not cover liquidation expenses in excess of liquidation proceeds under any circumstances.

(2) When a liquidation is performed by the lender, the Agency must approve, in advance and in writing, the lender's estimated liquidation expenses of collateral.

(3) Liquidation expenses must be reasonable and customary and must provide a demonstrated economic benefit to the lender and the Agency. The lender and Agency will share liquidation expenses equally. To accomplish this, the lender must deduct 50 percent of the liquidation expenses from the collateral sale proceeds.

(i) *Accounting and reports.* The lender must account for funds during the period of liquidation and must provide the Agency with reports on the progress of liquidation including disposition of collateral and resulting costs. If in the course of implementing the approved liquidation plan the lender determines additional procedures are necessary for the successful completion of the liquidation or otherwise makes any other changes to or deviations from the approved liquidation plan, the lender must identify in the report such procedures, changes, and deviations.

(j) *Transmitting payments and proceeds to the Agency.* When the Agency is the holder of a portion of the guaranteed loan, the lender must transmit to the Agency within 14 calendar days the Agency's pro rata share of any payments received from the borrower, liquidation, or other proceeds using an Agency approved form.

(k) *Disposition of collateral.* (1) Disposition of collateral acquired by the lender must be approved, in writing, by the Agency when—

(i) The lender's cost to acquire the collateral of a borrower exceeds the potential recovery value of the security and the lender proposes abandoning the collateral in lieu of liquidation; or

(ii) The acquired collateral is to be sold to the borrower, affiliates or members of the borrower or to borrower's stockholders or officers, or the lender or lender's stockholders or officers.

(2) A recommendation by the lender for abandonment of collateral is considered a servicing action under 7 CFR 1970.8(e) and a separate NEPA review is not required.

(l) *Disposition of personal or corporate guarantees.* The lender must take action to maximize recovery from all personal and corporate guarantees, including seeking deficiency judgments when there is a reasonable chance of future collection.

(m) *Compromise settlement.* Compromise settlements must be approved by the lender and the Agency. The lender must provide complete current financial information on all parties obligated for the loan. At a minimum, the compromise settlement must be equivalent to the value and timeliness of that which would be received from attempting to collect on the guarantee. Any guarantor cannot be released from liability until the full amount of the compromise settlement has been received. In determining whether to approve a compromise settlement, the Agency will consider, among other things, whether the compromise is more financially advantageous than collecting on the guarantee.

(n) *Liquidation provisions selection.* (1) If a lender has made a loan guaranteed under one of the programs identified in § 5001.1 of this part, the lender has the option to liquidate the loan under the provisions of this part or under the entire provisions of applicable regulation at the time the loan was guaranteed by the Agency.

(2) The lender must notify the Agency in writing within 10 calendar days after its decision to liquidate as to which regulatory provisions it chooses to use. If the lender does not notify the Agency in writing within these 10 calendar days, it must use the liquidation provisions in this part.

(o) *Agency liquidation.* The Agency will liquidate a guaranteed loan at its option only when it is a holder and there is reason to believe the lender is not likely to undertake liquidation efforts that will result in maximum recovery. When it conducts a liquidation, the Agency will apply proceeds derived from the sale of the collateral first to reasonable liquidation expenses and second to the guaranteed portion of the loan.

§ 5001.518 [Reserved]

§ 5001.519 Bankruptcy.

(a) *Lender's responsibilities.* The lender is responsible for protecting the guaranteed loan and the collateral securing it in bankruptcy and any

related appellate proceedings. These responsibilities include, but are not limited to, the following:

(1) Taking actions that result in greater recoveries and avoiding actions that are likely not to be cost-effective;

(2) Monitoring confirmed bankruptcy plans to determine borrower compliance, and, if the borrower fails to comply, pursuing appropriate relief, including seeking a dismissal of the bankruptcy plan;

(3) Requesting modifications of any proposed bankruptcy plan whenever it appears that the lender could obtain additional recoveries via plan modification;

(4) Filing a proof of claim, when necessary, and all the necessary papers and pleadings concerning the case;

(5) Attending and, when necessary, participating in meetings of the creditors and all court proceedings;

(6) Immediately seeking adequate protection of the collateral if it is subject to being used by the trustee in bankruptcy or the debtor in possession;

(7) When appropriate, seeking involuntary conversion of a pending chapter 11 case to a liquidation proceeding or seeking dismissal of the proceedings;

(8) Submitting a default status report within 15 calendar days after the date when the borrower defaults and every 30 calendar days thereafter until the default is resolved or a final loss claim is paid by the Agency; and

(9) Informing the Agency within 10 working days upon notification of the filing of a bankruptcy case and keeping the Agency adequately and regularly informed, in writing, of all aspects of the proceedings, at a minimum, on a bi-monthly basis.

(b) *Appraisals.* In a Chapter 9 or Chapter 11 reorganization, the lender must obtain an independent appraisal of the collateral if the Agency has determined that an independent appraisal is necessary. With written Agency consent, the lender and Agency will equally share the cost of any independent appraisal fee to protect the guaranteed loan in any bankruptcy proceedings.

(c) *Repurchase from the holder.* The Agency or the lender, with the approval of the Agency, can initiate the repurchase of the unpaid guaranteed portion of the loan from the holder. If the lender is the holder, an estimated loss payment may be filed at the initiation of a Chapter 7 proceeding or after a Chapter 9 or Chapter 11 proceeding becomes a liquidation proceeding. Any loss payment on loans in bankruptcy must be approved by the Agency.

(d) *Reports of loss during bankruptcy.* In bankruptcy proceedings, the lender must use the report of loss form for reporting all estimated and final loss determinations. Payment of loss claims will be made as provided in this section.

(1) *Estimated loss payments.* (i) If a borrower has filed for bankruptcy and all or a portion of the debt has been discharged, the lender must request an estimated loss payment of the guaranteed portion of the accrued interest and principal discharged by the court. Only one estimated loss payment is allowed during the bankruptcy and any related appellate proceedings. The Agency will treat all subsequent claims of the lender during bankruptcy and any related appellate proceedings as revisions to the initial estimated loss. At its option, the Agency may process a revised estimated loss payment in accordance with any court-approved changes in the bankruptcy plan. Once the bankruptcy plan has been satisfactorily completed, the lender is responsible for submitting the documentation necessary for the Agency to review and adjust the estimated loss claim to reflect any actual discharge of principal and interest and to reimburse the lender for any court-ordered interest rate reduction under the terms of the bankruptcy plan.

(ii) The lender must use the report of loss to request an estimated loss payment and to revise any estimated loss payments during the bankruptcy plan. The estimated loss claim, as well as any revisions to this claim, must be accompanied by documentation to support the claim.

(iii) Upon completion of a bankruptcy plan, the lender must—

(A) Enter the data directly into the Agency's electronic system; and

(B) Provide the Agency with the documentation necessary to determine whether the estimated loss paid equals the actual loss sustained. Where the actual loss sustained is different than the estimated loss paid, the difference will be handled in accordance with § 5001.521(h).

(2) *Bankruptcy loss payments.* (i) The lender must request a bankruptcy loss payment of the guaranteed portion of the accrued interest and principal discharged by the court for all bankruptcies when all or a portion of the debt has been discharged. Unless a final court decree approves a subsequent change to the bankruptcy plan that is adverse to the lender, only one bankruptcy loss payment is allowed during the bankruptcy. Once a final court decree has discharged all or part of the guaranteed loan and any appeal period has run, the lender must submit the documentation necessary for the Agency to review and adjust the bankruptcy loss claim to reflect any actual discharge of principal and Interest.

(ii) The lender must use the report of loss to request a bankruptcy loss payment and to revise any bankruptcy loss payments during the course of the bankruptcy. The lender must include with the bankruptcy loss claim documentation to support the claim, as well as any revisions to this claim.

(iii) Upon completion of a bankruptcy plan, restructure, or liquidation, the lender must enter the data directly into the Agency's electronic reporting system.

(iv) If an estimated loss claim is paid during a bankruptcy and the borrower repays in full the remaining balance without an additional loss sustained by the lender, a final report of loss will be filed to terminate the loan.

(3) *Interest losses as a result of bankruptcy reorganization.* Interest losses as a result of bankruptcy reorganization will be paid as described in paragraphs (e)(3)(i) and (ii) of this section, as applicable.

(i) For guaranteed loans closed for which the Agency has not issued an interest termination letter—

(A) The loss of interest income sustained during the period of the bankruptcy plan will be processed in accordance with paragraph (d)(1) of this section;

(B) The loss of interest income sustained after the bankruptcy plan is confirmed will be processed annually when the lender sustains a loss as a result of a permanent interest rate reduction that extends beyond the period of the bankruptcy plan; and

(C) If an estimated loss claim is paid during the operation of the bankruptcy plan and the borrower repays in full the remaining balance without an additional loss sustained by the lender, a final report of loss will be filed to terminate the loan.

(ii) For guaranteed loans closed for which the Agency has issued an interest termination letter, the Agency will not compensate the lender for any difference in the interest rate specified in the loan note guarantee and the rate of interest specified in the bankruptcy plan.

(4) *Final bankruptcy loss payments.* The Agency will process final bankruptcy loss payments when the loan is fully liquidated.

(5) *Application of loss claim payments.* The lender must apply estimated loss payments first to the principal balance of the guaranteed portion of the debt and then to the

interest of the guaranteed portion of the debt. In the event a court attempts to direct the payments to be applied in a different manner, the lender must immediately notify the Agency in writing.

(6) *Protective advances.* If approved protective advances, as authorized by § 5001.516, were incurred in connection with the initiation of liquidation action and were required to protect the collateral as result of delays in the case or failure of the borrower to maintain the security prior to the borrower having filed bankruptcy, the protective advances together with accrued interest, as determined under § 5001.450(c) of this part, are payable under the guarantee in the final loss claim.

(e) *Liquidation expenses during bankruptcy proceedings.* (1) The liquidation expenses will be in compliance with § 5001.517(h).

(2) Reasonable and customary liquidation expenses in bankruptcy may be deducted from liquidation proceeds of collateral. In the case of Chapter 11 reorganizations or Chapters 11 or 7 liquidation, only expenses authorized by the court can be deducted from the collateral proceeds, unless the liquidation is by the lender.

(3) When a bankruptcy proceeding results in a liquidation of the borrower by a bankruptcy trustee appointed under 11 U.S.C. 701, 702, 703, or 1104, expenses will be handled as directed by the court, and the lender cannot claim liquidation expenses for the sale of the assets.

(4) If the property is abandoned by the bankruptcy trustee and any relief from the stay has been obtained, the lender will conduct the liquidation in accordance with § 5001.517.

(5) Proceeds received from partial sale of collateral during bankruptcy can be used by the lender to pay reasonable costs (*e.g.,* freight, labor, and sales commissions) associated with the partial sale. Reasonable use of proceeds for this purpose must be documented with the final loss claim request.

(6) Legal fees as a result of a bankruptcy are limited by the Agency to an amount not to exceed 3 percent of the current principal balance and are only recoverable from liquidation proceeds. Legal fees in excess of 3 percent of the current principal balance shall be borne by the lender and are not recoverable from liquidation proceeds or any loss claim by the lender.

§ 5001.520 Litigation.

(a) In all litigation proceedings involving the borrower, the lender is responsible for protecting the rights of the lender and the Agency with respect to the loan and keeping the Agency adequately and regularly informed, in writing, of all aspects of the proceedings. If the Agency determines that the lender is not adequately protecting the rights of the lender or the Agency with respect to the loan, the Agency reserves the right to take any legal action the Agency determines necessary to protect the rights of the lender and Agency, on behalf of the lender or the Agency. If the Agency exercises this right, the lender must cooperate with the Agency. The Agency will assess against the lender any cost the Agency incurs with such action.

(b) Notwithstanding any other provision of this part, the Agency reserves the right to be represented by the U.S. Department of Justice in any litigation where the Agency is named as a party.

§ 5001.521 Loss calculations and payment.

Unless the Agency anticipates a future recovery, the Agency will make a final settlement with the lender after the collateral is liquidated or after settlement and compromise of all parties has been completed. The Agency has the right to recover losses paid under the guarantee from any party that may be liable.

(a) *Report of loss form.* The lender must use the report of loss form for all estimated and final loss claim requests.

(b) *Estimated loss claim.* The lender must submit to the Agency a completed report of loss form for all estimated loss claims. In calculating the estimated loss, the lender must use the estimated or current appraised liquidation value of the collateral.

(c) *Estimated loss payment.* The Agency will approve estimated loss payments only after it has approved the lender's liquidation plan. For a loan which has been approved by the Agency for a debt write-down (or debt restructure), the maximum amount of loss payment will not exceed the percent of guarantee multiplied by the difference between the outstanding principal and interest balance of the loan before the write-down and the outstanding balance of the loan after the write-down.

(1) The amount of an estimated loss payment must be credited first as a deduction from the principal balance of the loan with any remaining balance to accrued interest.

(2) The estimated loss payment cannot be applied as a payment on the loan for purposes of reducing the unpaid balance owed by the borrower for status reporting or any debt collection actions against the borrower or any guarantors.

(d) *Reduction of loss claims payable.* (1) Negligent loan origination and negligent loan servicing will result in a reduction of loss claims payable under the guarantee to the lender if any losses have occurred as the result of such negligence. The Agency will assess against the lender any cost to the Agency associated with actions taken by the Agency necessary to protect the Agency's interests with respect to the loan where a lender is not in compliance with its origination and servicing responsibilities. The extent of the reduction, which could be a total reduction of the loss claims payable, will depend on the extent of the losses incurred as a result of the negligent loan origination or servicing.

(2) Non-compliance with the requirements of § 5001.205(a) or § 5001.305(a) will result in a reduction of loss claims payable. The Agency's review of the non-compliance could result in a total reduction of the loss claim payable.

(3) Any delinquent fees, including any interest due thereon, will be deducted from any loss payment due the lender.

(e) *Final loss claim.* Except for certain unsecured personal or corporate guarantees as provided for in this section, the lender must submit a final report of loss to the Agency within 30 calendar days after liquidation of all collateral is completed. The Agency will not guarantee interest beyond the interest termination date or this 30-day period, other than for the period of time it takes the Agency to process the loss claim. The lender must apply the total amount of the loss payment remitted by the Agency to the guaranteed portion of the loan debt. At the time of final loss settlement, the lender must notify the borrower that the loss payment has been so applied. Such application does not release the borrower from liability. Once the lender receives a final loss payment from the Agency, the Agency will collect any outstanding debts owed to the government in accordance with part 3 of this title.

(1) *Loss.* In the event of a loss, the loan note guarantee will not cover—

(i) Interest to the lender accruing after the interest termination date;

(ii) Any interest accrued as the result of the borrower's default on the guaranteed loan over and above that which would have accrued at the Agency-approved promissory note rate on the guaranteed loan (*e.g.,* default interest rate); or

(iii) Any late fees, penalties, bond fees, interest rate swap charges, liquidation expenses, and other costs

unless authorized under paragraph (e)(7) of this section.

(2) *Accounting of funds.* Before the Agency will approve a final report of loss, the lender must account for all funds during the period of liquidation, disposition of the collateral, all costs incurred, and any other information necessary for the successful completion of liquidation. The lender must document and show that all the collateral has been accounted for and properly liquidated, and that liquidation proceeds have been properly accounted for and applied correctly on the loan.

(3) *Audit.* Upon receipt of the final accounting and report of loss, the Agency may audit all applicable documentation to determine the final loss. The lender must make its records available to and otherwise assist the Agency in making any investigation or audit of the report of loss. The documentation accompanying the Report of loss must support the amounts reported. The Agency must be satisfied that the lender has maximized the collections in conducting the liquidation.

(4) *Guarantees.* The lender must determine the collectability of unsecured personal and corporate guarantees required in accordance with § 5001.204 of this part. The lender must promptly collect or otherwise dispose of such guarantees prior to completion of the final loss report. However, if collection from the guarantors appears unlikely or will require a prolonged period of time, the lender must file the report of loss when all other collateral has been liquidated. Unsecured personal or corporate guarantees outstanding at the time of the submission of the final report of loss will be treated as a Future Recovery with the net proceeds to be shared on a pro rata basis by the lender and the Agency.

(5) *Federal debt.* Any amounts paid by the Agency on account of liabilities of a borrower constitute a Federal debt owed to the Agency by the borrower. In such case, the Agency can use all remedies available to it to collect the debt from the borrower, including offset in accordance with part 3 of this title.

(i) Any amounts paid by the Agency pursuant to a claim by a lender constitute a Federal debt owed to the Agency by a third-party guarantor of the guaranteed loan, to the extent of the amount of the third-party guarantee. In such case, the Agency can use all remedies available to it to collect the debt from the third-party guarantor including offset in accordance with part 3 of this title.

(ii) The Agency may consider a compromise settlement of a debt owed to the Agency after it has processed a final report of loss and issued a 60-day due process letter. Any funds collected by the Agency will not be shared with the lender.

(6) *Protective advances.* In those instances where the lender made authorized protective advances, the lender can claim recovery for the guaranteed portion of any loss of monies advanced as well as interest resulting from such protective advances. These claims must be included in the final report of loss. The lender must provide receipts and a breakdown of protective advances as to the payee, purpose of the expenditure, date paid, evidence that the amount expended was proper, and that the amount was actually paid.

(7) *Liquidation expenses.* As provided in § 5001.517(e), certain reasonable liquidation expenses are allowed during the liquidation process. The lender cannot claim any liquidation expenses in excess of liquidation proceeds.

(i) Liquidation expenses are recoverable only from liquidation proceeds. The Agency will deduct liquidation expenses from the liquidation proceeds of the collateral unless the costs have been previously determined by the lender (with Agency concurrence) to be protective advances. The lender must provide receipts and a breakdown of liquidation expenses as to the payee, purpose of the expenditure, date paid, evidence that the amount expended was proper, and that the amount was actually paid.

(ii) The Agency may approve legal fees as liquidation expenses provided that the fees are reasonable, require the assistance of attorneys, and cover legal issues pertaining to the liquidation that could not be properly handled by the lender, its employees or in-house counsel. Approved legal expenses are limited by the Agency to an amount not to exceed 3 percent of the current principal balance and will be shared by the lender and Agency equally. This includes those instances where the lender has incurred such expenses from a trustee conducting the liquidation of assets. Legal fees in excess of 3 percent of the current principal balance shall be borne by the lender and are not recoverable from liquidation proceeds or any loss claim by the lender.

(iii) The lender cannot claim the guarantee fee or the other Agency fees as authorized liquidation expenses, and In-house expenses of the lender are not allowed.

(8) *Accrued interest.* If the lender holds all or a portion of the guaranteed loan, the Agency will guarantee accrued interest in accordance with § 5001.450(c) of this part.

(i) Accrued interest eligible for payment under the guarantee on a defaulted loan will be discontinued when the estimated loss is paid. Interest will not be paid beyond the interest termination date.

(ii) The lender must support accrued interest by documenting how the amount was accrued, including attaching a copy of both the promissory note and ledger. If the interest rate was a variable rate, the lender must include documentation of changes in both the selected base rate and the loan rate.

(iii) If a restructuring of a guaranteed loan includes the capitalization of interest, the guarantee will not cover the interest accrued on the capitalized Interest.

(9) *Acquiring property titles.* If a lender acquires title to property, any loss will be based on the collateral value at the time the lender obtains title. Alternatively, the lender can calculate the final loss settlement using the net proceeds received at the time of the ultimate disposition of the property if—

(i) The lender has submitted to the Agency a written request to use this option within 15 calendar days of acquiring title; and

(ii) The Agency approves the request prior to the lender submitting any request for estimated loss payment.

(f) *Loss limit.* The amount payable by the Agency to the lender cannot exceed the limits contained in the loan note guarantee. If the lender conducts the liquidation, loss occasioned by accruing interest will be covered to the interest termination date, provided the lender proceeds expeditiously with the liquidation plan approved by the Agency. If the Agency conducts the liquidation, loss occasioned by accruing interest will be covered by the guarantee only to the date the Agency accepts this responsibility.

(g) *Rent.* The lender must apply any net rental or other income that it receives from the collateral to the guaranteed loan debt.

(h) *Final loss payment.* The Agency will make loss payments after it has reviewed the complete final report of loss, all collateral has been properly liquidated and accounted for, and the Agency has determined that liquidation expenses are reasonable and within approved limits.

(1) Any estimated loss payments made to the lender will be credited against the final loss payment on the guaranteed loan.

(2) Once the Agency approves the report of loss and supporting documents submitted by the lender—

(i) If the actual loss is greater than any estimated loss payment, the Agency will pay the additional amount owed by the Agency to the lender.

(ii) If the actual loss is less than the estimated loss payment, the lender must reimburse the Agency for the overpayment plus interest at the promissory note rate from the date of payment of the estimated loss.

(iii) If the Agency conducted the liquidation, it will provide an accounting to the lender and will pay the lender in accordance with the loan note guarantee.

§ 5001.522 Future recovery.

After a final loss claim has been paid, the lender must use reasonable efforts to collect from any party still liable for future recovery unless the Agency notifies the lender otherwise. Any net proceeds from future recovery will be split pro rata between the lender and the Agency based on the percent of the loan guarantee even if the loan note guarantee has been terminated. Once the Agency determines a debt is Federal debt and provides notice to the lender, that Federal debt is excluded from future recovery. The lender must cease all collection efforts against the borrower and any individual or corporate guarantors upon referral of the debts by the Agency for collection in accordance with part 3 of this title. The Agency will not share with the lender any collection of Federal debt made by the Federal Government from any liable party to the guaranteed loan.

§ 5001.523 Property acquired by the lender.

(a) *Collateral preservation.* When a lender acquires title to the collateral and the final loss claim is not paid until final disposition, the lender must proceed as quickly as possible to develop a plan to fully protect the collateral from deterioration (weather, vandalism, etc.). Hazard insurance in an amount necessary to cover the market value of the collateral must be maintained.

(b) *Collateral sale.* (1) Upon acquiring the collateral, the lender must prepare and submit without delay to the Agency a plan on the best method for the sale of the collateral, keeping in mind any prospective purchasers. The Agency must approve the plan in writing. If an existing approved liquidation plan addresses the disposition of acquired property, no further review is required unless modification of the plan is needed.

(2) Whenever the conversion of collateral to cash can reasonably be expected to result in a negative net recovery amount, the lender should consider abandonment of the collateral. If the lender seeks to abandon the collateral, the lender must obtain written Agency approval before abandoning the collateral.

(c) *Re-title collateral.* Any collateral accepted by the lender must not be titled in the Agency's name in whole or in part.

§ 5001.524 Termination of loan note guarantee.

Each loan note guarantee issued under this part or under one of the guaranteed loan programs identified in § 5001.1 of this part will terminate automatically when one of the events described in paragraphs (a) through (c) of this section occur. The lender will maintain its guaranteed loan files for at least three years after termination of the loan note guarantee.

(a) The guaranteed loan is paid in full;

(b) Full payment by the Agency of any loss claim or compromised settlement except for future recovery provisions; or

(c) Written request from the lender to the Agency to terminate the guarantee, which will be effective the date the Agency receives the request provided that the lender holds all the guaranteed portion of the loan.

(d) The Agency may terminate the loan note guarantee if it is determined that the lender or borrower failed to adhere to the applicable provisions of this part or other good cause.

§§ 5001.525–5001.600 [Reserved]

Bette B. Brand,

Deputy Under Secretary, Rural Development.

[FR Doc. 2020–13991 Filed 7–13–20; 8:45 am]

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Part III

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910
Revising the Beryllium Standard for General Industry; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. OSHA–2018–0003]

RIN 1218–AD20

Revising the Beryllium Standard for General Industry

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule.

SUMMARY: OSHA is amending its existing general industry standard for occupational exposure to beryllium and beryllium compounds to clarify certain provisions and simplify or improve compliance. The revisions in this final rule are designed to maintain or enhance worker protections overall by ensuring that the rule is well understood and compliance is more straightforward.

DATES: This final rule becomes effective on September 14, 2020.

ADDRESSES: In accordance with 28 U.S.C. 2112(a)(2), OSHA designates Edmund C. Baird, Associate Solicitor of Labor for Occupational Safety and Health, to receive petitions for review of the final rule. Contact the Associate Solicitor at the Office of the Solicitor, Room S–4004, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–5445.

FOR FURTHER INFORMATION CONTACT:

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Citation Method

In the docket for this rulemaking found at *http://www.regulations.gov,* every submission was assigned a document identification (ID) number that consists of the docket number (OSHA–2018–0003) followed by an additional four-digit number. For example, the document ID number for the proposed rule is OSHA–2018–0003–0016. Some document ID numbers include one or more attachments (see, *e.g.,* Document ID OSHA–2018–0003–0026).

When citing exhibits in the OSHA–2018–0003 docket in this preamble, OSHA includes the term ''Document ID'' followed by the last four digits of the document number; the attachment number or other attachment identifier, if necessary for clarity; and page numbers (designated ''p.'' or ''pp.''). In a citation that contains two or more document ID numbers, the document ID numbers are separated by semi-colons. For example, a citation referring to National Jewish Health's comments and the first attachment to Materion Brush, Inc.'s comments would be indicated as follows: (Document ID 0022, pp. X–X; 0038–A1, p. X).

Occasionally this preamble refers to documents located in the rulemaking dockets that were used for previous beryllium rulemaking activities, including the 2017 final rule. When citing exhibits in other dockets, OSHA includes the term ''Document ID'' followed by the full document number. For example, this preamble cites a publication by Armstrong et al. (2014), titled ''Migration of beryllium via multiple exposure pathways among work processes in four different facilities,'' designated Document ID OSHA–H005C–2006–0870–0502.

The exhibits in the docket (and the other beryllium-rulemaking dockets cited in this preamble), including public comments, supporting materials, meeting transcripts, and other documents, are listed on *http://www.regulations.gov*. All exhibits are listed in the docket index on *http://www.regulations.gov,* but some exhibits (*e.g.,* copyrighted material) are not available to read or download from that website. All materials in the docket are available for inspection at the OSHA Docket Office, Room N–3508, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC 20210; telephone (202) 693–2350.

I. Executive Summary

On January 9, 2017, OSHA published a final rule on Occupational Exposure to Beryllium and Beryllium Compounds (82 FR 2470). This rule created health standards for beryllium exposure in the general industry (29 CFR 1910.1024), construction (29 CFR 1926.1124), and shipyards (29 CFR 1915.1024) sectors. On December 11, 2018, OSHA published a Notice of Proposed Rulemaking (NPRM) in which the agency proposed various amendments to the beryllium standard for general industry (83 FR 63746). With the proposed revisions, OSHA sought to clarify certain provisions and simplify or improve compliance with the beryllium standard for general industry. In this final rule, OSHA is finalizing the majority of the changes proposed in the NPRM, with some revisions intended to address concerns raised by stakeholders during the comment period. OSHA believes that these changes to the standard will maintain safety and health protections for workers and will further enhance worker protections by ensuring that the standard is well-understood.

The changes to the final standard for general industry are fully discussed in Section XI, Summary and Explanation of the Final Rule. Broadly, OSHA proposed to add one definition and modify five existing terms in paragraph (b), Definitions; to amend paragraph (f), Methods of compliance; paragraph (h), Personal protective clothing and equipment; paragraph (i), Hygiene areas and practices; paragraph (j), Housekeeping; paragraph (k), Medical surveillance; paragraph (m), Communication of hazards; and paragraph (n), Recordkeeping; and to replace the 2017 final standard's Appendix A with a new appendix designed to supplement the proposed definition of *beryllium work area*.

OSHA is finalizing these provisions as proposed, with the following exceptions. First, OSHA is revising the definition of *confirmed positive* to state that the findings of two abnormal, one abnormal and one borderline, or three borderline results need to occur from beryllium lymphocyte proliferation tests (BeLPTs) conducted within a three-year period. This differs from the definition proposed in the 2018 NPRM, which would have required that any combination of test results specified in the definition must be obtained within the 30-day follow-up test period required after a first abnormal or borderline BeLPT test result. Second, OSHA is modifying the proposed paragraph (j)(3), which requires employers to take certain actions when

transferring materials that contain at least 0.1 percent beryllium by weight or that are contaminated with beryllium outside a plant for the purpose of disposal, recycling, or reuse, to clarify that only transfers outside of a plant, including between facilities owned by the same employer, are subject to the labeling requirements of paragraph (m)(3).

Third, in paragraphs (k)(2)(iii) and (iv), OSHA is modifying the proposed provisions pertaining to an employer's obligation to offer a medical examination after an employee is exposed to beryllium in an emergency. Fourth, OSHA is amending proposed paragraph (k)(7)(i) to require that an examination at a chronic beryllium disease (CBD) diagnostic center be scheduled within 30 days of the employer receiving certain types of documentation, listed in paragraph (k)(7)(i)(A) and (B), that trigger evaluation for CBD. OSHA is further revising proposed paragraph (k)(7) by adding a new provision, paragraph (k)(7)(ii), which clarifies that, as part of the evaluation at the CBD diagnostic center, the employer must ensure that the employee is offered any tests deemed appropriate by the examining physician at the CBD diagnostic center and to state that if any tests deemed appropriate by the physician are not available at the CBD diagnostic center, they may be performed at another location that is mutually agreed upon by the employer and the employee. For a full explanation of comments received and OSHA's reasoning for these revisions, see Section XI, Summary and Explanation of the Final Rule.

OSHA's examination of the technological and economic feasibility of this final rule is presented in the Final Economic Analysis and Regulatory Flexibility Analysis (FEA), in Section IV of this preamble. As explained there, OSHA finds that none of the revisions would impose any new employer obligations or increase the overall cost of compliance, while some of the revisions in this final rule will clarify and simplify compliance in such a way that results in cost savings. OSHA also finds that none of the revisions would require any new controls or other technology. OSHA therefore concludes that the final rule is both economically and technologically feasible.

Further, this final rule is considered to be an Executive Order (E.O.) 13771 deregulatory action. Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule not a ''major rule,'' as defined by 5 U.S.C. 804(2).

II. Events Leading to the Final Rule

On January 9, 2017, OSHA published the final rule Occupational Exposure to Beryllium and Beryllium Compounds (2017 final rule) in the **Federal Register** (82 FR 2470).[1] Therein, OSHA concluded that employees exposed to beryllium and beryllium compounds at the preceding permissible exposure limits (PELs) were at significant risk of material impairment of health, specifically chronic beryllium disease (CBD) and lung cancer. The agency further determined that limiting employee exposure to an 8-hour time-weighted average (TWA) PEL of 0.2 μg/m^3 would reduce this significant risk to the maximum extent feasible. Therefore, the 2017 final rule adopted a TWA PEL of 0.2 μg/m^3. In addition to the revised PEL, the 2017 final rule established a new short-term exposure limit (STEL) of 2.0 μg/m^3 over a 15-minute sampling period and an action level of 0.1 μg/m^3 as an 8-hour TWA, along with a number of ancillary provisions intended to provide additional protections to employees. The ancillary provisions included requirements for exposure assessment, methods for controlling exposure, respiratory protection, personal protective clothing and equipment, housekeeping, medical surveillance, hazard communication, and recordkeeping that are similar to those found in other OSHA health standards.

The 2017 final rule went into effect on May 20, 2017, and OSHA began enforcing the PEL and the general industry standard's provisions for exposure assessment, respiratory protection, medical surveillance, and medical removal on May 11, 2018. See Updated Interim Enforcement Guidance for the Beryllium Standards, available at *https://www.osha.gov/laws-regs/standardinterpretations/2018-12-11*. The majority of the general industry standard's other provisions became enforceable on December 12, 2018, with compliance obligations for showers and change rooms following on March 11, 2019 (83 FR 39351). OSHA began enforcing the general industry requirements for engineering controls on March 10, 2020.

In response to concerns raised by stakeholders following the publication of the 2017 final rule, OSHA published a direct final rule (DFR) in the **Federal Register** on May 7, 2018 (83 FR 19936), amending the text of the beryllium standard for general industry to clarify OSHA's intent with respect to certain terms in the standard, including the definition of *beryllium work area* (BWA), the definition of *emergency,* and the meaning of the terms *dermal contact* and *beryllium contamination* (see 83 FR at 19938). The DFR also clarified OSHA's intent with respect to provisions for disposal and recycling and with respect to provisions that the agency intended to apply only where skin can be exposed to materials containing at least 0.1% beryllium by weight (83 FR at 19938). Because the agency did not receive any significant adverse comments, OSHA published a **Federal Register** notice confirming the effective date of the DFR as July 6, 2018, and withdrawing the companion NPRM (83 FR 31045 (July 3, 2018)).

On December 11, 2018, OSHA published an NPRM in the **Federal Register** (83 FR 63746) in which the agency proposed to further amend the beryllium standard for general industry.[2] The proposal sought to clarify certain provisions–with proposed changes designed to facilitate application of the standard consistent with the intent of the 2017 final rule–and to simplify or improve compliance, preventing costs that may flow from misinterpretation or misapplication of the standard. OSHA requested public comment on the proposed changes and provided stakeholders 60 days to submit comments. OSHA received 22 comments before the comment period closed on February 11, 2019.

III. Legal Considerations

The purpose of the Occupational Safety and Health Act of 1970 (''the OSH Act'' or ''the Act''), 29 U.S.C. 651 *et seq.,* is to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources. 29 U.S.C. 651(b). To achieve this goal, Congress authorized the Secretary of Labor (''the Secretary'') to promulgate occupational safety and health standards pursuant to notice and comment rulemaking. See 29 U.S.C. 655(b). An occupational safety or health standard is a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe

[1] In the 2017 final rule, OSHA issued three separate beryllium standards—general industry, shipyards, and construction. This final rule amends only the general industry standard. Therefore, neither this Events Leading to the Final Rule section nor the remainder of the preamble will include information about the other two standards.

[2] OSHA stated in the NPRM that the agency believed that the standard as modified by the proposal would provide equivalent protection to the existing standard; and OSHA would therefore accept compliance with the standard, as modified by the proposal, as compliance with the standard while the rulemaking was pending.

or healthful employment and places of employment. 29 U.S.C. 652(8).

The Act also authorizes the Secretary to ''modify'' or ''revoke'' any occupational safety or health standard, 29 U.S.C. 655(b), and under the Administrative Procedure Act, regulatory agencies generally may revise their rules if the changes are supported by a reasoned analysis, see *Motor Vehicle Mfrs. Ass'n* v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 42 (1983). ''While the removal of a regulation may not entail the monetary expenditures and other costs of enacting a new standard, and accordingly, it may be easier for an agency to justify a deregulatory action, the direction in which an agency chooses to move does not alter the standard of judicial review established by law.'' Id.

The Act provides that in promulgating health standards dealing with toxic materials or harmful physical agents, such as the January 9, 2017, final rule regulating occupational exposure to beryllium, the Secretary must set the standard that most adequately assures, to the extent feasible and on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life. 29 U.S.C. 655(b)(5).

The Supreme Court has held that before the Secretary can promulgate any permanent health or safety standard, he must make a threshold finding that significant risk is present and that such risk can be eliminated or lessened by a change in practices. See *Indus. Union Dep't, AFL–CIO* v. *Am. Petroleum Inst. (*''*Benzene*''*),* 448 U.S. 607, 641–42 (1980) (plurality opinion). OSHA need not make additional findings on risk for this revised rule because OSHA previously determined that the beryllium standard addresses a significant risk that can be eliminated or lessened by a change in practices, see 82 FR 2545–52, and the changes and clarifications in this final rule do not affect that determination. See, *e.g., Pub. Citizen Health Research Grp.* v. *Tyson,* 796 F.2d 1479, 1502 n.16 (D.C. Cir. 1986) (rejecting the argument that OSHA must ''find that each and every aspect of its standard eliminates a significant risk'').

OSHA standards must also be both technologically and economically feasible. See *United Steelworkers of Am., AFL–CIO–CLC* v. *Marshall* (''*Lead I*''), 647 F.2d 1189, 1264 (D.C. Cir. 1980). The Supreme Court has defined feasibility as ''capable of being done.'' *Am. Textile Mfrs. Inst.* v. *Donovan* (''*Cotton Dust*''), 452 U.S. 490, 508–09 (1981). The courts have further clarified that a standard is technologically feasible if OSHA proves a reasonable possibility, ''within the limits of the best available evidence . . . that the typical firm will be able to develop and install engineering and work practice controls that can meet the [standard] in most of its operations.'' *Lead I,* 647 F.2d at 1272. With respect to economic feasibility, the courts have held that ''[a] standard is feasible if it does not threaten massive dislocation to or imperil the existence of the industry.'' Id. at 1265 (internal quotation marks and citations omitted).

OSHA exercises significant discretion in carrying out its responsibilities under the Act. Indeed, ''[a] number of terms of the statute give OSHA almost unlimited discretion to devise means to achieve the congressionally mandated goal'' of ensuring worker safety and health. See *Lead I,* 647 F.2d at 1230 (citation omitted). Thus, where OSHA has chosen some measures to address a significant risk over other measures, parties challenging the OSHA standard must ''identify evidence that their proposals would be feasible and generate more than a de minimis benefit to worker health.'' *N. Am.'s Bldg. Trades Unions* v. *OSHA,* 878 F.3d 271, 282 (D.C. Cir. 2017).

Although OSHA is required to set standards ''on the basis of the best available evidence,'' 29 U.S.C. 655(b)(5), its determinations are ''conclusive'' if supported by ''substantial evidence in the record considered as a whole,'' 29 U.S.C. 655(f). Similarly, as the Supreme Court noted in *Benzene,* OSHA must look to ''a body of reputable scientific thought'' in making determinations, but a reviewing court must ''give OSHA some leeway where its findings must be made on the frontiers of scientific knowledge.'' *Benzene,* 448 U.S. at 656. When there is disputed scientific evidence in the record, OSHA must review the evidence on both sides and ''reasonably resolve'' the dispute. *Tyson,* 796 F.2d at 1500. The ''possibility of drawing two inconsistent conclusions from the evidence does not prevent the agency's finding from being supported by substantial evidence.'' *N. Am.'s Bldg. Trades Unions,* 878 F.3d at 291 (quoting *Cotton Dust,* 452 U.S. at 523) (alterations omitted). As the D.C. Circuit has noted, where ''OSHA has the expertise we lack and it has exercised that expertise by carefully reviewing the scientific data,'' a dispute within the scientific community is not occasion for the reviewing court to take sides about which view is correct. *Tyson,* 796 F.2d at 1500.

Finally, because section 6(b)(5) of the Act explicitly requires OSHA to set health standards that eliminate risk ''to the extent feasible,'' OSHA uses feasibility analysis rather than cost-benefit analysis to make standards-setting decisions dealing with toxic materials or harmful physical agents. 29 U.S.C. 655(b)(5). An OSHA standard in this area must be technologically and economically feasible–and also cost effective, which means that the protective measures it requires are the least costly of the available alternatives that achieve the same level of protection–but OSHA cannot choose an alternative that provides a lower level of protection for workers' health simply because it is less costly. See *Int'l Union, UAW* v. *OSHA,* 37 F.3d 665, 668 (D.C. Cir. 1994); see also *Cotton Dust,* 452 U.S. at 513 n.32. In *Cotton Dust,* the Court explained that Congress itself had defined the appropriate relationship between costs and benefits by prioritizing the ''benefit'' of worker health above all other considerations, save those that would make this ''benefit'' unachievable. The Court further stated that any standard based on a balancing of costs and benefits by the Secretary that strikes a different balance than that struck by Congress would be inconsistent with the command set forth in section 6(b)(5). See *Cotton Dust,* 452 U.S. at 509. Thus, while OSHA estimates the costs and benefits of its proposed and final rules, in part to ensure compliance with requirements such as those in Executive Orders 12866 and 13771, these calculations do not form the basis for the agency's regulatory decisions.

IV. Final Economic Analysis and Regulatory Flexibility Act Certification (FEA)

A. Summary of Economic Impact

This rule amends OSHA's existing general industry standard for occupational exposure to beryllium and beryllium compounds (29 CFR 1910.1024) to clarify certain provisions and simplify or improve compliance. OSHA's final economic analysis shows that these changes will result in unquantifiable cost savings, largely due to the prevention of misinterpretation and misapplication of the standard.

In promulgating the 2017 final rule, OSHA determined that the beryllium rule was both technologically and economically feasible. See 82 FR at 2582–86, 2590–96, Summary of the Final Economic Analysis. The changes herein are intended to align the rule more clearly with the intent of the 2017 final rule. Because OSHA has

determined that this final rule will decrease the costs of compliance by preventing misinterpretation and misapplication of the standard, and would require no new controls or other technology, OSHA has also determined that the rule is both technologically and economically feasible.

Because this final rule only clarifies the existing beryllium standard or makes minor revisions that will generally aid in compliance, the revised beryllium standard will maintain safety and health protections for workers. And, to the extent this final rule helps employers avoid misapplication of the beryllium standard's requirements and hence achieves greater compliance with the standard's intended meaning, there will be increased protection for workers.

B. Final Economic Analysis and Regulatory Flexibility Act Certification

Executive Orders 12866 and 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1532(a)) require that OSHA estimate the benefits, costs, and net benefits of regulations, and analyze the impacts of certain rules that OSHA promulgates. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

This final rule is not a ''significant regulatory action'' under Executive Order 12866 or the UMRA. Neither the benefits nor the costs of this final rule would exceed $100 million in any given year. On the contrary, the possible effects of each provision on costs and benefits appear to be relatively small, and OSHA has not been able to quantify them. Nor has OSHA been able to quantify the cost savings it expects from preventing misinterpretation and misapplication of the standard. However, OSHA does expect that this final rule will increase understanding and compliance with the standard and, therefore, the agency expects the rule to result in some, unquantifiable cost savings. Moreover, and as discussed above, OSHA expects this final rule will maintain safety and health protections for workers.

1. Final Determinations Regarding Costs and Cost Savings Attributable to the Final Rule

In the Preliminary Economic Analysis and Regulatory Flexibility Act Certification (PEA) in the 2018 NPRM, OSHA considered whether each of the proposed changes could affect the costs and, if so, how those costs might be affected (83 FR at 63760–65). For the purposes of the preliminary analysis, the agency divided the proposed changes into two groups: (1) Proposed clarifications and (2) proposed revisions. The ''proposed clarifications'' were those that were solely intended to clarify provisions and would not alter the requirements and scope of the rule (83 FR at 63760–61). The items OSHA identified as clarifications included the addition of a definition of *beryllium sensitization* to paragraph (b); minor changes to the definitions of *CBD diagnostic center* and *chronic beryllium disease* in paragraph (b); minor changes to the written exposure control plan provisions in paragraphs (f)(1)(i)(D) and (f)(1)(ii)(B); a minor change in the PPE removal provision of paragraph (h)(2)(i); minor changes to provisions for the cleaning of PPE in paragraph (h)(3)(iii); minor changes to the cleaning of PPE upon entry to eating or drinking areas in paragraph (i)(4)(ii); and minor changes to provisions for employee information and training in paragraphs (m)(4)(ii)(A) and (m)(4)(ii)(E) (83 FR at 63760–61).

The ''proposed revisions,'' on the other hand, were those that would go beyond clarification and alter certain requirements of the beryllium standard (83 FR at 63761). The proposed provisions that OSHA identified as revisions included changes to the definitions of *beryllium work area, confirmed positive,* and *dermal contact with beryllium* in paragraph (b); a change to the requirements for washing facilities in paragraph (i)(1); a change to the requirements for provision of change rooms in paragraph (i)(2); changes to the requirements pertaining to disposal and recycling in paragraph (j)(3); a change to the requirements for medical surveillance following an employee's exposure to beryllium in an emergency in paragraph (k)(2); revision to provisions for evaluation at a CBD diagnostic center in paragraph (k)(7)(i); a change to the requirements for warning labels in paragraph (m)(3); and changes to the requirements for recordkeeping in paragraphs (n)(1)(ii)(F), (n)(3)(ii)(A), and (n)(4)(i).

After carefully reviewing the proposed clarifications and revisions, OSHA preliminarily determined that their net total effect would result in potential cost savings, mainly from improving employer understanding and facilitating application of the rule (83 FR at 63760–61). OSHA preliminarily identified a new potential cost, which would result from the proposed changes as a whole: A de minimis cost for the time employers would need to become familiar with the revised portions of this final rule (83 FR at 63761, 63765). Viewing all the proposed changes as a whole, OSHA explained that it preliminarily anticipated that the proposed provisions' net effect would result in some cost savings (83 FR at 63761). OSHA invited comment on all aspects of the PEA, including these preliminary determinations (83 FR at 63760–62, 63764–65).

Stakeholders either agreed with or did not comment on OSHA's analysis of potential costs and costs savings attributable to the vast majority of the proposed clarifications and revisions (*e.g.,* Document ID 0026, pp. 1–2; 0038, pp. 21, 26, 32). The only objections the agency received related to two of the four proposed paragraphs that OSHA is revising from the proposal in the final rule: (1) The definition of the term *confirmed positive;* and (2) the requirement related to examinations at CBD diagnostic centers (Document ID 0021, p. 4; 0022, pp. 5–6). Those comments, and OSHA's final determination that each of the four paragraphs that OSHA is revising from the proposal will result in small and unquantifiable cost savings, are discussed in detail below.

OSHA has also examined the record concerning the proposed clarifications and revisions that OSHA has finalized without change. As noted above, stakeholders either agreed with or did not comment on OSHA's analysis of potential costs and costs savings attributable to these proposed changes. Therefore, after carefully considering all the comments received and the remainder of the record, OSHA affirms its preliminary determination that these clarifications and revisions are likely to result in cost savings, largely from improving employer understanding and facilitating application of the rule. OSHA also affirms its preliminary determination that the only potential new costs are de minimis costs for the time employers would need to become familiar with the revised portions of this final rule.

In summary, OSHA finds that both the four paragraphs that OSHA is revising from the proposal and the remainder of the proposed clarifications and revisions that OSHA is finalizing without change in the final rule will result in potential cost savings mainly attributable to improving employer understanding and facilitating application of the rule, as well as preventing costs that would follow from misunderstanding the standard. OSHA expects that the cost savings attributable to these changes will offset the de minimis employer familiarization costs, resulting in a net result of cost savings. Therefore, OSHA finds that this final rule is likely to result in cost savings.

2. Analysis of Costs and Costs Savings Attributable to Provisions in the Final Rule That Differ From Those in the Proposal

In this section the agency discusses the four changes in the final rule that differ from the proposal: The definition of *confirmed positive* in paragraph (b), Definitions; a clarification to inter-plant transfers in paragraph (j), Housekeeping; and two changes to paragraph (k), Medical Surveillance: Requirements related to CBD diagnostic centers and requirements for medical examination at termination of employment. In all cases, as stated above, the agency has determined these will have de minimis cost or cost savings implications.

Definition of Confirmed Positive.

The 2017 final rule did not specify a time limit within which the BeLPT tests that contribute toward a finding of ''confirmed positive'' must occur. In the 2018 NPRM, OSHA proposed to modify the definition of *confirmed positive* to require that the qualifying test results be obtained within one testing cycle (including the 30-day follow-up test period required after a first abnormal or borderline BeLPT test result), rather than arguably over an unlimited time period that might have led to false positives that could needlessly concern workers and their families, could lead workers to undergo unnecessary testing, and would not enhance worker protections. In the PEA, OSHA explained that the exact effect of the proposed change was uncertain as it is unknown how many employees would have a series of BeLPT results associated with a confirmed positive finding (two abnormal results, one abnormal and one borderline result, or three borderline results) over an unlimited period of time, but would not have any such combination of results within a single testing cycle (83 FR at 63761–62). OSHA preliminarily concluded that the proposed change would not increase compliance costs and would incidentally yield some cost savings by lessening the likelihood of false positives (83 FR at 63762). The agency invited comment on its preliminary conclusion (83 FR at 63762).

As discussed in Section XI, Summary and Explanation for paragraph (b), a number of stakeholders commented that requiring results within a 30-day testing cycle could create logistical challenges, for example due to repeat testing requirements or for businesses in remote areas with limited healthcare facilities (Document ID 0022, p. 4; 0021, p. 4; 0024, p. 1; 0033, p. 5; 0027, p. 3). National Jewish Health (NJH) also commented that removing the time frame of 30 days for confirming abnormal results would allow for employee workplace protection and clinical evaluation referral at a lower cost and with less logistical burden (Document ID 0022, p. 5).

Stakeholders' logistical concerns and NJH's comment about costs reflect a misunderstanding of the proposed change. As explained in more detail in the Summary and Explanation for paragraph (b), OSHA did not intend that the initial and any follow-up tests had to be completed and interpreted within 30 days. Rather, the agency intended that the test results be obtained during one cycle of testing, that is, an initial or periodic examination followed by follow-up testing conducted within 30 days of an abnormal or borderline result. For example, if an employee received a borderline BeLPT result at his or her periodic examination, paragraph (k)(3)(ii)(E) would require the employer to offer a follow-up BeLPT within 30 days of the test results. If the follow-up BeLPT result was also borderline, paragraph (k)(3)(ii)(E) would again require the employer to offer a follow-up BeLPT within 30 days of the first follow-up test's results. If that second follow-up was borderline or abnormal, the employee would have been confirmed positive under the proposal because all of the tests that ''confirmed'' the results were triggered by the initial test. In other words, OSHA did not intend to suggest that the proposal would have required employers to conduct all of the tests or obtain the confirming results within a single 30-day period.

In this final rule, OSHA has revised the definition of *confirmed positive* to specify that the findings of two abnormal, one abnormal and one borderline, or three borderline results must be obtained from BeLPTs conducted within a three-year period. OSHA determined that this revision strikes the appropriate balance between the shorter time period for confirmation in the proposal and the unspecified, arguably indefinite, time period of the original definition. As explained in the Summary and Explanation section, the final three-year period will capture the identification of sensitized workers enrolled in medical surveillance. OSHA finds that the addition of a specific time period to the text of the final rule will decrease the possibility of a misinterpretation of the provision's time frame that could lead to false positive results.

As with the proposed revisions to this definition, OSHA finds that the exact effect of this change is uncertain because it is unknown how many employees would have a series of BeLPT results associated with a confirmed positive finding (two abnormal results, one abnormal and one borderline result, or three borderline results) over an unlimited period of time, but would not have any such combination of results within a three-year testing cycle, though it is likely to be small. As discussed in Section XI, Summary and Explanation of the Final Rule, NJH reported that in a group of 194 CBD patients in their care, the length of time between abnormal results ranged from 14 days to 5.8 years, with a 95th percentile of 2.9 years. This suggests that the vast majority of individuals who will have two abnormal BeLPT tests in the course of medical surveillance are likely to be confirmed positive within the three-year window of time OSHA is establishing in the definition of *confirmed positive.* The Summary and Explanation section notes further that a three-year testing cycle is consistent with practices and recommendations of the medical community, pointing to the increasing likelihood that a confirmed positive finding over longer periods of time will be a false-positive and lead to costly further medical exams with no benefit. Thus, OSHA concludes that this change will not increase compliance costs and will incidentally yield some cost savings by lessening the likelihood of false positives.

Disposal, Recycling, and Reuse.

Paragraph (j)(3) of the previous standard (29 CFR 1910.1024(j)(3)) addresses disposal and recycling of materials that contain beryllium in concentrations of 0.1 percent by weight or more or that are contaminated with beryllium. In the 2018 NPRM, OSHA proposed to modify this paragraph in a number of ways—all of which the agency preliminarily found would not increase the costs of complying with the standard and may also result in unquantifiable savings to employers by preventing misinterpretation or misapplication of the rule (83 FR at 63762–63). Stakeholders did not offer any comments objecting to this preliminary determination. With the exception of one minor clarification to the regulatory text, discussed below, OSHA is adopting all of the proposed revisions to paragraph (j)(3) in this final rule. After reviewing the record as a whole and having received no evidence or comment to the contrary, the agency reaffirms its preliminary determination that the proposed revisions to paragraph (j)(3) that are being adopted in this final rule will result in some cost savings from increased employer understanding.

OSHA has made one change to the proposed provisions in paragraph (j)(3) in this final rule. When employers transfer certain materials to another party for disposal, recycling, or reuse, proposed paragraph (j)(3)(i) would have required employers to label the materials in accordance with paragraph (m)(3) of the standard. As explained in the Summary and Explanation for paragraph (j)(3), a comment alerted the agency to a potential ambiguity in this proposed text. Specifically, OSHA realized that the phrase ''to another party'' could be read to suggest that transfers between two facilities owned by the same employer are exempted from the labeling requirements in paragraph (j)(3)(i). That was not the agency's intent in the proposal. To eliminate any ambiguity on this point, OSHA revised paragraph (j)(3)(i) in the final rule to strike the phrase ''to another party'' and add the ''except for intra-plant transfers'' language that is found in paragraphs (j)(3)(ii) and (iii).

As with the proposed changes to paragraphs (j)(3)(ii) and (iii), which clarified that those paragraphs' requirements did not apply to intra-plant transfers, OSHA finds that this proposed change is not a substantive change to the standard. It is simply clarifying OSHA's original intent that all transfers outside of a plant, including between facilities owned by the same employer, are subject to the labeling requirements of paragraph (m)(3). Since this change does not alter the requirements of the standard, it will not affect the costs of compliance with the standard. Therefore, OSHA finds that none of the changes this final rule makes to paragraph (j)(3) will increase the costs of complying with the standard.

Medical Surveillance.

In the 2018 NPRM, OSHA proposed two sets of changes to paragraph (k). The first set of changes proposed is in paragraph (k)(2), which specifies when and how frequently medical examinations are to be offered to those employees covered by the medical surveillance program. Paragraph (k)(2)(i)(B) of the previous standard required the employer to provide a medical examination within 30 days after determining that the employee shows signs or symptoms of CBD or other beryllium-related health effects or that the employee has been exposed to beryllium in an emergency.

Based on stakeholder feedback and other evidence indicating that the 30-day period in the previous standard may be insufficient to detect beryllium sensitization in individuals exposed one time in an emergency, OSHA proposed removing the requirement for a medical examination within 30 days of exposure to beryllium during an emergency, under paragraph (k)(2)(i)(B), and adding paragraph (k)(2)(iv), which would require the employer to offer a medical examination at least one year after but no more than two years after the employee is exposed to beryllium during an emergency (83 FR at 63757).

In the PEA, OSHA preliminarily determined that the net cost impact of these proposed changes would be slight, with some possible cost savings. Specifically, OSHA explained that, in the FEA for the 2017 final rule, the agency estimated that emergencies would affect a very small number of employees in a given year, likely less than 0.1 percent of the affected population, representing a small addition to the costs of medical surveillance for the standard (Document ID OSHA–H005C–2006–0870–2042, p. V–196). Under the 2017 final rule, some employees might have required two examinations to be confirmed positive: A first test cycle within the initial 30-day period and a second BeLPT at least two years later. Under the 2018 NPRM, OSHA expected that more of the employees who became sensitized from exposure in an emergency would be confirmed positive through a single testing cycle because that test would have been administrated one to two years following the emergency. The agency anticipated that the proposed change would result in the elimination of one premature testing, which would ensure better detection for more employees and incidentally trigger some cost savings (83 FR at 63764).[3]

To the extent that lengthening the time period in which the test must be offered from within 30 days to between one and two years leads to earlier confirmed positive results (within two years, as opposed to within two years plus 30 days), OSHA preliminarily found that the proposed change could slightly accelerate costs to the employer for earlier CBD diagnostic center referral and medical removal protection. OSHA estimated that the proposed change would affect a very small percentage of an already very small population. The agency preliminarily determined that the proposed revision would only potentially change the timing of the already-required BeLPT, CBD diagnostic center referral, and medical removal protection (83 FR at 63764, 63764 n.5).

[3] Assuming that this initial analysis does not result in a confirmed positive diagnosis, that employee would not be confirmed positive until a second test two years later under the current rule.

In summary, OSHA preliminarily found that the end result of the proposed changes to paragraph (k)(2) from a cost perspective would be that the cost savings from the potential avoidance of a premature BeLPT within 30 days following an emergency would likely be largely canceled out by the acceleration of the cost of the CBD diagnostic center evaluation and medical removal protection. Therefore, OSHA preliminarily determined that the net cost impact of the proposed changes would be slight, with some possible cost savings (83 FR at 63764). Stakeholders did not submit any comments related to OSHA's preliminary determinations regarding potential costs of the proposed revisions to paragraph (k)(2).

In sum, after considering the record as a whole, OSHA finds that its preliminary estimates were correct: A small change in costs, with possible cost savings. Nevertheless, as discussed in more detail in the Summary and Explanation for paragraph (k), Medical Surveillance, some stakeholders expressed concerns about possible delays in medical consultations and examinations and lack of employee knowledge of potential health effects, and one stakeholder argued that employees who terminate employment before receiving the post-emergency examination might not receive an examination at all after being exposed in an emergency (Document ID 0023, pp. 2–3; 0024, p. 2; 0027, p. 4).

OSHA is revising paragraphs (k)(2) in the final rule in two ways to address these concerns. First, OSHA has added two sub-provisions under paragraph (k)(2)(iv) to provide for post-emergency examination timing for two separate groups of employees. Final paragraph (k)(2)(iv)(A) focuses on the very small group of employees who are exposed in an emergency but have not received a medical examination under paragraph (k)(1)(i) within the previous two years. The requirement for these employees is similar to the requirement contained in the previous standard; *i.e.,* under the final standard, the employer must provide these employees with a medical examination within 30 days of the date of the emergency. Because the final standard treats these employees similarly to the manner in which the previous standard treated all employees exposed in an emergency, OSHA does not expect that there will be any change in cost attributable to this change. In other words, for those employees who have not had a medical examination within the past two years there is no change in protocol and, thus, no change in costs.

Final paragraph (k)(2)(iv)(B) focuses on employees who are exposed during an emergency, but have recently received an examination. Under this new provision, if an employee has received a medical examination under paragraph (k)(1)(i) within the previous two years, then the employer would be required to offer that employee a medical examination that meets the requirements of the standard at least one year but no more than two years after the employee was exposed to beryllium in an emergency. Because this provision treats employees who have recently received an examination similarly to the manner in which the proposal would have treated all employees exposed in an emergency, OSHA expects that this change will result in a fraction of the small cost savings preliminarily estimated in the proposal.

Second, to address concerns that delaying the medical examination to at least one year and no more than two years following the emergency may result in employees not receiving a post-emergency examination if their employment ends soon after exposure during an emergency, OSHA is revising paragraph (k)(2)(iii) to require that each employee who is exposed in an emergency and has not received an examination since the emergency exposure is provided an examination at the time employment is terminated. Because paragraph (k)(2)(iii) already requires an examination at termination if there has not been one within the last six months due to any of the standard medical exam triggers, including emergency exposure, OSHA expects that this change will affect an extremely small group of employees. This revision, however, will ensure that all employees with emergency exposure are offered a medical exam, even under this very narrow set of circumstances. The baseline of costs and cost savings of this analysis is the previous rule, which already required a medical exam within 30 days of emergency exposure. Thus, OSHA does not expect that this change will have any cost implications.

In summary, OSHA finds that this final rule's revisions to paragraph (k)(2) will result in slight cost savings. No costs or costs savings are attributable to new paragraph (k)(2)(iv)(A), which treats employees exposed in an emergency who have not received a medical examination within the previous two years pursuant to paragraph (k)(1)(i) similarly to how all employees exposed in an emergency were treated under the previous standard. The end result of final paragraph (k)(2)(iv)(B), however, will be cost savings from the potential avoidance of a premature BeLPT that are largely offset by the acceleration of the cost of the CBD diagnostic center evaluation and medical removal protection. OSHA does not attribute any costs or cost savings to result from the revisions to paragraph (k)(2)(iii). Therefore, the agency expects the new result of final paragraph (k)(2) to be a slight cost savings.

The second set of changes proposed to the standard's medical surveillance requirements is in paragraph (k)(7), which contains the requirements for evaluation at a CBD diagnostic center. Paragraph (k)(7)(i) of the previous rule required employers to provide an evaluation at no cost to the employee at a CBD diagnostic center that is mutually agreed upon by the employee and employer within 30 days of the employer receiving a written medical opinion that recommends referral to a CBD diagnostic center, or a written medical report indicating that the employee has been confirmed positive or diagnosed with CBD. To address stakeholder concerns that scheduling the appropriate tests with an examining physician at the CBD diagnostic center may take longer than 30 days, OSHA proposed that the employer provide an initial consultation with the CBD diagnostic center, rather than the full evaluation, within 30 days of the employer receiving one of the types of documentation listed in paragraph (k)(7)(i)(A) or (B). The agency noted that the consultation could occur via telephone or virtual conferencing methods and would demonstrate that the employer made an effort to begin the process for a medical examination (83 FR at 63758). Evaluation and any testing would then occur within a reasonable time after the consultation.

In the PEA, OSHA noted that while the addition of the consultation would not result in any additional costs or cost savings (since the 2017 FEA had already accounted for a 15-minute discussion between the employee and a physician (Document ID OSHA–H005C–2006–0870–2042, p. V–206)), allowing more flexibility in scheduling the tests at the CBD diagnostic center would enable employers to find more economical travel and accommodation options. To the extent that it takes longer than 30 days to schedule the tests at the CBD diagnostic center, the agency preliminarily found that employers may realize a cost savings due to retaining funds during the delay. OSHA could not quantify the effect of this flexibility, however, concluding only that it expected that the changes would produce minor, if any, cost savings. The agency invited comment on its preliminary assessment of these potential effects (83 FR at 63764).

Stakeholders did not offer any comments on the agency's preliminary estimates regarding the cost savings attributable to these proposed changes. Several commenters objected to adding the consultation requirement, however, arguing that it was an unnecessary step that would add logistical complications and costs (see, *e.g.,* Document ID 0021, p. 3; 022, p. 6). This is discussed in more detail in the Summary and Explanation for paragraph (k), Medical Surveillance. After considering these comments and the record as a whole, OSHA decided to modify paragraph (k)(7)(i) to require that the employer within 30 days of receiving one of the types of documentation listed in paragraph (k)(7)(i)(A) or (B) schedule an evaluation at a CBD diagnostic center. In addition, OSHA is adding a requirement that the evaluation itself must occur within a reasonable time.

OSHA finds that these changes may slightly delay the incidence of costs of an evaluation under paragraph (k)(7)(i), in that it may occur at a later date in some cases than under the existing provision. This would slightly decrease the costs of compliance with the standard. The agency also finds that allowing the evaluation to occur within a reasonable time, rather than within 30 days, may allow for more cost-effective travel and accommodation options. Thus, as with the proposal, OSHA concludes that these changes may produce minor cost savings.

To account for a proposed change to the definition of *CBD diagnostic center,* the proposed rule would also have amended paragraph (k)(7)(i) to clarify that the employer must provide, at no cost to the employee and within a reasonable time after consultation with the CBD diagnostic center, any of the following tests that a CBD diagnostic center must be capable of performing, if deemed appropriate by the examining physician at the CBD diagnostic center: A pulmonary function test as outlined by American Thoracic Society criteria testing, bronchoalveolar lavage (BAL), and transbronchial biopsy. In the PEA, OSHA explained that this proposed change would not alter the requirements of the standard and therefore would not change the costs of compliance with the standard (83 FR at 63764).

Stakeholders did not offer any comments on OSHA's determination that these proposed changes would not affect costs. Some stakeholders argued, however, that the proposed provision could be misinterpreted to mean that the employer does not have to make available other tests that the examining

physician deems appropriate for reasons such as diagnosing or determining the severity of CBD (Document ID 0021, p. 3; 0022, p. 3; 0028, p. 2). This is discussed in more detail in the Summary and Explanation for paragraph (k), Medical Surveillance. To address these concerns, OSHA is adding a new provision, paragraph (k)(7)(ii), which clarifies that, as part of the evaluation at the CBD diagnostic center, the employer must ensure that the employee is offered any tests deemed appropriate by the examining physician at the CBD diagnostic center, such as pulmonary function testing as outlined by American Thoracic Society criteria testing, bronchoalveolar lavage (BAL), and transbronchial biopsy.[4] If any of these tests deemed appropriate by the examining physician are not available at the CBD diagnostic center, the final rule allows them to be performed at another location that is mutually agreed upon by the employer and the employee.

OSHA does not believe that requiring employers to provide any tests deemed appropriate by the examining physician would change the costs of compliance with the standard because the agency accounted for such costs in the 2017 final rule.[5] Specifically, when calculating the unit cost for going to a CBD diagnostic center in the 2017 FEA, the agency used a typical suite of tests that would be performed (Document ID OSHA–H005C–2006–0870–2042, p. V–205). Consequently, OSHA's unit cost in the 2017 final rule for an evaluation at a CBD diagnostic center was an average for standard tests that are required. The agency finds that this average set of tests by definition is constructed to give the average cost for the tests deemed appropriate by the examining physician and, thus, concludes that there are no costs or cost savings attributable to this change.

Paragraph (k)(7)(ii) requires that if any test deemed appropriate by the examining physician is not available at the CBD diagnostic center, the test must be performed at another location that is mutually agreed to by the employer and employee. OSHA believes that such circumstances would be very rare. CBD diagnostic centers with the ability to perform pulmonary function testing (as outlined by the American Thoracic Society criteria), bronchoalveolar lavage (BAL), and transbronchial biopsy are most likely to also provide other medical tests related to CBD.[6] As a result, the CBD diagnostic center in the vast majority of cases will be able to offer the additional testing deemed necessary by the examining physician. Moreover, because the three tests noted above are the tests that are commonly needed to diagnose CBD, OSHA expects that these are the tests that would most commonly be performed (see Section XI, Summary and Explanation of the Final Rule). Given that this standard requires CBD diagnostic centers to be able to perform the three tests that are most commonly performed to diagnose CBD and CBD diagnostic centers typically would be able to offer any additional tests deemed necessary, OSHA expects that employees would rarely, if ever, need to travel to a second location.[7] In those rare cases, the added flexibility of having the tests performed outside of a CBD diagnostic center gives more options for the employer and employee and should lead to cost savings. Because this situation should be quite uncommon, OSHA expects that the cost savings of allowing employees to have additional tests outside of a CBD diagnostic center are likely to be de minimis.

This change to paragraph (k)(7) clarifies OSHA's intent that the employer provide any tests deemed appropriate by the examining physician at the CBD diagnostic center, or at another location if not available at the CBD diagnostic center, but does not substantively change the requirements of the beryllium standard. OSHA expects that the changes described here would maintain safety and health protections for workers.

[4] As discussed in Section XI, Summary and Explanation of the Final Rule, OSHA also redesignated previous paragraphs (k)(7)(ii), (iii), (iv), and (v) as paragraphs (k)(7)(iii), (iv), (v), and (vi), respectively. This redesignation in paragraph (k) also affects a reference in paragraph (l)(1)(ii). These changes are merely administrative and do not have any substantive or monetary effect.

[5] As discussed in the Summary and Explanation for paragraph (k), Medical Surveillance, OSHA never intended to limit the required tests to the three tests listed in the previous definition of the term *CBD diagnostic center.*

[6] Document ID OSHA–H005C–2006–0870–0637 provides some information from the NJH website, which provides an overview of the types of tests performed.

[7] OSHA also notes that it has always intended for employers to make available any additional tests deemed appropriate by the examining physician (see the discussion of paragraph (k), Medical Surveillance, in Section XI, Summary and Explanation of the Final Rule, of this preamble). The economic analysis of the 2017 final rule did not explicitly account for these rare cases where a test recommended by the examining physician of the CBD diagnostic center was not available at the same center. Hence, there would be a de minimis cost adjustment increase of the total cost of the 2017 final rule due to this consideration. This is not a change in people's behavior, simply a methodological change. The current final rule could affect people's behavior and be a true change (decrease) in costs. This change merely provides employers with a more flexible, potentially less expensive, manner to provide those tests in the rare situation where they are not available at the original CBD diagnostic center.

3. Economic and Technological Feasibility

In the FEA in support of OSHA's 2017 Beryllium Final Rule, OSHA concluded that the general industry beryllium standard was economically and technologically feasible (see 82 FR at 2471). In the 2018 NPRM, OSHA explained that it anticipated that none of the proposed changes would impose any new employer obligations or increase the overall cost of compliance, while some of the changes would clarify and simplify compliance in such a way that results in cost savings. In addition, OSHA preliminarily anticipated that the de minimis cost of any time spent reviewing the proposed changes would be more than offset by the cost savings described in the PEA. OSHA further found that none of the proposed revisions would require any new controls or other technology. OSHA therefore preliminarily determined that the proposed rule was both economically and technologically feasible. OSHA did not receive any comments objecting to or otherwise questioning this preliminary determination.[8] Therefore, after considering the record as a whole, OSHA finds that the proposed provisions that are being adopted in this final rule are economically and technologically feasible.

OSHA also finds that the few new changes between the proposal and the final rule would not require any new controls or other technology and will result in cost savings. Therefore, OSHA finds that these final provisions, and the final rule as a whole, are economically and technologically feasible.

4. Effects on Benefits

In the 2017 FEA, OSHA attributed approximately 67 percent of the beryllium sensitization cases and the CBD cases avoided, and none of the lung cancer cases avoided, solely to the ancillary provisions of the standard (Document ID OSHA–H005C–2006–0870–2042, pp. VII–4 to VII–5, VII–24). This estimate was based on the ancillary provisions as a whole, rather than each provision separately.

[8] Although the agency did not receive any comments questioning the economic or technological feasibility of the proposed changes, at least one stakeholder argued that the previous standard was not economically or technologically feasible and that the proposed provisions remedied some of that stakeholder's concerns with feasibility (Document ID 0038, pp. 13, 21–22, 43). Because the feasibility of the January 2017 final rule as a whole is not at issue in this rulemaking, OSHA considers these comments indicating that these changes provide both economic and technological feasibility relief as support for the economic and technological feasibility of the proposed revisions.

In the PEA, OSHA considered the potential effect of each proposed change to ancillary provisions on employee protections. Because the proposed revisions to the standard would not remove or change the general nature of any ancillary provisions, and because the agency expected the proposed revisions to maintain safety and health protections for workers and facilitate employer understanding and compliance, OSHA preliminarily determined that the proposed changes would increase the standard's benefits as a whole by enhancing worker protections overall and by preventing costs that follow from misunderstanding the standard.

OSHA did not receive any comments related to its preliminary assessment of the proposed provisions' effects on benefits. Having considered the record as a whole, including all the comments received, OSHA finds that the changes in this final rule will maintain safety and health protections for workers while aligning the standard with the intent behind the 2017 final rule and otherwise preventing costs that could follow from misinterpretation or misapplication of the standard. And the agency reaffirms its determination that facilitating employer understanding and compliance has the benefit of enhancing worker protections overall. Therefore, OSHA finds that the changes in this final rule will increase the benefits of the standard as a whole.

5. Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (as amended), OSHA has examined the regulatory requirements of this final rule to revise the general industry beryllium standard to determine whether they would have a significant economic impact on a substantial number of small entities. The final rule modifies the general industry standard to clarify certain provisions and simplify or improve compliance. It does not impose any new duties or increase the overall cost of compliance, and OSHA expects it will provide some cost savings. OSHA therefore expects that this final rule will not have a significant economic impact on any small entities. Accordingly, OSHA certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

V. Office of Management and Budget (OMB) Review Under the Paperwork Reduction Act of 1995

A. Overview

This final rule revises information collection (paperwork) requirements in the occupational exposure to beryllium in general industry (29 CFR 1910.1024) standard that are subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) and its implementing regulations (5 CFR part 1320). OSHA is revising the previously approved paperwork package under OMB control number 1218–0267, as it pertains to general industry only. The collection of information items contained in the Information Collection Request (ICR) pertaining to occupational exposure to beryllium in the construction and shipyard sectors remain in the ICR without change.

The PRA generally requires that agencies consider the impact of paperwork and other information collection burdens imposed on the public, obtain public input, and obtain approval from OMB before conducting any collection of information (44 U.S.C. 3507). The PRA defines a *collection of information* as ''the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public, of facts or opinions by or for an agency, regardless of form or format'' (44 U.S.C. 3502(3)(A)). Federal agencies generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a valid OMB control number (44 U.S.C. 3507). Also, notwithstanding any other provision of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB control number (44 U.S.C. 3512).

B. Solicitation of Comments

On January 9, 2017, OSHA published a final rule establishing new permissible exposure limits and other provisions to protect employees from beryllium exposure, such as requirements for exposure assessment, respiratory protection, personal protective clothing and equipment, housekeeping, medical surveillance, hazard communication, and recordkeeping for the general industry, construction, and shipyard sectors. OMB approved the collections of information contained in the final rule under OMB Control Number 1218–0267.

On December 11, 2018, OSHA published a Notice of Proposed Rulemaking (NPRM) to modify the general industry beryllium standard by clarifying certain provisions to improve and simplify compliance (83 FR 63746). The 2018 NPRM proposed to revise the collections of information contained in the general industry standard by modifying provisions for the written exposure control plan; the cleaning and replacement of personal protection equipment; the disposal, recycling, and reuse of contaminated materials; certain aspects of medical surveillance; and the collection of social security numbers in recordkeeping. OSHA prepared and submitted to OMB an ICR for the 2018 proposed rule for review in accordance with 44 U.S.C. 3507(d). A copy of the proposed ICR is available to the public at *http://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=1218-0267*.

In accordance with the PRA (44 U.S.C. 3506(c)(2)), OSHA solicited public comments on the collection of information contained in the 2018 proposed rule. OSHA encouraged commenters to submit their comments on the information collection requirements contained in the proposed rule under docket number OSHA–2018–0003, along with their comments on other parts of the proposed rule. In addition to generally soliciting comments on the collection of information requirements, the proposed rule indicated that OSHA and OMB were particularly interested in the following items:

- Whether the proposed collection of information is necessary for the proper performance of the agency's functions, including whether the information is useful;
- 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;
- The quality, utility, and clarity of the information to be collected; and
- Ways to minimize the compliance burden on employers, for example, through the use of automated or other technological techniques for collecting and transmitting information (83 FR 63766).

On March 29, 2019, OMB issued a Notice of Action (NOA) stating, ''Terms of the previous clearance remain in effect. OMB is withholding approval at this time. Prior to publication of the final rule, the agency should provide a summary of any comments related to the information collection and their response, including any changes made to the ICR as a result of comments. In

addition, the agency must enter the correct burden estimates'' (see OMB Conclusion Action on ICR Reference No. 201812–1218–001, dated March 29, 2019, available at: *https://www.reginfo.gov/public/do/PRAOMBHistory?ombControlNumber=1218-0267*).

The agency did not receive any public comments in response to the proposed ICR submitted to OMB for review. Public comments submitted in response to the NPRM, however, substantively addressed provisions containing collection of information. OSHA considered these comments when it developed the revised ICR for this final rule. Summaries of comments received on the NPRM and OSHA's responses are found in Sections XI, Summary and Explanation of the Final Rule, and IV, Final Economic Analysis and Regulatory Flexibility Act Certification.

The Department of Labor submitted the final ICR concurrent with the publication of this final rule, containing the full analysis and description of the burden hours and costs associated with the final rule, to OMB for approval. A copy of this ICR will be available to the public at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202006-1218-006* (this link will become active on the day following publication of this notice). At the conclusion of OMB's review, OSHA will publish a separate notice in the **Federal Register** to announce the results.

C. Summary of Information Collection Requirements

As required by 5 CFR 1320.5(a)(1)(iv) and 1320.8(d)(2), the following paragraphs provide information about the ICR.

1. *Title:* Beryllium Standard for General Industry (29 CFR 1910.1024), Construction (29 CFR 1926.1124), and Maritime (29 CFR 1915.1024).

2. *Type of Review:* Revision.

3. *OMB Control Number:* 1218–0267.

4. *Affected Public: Business or Other For-Profit.* This final rule applies to employers in general industry who have employees that may have occupational exposures to any form of beryllium, including compounds and mixtures, except those articles and materials exempted by paragraphs (a)(2) and (a)(3).

5. Occupational Exposure to Beryllium in General Industry only:

a. *Number of Respondents:* 4,538.

b. *Frequency of Responses:* On occasion, quarterly, semi-annually, annually, biannually.

c. *Number of Responses:* 134,570.

d. *Estimated Total Burden Hours:* 82,822.

e. *Estimated Cost:* $18,741,540.

6. Occupational Exposure to Beryllium in Construction and Shipyard Sectors (previously-approved costs not affected by this rulemaking):

a. *Number of Respondents:* 2,796.

b. *Frequency of responses:* On occasion, quarterly, semi-annually, annually, biannually.

c. *Number of responses:* 39,420.

d. *Estimated Total Burden Hours:* 25,269.

e. *Estimated Cost:* $8,774,874.

7. Total Estimated Burden Hours and Cost for All Three Industries:

a. *Estimated Total Number of responses:* 173,990.

b. *Estimated Total Burden Hours:* 108,091.

c. *Estimated Cost:* $27,516,414.

D. Summary of Changes in the Collection of Information Requirements

This final standard for occupational exposure to beryllium and beryllium compounds in general industry revises the collection of information requirements contained in the existing ICR for general industry, approved under OMB control number 1218–0267. OSHA is updating the new ICR to reflect those changes, which include changes to the written exposure control plan; the cleaning and replacement of personal protection equipment; the disposal, recycling, and reuse of contaminated materials; certain aspects of medical surveillance; and the collection of Social Security numbers in recordkeeping (see Table V.1 below). The majority of these changes were adopted by the agency as proposed. However, in response to comments on the proposed rule, OSHA has revised a few of the provisions of the final rule that affect the collection of information. Those changes are also noted in Table V.1 below.

TABLE V.1—CHANGES TO COLLECTION OF INFORMATION REQUIREMENTS IN THE FINAL RULE FOR GENERAL INDUSTRY

Information collection requirements in this final rule	Explanation of this final rule's changes to the information collection requirements
§ 1910.1024(f)(1)(i), (ii), & (iii)—Methods of Compliance—Written Exposure Control Plan ..... (i) The employer must establish, implement, and maintain a written exposure control plan, which must contain: (A) A list of operations and job titles reasonably expected to involve airborne exposure to or dermal contact with beryllium; (B) A list of operations and job titles reasonably expected to involve airborne exposure at or above the action level; (C) A list of operations and job titles reasonably expected to involve airborne exposure above the TWA PEL or STEL; (D) Procedures for minimizing cross-contamination, including the transfer of beryllium between surfaces, equipment, clothing, materials, and articles within beryllium work areas; (E) Procedures for keeping surfaces as free as practicable of beryllium; (F) Procedures for minimizing the migration of beryllium from beryllium work areas to other locations within or outside the workplace; (G) A list of engineering controls, work practices, and respiratory protection required by paragraph (f)(2) of this standard; (H) A list of personal protective clothing and equipment required by paragraph (h) of this standard; and (I) Procedures for removing, laundering, storing, cleaning, repairing, and disposing of beryllium-contaminated personal protective clothing and equipment, including respirators. (ii) The employer must review and evaluate the effectiveness of each written exposure control plan at least annually and update it, as necessary, when: (A) Any change in production processes, materials, equipment, personnel, work practices, or control methods results, or can reasonably be expected to result, in new or additional airborne exposure to beryllium;	This final rule removed the word ''preventing'' from (f)(i)(D), which previously contained the phrase ''including preventing the transfer of beryllium.'' In addition, the final rule revised (f)(1)(ii)(B) by replacing the phrase ''airborne exposure to or dermal contact with beryllium'' with ''exposure to beryllium.'' Both of these changes were adopted as proposed.

TABLE V.1—CHANGES TO COLLECTION OF INFORMATION REQUIREMENTS IN THE FINAL RULE FOR GENERAL INDUSTRY—Continued

Information collection requirements in this final rule	Explanation of this final rule's changes to the information collection requirements
(B) The employer is notified that an employee is eligible for medical removal in accordance with paragraph (l)(1) of this standard for evaluation at a CBD diagnostic center, or shows signs or symptoms associated with exposure to beryllium; or (C) The employer has any reason to believe that new or additional airborne exposure is occurring or will occur. (iii) The employer must make a copy of the written exposure control plan accessible to each employee who is, or can reasonably be expected to be, exposed to airborne beryllium in accordance with OSHA's Access to Employee Exposure and Medical Records (Records Access) standard (29 CFR 1910.1020(e)).	
§ 1910.1024(h)(3)(iii)—Personal Protective Clothing and Equipment—Cleaning and Replacement. (3)(iii) The employer must inform in writing the persons or the business entities who launder, clean, or repair the personal protective clothing or equipment required by this standard of the potentially harmful effects of exposure to beryllium and that the personal protective clothing and equipment must be handled in accordance with this standard.	This final rule revised (h)(3)(iii) by replacing the phrase ''airborne exposure to and dermal contact with beryllium'' with ''exposure to beryllium.'' This change was adopted as proposed.
§ 1910.1024(j)(3)(i), (ii), & (iii)—Housekeeping—Disposal, recycling, and reuse ..... (3)(i) Except for intra-plant transfers, when the employer transfers materials that contain at least 0.1% beryllium by weight or are contaminated with beryllium for disposal, recycling, or reuse, the employer must label the materials in accordance with paragraph (m)(3) of this standard; (ii) Except for intra-plant transfers, materials designated for disposal that contain at least 0.1% beryllium by weight or are contaminated with beryllium must be cleaned to be as free as practicable of beryllium or placed in enclosures that prevent the release of beryllium-containing particulate or solutions under normal conditions of use, storage, or transport, such as bags or containers; and (iii) Except for intra-plant transfers, materials designated for recycling or reuse that contain at least 0.1% beryllium by weight or are contaminated with beryllium must be cleaned to be as free as practicable of beryllium or placed in enclosures that prevent the release of beryllium-containing particulate or solutions under normal conditions of use, storage, or transport, such as bags or containers.	This final rule revised (j)(3) by explicitly addressing transferring materials for reuse; reorganizing the previous two provisions into three to allow the agency to incorporate the new reuse requirements, while also setting out each distinct obligation clearly; replacing the phrase materials ''that contain beryllium in concentrations of 0.1 percent by weight or more'' with a shorter, easier to understand phrase: Materials ''that contain at least 0.1 percent beryllium by weight;'' clarifying that the rule's requirements for disposal, recycling, and reuse do not apply to intra-plant transfers; clarifying the enclosure requirements by providing more detail on what constitutes an appropriate enclosure; allowing for the cleaning of materials bound for disposal; and removing the undefined phrase ''surface beryllium contamination.'' In addition to the above actions, which were all adopted as proposed, in this final rule, OSHA revised paragraph (j)(3)(i) to explicitly incorporate the clarification that the rule's requirements for disposal, recycling, and reuse do not apply to intra-plant transfers.

TABLE V.1—CHANGES TO COLLECTION OF INFORMATION REQUIREMENTS IN THE FINAL RULE FOR GENERAL INDUSTRY—Continued

Information collection requirements in this final rule	Explanation of this final rule's changes to the information collection requirements
§ 1910.1024(k)(2)—Medical Surveillance. (2) Frequency ..... The employer must provide a medical examination: (i) Within 30 days after determining that: (A) An employee meets the criteria of paragraph (k)(1)(i)(A), unless the employee has received a medical examination, provided in accordance with this standard, within the last two years; or (B) An employee meets the criteria of paragraph (k)(1)(i)(B) of this standard. (ii) At least every two years thereafter for each employee who continues to meet the criteria of paragraph (k)(1)(i)(A), (B), or (D) of this standard. (iii) At the termination of employment for each employee who meets any of the criteria of paragraph (k)(1)(i) of this standard at the time the employee's employment terminates, unless an examination has been provided in accordance with this standard during the six months prior to the date of termination. Each employee who meets the criteria of paragraph (k)(1)(i)(C) of this standard and who has not received an examination since exposure to beryllium during the emergency must be provided an examination at the time the employee's employment terminates. (iv) For an employee who meets the criteria of paragraph (k)(1)(i)(C) of this standard: (A) If that employee has not received a medical examination within the previous two years pursuant to paragraph (k)(1)(i) of this standard, then within 30 days after the employee meets the criteria of paragraph (k)(1)(i)(C) of this standard; or (B) If that employee has received a medical examination within the previous two years pursuant to paragraph (k)(1)(i) of this standard, then at least one year but no more than two years after the employee meets the criteria of paragraph (k)(1)(i)(C) of this standard.	Paragraph (k)(2)(i)(B) of the 2017 standard previously required the employer to provide a medical examination within 30 days after determining that the employee shows signs or symptoms of CBD or other beryllium-related health effects or that the employee has been exposed to beryllium in an emergency. The 2018 NPRM would have added paragraph (k)(2)(iv) to require employers to offer an examination to employees exposed to beryllium in an emergency at least one year after but no more than two years after the employee is exposed to beryllium in an emergency. It also would have amended paragraph (k)(2)(i)(B) to focus only on the frequency of examinations for employees who show signs or symptoms of CBD or other beryllium-related health effects. This final rule's provisions differ from those in the proposal. Specifically, in this final rule, OSHA removed the requirement for a medical examination within 30 days of exposure in an emergency and added paragraph (k)(2)(iv). Final paragraph (k)(2)(iv)(A) requires the employer to offer a medical examination to an employee within 30 days after the employee was exposed to beryllium in an emergency, if the employee has not had an examination under paragraph (k)(1)(i) within the last two years, while final paragraph (k)(2)(iv)(B) requires the employer to offer a medical examination to an employee within one to two years after the employee was exposed to beryllium in an emergency, if the employee had an examination under paragraph (k)(1)(i) of the beryllium standard within the last two years. In addition, this final rule revised paragraph (k)(2)(iii) to require that each employee who is exposed in an emergency and has not received an examination since the emergency exposure must be provided an examination at the time employment is terminated. As proposed in the 2018 NPRM, this final rule also amended paragraph (k)(2)(i)(B) to focus only on the frequency of examinations for employees who show signs or symptoms of CBD or other beryllium-related health effects.

TABLE V.1—CHANGES TO COLLECTION OF INFORMATION REQUIREMENTS IN THE FINAL RULE FOR GENERAL INDUSTRY—Continued

Information collection requirements in this final rule	Explanation of this final rule's changes to the information collection requirements
§ 1910.1024(k)(7)—Medical Surveillance—Referral to the CBD Diagnostic Center ..... (7) *CBD diagnostic center.* (i) The employer must provide an evaluation at no cost to the employee at a CBD diagnostic center that is mutually agreed upon by the employer and the employee. The evaluation at the CBD diagnostic center must be scheduled within 30 days, and must occur within a reasonable time, of: (A) The employer's receipt of a physician's written medical opinion to the employer that recommends referral to a CBD diagnostic center; or (B) The employee presenting to the employer a physician's written medical report indicating that the employee has been confirmed positive or diagnosed with CBD, or recommending referral to a CBD diagnostic center. (ii) The employer must ensure that, as part of the evaluation, the employee is offered any tests deemed appropriate by the examining physician at the CBD diagnostic center, such as pulmonary function testing (as outlined by the American Thoracic Society criteria), bronchoalveolar lavage (BAL), and transbronchial biopsy. If any of the tests deemed appropriate by the examining physician are not available at the CBD diagnostic center, they may be performed at another location that is mutually agreed upon by the employer and the employee. (iii) The employer must ensure that the employee receives a written medical report from the CBD diagnostic center that contains all the information required in paragraph (k)(5)(i), (ii), (iv), and (v) of this standard and that the PLHCP explains the results of the examination to the employee within 30 days of the examination. (iv) The employer must obtain a written medical opinion from the CBD diagnostic center within 30 days of the medical examination. The written medical opinion must contain only the information in paragraph (k)(6)(i), as applicable, unless the employee provides written authorization to release additional information. If the employee provides written authorization, the written opinion must also contain the information from paragraphs (k)(6)(ii), (iv), and (v), if applicable. (v) The employer must ensure that each employee receives a copy of the written medical opinion from the CBD diagnostic center described in paragraph (k)(7) of this standard within 30 days of any medical examination performed for that employee. (vi) After an employee has received the initial clinical evaluation at a CBD diagnostic center described in paragraphs (k)(7)(i) and (ii) of this standard, the employee may choose to have any subsequent medical examinations for which the employee is eligible under paragraph (k) of this standard performed at a CBD diagnostic center mutually agreed upon by the employer and the employee, and the employer must provide such examinations at no cost to the employee.	The 2018 NPRM would have amended paragraph (k)(7) of the 2017 standard to require employers to provide, at no cost to the employee and within a reasonable time after the initial consultation with the CBD diagnostic center, any of the following tests if deemed appropriate by the examining physician at the CBD diagnostic center: Pulmonary function testing (as outlined by the American Thoracic Society criteria), bronchoalveolar lavage (BAL), and transbronchial biopsy. The proposal also specified the timing of the initial consultation. This final rule's provisions differ from those in the proposal. Specifically, OSHA revised paragraph (k)(7)(i) to require that the evaluation must be *scheduled* within 30 days, and must occur within a reasonable time, of the employer receiving one of the types of documentation listed in paragraph (k)(7)(i)(A) or (B). Previously, the general industry standard required employers to *provide* the examination within 30 days of the employer receiving one of the types of documentation listed in paragraph (k)(7)(i)(A) or (B). This final rule also added a provision, in paragraph (k)(7)(ii), which specifies that the employer must ensure that, as part of the evaluation, the employee is offered any tests deemed appropriate by the examining physician at the CBD diagnostic center, such as pulmonary function testing (as outlined by the American Thoracic Society criteria), bronchoalveolar lavage (BAL), and transbronchial biopsy. The new provision also states that if any of the tests deemed appropriate by the examining physician are not available at the CBD diagnostic center, they may be performed at another location that is mutually agreed upon by the employer and the employee.
§ 1910.1024(n)(1)(i), (ii), & (iii)—Recordkeeping—Air Monitoring Data ..... (i) The employer must make and maintain a record of all exposure measurements taken to assess airborne exposure as prescribed in paragraph (d) of this standard. (ii) This record must include at least the following information: (A) The date of measurement for each sample taken; (B) The task that is being monitored; (C) The sampling and analytical methods used and evidence of their accuracy; (D) The number, duration, and results of samples taken; (E) The type of personal protective clothing and equipment, including respirators, worn by monitored employees at the time of monitoring; and (F) The name and job classification of each employee represented by the monitoring, indicating which employees were actually monitored. (iii) The employer must ensure that exposure records are maintained and made available in accordance with the Records Access standard (29 CFR 1910.1020).	This final rule removed the requirement for collection and recording of Social Security numbers from this provision. This change was adopted as proposed.
§ 1910.1024(n)(3)(i), (ii), & (iii)—Recordkeeping—Medical Surveillance ..... (i) The employer must make and maintain a record for each employee covered by medical surveillance under paragraph (k) of this standard. (ii) The record must include the following information about the employee: (A) Name and job classification; (B) A copy of all licensed physicians' written medical opinions for each employee; and (C) A copy of the information provided to the PLHCP as required by paragraph (k)(4) of this standard. (iii) The employer must ensure that medical records are maintained and made available in accordance with the Records Access standard (29 CFR 1910.1020).	This final rule removed the requirement for collection and recording of Social Security numbers from this provision. This change was adopted as proposed.

TABLE V.1—CHANGES TO COLLECTION OF INFORMATION REQUIREMENTS IN THE FINAL RULE FOR GENERAL INDUSTRY—Continued

Information collection requirements in this final rule	Explanation of this final rule's changes to the information collection requirements
§ 1910.1024(n)(4)(i) & (ii)—Recordkeeping—Training ..... (4) *Training.* (i) At the completion of any training required by this standard, the employer must prepare a record that indicates the name and job classification of each employee trained, the date the training was completed, and the topic of the training. (ii) This record must be maintained for three years after the completion of training.	This final rule removed the requirement for collection and recording of Social Security numbers from this provision. This change was adopted as proposed.

VI. Federalism

OSHA reviewed this rule in accordance with the Executive Order on Federalism (Executive Order 13132, 64 FR 43255, August 10, 1999), which requires that federal agencies, to the extent possible, refrain from limiting state policy options, consult with states prior to taking any actions that would restrict state policy options, and take such actions only when clear constitutional and statutory authority exists and the problem is national in scope. Executive Order 13132 provides for preemption of state law only with the expressed consent of Congress. Any such preemption is to be limited to the extent possible.

Under Section 18 of the OSH Act, Congress expressly provides that states and U.S. territories may adopt, with federal approval, a plan for the development and enforcement of occupational safety and health standards. OSHA refers to such states and territories as ''State Plans'' (29 U.S.C. 667). Occupational safety and health standards developed by State Plans must be at least as effective in providing safe and healthful employment and places of employment as the federal standards. Subject to these requirements, State Plans are free to develop and enforce under state law their own requirements for safety and health standards.

OSHA previously concluded from its analysis for the 2017 final rule that promulgation of the beryllium standard complies with E.O. 13132 (82 FR at 2633). The amendments in this final rule do not change that conclusion. In states without OSHA-approved State Plans, Congress expressly provides for OSHA standards to preempt state occupational safety and health standards in areas addressed by the federal standards. In these states, this rule limits state policy options in the same manner as every standard promulgated by OSHA. In states with OSHA-approved State Plans, this rulemaking does not significantly limit state policy options.

VII. State Plans

When federal OSHA promulgates a new standard or more stringent amendment to an existing standard, the states and U.S. Territories with their own OSHA-approved occupational safety and health plans (State Plans) must promulgate a state standard adopting such new federal standard, or more stringent amendment to an existing federal standard, or an at least as effective equivalent thereof, within six months of promulgation of the new federal standard or more stringent amendment. The state may demonstrate that a standard change is not necessary because the state standard is already the same or at least as effective as the federal standard change. Because a state may include standards and standard provisions that are equally or more stringent than federal standards, it would generally be unnecessary for a state to revoke a standard when the comparable federal standard is revoked or made less stringent. To avoid delays in worker protection, the effective date of the state standard and any of its delayed provisions must be the date of state promulgation or the federal effective date, whichever is later. The Assistant Secretary may permit a longer time period if the state makes a timely demonstration that good cause exists for extending the time limitation (29 CFR 1953.5(a)).

Of the 28 states and territories with OSHA-approved State Plans, 22 cover public and private-sector employees: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming. The remaining six states and territories cover only state and local government employees: Connecticut, Illinois, Maine, New Jersey, New York, and the Virgin Islands.

As discussed in detail below in Section XI, Summary and Explanation of the Final Rule, the majority of the changes made by this final rule will clarify certain provisions and simplify or improve employer compliance. After considering all of the changes made by this final rule and the record as a whole, OSHA believes that this final rule enhances employee safety, in part by revising provisions that may be misinterpreted. Therefore, OSHA has determined that, within six months of the rule's promulgation date, State Plans must review their state standards and adopt amendments to those standards that are at least as effective as the amendments to the beryllium general industry standard finalized herein, as required by 29 CFR 1953.5(a), unless the State Plans demonstrate that such amendments are not necessary because their existing standards are already at least as effective at protecting workers as this final rule. This decision is also informed by a comment from Materion Brush, Inc. (Materion), in which Materion argued that OSHA should require states to adopt the proposed changes (Document ID 0038–A5, p. 2).[9] No other stakeholders opined on this issue.

VIII. Unfunded Mandates Reform Act

OSHA reviewed this final rule according to the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*) and Executive Order 13132 (64 FR 43255). As discussed above in Section IV, Final Economic Analysis and Regulatory Flexibility Act Certification (FEA), of this preamble, the agency determined that this final rule will not impose significant additional costs on any private- or public-sector entity. Further, OSHA previously concluded that the rule will not impose a federal mandate on the private sector in excess of $100 million (adjusted annually for inflation) in expenditures in any one year (82 FR at 2634). Accordingly, this final rule will not require significant additional

[9] OSHA notes that Materion also argued that the State Plans that have already adopted the original OSHA standard should be required to adopt the changes OSHA previously adopted in the 2018 direct final rule, as well as the changes that result from the current rulemaking (Document ID 0038–A5, p. 1). Whether OSHA should require State Plans to adopt the changes made in the 2018 direct final rule is out of the scope of this rulemaking and, thus, will not be considered here.

expenditures by either public or private employers.

As noted above under Section VII, State Plans, the agency's standards do not apply to state and local governments except in states that have elected voluntarily to adopt a State Plan approved by the agency. Consequently, this final rule does not meet the definition of a ''federal intergovernmental mandate'' (see Section 421(5) of the UMRA (2 U.S.C. 658(5))). Therefore, for the purposes of the UMRA, the agency certifies that this final rule will not mandate that state, local, or tribal governments adopt new, unfunded regulatory obligations of, or increase expenditures by the private sector by, more than $100 million in any year.

IX. Consultation and Coordination With Indian Tribal Governments

OSHA has reviewed this final rule in accordance with Executive Order 13175 (65 FR 67249) and determined that it does not have ''tribal implications'' as defined in that order. This final rule 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.

X. Environmental Impacts

OSHA has reviewed this final rule in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality NEPA regulations (40 CFR part 1500–1508), and the Department of Labor's NEPA procedures (29 CFR part 11). As a result of this review, OSHA has determined that this final rule will not have a significant impact on air, water, or soil quality; plant or animal life; the use of land; or aspects of the external environment.

XI. Summary and Explanation of the Final Rule

On December 11, 2018, OSHA published a Notice of Proposed Rulemaking (83 FR 63746) (2018 NPRM) proposing changes to a number of provisions in the general industry beryllium standard. Following publication of the 2018 NPRM, a variety of stakeholders, including representatives of industry, labor, medical groups, public health organizations, federal and state government agencies, academia, trade associations, and private citizens, submitted comments on OSHA's proposed changes. After reviewing and carefully considering these comments and the remainder of the record, OSHA has decided to adopt the majority of the changes proposed, as well as additional changes that were prompted by the comments received. These changes clarify certain provisions and simplify or improve compliance for the other provisions of the standard. OSHA believes that these changes will maintain safety and health protections for workers and will further enhance worker protections by ensuring that the standard is well understood and implemented according to the agency's intent.

The following discussion summarizes the comments received on the proposed changes to the general industry standard, lays out OSHA's responses to and final determinations regarding the issues in the comments, and explains each new or revised provision in this final rule including details on any modification made from the proposal. As discussed in detail below, the changes include the addition of one definition and modifications to five existing definitions in paragraph (b) and revisions to seven of the standard's other paragraphs, including paragraph (f), Methods of compliance; paragraph (h), Personal protective clothing and equipment; paragraph (i), Hygiene areas and practices; paragraph (j), Housekeeping; paragraph (k), Medical surveillance; paragraph (m), Communication of hazards; and paragraph (n), Recordkeeping. The final rule also replaces the 2017 standard's Appendix A with a new appendix designed to supplement the final standard's definition of *beryllium work area.*

Definitions.

Paragraph (b) of the beryllium standard for general industry provides definitions of key terms used in the standard. In this final rule, OSHA is changing or adding six terms in the definitions paragraph of the standard. The terms that OSHA is changing or adding are *beryllium sensitization, beryllium work area, CBD diagnostic center, chronic beryllium disease, confirmed positive,* and *dermal contact with beryllium.*

Beryllium sensitization.

OSHA is adding the following definition for *beryllium sensitization:* ''a response in the immune system of a specific individual who has been exposed to beryllium. There are no associated physical or clinical symptoms and no illness or disability with beryllium sensitization alone, but the response that occurs through beryllium sensitization can enable the immune system to recognize and react to beryllium. While not every beryllium-sensitized person will develop chronic beryllium disease (CBD), beryllium sensitization is essential for development of CBD.'' The agency is adding this definition to clarify other provisions in the standard, such as the definitions of *chronic beryllium disease (CBD)* and *confirmed positive,* as well as the provisions for medical surveillance in paragraph (k) and hazard communication in paragraph (m).

This definition of *beryllium sensitization* is identical to the definition proposed in the 2018 NPRM and is consistent with information provided in the 2017 final beryllium rule (82 FR 2470). In the preamble to the 2017 final rule, OSHA found that individuals sensitized through either the dermal or inhalation exposure pathways respond to beryllium through the formation of a beryllium-protein complex, which then binds to T-cells stimulating a beryllium-specific immune response (82 FR at 2494). The formation of the T-cell-beryllium-protein complex that results in beryllium sensitization rarely manifests in any outward symptoms (such as coughing or wheezing); most who are sensitized show no symptoms at all (see 82 FR at 2492, 2527). Once an individual has been sensitized, any subsequent beryllium exposures via inhalation can progress to serious lung disease through the formation of granulomas and fibrosis (see 82 FR at 2491–98). Since the pathogenesis of CBD involves a beryllium-specific, cell-mediated immune response, CBD cannot occur in the absence of sensitization (82 FR at 2492; see also NAS, 2008 (Document ID OSHA–H005C–2006–0870–1355)). Therefore, this definition's explanation that beryllium sensitization is essential for development of CBD is consistent with the agency's findings in the 2017 final rule.

Several commenters expressed support for OSHA's inclusion of a definition of *beryllium sensitization* in the beryllium general industry standard, including NJH (Document ID 0022, p. 2), the United Steelworkers (USW) (Document ID 0033, p. 1), Materion (Document ID 0038, p. 8), the U.S. Department of Defense (DOD) (Document ID 0029, p. 1), and Edison Electric Institute (EEI) (Document ID 0031, p. 2). According to the USW, the proposed definition is clear and accurate, and is necessary because the beryllium standard includes many provisions related to the recognition of and appropriate response to beryllium sensitization among beryllium-exposed workers (Document ID 0033, p. 1).

Materion similarly commented that inclusion of the proposed definition in the standard would improve workers' and employers' understanding of this term (Document ID 0038, p. 4).

While OSHA received no objections to including a definition of *beryllium sensitization* in the beryllium standard, several commenters suggested changes to the proposed definition. The National Supplemental Screening Program (NSSP) and NJH recommended that the definition of *beryllium sensitization* should include the following text, based on the ATS Statement on Beryllium: ''Beryllium sensitization is a response in the immune system of an individual who has been exposed to beryllium. A diagnosis of [beryllium sensitization] can be based on two abnormal blood BeLPTs, one abnormal and one borderline blood BeLPT, three borderline BeLPTs, or one abnormal bronchoalveolar lavage (BAL) BeLPT. Beryllium sensitization is essential for development of CBD'' (Document ID 0027 p. 1; 0022, p. 2; see also Document ID OSHA–H005C–2006–0870–0364, pp. 1, 44). Neither organization, however, explained why this definition of *beryllium sensitization* should be used instead of the definition OSHA proposed.

OSHA disagrees with this recommendation. The agency is providing a definition of *beryllium sensitization* to give stakeholders a general understanding of what beryllium sensitization is and its relationship to CBD. Information pertinent to medical identification of sensitization is provided in the definition of confirmed positive, which appears later in this section. OSHA has determined that the agency's definitions of *beryllium sensitization* and *confirmed positive* together provide the information suggested by NJH and the NSSP. The definition of *confirmed positive* explains how the results of BeLPT testing should be interpreted in the context of the standard's provisions that refer to that term, such as evaluation at a CBD diagnostic center and medical removal protection. The *confirmed positive* definition establishes that these benefits should be extended to workers who have a pattern of BeLPT results, obtained in a three-year period, consistent with the NJH and the NSSP's recommended definition of beryllium sensitization. The remainder of the information suggested by NJH and the NSSP, which pertains to the relationship of beryllium sensitization to beryllium exposure, the immune system, and the development of CBD, is included in the definition of *beryllium sensitization* that OSHA proposed and is including in this final standard. For these reasons, OSHA has decided not to adopt the language suggested by NJH and the NSSP.

The NSSP objected to the statement that no physical or clinical symptoms, illness, or disability are associated with beryllium sensitization alone, but did not explain the reason for their concern with this statement (Document ID 0027, p. 1). Materion supported the agency's inclusion of this information in the definition, stating that ''employees deserve to understand that beryllium sensitization does not involve symptoms . . .'' (Document ID 0038, p. 5). The USW also specifically supported the accuracy of this section of OSHA's proposed definition of *beryllium sensitization* (Document ID 0033, p. 1).

The agency has decided to retain this statement in the definition of *beryllium sensitization* because it is important that employers and employees understand the asymptomatic nature of beryllium sensitization and the need for specialized testing such as the BeLPT. The statement is consistent with OSHA's discussion of beryllium sensitization in the 2017 final rule (82 FR at 2492–99). As OSHA discussed in the 2017 final rule, sensitization through dermal contact has sometimes been associated with skin granulomas, contact dermatitis, and skin irritation, but these reactions are rare and those sensitized through dermal exposure to beryllium typically do not exhibit any outward signs or symptoms (see 82 FR at 2488, 2491–92, 2527). OSHA determined that while beryllium sensitization rarely leads to any outward signs or symptoms, beryllium sensitization is an adverse health effect because it is a change to the immune system that leads to risk of developing CBD (82 FR at 2498–99). The agency believes that the asymptomatic nature of beryllium sensitization, especially in the lung, should be conveyed to employers and employees to emphasize why specialized testing such as the BeLPT should be provided to workers who may have no symptoms of illness associated with beryllium exposure. For these reasons, OSHA is retaining the statement ''[t]here are no associated physical or clinical symptoms and no illness or disability with beryllium sensitization alone'' in the definition of *beryllium sensitization.*

The State of Washington Department of Labor and Industries, Division of Occupational Safety and Health (DOSH), commented that OSHA's proposed definition of *beryllium sensitization* places unnecessary emphasis on the role that beryllium sensitization plays in the development of CBD. According to DOSH, ''[t]his language may cause confusion with proper diagnosis of CBD and application of the rule requirements for workers who have developed CBD without a confirmed beryllium sensitization'' (Document ID 0023, p. 1). Other commenters, however, including NJH, the NSSP, and the USW, supported including the statement that beryllium sensitization is necessary for the development of CBD in OSHA's definition of beryllium sensitization (Document ID 0022, p. 2; 0027, p. 1; 0033, p. 1).

Following consideration of DOSH's comment, OSHA has determined that this information should remain in the definition of *beryllium sensitization* (as well as the definition of *chronic beryllium disease,* discussed later). OSHA believes that an understanding of the relationship between beryllium sensitization and CBD is key to workers' and employers' understanding of the beryllium standard. By including the role that sensitization plays in the development of CBD in the definition of *beryllium sensitization,* OSHA intends to make a number of things clear to workers and employers: That beryllium sensitization, although not itself a disease, is nevertheless an adverse health effect that presents a risk for developing CBD and thus should be prevented; the need to identify beryllium sensitization through regular medical screening; and why workers who are confirmed positive should be offered specialized medical evaluation and medical removal protection. OSHA notes that DOSH does not dispute the factual accuracy of OSHA's statement regarding the role beryllium sensitization plays in the development of CBD, which the agency established in the Health Effects section of the 2017 final rule (82 FR at 2495–96).

Nevertheless, OSHA agrees with DOSH that it is not always necessary to identify a worker as beryllium sensitized by the BeLPT as part of a diagnosis of CBD, and the agency acknowledges that some sensitized individuals may not be confirmed positive for beryllium sensitization by BeLPT testing. OSHA established in the Health Effects section of the preamble to the 2017 final rule that while BeLPT testing is helpful to identify workers at risk for CBD and to differentiate CBD from respiratory diseases with similar clinical presentation, CBD can be diagnosed in the absence of a confirmed positive BeLPT (see 82 FR at 2499–5002) (discussing a number of studies conducted prior to the development of the BeLPT). At least one study in the rulemaking record found that some

beryllium workers who would not have been confirmed positive by their BeLPT results were found to be sensitized via the BAL BeLPT and went on to develop CBD (Newman et al., 2001, Document ID OSHA–H005C–2006–0870–1354, p. 234). Other studies indicate that the BeLPT has a false-negative rate of approximately 25–28 percent (that is, approximately 25–28 percent of individuals who have a single normal BeLPT result are in fact sensitized) (Middleton et al., 2011, Document ID OSHA–H005C–2006–0870–0399, p. 2 (25 percent); Stange et al., 2004, Document ID OSHA–H005C–2006–0870–1402, p. 457 (27.7 percent)). Because the BeLPT itself may have a false-negative result and because other means exist to diagnose CBD apart from the BeLPT, examining physicians should have the latitude to diagnose CBD in the absence of a ''confirmed positive'' pattern of BeLPT results. Moreover, as discussed below, the determination that an employee is ''confirmed positive'' under the beryllium standard acts only as a trigger for medical monitoring and surveillance and OSHA does not intend the phrase ''confirmed positive'' to be interchangeable with ''beryllium sensitized.''

The standard provides a mechanism for an employee to be referred to a CBD diagnostic center and diagnosed with CBD, even in the absence of a confirmed positive blood BeLPT result. Under paragraph (k)(5)(iii), the licensed physician can recommend referral to a CBD diagnostic center if he or she deems it appropriate. As OSHA explained in the preamble to the 2017 final rule, the licensed physician could recommend an evaluation at a CBD diagnostic center based on questionable BeLPT findings (82 FR at 2714). For example, in a scenario where an employee has repeating borderline or abnormal results but does not meet the definition for confirmed positive, referral to a CBD diagnostic center may be appropriate.

Furthermore, the standard does not specify how CBD is diagnosed and gives the licensed physician at the CBD diagnostic center discretion for making that diagnosis, including by means other than blood BeLPT results. The diagnostic criteria for CBD include (1) history of beryllium exposure; (2) histopathological evidence of non-caseating granulomas or mononuclear cell infiltrates in the absence of infection; and (3) positive blood or BAL BeLPT (82 FR at 2500; see also Newman et al., 1989 (Document ID OSHA–H005C–2006–0870–0196, p. 1480)). The availability of transbronchial lung biopsy facilitates the evaluation of the second criterion, by making histopathological confirmation possible in almost all cases (82 FR at 2500). The ATS has noted that the BAL BeLPT can be useful in diagnosing CBD in individuals who have normal blood BeLPT results and considers one positive BAL BeLPT sufficient for the diagnosis of beryllium sensitization (Document ID OSHA–H005C–2006–0870–0364, pp. 44–45). OSHA expects that the licensed physician might apply such criteria in the diagnosis of CBD, without relying on a confirmed positive finding based on blood BeLPT results.

In summary, OSHA believes that emphasizing the role that beryllium sensitization plays in the development of CBD provides employers and employees with important context for understanding the beryllium standard. At the same time, the agency acknowledges that employees may be diagnosed with CBD in the absence of a confirmed positive BeLPT, and the beryllium standard allows for such a diagnosis. Thus, following consideration of the record of comments on OSHA's proposed definition of *beryllium sensitization,* the agency is finalizing the definition as proposed in the 2018 NPRM. The addition of this definition for *beryllium sensitization* does not change employer obligations under paragraphs (k) and (m) and, therefore, OSHA expects that the new definition will maintain safety and health protections for workers.

Beryllium work area.

Paragraph (b) of the final rule defines *beryllium work area* as any work area where materials that contain at least 0.1 percent beryllium by weight are processed either: (1) During any of the operations listed in Appendix A of the standard; or (2) where employees are, or can reasonably be expected to be, exposed to airborne beryllium at or above the action level. The presence of a beryllium work area triggers a number of requirements in the standard. These include the requirements under paragraphs (e)(1)(i) and (2)(i) to establish, maintain, and demarcate the boundaries of each beryllium work area, as well as requirements under paragraphs (f)(1)(i)(D) and (F), written exposure control plan requirements; paragraph (f)(2)(ii), required exposure controls; paragraphs (i)(1) and (2), general hygiene practices and change rooms requirements; paragraphs (j)(1)(i) and (2), housekeeping requirements; and paragraph (m)(4)(ii)(B), employee training. The establishment of beryllium work areas serves to ensure that employees and other persons are aware of the potential presence of airborne beryllium; to control access to these areas; and in conjunction with other provisions such as the written control plan, hygiene, and housekeeping requirements, to minimize the transfer of beryllium to other areas of the facility and reduce the potential for exposure to other employees.

The term *beryllium work area* (as revised in the 2018 direct final rule) was defined as any work area (1) containing a process or operation that can release beryllium and that involves material that contains at least 0.1 percent beryllium by weight; and, (2) where employees are, or can reasonably be expected to be, exposed to airborne beryllium at any level or where there is the potential for dermal contact with beryllium. That definition was developed in response to stakeholder comments on the 2015 NPRM, which had proposed to define a *beryllium work area* as any work area where there is potential for exposure to airborne beryllium at any level, and which did not include dermal contact as a trigger for establishment of a beryllium work area. Some stakeholders argued that the definition proposed in the 2015 NPRM was overly broad and could be interpreted as applying to most or all areas of a worksite, regardless of the work processes or operations occurring in those areas. Commenters also expressed concern that the definition was vague and should be triggered on a measurable threshold of exposure. NIOSH commented that the proposed definition's focus on airborne beryllium did not account for the potential contribution of dermal exposures to total exposure (82 FR at 2659).

In response to these comments, OSHA modified the definition in the 2017 final rule to require the presence of a beryllium-releasing process. The agency explained in the preamble that triggering the requirement of creating a beryllium work area on a specific threshold level of exposure would be insufficiently protective of workers, but also explained that the agency did not intend for a beryllium work area to be established in areas where work processes or operations that release beryllium do not occur, such as where employees handle articles containing beryllium (82 FR at 2659–60). Rather, the purpose of establishing beryllium work areas is to identify and demarcate areas within a facility where processes or operations release beryllium so that necessary control measures can be implemented, such as those designed to prevent the migration of beryllium to other areas where beryllium is not processed or released. OSHA clarified this intent by defining a *beryllium work*

area as an area that contains processes or operations that release beryllium to which workers could be exposed. Additionally, OSHA accounted for NIOSH's concern by including the potential for dermal contact with beryllium in the definition (see 82 FR at 2658–60).

In the preamble to the 2017 final rule, however, OSHA disagreed with commenters who claimed that the proposed definition of *beryllium work area* was impermissibly vague. The agency explained that, by limiting the trigger for beryllium work areas to exposures generated from a beryllium-releasing process or operation within the area, the definition made clear that the requirements were not triggered solely on the fact that an employee may be handling solid material containing beryllium. Additionally, any employer who had doubts about whether a process was releasing beryllium or created the potential for dermal contact with beryllium could use air sampling or wipe sampling to determine where the boundary of a beryllium work area should be established. OSHA reasoned that, rather than rendering the provision vague, defining a beryllium work area in a performance-based manner left employers flexibility in complying with the standard (82 FR at 2659).

Nevertheless, following publication of the 2017 standard, OSHA continued to hear from stakeholders that the definition of *beryllium work area* remained a source of substantial uncertainty and confusion. Some stakeholders expressed concern that defining a *beryllium work area* to include any area where unspecified processes can reasonably be expected to generate any level of airborne beryllium, or where there is a process or operation that can release beryllium or the potential for dermal contact with beryllium, could lead to the designation of entire facilities as beryllium work areas because minute quantities of beryllium can sometimes be detected in areas of a facility far distant from the work processes that create beryllium exposures. Stakeholders requested that OSHA provide a list of operations that are known to release airborne beryllium, which would allow employers to more accurately identify where beryllium work areas must be established and demarcated at their workplaces. As described in more detail below, stakeholders also requested that ''dermal contact'' be removed from the definition of *beryllium work area.*

In response to this feedback, OSHA proposed in this rulemaking to modify the definition of *beryllium work area* to provide clarity for employers on where and when to establish a beryllium work area. First, OSHA proposed a new appendix to the standard (Appendix A), containing Table A.1, which includes a list of operations that are commonly performed when processing beryllium materials and are known to generate airborne beryllium. OSHA proposed to revise the definition of *beryllium work area* so that any work area where an operation that is listed in proposed Appendix A occurs, and involves materials containing at least 0.1 percent beryllium by weight, is a beryllium work area. For work areas where no operations listed in proposed Appendix A occur, the proposed definition would require a beryllium work area wherever materials containing at least 0.1 percent beryllium by weight are processed and where employees are, or can be reasonably expected to be, exposed to airborne beryllium at or above the action level. The list of operations in Table A.1 was compiled based on the experience of Materion, the primary beryllium manufacturer in the United States, and the USW, the primary union representing employees with beryllium exposure.[10] As noted in the preamble to the 2018 NPRM, OSHA intends the list to cover all operations and processes that have the potential for exposure to airborne beryllium (83 FR at 63761).

Second, OSHA proposed to remove the reference to dermal contact from the definition of the term beryllium work area. OSHA preliminarily determined that this change would make it less likely that the definition could be misinterpreted as extending to areas of a facility where work processes or operations that release beryllium do not occur or even to entire facilities (83 FR at 63749). Further, the agency explained that it was unaware of beryllium-releasing processes or operations that have a potential for dermal contact that are not included in the proposed Appendix A or do not generate airborne exposures at or above the action level (83 FR at 63749). Therefore, OSHA preliminarily determined that the proposed change would be as protective as the previous definition, while more clearly avoiding the erroneous perception that the standard would require employers to treat entire facilities as beryllium work areas.

Comments submitted in response to the NPRM showed general support from employers, unions, and public health experts for OSHA's proposed approach and for providing better clarity with respect to beryllium work areas (Document ID 0017; 0022, pp. 6–7; 0029, p. 1; 0033, pp. 1–4; 0038, pp. 8–9). For example, the USW agreed with OSHA that the revisions proposed in the NPRM would make the definition more precise and help to ensure that employers can appropriately comply with the standard. The USW stated that the proposed definition ''provides employers with a clearer means of understanding when and where demarcation is required'' for beryllium work areas (Document ID 0033, p. 2). Materion likewise indicated that this new approach ''greatly improves and simplifies an understanding of where beryllium work areas should be in a facility, allowing employers and employees to know and understand how to comply with the requirement to establish these protective work areas'' (Document ID 0038, p. 9).

While there was general support for this proposed approach to beryllium work areas, several commenters expressed concerns about various aspects of the new definition and new Appendix A. For example, DOSH agreed that the addition of a new Appendix A would provide clarity to the beryllium work area requirements but expressed concern that removal of the dermal contact trigger would reduce worker protections. DOSH suggested the use of a defined lower limit for beryllium contamination on surfaces that would address this concern while maintaining the protection for workers (Document ID 0023, pp. 1–2).

OSHA does not agree that removing the reference to dermal contact from the definition of the term *beryllium work area* reduces protections. As noted above and explained in both the preambles to the 2017 final rule and the 2018 NPRM, OSHA's intent was to capture those areas of a facility where beryllium-generating processes or operations are located; OSHA never intended for dermal contact alone to trigger the standard's beryllium work area requirements (82 FR at 2659; 83 FR at 63748). Contrary to DOSH's assertion, the requirement to establish a beryllium work area was dependent on the presence of a process or operation that can release beryllium and that involves material that contains at least 0.1 percent beryllium by weight in the area in question; exposure alone, whether airborne or dermal, was never a trigger for the beryllium work area requirements.

Moreover, again as noted above, OSHA explained in the 2018 NPRM that it did not know of any beryllium-releasing processes or operations with

[10] Table A.1 is divided into three categories: (1) Beryllium Metal Alloy Operations (generally <10% beryllium by weight); (2) Beryllium Composite Operations (generally >10% beryllium by weight) and Beryllium Metal Operations; and (3) Beryllium Oxide Operations.

the potential for dermal contact that are not included in the proposed Appendix A or that do not generate airborne exposures at or above the action level. Put more simply, OSHA was unaware of any situation where an employer would be required to establish a beryllium work area under the previous definition but would not be required to do so under the proposed definition. However, in the interest of caution, OSHA asked stakeholders specifically whether there are any operations or processes that trigger beryllium work areas under the previous definition that would not be covered under the proposed definition (83 FR at 63749). Commenters did not point to any such processes. On the contrary, the only stakeholder to squarely address this issue, Materion, noted that it too was ''unaware of work areas containing beryllium-releasing processes or operations that have a potential for dermal contact that are not included in the proposed Appendix A or generate airborne exposures at or above the action level'' (Document ID 0038 p. 13).

Furthermore, another stakeholder, the USW commented that it supported OSHA's proposed removal of the reference to dermal contact from the definition of the term *beryllium work area* (Document ID 0033, p. 3). The USW stated that it does not have reservations about the proposed change and explained its belief ''that dermal exposure is properly addressed elsewhere in the standard'' (Document ID 0033, pp. 1–3). According to the USW, ''[a]lthough dermal exposure to beryllium is important and must be properly addressed, removal of dermal exposure from this definition will reduce the confounding factors that might result in unnecessarily extending beryllium work areas beyond needed portions of a workplace'' (Document ID 0033, p. 3).

In addition, DOSH did not explain why it believes the change would reduce worker protections. Given that DOSH did not point to any particular loss of worker protection and the lack of evidence of any differences between the coverage of the two definitions, OSHA has decided to adopt the proposed definition, which commenters have indicated reduces the confusion caused by the previous definition. OSHA expects the revised definition to provide clarity on the proper boundaries of a beryllium work area. Employers are required by paragraph (j)(1), in conjunction with paragraph (f)(1), to minimize the migration of beryllium from beryllium work areas, and clearly defining the beryllium work area ensures employees working outside of these areas receive the protective benefits of these requirements. If a beryllium work area is defined overly broadly, then more employees may inadvertently be exposed to beryllium within the beryllium work area and would not receive some of these benefits. Moreover, as stated in the 2018 NPRM, PPE requirements to protect against dermal exposure to beryllium do not depend on the existence of a beryllium work area. The standard requires employers to provide and ensure the use of appropriate PPE whenever there is a reasonable expectation of dermal contact with beryllium, regardless of whether or not the area is a beryllium work area (see 83 FR at 63749).

OSHA also does not agree with DOSH that a lower limit for beryllium contamination on surfaces is necessary as a trigger for establishing a beryllium work area. In the 2017 final rule, OSHA chose not to set quantitative limits for surface contamination because the best available scientific evidence on adverse health effects from dermal contact with beryllium made it difficult to identify an appropriate limit for surface contamination (82 FR at 2688). This remains the case today. OSHA discusses the limitations of this data more fully below in the Summary and Explanation of the definition of dermal contact with beryllium.

Two commenters objected to the exemption for materials that contain less than 0.1 percent beryllium from the definition of beryllium work area (Document ID 0022, p. 7; 0027, p. 2). However, OSHA incorporated this change in the 2018 direct final rule. At the time, OSHA explained that it was never the agency's intent that the requirements related to beryllium work areas apply to these materials (83 FR 19936, 19938 (May 7, 2018)). OSHA did not receive any adverse comments on the direct final rule and therefore finalized the change. The 2018 NPRM did not propose to amend this portion of the definition and therefore comments related to the 0.1 percent limitation are not within the scope of this rulemaking.

OSHA also received comments on the new Appendix A. NJH expressed concerns that the proposed list of operations in Appendix A was geared toward manufacturing and that it ''may restrict employers' interpretations of a beryllium work area and prevent employees from the protections afforded by the beryllium standard. Employers may only consider these featured tasks as those that dictate a beryllium work area, when other tasks may be considered as such'' (Document ID 0022, pp. 6–7). OSHA believes NJH's concern is misplaced. First, OSHA requested comment on whether there were additional operations that should be included on the list of operations in Appendix A, and no suggestions for additional operations were put forth by commenters. More importantly, the final standard requires that a beryllium work area be established if exposures can reasonably be expected to exceed the action level where materials that contain at least 0.1 percent beryllium by weight are processed, regardless of whether the operation is listed in Appendix A. As the USW noted, this requirement ''provides a backstop for any unforeseen operation which can expose employees above the action level'' (Document ID 0033, p. 2). Thus, employees who may be exposed above the action level during a process not listed in Appendix A will still receive the protections afforded by the beryllium work area requirements.

DOD, while generally supportive of the proposed definition of *beryllium work area,* expressed some concerns about Appendix A (Document ID 0029, p. 1). First, DOD suggested, without explanation, that OSHA remove the word ''generally'' from the description of the table in Appendix A, which describes beryllium metal alloy operations as being ''generally < 10% beryllium by weight'' and beryllium composite operations as being ''generally ≤ 10% beryllium by weight.'' OSHA disagrees with this suggestion. The table in Appendix A reflects materials that are on the market today. However, the inclusion of the word ''generally'' accounts for the possibility of beryllium metal alloy operations and beryllium composite operations involving different materials. Thus, if alloys are developed with greater than 10 percent beryllium or composites less than 10 percent beryllium, these materials will be covered under Table A.1. Because OSHA does not intend to limit Table A.1 to processes involving only those materials on the market today, the agency is retaining the word ''generally'' in the description of the tables in Appendix A.[11]

[11] The agency notes that DOD's comment suggests there might be some confusion as to whether beryllium alloys and beryllium composites are analogous. In fact, these materials have different structures and should be treated differently from a control strategy point of view. A metal alloy is a metal which is a homogeneous mixture of two or more metals or of a metal and another element to provide unique characteristics or properties (see *https://www.thefreedictionary.com/Metal+alloy*). A ''beryllium composite,'' on the other hand, is a metal matrix composite or (MMC) which typically contain at least two distinct constituent parts (see *https://www.azom.com/article.aspx?ArticleID=9843*).

DOD, along with DOSH, also questioned the deletion of the Appendix A published with the 2017 final beryllium rule. That old appendix provided non-mandatory general control strategies for common operations. These commenters thought that the old appendix was useful and should be retained in the standard (Document ID 0029, p. 1; 0023, p. 3). OSHA agrees that the old appendix contained useful information, but expects that in time it would have become either obsolete or incomplete. Instead, OSHA plans to provide this information about general control strategies in guidance materials tailored to reach the targeted audience. This will make it easier to update as new technologies or beryllium processes become available.

In addition, under paragraph (f)(2), Engineering and work practices, employers are obligated to use engineering controls in beryllium work areas. OSHA requires employers to use at least one type of control that is listed in paragraph (f)(2)(ii) (substitution, isolation, local exhaust ventilation, or process controls) unless controls are infeasible or exposures are demonstrated to be below the action level. These general controls are the same types of controls that were listed in Appendix A and are required regardless of whether that appendix is retained. For these reasons, this final standard does not retain the old Appendix A.

Materion fully supported the proposed changes to the *beryllium work area* definition and the proposed Appendix A. However, it noted a typographical error in Appendix A for ''High Speed Machining (≤ 10,000 rpm),'' which should be (≤ 10,000 rpm) (Document ID 0038, p. 10). OSHA agrees that the entry in the NPRM's Appendix A is incorrect and made the appropriate correction in this final rule.

After careful consideration of the record, OSHA has determined that the revised definition of *beryllium work area* will improve compliance with the standard by providing greater clarity to employers regarding when and where beryllium work areas should be established in the workplace. The agency further finds that properly identifying beryllium work areas will reduce potential exposure for workers outside of these areas through the various provisions triggered by beryllium work areas. In sum, OSHA has determined that the revision to the definition of *beryllium work area* will ensure that the standard's requirements related to beryllium work areas are workable and properly understood. Therefore, OSHA has decided to finalize the definition of *beryllium work area* and the corresponding update to Appendix A as proposed, with the exception of correcting the typographical error in Appendix A noted by Materion.

CBD diagnostic center.

OSHA is amending the 2017 final rule's definition of *CBD diagnostic center* to clarify certain requirements used to qualify an existing medical facility as a CBD diagnostic center. The clarification does not change the requirement for the employer to offer a follow-up examination at a CBD diagnostic center to employees meeting the criteria set forth in paragraph (k). OSHA is defining *CBD diagnostic center* to mean a medical diagnostic center that has a pulmonologist or pulmonary specialist on staff and on-site facilities to perform a clinical evaluation for the presence of CBD. The revised definition also states that a CBD diagnostic center must have the capacity to perform pulmonary function testing (as outlined by the American Thoracic Society criteria), bronchoalveolar lavage (BAL), and transbronchial biopsy. In the revised definition, the CBD diagnostic center must also have the capacity to transfer BAL samples to a laboratory for appropriate diagnostic testing within 24 hours and the pulmonologist or pulmonary specialist must be able to interpret the biopsy pathology and the BAL diagnostic test results. This definition is identical to the definition of *CBD diagnostic center* that OSHA proposed in the 2018 NPRM.

The revised definition of *CBD diagnostic center* differs from the former definition in a number of ways. First, whereas the 2017 final rule's definition specified only that a CBD diagnostic center must have a pulmonary specialist, OSHA is adding the term ''pulmonologist'' to clarify that either type of specialist is qualified to perform a clinical evaluation for the presence of CBD. Additionally, the 2017 definition required that a CBD diagnostic center have an on-site pulmonary specialist. The revised definition states that the CBD diagnostic center must simply have a pulmonologist or pulmonary specialist on staff. This clarifies OSHA's intent that a specialist must be available to the CBD diagnostic center but need not necessarily be on site at all times.

In their comments on the 2018 NPRM, two commenters, NJH and the ATS, recommended that a pulmonologist, occupational medicine specialist, or physician with expertise in beryllium disease should conduct the clinical evaluation for CBD and that a pulmonologist should be on staff or available to perform the bronchoscopy (Document ID 0022, p. 2; 0021, p. 2). According to NJH, clinics that regularly evaluate patients for CBD have physicians with experience in occupational health conduct the clinical evaluation for CBD, in conjunction with a pulmonologist who performs a bronchoscopy (Document ID 0022, pp. 2–3).

OSHA notes that, although the agency is requiring facilities to have a pulmonologist or pulmonary specialist on staff who is able to interpret the biopsy pathology and the BAL diagnostic test results, OSHA does not intend that all aspects of clinical evaluation for CBD must be performed by a pulmonologist or pulmonary specialist. In the preamble to the 2017 final rule, OSHA explained that the agency was defining a *CBD diagnostic center* as a facility with a pulmonary specialist ''on-site'' specifically to indicate that the specialist need not personally perform the BeLPT testing (82 FR at 2645). Moreover, paragraph (k)(7), which sets out the substantive requirements for the evaluation at the CBD diagnostic center, refers to recommendations of the ''examining physician,'' not necessarily the pulmonologist or pulmonary specialist.

Paragraph (b), in turn, defines *physician or other licensed health care professional (PLHCP)* as an individual licensed to provide some or all of the services required by paragraph (k). As such, some parts of the evaluation, such as lung function tests, might be performed by a certified medical professional other than a pulmonologist or pulmonary specialist. The arrangement that NJH describes as typical for clinics treating CBD patients, in which physicians with experience in occupational health conduct the clinical evaluation for CBD in conjunction with a pulmonologist who performs a bronchoscopy, is consistent with OSHA's intent for the definition of *CBD diagnostic center* and other provisions of the standard related to CBD diagnosis. Therefore, OSHA has determined that it is not necessary to revise the definition of *CBD diagnostic center* to require that the clinical evaluation for CBD be conducted by a pulmonologist, occupational medicine specialist, or physician with expertise in beryllium disease.

An additional change to the definition of *CBD diagnostic center* clarifies that the diagnostic center must have the capacity to perform pulmonary function testing (according to American Thoracic Society criteria), bronchoalveolar lavage (BAL), and tranbronchial biopsy. OSHA determined that the former definition—which stated that the evaluation at the

diagnostic center ''must include'' these tests—could have been misinterpreted to mean that the examining physician was required to perform each of these tests during every clinical evaluation at a CBD diagnostic center. The agency's intent is not to dictate which tests an evaluation at a CBD diagnostic center should include, but to ensure that any CBD diagnostic center has the capacity to perform any of these tests, which are commonly needed to diagnose CBD. OSHA expects that these are the tests that would most commonly be requested for a CBD evaluation. Therefore, the agency is revising the definition to clarify that the CBD diagnostic center must simply have the ability to perform each of these tests when deemed appropriate. These changes clarify the definition of *CBD diagnostic center,* and OSHA expects they will maintain safety and health protections for workers.

Materion submitted comments supporting OSHA's intent to specify the required capacities of a CBD diagnostic center, rather than the contents of a CBD evaluation, in the definition of *CBD diagnostic center* (Document ID 0038, pp. 16–17). NJH expressed concern that this change to the definition may indicate that the clinical evaluation for CBD need not include certain aspects of a CBD evaluation, which NJH, the Association of Occupational and Environmental Clinics (AOEC), and the ATS recommend should typically include full pulmonary function testing (lung volumes, spirometry, and diffusion capacity for carbon monoxide), chest imaging, and cardiopulmonary exercise testing, and may also include bronchoscopy in some cases (Document ID 0022, p. 3; 0028, p. 2; 0021, pp. 1–2). Similarly, the ATS commented that not requiring certain diagnostic tests ''could reduce the potential to diagnose CBD and determine disease severity'' (Document ID 0021, p. 3). NJH recommended that OSHA require the ATS recommendations for diagnostic evaluation, which the NJH stated include the BeLPT; pulmonary function testing and chest imaging; and in some cases bronchoscopy (Document ID 0022, p. 3).

As explained below in the Summary and Explanation of paragraph (k)(7), that provision—which establishes the substantive requirements for the evaluation at the CBD diagnostic center—makes clear that the employer must offer any tests that the examining physician at the CBD diagnostic center deems appropriate. The definition of *CBD diagnostic center* in paragraph (b) does not alter this requirement. In light of paragraph (k), the revised definition of *CBD diagnostic center* cannot reasonably be read to limit the types of tests available to the employee (see the Summary and Explanation for paragraph (k)(7) for a full discussion of this topic). Thus, after considering these comments, OSHA has decided to retain the proposed change to the definition of *CBD diagnostic center.*

Chronic beryllium disease (CBD).

OSHA is also amending the definition of *chronic beryllium disease.* For the purposes of this standard, the agency is using the term *chronic beryllium disease* to mean a chronic granulomatous lung disease caused by inhalation of airborne beryllium by an individual who is beryllium sensitized. OSHA is finalizing the definition as proposed. It includes several changes to the 2017 final rule's definition of *chronic beryllium disease,* which was ''a chronic lung disease associated with exposure to airborne beryllium'' (82 FR at 2645–46). The revisions serve to differentiate CBD from other respiratory diseases associated with beryllium exposure (*e.g.,* lung cancer) and to make clear that beryllium sensitization and the presence of beryllium in the lung are essential in the development of CBD (see 82 FR at 2492).

First, OSHA is adding the term ''granulomatous'' to the definition. A granulomatous lung formation is a focal collection of inflammatory cells (*e.g.,* T-cells) creating a nodule in the lung (see Ohshimo et al., 2017, Document ID OSHA–H005C–2006–0870–2171, p. 2). The formation of the type of lung granuloma specific to a beryllium immune response can occur only in those with CBD (82 FR at 2492–2502). Next, OSHA is removing the phrase ''associated with airborne exposure to beryllium'' and replacing it with ''caused by inhalation of airborne beryllium.'' This change is more consistent with the findings in the 2017 final rule that beryllium is the causative agent for CBD and that CBD occurs only after inhalation of beryllium (82 FR at 2513). Finally, OSHA is clarifying that CBD is caused by inhalation of airborne beryllium ''by an individual who is beryllium sensitized.'' Along with the revised definition of *beryllium sensitization* discussed above, this revision emphasizes to employers and employees the role that beryllium sensitization plays in the development of CBD.

NJH, the USW, and Materion agreed with OSHA that the 2017 final standard's definition of *chronic beryllium disease* should be clarified. Materion supported the changes OSHA proposed, which it characterized as a necessary clarification to ensure the definition provided is specific to chronic beryllium disease (Document ID 0038, p. 17). The USW similarly supported the proposed definition, stating that it clarifies the previous definition which ''could be read to apply to any chronic lung disease caused by beryllium, including lung cancer'' (Document ID 0033, p. 5). These comments reinforce OSHA's determination that adding the term ''granulomatous'' to the definition will better distinguish CBD from other occupationally associated chronic pulmonary diseases. As OSHA explained in the preamble to the 2017 final rule, the formation of the type of lung granuloma specific to a beryllium immune response can occur only in those with CBD (82 FR at 2492–2502).

Several commenters expressed concern that the proposed definition of *chronic beryllium disease* does not provide sufficient information to guide diagnosis of CBD, and specifically that OSHA's emphasis on the role of sensitization in the development of CBD may confuse diagnostic efforts. The ATS noted that demonstrating beryllium sensitization may be challenging in certain settings and recommended that OSHA's definition of *chronic beryllium disease* use the diagnostic criteria for CBD outlined in a 2014 ATS document on diagnosis and management of beryllium sensitivity and CBD (''the ATS Statement''). These diagnostic criteria include confirmation of an immune response to beryllium and granulomatous lung inflammation using lung biopsy and emphasize the various approaches which may be used ''[d]epending on the clinical setting, feasibility of certain diagnostic tests, and degree of diagnostic certainty needed'' (Document ID 0021, p. 5). DOSH similarly emphasized that individuals may be diagnosed with CBD without a confirmed positive BeLPT result and advocated that the definition of *chronic beryllium disease* ''ensure employers and medical providers are given a clear expectation of how beryllium conditions are properly identified'' (Document ID 0023, p. 2).

OSHA notes that the standard's definition of *chronic beryllium disease* is not intended to provide criteria for the diagnosis of CBD. The agency's intent is to provide readers who may have little or no familiarity with CBD with a general understanding of the term, rather than to provide diagnostic criteria for healthcare professionals in addressing CBD.

Due to differences in individual cases and circumstances, medical specialists may need to apply somewhat different

testing regimens and/or diagnostic criteria to different individuals they evaluate for CBD. Furthermore, the diagnostic tools and criteria available to medical specialists may change over time. As discussed in the Summary and Explanation for paragraph (k)(7), OSHA believes that the physician at the CBD diagnostic center should have the latitude to use any tests he or she deems appropriate for the purpose of diagnosing or otherwise evaluating CBD in a patient, and has revised paragraph (k)(7) to make this clear. Therefore, OSHA has determined that it is neither necessary nor appropriate to specify diagnostic criteria in the beryllium standard's definition of *chronic beryllium disease.* Instead, OSHA has decided to retain a definition that provides the reader with a general understanding of the term.

NJH suggested that the agency define *chronic beryllium disease* as a disease ''characterized by evidence of granulomatous lung inflammation in an individual who is sensitized to beryllium.'' According to NJH, this definition would allow for diagnosis based on different combinations of clinical evaluation results as detailed the ATS Statement (Document ID 0022, p. 3). OSHA believes that the definition the agency proposed—a chronic granulomatous lung disease caused by inhalation of airborne beryllium by an individual who is beryllium sensitized—conveys the substance of NJH's recommended definition while also emphasizing that CBD results from the inhalation of airborne beryllium. OSHA has therefore decided not to adopt the definition NJH suggested.

The ATS expressed concern that OSHA's proposed changes to the definition of *chronic beryllium disease* could create confusion in the diagnosis of CBD because it may be challenging in certain settings to identify sensitization and granulomatous lung disease based on lung pathology (Document ID 0021, p. 5). DOSH similarly commented that the proposed definition may be misleading because, although those with CBD have sensitization to beryllium, the current testing for sensitization has a high false-negative rate and individuals may be diagnosed with CBD without first being confirmed positive for beryllium sensitization (Document ID 0023, p. 2).

Although OSHA agrees that employees may be diagnosed with CBD without confirmed positive BeLPT results, the agency does not agree with these commenters that references to sensitization should be excluded from the definition of *chronic beryllium disease.* OSHA first notes that neither DOSH nor the ATS contend that OSHA's definition is inaccurate. Furthermore, as OSHA explained previously in its discussion of the *beryllium sensitization* definition, the agency believes that a correct understanding of the relationship between beryllium sensitization and CBD is key to workers' and employers' understanding of many provisions of the beryllium standard. By stating the role that sensitization plays in the development of CBD in the standard's definition of *chronic beryllium disease,* OSHA intends to convey clearly to the regulated community why protecting workers from becoming beryllium sensitized is key to the prevention of CBD and why workers who are confirmed positive for beryllium sensitization should be offered both a clinical evaluation for CBD and medical removal protection.

OSHA acknowledges that it is not always necessary to identify a worker as confirmed positive for beryllium sensitization using the BeLPT as part of a diagnosis of CBD and that the BeLPT can yield false-negative results in some individuals. For this reason, an examining physician should have the latitude to diagnose CBD even in the absence of a ''confirmed positive'' pattern of BeLPT results. As explained in the Summary and Explanation of paragraph (k)(7) of the 2017 final rule, that provision gives the examining physician this latitude (82 FR 2704, 2709). Because the substantive provisions of the standard leave the examining physician discretion in diagnosing CBD, OSHA does not agree that acknowledging the role of beryllium sensitization in the development of CBD will result in diagnostic confusion.

The NSSP recommended the following addition to OSHA's proposed definition of *chronic beryllium disease:* ''The presence of interstitial mononuclear cell (T cell) infiltrates (lymphocytosis) is characteristic of chronic beryllium disease'' (Document ID 0027, pp. 3–4). The NSSP argued that the presence of these infiltrates on lung biopsy indicates the presence of chronic beryllium disease, and should therefore be included in the standard's definition (Document ID 0027, p. 4). OSHA disagrees. The agency believes that the term ''granulomatous'' sufficiently addresses the presence of T-cell infiltrates, which occur at an early stage in the development of granulomas (82 FR at 2492–2502). As discussed previously, OSHA's intent in defining *chronic beryllium disease* is to provide the reader a general understanding of what CBD is, rather than provide a technical definition for diagnostic use. The suggested addition is not necessary to describe the nature of CBD in general terms. With the addition of the term ''granulomatous,'' the definition is sufficiently specific for OSHA's purposes in the context of paragraph (b).

In summary, for the purposes of this standard OSHA is defining *chronic beryllium disease* as a chronic granulomatous lung disease caused by inhalation of airborne beryllium by an individual who is beryllium sensitized. This definition is identical to the definition of *chronic beryllium disease* OSHA proposed in 2018 and includes only minor changes from the definition included in the 2017 final standard. OSHA is providing this definition to enhance stakeholders' general understanding of the beryllium standard; it is neither intended nor suitable to provide guidance to medical professionals on the diagnosis of CBD. OSHA expects these changes to the 2017 definition of *chronic beryllium disease* will clarify the standard, and will therefore maintain safety and health protections for workers.

Confirmed positive.

OSHA is amending the definition of *confirmed positive* to mean (1) the person tested has had two abnormal BeLPT test results, an abnormal and a borderline test result, or three borderline test results, obtained from tests conducted within a three-year period; or (2) the result of a more reliable and accurate test indicating a person has been identified as having beryllium sensitization. The revised definition includes several changes to the 2017 definition of *confirmed positive* and one change from the definition of *confirmed positive* that OSHA proposed in the 2018 NPRM.

First, the agency is removing the phrase ''beryllium sensitization'' from the first sentence of the definition, which previously stated that a person is confirmed positive if that person has beryllium sensitization, as indicated by two abnormal BeLPT test results, an abnormal and a borderline test result, or three borderline test results. OSHA intends that *confirmed positive* act only as a trigger for requirements such as continued medical monitoring and surveillance for the purposes of this standard, and not as a general-purpose definition of beryllium sensitization. By removing the phrase ''beryllium sensitization'' from the first sentence of the definition, the agency hopes to avoid confusion resulting from scientific disagreements over whether certain test results, such as three borderlines, necessarily prove that sensitization has occurred. For purposes of the beryllium

standard, any worker with the BeLPT test results specified in the definition of *confirmed positive* should be offered an evaluation for CBD with continued medical surveillance as well as the option of medical removal protection, even though some small percentage of workers who are confirmed positive by this definition may not in fact be sensitized to beryllium, as is the case for any diagnostic test (Middleton et al., 2008 (Document ID OSHA–H005C–2006–0870–0480, p. 4)).[12]

Both the USW and Materion supported this proposed revision. The USW stated that the former definition of *confirmed positive* had acted ''as a de facto definition of sensitization'' and that removing the phrase from this portion of the definition ensures that a finding of confirmed positive will trigger medical surveillance and medical removal protection ''without an intermediate stop at a finding of sensitization'' (Document ID 0033, p. 5). Similarly, Materion commented that the revised definition allows individuals with three borderline BeLPT results to obtain the protections of the standard, including evaluation for CBD and medical removal protection, without necessarily being ''declared sensitized'' (Document ID 0038, p. 18). Materion further asserted that the change enhances employee protection by increasing the number of persons eligible for further testing (Document ID 0038, p. 19).

NJH opposed the revised definition, asserting that the removal of the phrase ''beryllium sensitization'' could prevent individuals who meet the definition of being confirmed positive from being identified as sensitized. NJH further expressed concern that this could make it difficult for some workers to access the medical testing and workplace protections required by the rule (Document ID 0022, p. 4).

The ATS and the AOEC also disagreed with the removal of the phrase ''beryllium sensitization'' from the definition of *confirmed positive,* stating the medically accepted interpretation of BeLPT testing results is that they indicate beryllium sensitization, and that removing this phrase may cause confusion about what condition the term *confirmed positive* refers to (Document ID 0021, p. 3; 0028, p. 2). The ATS further stated without explanation that removing the term ''beryllium sensitization'' from the definition of *confirmed positive* would reduce worker protections.[13] The NSSP also expressed disagreement with OSHA's proposal to remove ''beryllium sensitization'' from the first part of the *confirmed positive* definition, but did not state the reasons for their concern (Document ID 0027, p. 3).

Following consideration of the concerns raised by these organizations, OSHA disagrees that removing the phrase ''beryllium sensitization'' from the first sentence of the definition of *confirmed positive* will create confusion or reduce worker protections. The provisions of the standard intended to benefit workers who may be sensitized (evaluation at a CBD diagnostic center and medical removal protection) are available to all workers who meet the definition of *confirmed positive.* Therefore, removing the term ''beryllium sensitization'' from the first sentence of the definition will not change the access to these benefits for any workers. By removing the term ''beryllium sensitization'' from the first sentence of the definition, OSHA seeks to ensure that workers with three borderline BeLPT results (or other patterns of test results that some physician or other licensed health care professionals (PLHCPs) may consider ambiguous) will receive the benefits of the standard regardless of whether their PLHCP views their results as firm evidence of sensitization. Furthermore, OSHA disagrees that removing the reference to ''beryllium sensitization'' will lead to confusion about what the BeLPT results are supposed to indicate because the second sentence of the definition of *confirmed positive* makes clear that a worker who has been diagnosed with beryllium sensitization would also meet the definition of *confirmed positive:* ''It [confirmed positive] also means the result of a more reliable and accurate test indicating a person has been identified as having beryllium sensitization.''

An additional change to the definition of *confirmed positive* provides that the findings of two abnormal, one abnormal and one borderline, or three borderline results need to occur from BeLPTs conducted within a three-year period. This change in the definition of *confirmed positive* differs from the proposal and is based on comments submitted to the record following publication of the 2018 NPRM.

The 2017 final rule did not specify a time limit within which the BeLPT tests that contribute toward a finding of ''confirmed positive'' must occur. After publication of the 2017 final rule, stakeholders suggested to OSHA that the definition of *confirmed positive* could be interpreted as meaning that findings of two abnormal, one abnormal and one borderline, or three borderline results over any time period, even as long as 10 years, would result in the employee being confirmed positive and automatically referred to a CBD diagnostic center for evaluation. As discussed in the preamble to the 2017 standard, clinical evaluation for CBD involves bronchoalveolar lavage and biopsy (82 FR at 2497) which, like all invasive medical procedures, carry risks of infection and other complications.[14] Given such risks, and the possibility that some repeat abnormal or borderline results obtained over a long period of time could be false positives, it was not the agency's intent that workers with rarely recurring abnormal or borderline BeLPT results should necessarily proceed to evaluation at a CBD diagnostic center unless recommended to do so by their examining physician. At the same time, OSHA notes that under paragraph (k)(5)(iii), the licensed physician performing the BeLPT testing retains the discretion to refer an employee to a CBD diagnostic center if the licensed physician deems it appropriate, regardless of the BeLPT result.

In the 2018 NPRM OSHA proposed that any combination of test results specified in the definition of *confirmed positive* must result from the tests conducted in one cycle of testing, including the initial BeLPT and the follow-up retesting offered within 30 days of an abnormal or borderline result (paragraph (k)(3)(ii)(E)). As outlined in proposed paragraph (k)(3)(ii)(E), an employee would be offered a follow-up BeLPT within 30 days if the initial test result is anything other than normal, unless the employee had been confirmed positive (*e.g.,* if the initial

[12] In the preamble to the 2017 final rule, OSHA found that three borderline BeLPT results recognize a change in a person's immune system with respect to beryllium exposure based on Middleton et al.'s 2011 finding that three borderline BeLPT results have a positive predictive value (PPV) of over 90 percent (82 FR at 2501), and therefore the agency included three borderline results in the criteria for confirmed positive (82 FR at 2646).

[13] The ATS also asserted that the removal of the phrase ''beryllium sensitization'' would reduce workers' right to file for worker's compensation (Document ID 0021, p. 3). The ATS did not explain how the definition of *confirmed positive* in the beryllium standard could affect worker's compensation claims and at least one other commenter questioned the ATS's assertion (see Document ID 0038, p. 19). Regardless, OSHA intends the definition of *confirmed positive* to serve only as a trigger for certain provisions of the beryllium standard. How OSHA defines this phrase for purposes of the beryllium standard in no way limits healthcare professionals' ability or incentive to diagnose beryllium sensitization.

[14] Bronchoalveolar lavage is a method of ''washing'' the lungs with fluid inserted via a flexible fiberoptic instrument known as a bronchoscope, removing the fluid and analyzing the content for the inclusion of immune cells reactive to beryllium exposure (82 FR at 2497).

BeLPT was performed on a split sample and showed two abnormal results). Thus, for example, if an employee's initial test result was abnormal, and the result of the follow-up testing offered to confirm the initial test result was abnormal or borderline, the employee would be confirmed positive. Alternatively, if the result of the follow-up testing offered to confirm the initial abnormal test result was normal, the employee would not be confirmed positive. Any additional abnormal or borderline results obtained from the next required BeLPT for that employee (typically, two years later) would not identify that employee as confirmed positive under the proposed modification to *confirmed positive.* OSHA requested comments on the appropriateness of this proposed time period.

Several stakeholders, including Materion, NJH, the ATS, DOSH, the NSSP, the AOEC, the USW, and The American College of Occupational and Environmental Medicine (ACOEM), submitted comments regarding OSHA's proposal to require that the test results specified in the agency's definition of *confirmed positive* must occur within a single testing cycle. Commenters focused on several aspects of the proposed timing. First, many of the comments focused on the logistics of OSHA's proposed change. Materion supported the proposed definition of *confirmed positive,* stating that a 30-day allowance for follow-up testing after a first abnormal or borderline BeLPT result is appropriate to ensure that testing is completed in a timely manner (Document ID 0038, p. 17). However, NJH, the ATS, ACOEM, the USW, and the NSSP all indicated that requiring results with a 30-day testing cycle could create logistical challenges, for example due to repeat testing requirements or for businesses in remote areas with limited healthcare facilities (Document ID 0022, p. 4; 0021, p. 4; 0024, p. 1; 0033, p. 5; 0027, p. 3). In this final rule and preamble, OSHA clarifies that it did not intend that the initial and follow-up tests had to be completed and interpreted within 30 days. It intended that the test results used to determine if a worker is confirmed positive be obtained during one cycle of testing (*i.e.,* an initial or periodic examination), including follow-up testing conducted within 30 days of an abnormal or borderline result.

Secondly, stakeholders commented on the appropriateness of limiting the use of the BeLPT from one test cycle in determining if a worker is confirmed positive. Materion agreed with the proposed timing and commented that the change ''increases employee protections by establishing an employee as confirmed positive in a shorter time frame, thus, making the medical removal benefit option available to the worker in a more timely manner'' (Document ID 0038, p. 19). Stakeholders from the medical community disagreed and raised concerns that limiting test results to one test cycle would affect the ability to identify workers who should be referred for a CBD evaluation and receive other protections under the standard.

The NSSP cited data from healthcare providers to demonstrate that a 30-day testing cycle is insufficient to properly identify sensitized workers. According to the NSSP, in over 20 years of conducting BeLPTs in worker populations, Oak Ridge Associated Universities observed approximate median times of 45 days (range of 3 days to 16 years) between first and second abnormal tests, 1.5 years (range of 30 days to 11 years) for the abnormal/borderline test combination, and 1 year (range of 30 days to 11 years) for three borderlines (Document ID 0027, p. 3). Under the proposed 30-day requirement, the NSSP stated that the majority of workers who have been identified as sensitized in the past would not meet the proposed definition of confirmed positive (Document ID 0027, p. 3).

NJH reported similar findings in new evidence submitted to the record (Document ID 0022, pp. 4–5). The evidence indicates that many workers who develop CBD have abnormal or borderline results that do not immediately repeat upon retesting. To the contrary, many CBD patients have a series of tests which alternate between normal and abnormal. Data based on NJH's extensive experience show that the BeLPT does not yield consistently abnormal results among CBD patients. Of 194 patients diagnosed with CBD at NJH, the length of time between abnormal results ranged from 14 days to 5.8 years, with a 95th percentile of 2.9 years. In this group, 150 patients (or 77 percent) would not have been evaluated for CBD if two abnormal BeLPT results were required to occur within a 30-day testing cycle (Document ID 0022, p. 5).

Although the information the NSSP and NJH submitted to the record is unpublished, their findings are consistent with published studies. Kreiss et al. (1997) reported that nine individuals had initial abnormal BeLPT results followed by two normal tests; six of those individuals were re-tested approximately one year later and four were confirmed positive for beryllium sensitization based on abnormal BeLPT results (Document ID OSHA H005C–2006–0870–1360, pp. 610–12). These findings suggest a high rate of false-negative results and are consistent with results reported in a study by Stange et al. (2004). That study found an average false-positive rate of 1.09 percent, and a false-negative rate of 27.7 percent for the BeLPT (Document ID OSHA–H005C–2006–0870–1402, p. 459).

Other public health organizations, including DOSH, the ATS, the NSSP, and the AOEC, agreed with NJH that workers who are sensitized to beryllium may show varying test results over time; and restricting the time period for determining ''confirmed positive'' status to 30 days would cause sensitized individuals to go undetected (Document ID 0023, p. 2; 0021, p. 2; 0027, p. 3; 0028, p. 2). The ATS and the AOEC recommended that results from tests performed up to at least three years after the initial abnormal or borderline test result should be used to determine whether the person tested is confirmed positive for beryllium sensitization (Document ID 0021, p. 2; 0028, p. 2). The ATS stated that a timeframe of at least three years, which encompasses two rounds of regularly scheduled testing required biennially by the beryllium standard, would adequately address its concerns regarding logistical feasibility, would improve diagnostic accuracy, and help ensure that sensitized workers are identified (Document ID 0021, p. 4). The AOEC agreed that consideration of BeLPT test results obtained during a time period of at least three years ''will increase the potential that workers are accurately diagnosed with beryllium sensitization [and] will receive the necessary care'' (Document ID 0028, p. 2).

The approaches recommended by the ATS and the AOEC are similar to the approach NJH used in providing medical surveillance consultation to workforces that use beryllium. NJH stated that, if an individual's BeLPT results are abnormal and normal on their initial round of BeLPT testing, they will usually request another BeLPT within a month. If the result of that test is normal, they do not request further testing until the next regularly scheduled BeLPT. If the result of the next regularly scheduled BeLPT comes back abnormal, they refer the worker for clinical evaluation even though the tests are separated by the two-year testing cycle (Document ID 0022, p. 5).

Following consideration of the comments and of the new evidence submitted to the record following the proposal, OSHA is convinced that some workers who are ultimately found to be sensitized to beryllium or diagnosed

with CBD may have alternating abnormal and normal BeLPT results, and that the time period for abnormal or borderline results to repeat can be months or years. OSHA is also convinced that requiring two abnormal, an abnormal and borderline, or three borderline results to occur in one cycle of an initial or periodic exam before an employee can be confirmed positive could result in beryllium sensitization or CBD going undetected in many employees. This is demonstrated by the unpublished data submitted by NJH showing that a substantial percentage of individuals with CBD (77 percent) may not have been referred for further testing based on results obtained within a 30-day cycle of testing and is confirmed by the experience of the NSSP. Therefore, OSHA finds that its proposed change would have the unintended and unacceptable consequence of reducing employee protections because some employees who are sensitized or have CBD would be deprived of the benefits available through the standard, such as a timely evaluation at a CBD diagnostic center. In addition, requiring that results be obtained in one test cycle is not consistent with the approaches currently applied or supported by the medical community.

For these reasons, OSHA is revising the definition of *confirmed positive* to specify that the findings of two abnormal, one abnormal and one borderline, or three borderline results must be obtained from BeLPTs conducted within a three-year period. OSHA agrees with the ATS and the AOEC that a three-year period will facilitate the identification of sensitized workers enrolled in medical surveillance (see Document ID 0022, p. 5; 0028, p. 2). In addition, this approach is consistent with the practices and recommendations from the medical community, including NJH, which provides beryllium-related medical surveillance consultation. OSHA believes that allowing a worker to be confirmed positive based on BeLPT results obtained over a three-year time period strikes a reasonable balance that would allow a timely evaluation for CBD, while at the same time, maintaining OSHA's original intent that a confirmed positive finding not be based on results obtained over an indefinite time period.

OSHA emphasizes that this revision does not modify the requirements of paragraph (k)(3)(ii)(E). Under that paragraph, if the results of the BeLPT are other than normal, a follow-up BeLPT must be offered within 30 days of receiving the results, unless the employee has been confirmed positive. Only other than normal BeLPT results must be followed up within 30 days of the same test cycle (*i.e.,* an initial or periodic medical examination).

As an example, an employee who receives a borderline result during one periodic examination conducted in 2020 would be retested within 30 days, and if the follow-up test is normal, testing would stop. That employee would be offered another BeLPT at the next periodic examination conducted in 2022. However, if the result of the 2022 test is borderline, the employee would be retested within 30 days of that test result receipt, and if the follow-up test is borderline, the employee would be confirmed positive because of receiving three borderline tests within three years. A three-year period for the employee to be confirmed positive would ensure sufficient time for such follow-up tests that may need to be conducted over two cycles of medical examinations.

DOD recommended changing the term ''confirmed positive'' to another term such as ''confirmed non-negative,'' ''confirmed finding of concern,'' or ''pattern of concern.'' According to the DOD, the term ''confirmed positive'' typically ''implies an initial positive test that was repeated with another test or another, more sensitive test, which confirms the initial positive test result'' (Document ID 0029, p. 2). The CBD literature, however, commonly treats individuals as confirmed positive for sensitization through sequentially conducted BeLPTs (see, for example, the ATS Statement on Diagnosis and Management of Beryllium Sensitivity and Chronic Beryllium Disease, ATS 2014, Document ID OSHA–H005C–2006–0870–0364, p. e41; see also Document ID OSHA–H005C–2006–0870–1543, 0603, 0398, 1403, 1449). Additionally, OSHA again emphasizes that terms defined in the beryllium standard are defined only for purposes of the standard and are not intended as diagnostic, scientific, or all-purpose definitions. OSHA believes that its definition of *confirmed positive* clearly indicates what that term means for purposes of the beryllium standard and therefore disagrees with DOD's concern that the term may cause confusion. Accordingly, OSHA is retaining the term ''confirmed positive'' in this final standard.

Dermal contact with beryllium.

Paragraph (b) of this final rule defines *dermal contact with beryllium* as skin exposure to (1) soluble beryllium compounds containing beryllium in concentrations greater than or equal to 0.1 percent by weight; (2) solutions containing beryllium in concentrations greater than or equal to 0.1 percent by weight; or (3) visible dust, fumes, or mists containing beryllium in concentrations greater than or equal to 0.1 percent by weight. The definition also states that handling of beryllium materials in non-particulate solid form that are free from visible dust containing beryllium in concentrations greater than or equal to 0.1 percent by weight is not considered dermal contact under the standard. Several of the standard's provisions are triggered where an employee has, or can be reasonably expected to have, dermal contact with beryllium. These include provisions in paragraph (f), Written exposure control plan; paragraph (h), Personal protective clothing and equipment (PPE); paragraph (i), Hygiene areas and practices; paragraph (k), Medical surveillance; and paragraph (m), Communication of hazards.

This final rule makes two changes to the previous definition, which was added to the standard through the 2018 direct final rule (83 FR at 19940) following OSHA's promulgation of the final rule in January 2017. That direct final rule defined *dermal contact with beryllium* as skin exposure to soluble beryllium compounds, beryllium solutions, or dust, fumes, or mists containing beryllium, where these materials contain beryllium in concentrations greater than or equal to 0.1 percent by weight (83 FR at 19940). First, this final rule modifies the definition to refer to ''visible'' dust, fumes, or mists containing beryllium in concentrations greater than or equal to 0.1 percent by weight. Second, OSHA is adding a sentence to the definition specifying that handling beryllium materials in non-particulate solid form that are free from visible dust containing beryllium in concentrations greater than or equal to 0.1 percent by weight is not considered dermal contact with beryllium under the standard. This final rule's definition of *dermal contact with beryllium* is identical to the definition that OSHA proposed in the 2018 NPRM.

The revisions incorporated in this definition are intended to help employers more accurately identify areas where the provisions triggered by dermal contact apply. Based on feedback OSHA received from stakeholders following publication of the 2017 final standard, OSHA became concerned that employers might have difficulty accurately identifying when and where the provisions triggered by dermal contact are required. Beryllium-generating processes can release beryllium in varying particle sizes and amounts, some of which are visible to the naked eye and some of which are not. OSHA was concerned that

employers could reasonably interpret the provisions triggered by dermal contact with beryllium (*e.g.,* the use of PPE) as extending to every employee who could potentially encounter a minute and non-visible amount of beryllium particulate at its facility, irrespective of the employee's job duties and tasks, or who might handle an object containing beryllium. Such an interpretation would be contrary to OSHA's intent and could prompt employers to attempt infeasible compliance measures. Therefore, as explained in the 2018 NPRM, OSHA proposed adding the term ''visible'' to clarify when skin exposure to beryllium-containing dust, fumes, or mist should be considered dermal contact with beryllium for the purpose of triggering the standard's requirements. OSHA also proposed adding a sentence to state that handling of beryllium materials in non-particulate solid form that are free from visible dust containing beryllium in concentrations greater than or equal to 0.1 percent by weight is *not* considered ''dermal contact with beryllium'' under the standard.

Several commenters supported revising the definition of *dermal contact with beryllium* to apply to visible particulate, agreeing that the revised definition would facilitate compliance with the standard. In its submission, Materion stated that the proposed change to the definition ''clears up the ambiguity and eliminates the vagueness of the [previous] . . . standard,'' and that

> Revising the standard to provide employees as well as employers clear lines will likely immeasurably help not only with compliance but with enforcement of the standard. Without the visible cue, employees will have no idea whether and when they should be protected by PPE. . . . OSHA has fixed this problem with a sensible and clear demarcation threshold for dermal contact, and has done so in a manner that does not sacrifice protection against the risk of CBD.

(Document ID 0038, p. 21). Similarly, the USW stated that dermal exposure to beryllium needed to be ''properly addressed,'' but that triggering provisions by dermal contact with materials containing beryllium at any level ''could extend the application of the standard far beyond what OSHA intended or what is necessary to protect workers'' (Document ID 0033, p. 4). The USW referred to non-sparking tools made from beryllium-copper alloy and beryllium foil used for x-ray windows as examples of materials where dermal contact should not trigger provisions of the standard (Document ID 0033, p. 4).

Century Aluminum Company (Century Aluminum) (Document ID 0026, p. 2) and DOD (Document ID 0029, p. 1) also agreed with the proposal to add the term ''visible'' to the definition. However, DOD recommended that OSHA revise the definition to explicitly identify skin exposure to ''visible dust that has accumulated on surfaces'' in addition to visible dust, fumes, or mists containing beryllium in concentrations greater than or equal to 0.1 percent by weight. OSHA does not believe this added phrase is necessary. The definition of *dermal contact with beryllium* does not distinguish the exposure routes that cause the skin exposure and, as proposed, the phrase ''visible dust'' encompasses exposures via both air and surface contamination.

The ATS commented that adding ''visible'' to the definition to trigger provisions related to dermal contact ''could be helpful,'' but cautioned that inhalation of beryllium particulate that is not visible is ''the major concern'' for developing CBD (Document ID 0021, p. 5). It urged OSHA to ensure that the revised definition neither undermines the requirements of the beryllium standard which limit exposure to respirable beryllium, nor limits education on the health effects of beryllium to only those workers with exposure to visible dust (Document ID 0021, p. 5).

NJH objected to OSHA's proposal to restrict the definition to visible dust, fumes, and mists, believing that doing so could reduce employee protections from beryllium-induced sensitization and disease (Document ID 0022 p. 7). NJH commented that the smallest respirable particles are not visible and are inhaled into the deepest part of the lung. It further commented that a ''monitoring program that routinely samples all departments with air and wipe samples can accomplish identifying 'nonvisible' dust contamination and should be part of any industry that needs to comply with an exposure limit'' (Document ID 0022, p. 7). Other commenters voiced similar concerns about the risk posed by exposure to ultrafine particles containing beryllium, including the NSSP (Document ID 0027, p. 3), the AOEC (Document ID 0028, p. 2), and DOSH (Document ID 0023, p. 2).

OSHA agrees that exposure to airborne beryllium, even when not visible to the naked eye, is an important risk factor for developing CBD and that it would be inappropriate to rely on the presence of visible airborne particulate to assess workers' exposure to airborne beryllium and the need to implement engineering and work practice controls or respiratory protection. The standard's permissible exposure limits and requirements for quantitative exposure assessments and use of respiratory protection are of paramount importance for ensuring that workers are protected from CBD, and these requirements are unaffected by the changes to the *dermal contact with beryllium* definition. In addition, the standard's requirements to train workers on the health hazards of exposure to beryllium and on the employer's exposure control plan (paragraph (m)(4)) apply to all employees within the scope of the general industry standard who have, or can reasonably be expected to have, airborne exposure (regardless of the size fraction) to or dermal contact with beryllium, thus including all workers that would be considered to be potentially at risk of beryllium-related disease.[15]

DOSH advocated for surface sampling as being a ''practical method'' for assessing exposure and asserted that adopting a ''specific numerical surface contamination criterion'' to assess dermal contact hazard was a more protective strategy. DOSH further suggested that, in establishing this numerical criterion, OSHA ''consider levels that could result in uptake of beryllium by workers at rates similar to action level airborne exposures'' (Document ID 0023, p. 2).

With respect to inhalation hazards associated with beryllium, OSHA agrees that relying on the visibility of particulate does not adequately protect workers from CBD or lung cancer, and that both conducting routine air sampling and ensuring no employees are exposed to airborne beryllium in excess of the PELs are essential to minimizing workers' exposures to airborne particulate. The TWA PEL for beryllium is based on robust evidence from studies of beryllium workers that permitted the agency to determine that there is significant risk of sensitization, CBD, and lung cancer associated with the previous TWA PEL, and that this

[15] NJH also asserted that ''[a]ll workers in a beryllium using industry should receive beryllium education with programs tailored to specific jobs and processes'' (Document ID 0022, p. 7). Mount Sinai Selikoff Centers for Occupational Health similarly advocated for ''intensive training and protective gear for all workers who may be at risk of beryllium exposure'' (Document ID 0032, p. 3). OSHA notes that the beryllium standard has never required all workers in a beryllium-using industry to receive training. Rather, the standard has always required training for those workers who have or are reasonably expected to have airborne exposure to beryllium regardless of the size fraction. The standard continues to require training for all such workers.

risk would be substantially reduced by the new PEL (82 FR at 2545–52).

Unlike the case for inhalation, the available data on the effects of dermal contact with beryllium make it difficult to establish a reasonably precise, objective limit on surface contamination above which protective measures should be triggered. The most recent effort to derive a health-based measure of surface cleanliness for beryllium was that of Shay et al. (Document ID H005C–2006–0870–0417), who used models that accounted for particulate dissipation, resuspension into air, transfer efficiency from surface to skin, dermal absorption of particulate through intact or damaged skin, and other factors. The authors used these models along with both oral and inhalation toxicity values derived by the Environmental Protection Agency to relate the level of surface contamination to target risk values for cancer and noncancer effects that would generally be considered to be de minimis (*i.e.,* an exposure associated with either a lifetime cancer risk of one death per million persons exposed, or no excess risk of adverse noncancer effects). After accounting for these factors, the resulting surface dust cleanup criteria for each health endpoint ranged over several orders of magnitude, reflecting a high degree of uncertainty (for the noncancer endpoint, the criteria ranged from 5 to 370 μg/cm² for damaged skin, and from 17 to 3,337 μg/cm² for intact skin; for cancer, the criteria ranged from 51 to 485 μg/cm²).

This study illustrates the difficulty in establishing a reliable and objective risk-based limit on surface contamination that could be used to trigger measures that would prevent dermal contact with beryllium particulate when such contact is sufficient to contribute to a significant risk of disease. Absent an objective measure, OSHA finds that it is preferable to base the definition of *dermal contact with beryllium* on a clear, qualitative indicator of when dermal contact is occurring or is reasonably anticipated to occur so that employers can have assurance that they are in compliance with the provisions that are triggered by dermal contact. Accordingly, the final rule's definition of *dermal contact with beryllium* refers to skin exposure to visible dusts, fumes, or mists, as well as to soluble compounds and solutions of beryllium, as was proposed. As stated above, OSHA expects that revisions in this final rule will maintain worker protections.

NJH also objected to defining *dermal contact with beryllium* when handling finished beryllium products only by the presence of visible dust, asserting that gloves are warranted because beryllium could oxidize on the surface (Document ID 0022, p. 7). However, for the reasons explained below, OSHA considers these comments to be beyond the scope of the proposal. The agency also notes that the revision NJH's comment refers to merely clarifies the meaning of the 2017 standard, rather than modifying it substantively.

OSHA's revision to the definition of *dermal contact with beryllium* clarifies OSHA's intent that the provisions in the standard related to dermal contact with beryllium do not apply to the handling of solid beryllium-containing objects that the employer does not process, unless visible beryllium particulate has contaminated the surface of the object. OSHA explained in the 2017 final rule that beryllium-containing solid objects, or ''articles,'' with uncompromised physical integrity are unlikely to release beryllium that would pose a health hazard for workers (82 FR at 2640). An article, by definition, ''under normal conditions of use does not release more than very small quantities, *e.g.,* minute or trace amounts of a hazardous chemical . . . , and does not pose a physical hazard or health risk to employees'' (29 CFR 1910.1200(c)). The agency therefore excluded articles that contain beryllium, and that the employer does not process, from the scope of the 2017 beryllium standard (see paragraph (a)(3)). OSHA did not intend for the 2018 NPRM to open the agency's underlying findings on the handling of beryllium-containing articles, nor their exclusion from the scope of the standard, for notice and comment. To the extent NJH's comment challenges the articles exemption, these comments are beyond the scope of the proposal.

Nevertheless, even for those solid beryllium-containing objects that do not fall under the definition of an article, such as ingots that might be processed further, OSHA notes that PPE would be required if there is a reasonable expectation that oxidation may result in visible surface contamination. In its comments on the 2015 NPRM, Materion explained that beryllium oxides are created through particular manufacturing processes, typically those involving heating of the beryllium-containing materials (*e.g.,* hot forming operations, melting, or heat treating) (see Document ID OSHA–H005C–2006–0870–1662, p. 16). These operations may give rise to a reasonable expectation of dermal contact due to the expected oxidization that will occur as a result of the process. Where there is a reasonable expectation that oxidization may result in visible surface contamination, an employer must not wait for the surface to be contaminated to require PPE for potentially exposed employees. For example, if the surface of a solid object must be heat treated, and the employer has reason to believe this will result in surface oxidation absent cleaning the surface, PPE would be required under this final rule.

After carefully considering the record of public comments on this topic, OSHA finds that the revised definition of *dermal contact with beryllium* will provide a clearer and more workable definition, without reducing worker protections. The specification of ''*visible* dust, fumes, or mists containing beryllium in concentrations greater than or equal to 0.1 percent by weight'' and clarification regarding beryllium-containing articles will allow employers to accurately identify the employees, particularly those working outside of beryllium work areas or regulated areas, to whom the provisions triggered by dermal contact with beryllium apply, including the requirement in paragraph (h) to provide employees with PPE to protect against reasonably expected dermal contact with beryllium. The revised definition will also render more workable the additional provisions in the standard that are triggered by dermal contact with beryllium, which include provisions in paragraph (f), Written exposure control plan; paragraph (i), Hygiene areas and practices; paragraph (k), Medical surveillance; and paragraph (m), Communication of hazards.

This final rule better addresses the practical aspects of a ''reasonable expectation'' trigger for PPE than did the previous rule, which could have been read as effectively requiring employees to wear PPE facility-wide, even when not in proximity to beryllium generating processes, such as in administrative offices. OSHA believes that use of PPE in that circumstance is unwarranted and would not meaningfully enhance worker protections against beryllium exposure. Where an employer has a reasonable expectation that even very small amounts of beryllium dust, fume, or mist might spread outside of beryllium work areas, they might have interpreted the language of the previous rule to require all employees in the facility to wear PPE all of the time. OSHA did not intend and did not cost the previous rule as requiring PPE to protect against dermal contact with non-visible beryllium dust, fumes, or mists outside of beryllium work areas. The addition of a visual cue will enable employers to accurately identify the employees outside of beryllium work

areas who need to wear PPE due to their reasonably-expected dermal contact with beryllium.

As OSHA explained in the 2018 NPRM (83 FR at 63752), the agency expects that the use of PPE will always be required in beryllium work areas because both the operations listed in Appendix A and those that can be reasonably expected to generate exposure at or above the action level would create a reasonable expectation of dermal contact with beryllium. This expectation is based, in part, on a study conducted by NIOSH and Materion and published in the Journal of Occupational and Environmental Hygiene (Document ID OSHA–H005C–2006–0870–0502, p. 791). In the 2018 NPRM, OSHA explained that this study identified a strong correlation between airborne beryllium concentrations and the amount measured on gloves worn by workers at multiple beryllium facilities and jobs, indicating the potential for skin exposure where airborne beryllium is present. The study further concluded that this correlation implies that one type of measurement can be indicative of other exposure pathways (Document ID OSHA–H005C–2006–0870–0502, p. 791). OSHA further explained that the expectation of dermal contact within beryllium work areas is also based on OSHA's review of data collected during site visits conducted by the agency that cover a wide range of processes (*e.g.,* furnace and melting operations, casting, grinding/deburring, machining and stamping) and a wide range of materials including beryllium composite, beryllium alloy, and beryllium oxide. The data show that those operations that would create a reasonable expectation of dermal contact, either through beryllium surface contamination or skin contamination, are covered either by proposed Appendix A or have exposures above the action level (see Document ID OSHA–H005C–2006–0870–0341).

In its comment, Materion questioned OSHA's reliance on the 2007 Day et al. study (82 FR at 2488–89) and suggested that, contrary to OSHA's statement, Day did not identify a ''strong correlation'' between airborne concentrations and skin exposure (Document ID 0038, pp. 13–14). Materion cited Day's finding of a potential for greater transfer of beryllium from surfaces to cotton gloves that could lead to an overestimation of the amount of beryllium transferred. OSHA disagrees with Materion's assessment of the Day study. Day indicates that the underlying assumption that glove-sampling techniques actually remove the majority of the contamination may be overstated and that the surface and skin wipe samples may underestimate the mass of beryllium that is present. The Day study demonstrates that there is a correlation between airborne and potential for skin exposures (Document ID OSHA–H005C–2006–0870–1548, p. 79).

As OSHA discussed in the NPRM, this finding is supported by a follow-up study by Armstrong et al. (2014) conducted at four different Materion manufacturing locations over a wide variety of jobs. This study also showed strong positive correlations between air, dermal, and surface exposures among the four different facilities that process beryllium (Document ID OSHA–H005C–2006–0870–0502, p. 791). The study further concludes that this correlation implies that one type of measurement can be indicative of other exposure pathways. OSHA finds that these studies demonstrate a correlation between airborne exposure and the reasonable expectation of dermal contact.[16]

In the 2018 NPRM, OSHA specifically requested comments on whether processes exist that could trigger the creation of a beryllium work area, but could be reasonably expected to release only non-visible beryllium-containing dusts, fumes, or mists. No commenter provided evidence of such processes. Materion asserted that OSHA should not ''automatically classify'' beryllium work areas as having a reasonable expectation of dermal contact because this would serve as ''a serious disincentive for employers to eliminate exposure meeting the definition of dermal contact'' (Document ID 0038, p. 15). However, Materion did not explain how such a presumption would serve as a disincentive and, more importantly, did not identify any process that could trigger the creation of a beryllium work area while not also, in fact, creating a reasonable expectation of dermal contact.

Accordingly, OSHA reaffirms its expectation that both the provisions associated with beryllium work areas (listed above) and the provisions associated with dermal contact with beryllium would apply to employees in a beryllium work area. OSHA expects that employers will, for each beryllium work area, assess the PPE needs as required by paragraph (f)(1) and OSHA's Personal Protective Equipment standards (subpart I of 29 CFR 1910) and provide their employees with appropriate PPE.

Because it will help employers identify which employees have, or can be reasonably expected to have, dermal contact with beryllium, the revised definition will allow employers to more accurately comply with the requirement in paragraph (f)(1)(i)(A) to establish, implement, and maintain a written exposure control plan that includes a list of operations and job titles reasonably expected to involve airborne exposure to or dermal contact with beryllium. OSHA expects that the list would likely include all operations and job titles in beryllium work areas, along with any additional operations or job titles for employees whose skin could be exposed to visible beryllium dust, fumes, or mists in concentrations of 0.1 percent by weight or more. Under the previous definition, employers could have reasonably interpreted the standard as requiring them to list the job title for every employee at the facility who could come into contact with a minute and non-visible amount of beryllium particulate, including employees who do not work in proximity to beryllium-releasing processes.

Similarly, the revised definition will facilitate employer compliance with the requirement to provide information and training (in accordance with the Hazard Communication standard (29 CFR 1910.1200(h)) to each employee who has, or can reasonably be expected to have, airborne exposure to or dermal contact with beryllium by the time of the employee's initial assignment and annually thereafter (paragraphs (m)(4)(i)(A)–(C)). Under this requirement, employees entitled to training include all employees who work in beryllium work areas and any other employees who may not be working directly with a beryllium-generating process, but who may nonetheless reasonably be expected to have airborne exposure to and/or skin contact with soluble beryllium, beryllium solutions, or visible beryllium dust, fumes, or mists in concentrations of 0.1 percent by weight or more. As discussed previously, OSHA intends the revised definition of dermal contact with beryllium to provide employers with a workable indicator for determining which employees outside of beryllium work areas should receive this information and training.

Because the change would allow employers to more accurately identify areas where provisions related to dermal contact should apply, the revised

[16] Materion also asserted that the evidence in the record is insufficient to conclude that ''dermal contact alone is sufficient to create a significant risk of CBD or even beryllium sensitization'' (Document ID 0038, pp. 14–15). However, in the 2017 final rule, OSHA specifically found that that dermal exposure can result in sensitization (see 82 FR at 2489). The 2018 NPRM did not propose revisiting this finding.

definition would also facilitate proper compliance with paragraph (i)(1)(ii), which requires employers to ensure employees who have dermal contact with beryllium wash any exposed skin at the end of the activity, process, or work shift and prior to eating, drinking, smoking, chewing tobacco or gum, applying cosmetics, or using the toilet. OSHA's revisions to the definition of *dermal contact with beryllium* would prevent employers from speculating that all employees in a facility, including those employees who do not work near beryllium-releasing processes, must wash their exposed skin because they might have come into contact with non-visible beryllium particulate or handled articles that contain beryllium. Such an interpretation would be contrary to OSHA's intent.

The revised definition is designed to further improve employer compliance with the requirements in paragraph (k) to offer employees a medical examination including a medical and work history that emphasizes past and present airborne exposure to or dermal contact with beryllium (paragraph (k)(3)(ii)(A)), and to provide the examining physician or other licensed health care professional (PLHCP) (and the agreed-upon CBD diagnostic center, if such an evaluation is required) with a description of the employee's former and current duties that relate to the employee's airborne exposure to and dermal contact with beryllium (paragraph (k)(4)(i)). Because it would improve employers' ability to identify when dermal contact with beryllium has occurred or could occur, this change would permit employers to accurately complete employee medical and work histories and the reports that they must provide to examining PLHCPs or CBD diagnostic centers. As with the provisions discussed above, OSHA's revisions to the definition of *dermal contact with beryllium* will prevent employers from including superfluous information in these medical and work histories and reports because they are concerned that an employee might have conceivably had skin contact with minute, non-visible beryllium particulate or handled beryllium-containing articles outside of a beryllium work area. Such an expansive interpretation is again contrary to OSHA's intent.

OSHA is adding two references to dermal contact with beryllium in paragraph (i), Hygiene areas and practices, to account for the final rule's changes to the definition of *beryllium work area* in paragraph (b). Paragraph (i) in the previous rule included requirements for employers to provide each employee working in a beryllium work area with readily accessible washing facilities (paragraph (i)(1)(i)) and a designated change room where employees are required to remove their personal clothing (paragraph (i)(2)). But, as explained earlier in this section, OSHA is revising the definition of *beryllium work area* so that the requirement to establish these areas is no longer triggered on the potential for dermal contact with beryllium.

OSHA intends for the washing facilities and change rooms requirements to apply where employees are reasonably expected to have dermal contact with beryllium, regardless of whether they work in a beryllium work area, as now defined in this final rule. As discussed above, there may be employees outside of the beryllium work area that may have a reasonable expectation of dermal contact with beryllium. Therefore, as was proposed, OSHA is adding two additional references to dermal contact with beryllium to paragraph (i). First, OSHA is revising paragraph (i)(1) so that the requirements would apply to each employee who works in a beryllium work area or who can reasonably be expected to have dermal contact with beryllium. Paragraph (i)(1)(i) would then require employers to provide washing facilities to all employees who can be reasonably expected to have dermal contact with beryllium. Second, OSHA is revising paragraph (i)(2) so that employers are required to provide change rooms to employees who are required to use personal protective clothing or equipment under paragraph (h)(1)(ii), if those employees are required by the employer to remove their personal clothing. Because paragraph (h)(1)(ii) requires the use of PPE where there is a reasonable expectation of dermal contact with beryllium, the change to paragraph (i)(2) ensures that the requirement for change rooms would continue to protect those employees who can reasonably be expected to have dermal contact with beryllium.

Methods of Compliance.

Paragraph (f) of the beryllium standard for general industry contains provisions covering methods for reducing employee exposure to beryllium through the use of a written exposure control plan and engineering and work practice controls. Paragraph (f)(1) sets forth the requirements for written exposure control plans. Paragraph (f)(1)(i) requires employers to establish, implement, and maintain such a plan, and paragraphs (f)(1)(i)(A)–(H) specifies the information and procedures that must be included in the plan. Paragraph (f)(1)(ii) directs employers to review and evaluate each plan at least annually and update it under specified circumstances.

In the 2018 NPRM, OSHA proposed two wording changes to paragraph (f)(1) (83 FR at 63754). The first proposed change relates to the contents of the written exposure control plan. Under paragraph (f)(1)(i)(D), employers were previously required to include procedures in their plans for minimizing cross-contamination, ''including preventing the transfer of beryllium'' between surfaces, equipment, clothing, materials, and articles within beryllium work areas. OSHA proposed removing the word ''preventing'' from the regulatory text to clarify that these procedures may not totally eliminate the transfer of beryllium, but should minimize cross-contamination of beryllium, including between surfaces, equipment, clothing, materials, and articles.

The second proposed change involves one of the circumstance when employers must update their written exposure control plans. Paragraph (f)(1)(ii)(B) of the standard directed employers to update the written exposure control plan, as necessary, when they are notified that an employee is eligible for medical removal in accordance with paragraph (l)(1), referred for evaluation at a CBD diagnostic center, or shows signs or symptoms associated with ''airborne exposure to or dermal contact with beryllium.'' In the 2018 NPRM, OSHA proposed to replace the phrase ''airborne exposure to and dermal contact with beryllium'' with ''exposure to beryllium.'' The agency explained that the change would simplify the language of the provision while still capturing all potential exposure scenarios currently covered. Because these proposed changes are merely clarifying, OSHA explained that it expected that they would maintain safety and health protections for workers.

All of the stakeholders that submitted comments related to OSHA's proposed changes to the written exposure control plan provisions supported the changes (see, *e.g.,* Document ID 0031, p. 2; 0038, p. 31). For example, EEI observed that OSHA's discussion of the proposed changes were appropriate modifications to the beryllium standard (Document ID 0031, p. 2). Materion also supported the proposed changes and agreed with OSHA that these proposed changes are merely clarifying, and that they will maintain safety and health protections for employees. In addition, Materion noted that it ''identifie[d] no reduction

in protection to employees associated with these clarifying language revisions'' (Document ID 0038, p. 31).

After reviewing these comments and considering the record as a whole, OSHA has determined that the proposed changes will clarify for employers the requirements of the written exposure control plan without sacrificing safety and health protections for workers. Therefore, OSHA is finalizing the proposed changes to paragraph (f) in this final rule.

Personal Protective Clothing and Equipment.

Paragraph (h) of the beryllium standard for general industry requires employers to provide employees with personal protective clothing and equipment (PPE) where employee exposure exceeds, or can reasonably be expected to exceed, the TWA PEL or STEL, or where there is a reasonable expectation of dermal contact with beryllium. Paragraph (h) also contains provisions for the safe removal, storage, cleaning, and replacement of the PPE required by this standard. As explained in the 2017 final rule preamble, these PPE requirements are intended to protect employees by preventing dermal exposure to beryllium and the accumulation of airborne beryllium on PPE, and to protect employees and other individuals both inside and outside the workplace from exposures that could occur if contaminated clothing were to transfer beryllium (82 FR at 2678).

In the 2018 NPRM, OSHA proposed two changes to paragraph (h). The first revision relates to paragraph (h)(2)(i), which addresses removal and storage of PPE. Paragraph (h)(2)(i) previously required employers to ensure that each employee removes all beryllium-contaminated PPE at the end of the work shift, ''at the completion of tasks involving beryllium,'' or when PPE becomes visibly contaminated with beryllium, whichever comes first. OSHA proposed modifying the phrase ''at the completion of tasks involving beryllium'' by changing ''tasks'' to ''all tasks,'' so that it reads ''at the completion of all tasks involving beryllium'' (83 FR at 63754).

OSHA explained in the 2018 NPRM that this revision to paragraph (h)(2)(i) merely clarifies the trigger for when employees must remove beryllium-contaminated PPE, consistent with the agency's original intent (83 FR at 63754). As expressed in the preamble to the 2017 final rule, OSHA intended that PPE contaminated with beryllium should not be worn after tasks involving beryllium exposure have been completed for the day (82 FR at 2682). Thus, when employees perform multiple tasks involving beryllium successively or intermittently throughout the day, the employer must ensure that each employee removes all beryllium-contaminated PPE at the completion of the set of tasks involving beryllium, not necessarily after each separate task. If, however, employees perform tasks involving beryllium exposure for only a portion of a work shift, and then perform tasks that do not involve exposure to beryllium, the employer must ensure that employees remove their PPE after the beryllium exposure period. Unless the PPE becomes visibly contaminated with beryllium, OSHA did not intend this provision to require multiple PPE changes throughout the work shift. Thus, the proposed revision to paragraph (h)(2)(i) clarifies OSHA's original intent.

OSHA received multiple comments in support of the proposed change to paragraph (h)(2)(i). The USW commented that it believes the change is reasonable and clarifies the intent of the standard (Document ID 0033, p. 6). Similarly, Century Aluminum expressed its support for this ''sensibl[e]'' revision, commenting that it is an example of a logical and workable requirement that will produce better work practices and habits and, in turn, improve employee health and safety outcomes (Document ID 0026, p. 2). In addition, Century Aluminum commented that requiring PPE to be changed after every task would ''significantly increase costs without increasing employee health and safety'' and could actually increase the amount of time employees are exposed to beryllium, thus increasing their risk of sensitization and disease (Document ID 0026, p. 2). Materion also expressed its general support for the ''clarifying language revisions'' to paragraph (h) (Document ID 0038, p. 32).

OSHA also received two comments opposing the proposed change to paragraph (h)(2)(i). A private citizen commented that, although OSHA did not intend to require continuous PPE changes throughout a work shift, doing so seemed necessary to limit transmission of contaminant between workers and work areas (Document ID 0017). And another private citizen commented that if a worker's suit is contaminated, the worker should be required to change even if the suit is not visibly contaminated (Document ID 0019).

OSHA does not believe it is necessary for workers to change PPE after each work task, or after each instance of PPE contamination, in order to limit the spread of beryllium particulate between work areas because, absent visible contamination of PPE, any contamination present will likely be minute and will not contaminate other work areas to such a degree as to materially increase worker exposures. Furthermore, as explained in the preamble to the 2017 final rule (82 FR at 2682), because the purpose of PPE is to serve as a barrier between an employee's body and ambient or surface beryllium, PPE becomes contaminated with beryllium immediately as part of its protective function. Requiring PPE to be changed upon contamination with any amount of beryllium is unreasonable and unnecessary to protect employees. This is because contamination of PPE with beryllium during work processes does not reduce the effectiveness of PPE or create hazards to employees unless sufficient beryllium accumulates on the PPE to impair its function or create additional exposures, such as by dispersing accumulated beryllium into the air. Moreover, the process of changing contaminated PPE can create opportunities for both inhalation exposure and dermal contact with beryllium. Accordingly, the use of ''visibly contaminated'' protects employees from potential exposures while changing PPE by limiting the requirement to change PPE during work tasks involving beryllium exposure to those circumstances when changing it is necessary to maintain its protective function and prevent deposits of beryllium from accumulating and dispersing.

Notably, the USW commented that it believes including the term ''visibly contaminated'' in the provision provides for employee safety (Document ID 0033, pp. 6–7), and Materion similarly stated that ''visibility [of beryllium-contaminated PPE and equipment] is a conservative, stringent'' trigger that ''also has the benefit of compliance clarity'' (Document ID 0038, p. 32). After reviewing these comments and considering the record as a whole, OSHA finds that the proposed change in paragraph (h)(2)(i) is reasonably necessary and appropriate and has retained the revised language in the final rule.

The second proposed revision relates to paragraph (h)(3)(iii), which addresses cleaning and replacement of PPE. This paragraph required employers to inform in writing the persons or the business entities who launder, clean, or repair the PPE required by this standard of the potentially harmful effects of ''airborne exposure to and dermal contact with beryllium.'' The 2018 NPRM proposed replacing the phrase ''airborne exposure to and dermal contact with beryllium''

with ''exposure to beryllium'' (83 FR at 63755). OSHA explained that this change simplifies the language of the provision while still capturing all potential exposure scenarios currently covered; and, as such, the agency concluded that the revised language will maintain safety and health protections for workers. OSHA received no comments on this proposed change beyond Materion's general support for the clarifying revisions to paragraph (h) as a whole (Document ID 0038, p. 32). OSHA is therefore retaining the proposed revision to paragraph (h)(3)(iii) in the final rule.

Hygiene Areas and Practices.

Paragraph (i) of the beryllium general industry standard requires that the employer provide employees with readily accessible washing facilities, change rooms, and showers when certain conditions are met; requires the employer to take certain steps to minimize exposure in eating and drinking areas; and prohibits certain practices that may contribute to beryllium exposure. As explained in the 2017 final rule, OSHA believes that strict compliance with these provisions will reduce the amount and duration of employees' airborne exposure and dermal contact with beryllium (82 FR at 2683–88).

In the 2018 NPRM, OSHA proposed three changes to paragraph (i) of the general industry standard. The agency proposed the first two changes (83 FR at 63755), which apply to paragraphs (i)(1) and (i)(2), to maintain the protections included in these paragraphs for employees who have dermal contact with beryllium notwithstanding the proposed change to the definition of beryllium work area, discussed previously in this Summary and Explanation. OSHA proposed the third change, which applies to paragraph (i)(4), to clarify the requirements for cleaning beryllium-contaminated PPE prior to entering an eating or drinking area (83 FR at 63755–56).

As explained in the previous discussion of changes to the definition of *beryllium work area,* OSHA proposed and has finalized these changes to the definition of *beryllium work area* to clarify where a beryllium work area must be established. One of these changes removes dermal contact with beryllium as one of the triggers that requires an employer to establish a beryllium work area. As explained in the 2018 NPRM, OSHA intended for the hygiene provisions related to washing facilities and change rooms to continue to apply to all employees who can reasonably be expected to have dermal contact with beryllium, regardless of whether they work in beryllium work areas as defined in the revised definition (83 FR at 63755). OSHA accordingly proposed two changes.

First, OSHA proposed a change in the wording of paragraph (i)(1), which required that ''[f]or each employee working in a beryllium work area,'' the employer must provide readily accessible washing facilities to remove beryllium from the hands, face, and neck; and ensure that employees who have dermal contact with beryllium wash any exposed skin at specific designated times. The 2018 NPRM proposed amending the language to apply to ''each employee . . . who can reasonably be expected to have dermal contact with beryllium,'' in addition to each employee working in a beryllium work area (83 FR at 63768).

Second, OSHA proposed a change in the wording of paragraph (i)(2), which required employers to provide ''employees who work in a beryllium work area,'' with a designated change room where employees are required to remove their personal clothing. OSHA proposed revising paragraph (i)(2) to require employers to provide a designated change room to employees who are required to use personal protective clothing or equipment under paragraph (h)(1)(ii) of the beryllium standard, instead of to employees who work in a beryllium work area (83 FR at 63768). Paragraph (h)(1)(ii) of the beryllium standard requires the provision and use of appropriate PPE where there is a reasonable expectation of dermal contact with beryllium. The requirement to provide change rooms would continue to apply only where employees are required to remove their personal clothing. As noted above and explained in the 2018 NPRM, the proposed changes to paragraphs (i)(1) and (i)(2) were merely intended to ensure that the hygiene provisions related to washing facilities and change rooms would continue to protect employees who are reasonably expected to have dermal contact with beryllium, if the agency adopted the proposed revised definition of the term *beryllium work area.*

OSHA also proposed a third change, which applies to paragraph (i)(4), in order to clarify the requirements for cleaning beryllium-contaminated PPE prior to entering an eating or drinking area. Paragraph (i)(4)(ii) required the employer to ensure that no employees enter any eating or drinking area with beryllium-contaminated personal protective clothing or equipment unless, prior to entry, surface beryllium has been removed from the clothing or equipment by methods that do not disperse beryllium into the air or onto an employee's body. In the 2018 NPRM, OSHA proposed to modify this paragraph to require the employer to ensure that, before employees enter an eating or drinking area, beryllium-contaminated PPE is cleaned, as necessary, to be as free as practicable of beryllium by methods that do not disperse beryllium into the air or onto an employee's body (83 FR at 63768). The agency explained that this proposed change would clarify that OSHA does not expect the methods used to clean PPE prior to entering an eating or drinking area to completely eliminate residual beryllium from the surface of the PPE if complete elimination is not practicable (83 FR at 63755–56). OSHA also explained that this is consistent with its determination, expressed in the preamble to the 2017 final rule, that ''as free as practicable'' is ''the most appropriate terminology for requirements pertaining to surface cleanliness'' (82 FR at 2687). This proposed clarification also aligns the language of paragraph (i)(4)(ii) with the language of paragraph (i)(4)(i), which requires employers to ensure that beryllium-contaminated surfaces in eating and drinking areas are as free as practicable of beryllium. Finally, OSHA explained that requiring cleaning only ''as necessary'' would clarify that cleaning would not be required if the PPE is already as free as practicable of beryllium. OSHA stated that it expected these proposed changes to paragraph (i) would maintain safety and health protections for workers.

Commenters expressed broad support for OSHA's proposed changes to paragraph (i) (see, *e.g.,* Document ID 0029, p. 1; 0031, p. 2; 0033, p. 6; 0038, p. 32). For example, EEI observed that the proposed changes to this paragraph as a whole were appropriate modifications to the beryllium standard (Document ID 0031, p. 2) and DOD generally agreed with the proposed changes, commenting that they are evidence based and provide greater employee protections (Document ID 0029, p. 1). Materion also supported the proposed changes to paragraph (i) as a whole, and agreed with OSHA that these proposed changes are merely clarifying, and that they will maintain safety and health protections for employees (Document ID 0038, p. 32; see also Document ID 0034 and 0035, p. 1 (supporting and endorsing the comments submitted by Materion)).

OSHA did not receive any comments that specifically addressed the two proposed changes to paragraphs (i)(1) and (i)(2). The agency is therefore

adopting the changes to those paragraphs as proposed.

Stakeholders also did not submit any comments on the majority of the agency's proposed changes to paragraph (i)(4). A DOD comment specifically addressed the term ''as free as practicable,'' suggesting that because the term is not defined, OSHA should require employers to establish procedures for cleaning PPE, document accomplishment of procedures, and periodically review compliance with cleaning procedures (Document ID 0029, p. 2). The USW supported the proposed change for cleaning PPE ''as necessary,'' agreeing with OSHA's explanation in the 2018 NPRM that requiring cleaning only as necessary would clarify that cleaning would not be required if the PPE is already as free as practicable of beryllium (Document ID 0033, p. 6).

The requirement to maintain surfaces as free as practicable of a regulated substance is included in other OSHA health standards, such as those for lead (29 CFR 1910.1025, 29 CFR 1926.62), chromium (VI) (29 CFR 1910.1026), and asbestos (29 CFR 1910.1001), and is used elsewhere in the beryllium general industry standard (29 CFR 1910.1024(f)(1)(i)(E), (i)(4)(i), (j)(1)(i), (j)(3)(ii)). Employers therefore have the benefit of previous experience interpreting and developing methods for compliance with requirements to maintain surfaces ''as free as practicable'' of toxic substances, including beryllium, as well as guidance from OSHA on compliance with such requirements. OSHA discussed the meaning of this phrase in the Summary and Explanation of paragraph (j) in the 2017 final rule (82 FR at 2690), as well as in a 2014 letter of interpretation explaining the phrase in the context of the agency's standard for chromium (VI) (OSHA, Nov. 5, 2014, Letter of Interpretation, available at *https://www.osha.gov/laws-regs/standardinterpretations/2014-11-05*). As OSHA explained in the 2014 letter of interpretation, OSHA evaluates whether a surface is ''as free as practicable'' of a contaminant by the efficacy of the employer's program to keep surfaces clean. OSHA intends for this term to be broad and performance-oriented, so as to allow employers in a variety of industries flexibility to decide what type of control methods and procedures are best suited to their beryllium operations, and OSHA intends to evaluate compliance based on employer efforts under the circumstances present at each facility. Notably, in its comment, Materion expressed general support for use of the phrase ''as free as practicable'' in other parts of the standard, acknowledging that this is the workable legal standard OSHA relies on in occupational health standards (Document ID 0038, pp. 25–26, 33).

Moreover, as to DOD's recommendation that OSHA require employers to establish procedures for cleaning PPE, document accomplishment of procedures, and periodically review compliance with cleaning procedures (Document ID 0029, p. 2), OSHA agrees that requiring employers to establish PPE cleaning procedures is important. To meet this objective, the written exposure control plan provision in paragraph (f)(1)(i) requires employers to establish, implement, and maintain a written exposure control plan, which must contain, among other things, procedures for removing, laundering, storing, cleaning, repairing, and disposing of beryllium-contaminated personal protective clothing and equipment, including respirators. Paragraph (f)(1)(ii) requires employers to review and evaluate the effectiveness of each written exposure control plan at least annually and update it, as necessary, if certain specified events occur. OSHA believes that these requirements satisfy DOD's concerns while still allowing employers the flexibility to establish, implement, and maintain a plan that works best for their individual workplaces.

After reviewing these comments and considering the record as a whole, OSHA believes that the term ''as free as practicable'' is understood by employers through its use in other standards and as explained in letters of interpretation and other guidance, and does not believe that defining the term in this standard or establishing specific PPE cleaning and documentation procedures is necessary. OSHA also believes the proposed change is necessary to align the language of paragraphs (i)(4)(i) and (i)(4)(ii). OSHA did not receive any comments objecting to the revised requirement that PPE be ''cleaned, as necessary,'' which makes clear that cleaning would not be required if PPE is already as free as practicable of beryllium. OSHA believes these changes clarify the agency's intent without sacrificing safety and health protection for workers. The agency is therefore adopting the changes as proposed to paragraph (i)(4)(ii) in this final rule.

Disposal, Recycling, and Reuse.

Paragraph (j) of the beryllium general industry standard requires employers to adhere to certain housekeeping practices. Paragraphs (j)(1) and (j)(2) require employers to maintain all surfaces in beryllium work areas as free as practicable of beryllium, promptly clean spills and emergency releases of beryllium, and use appropriate cleaning methods, while paragraph (j)(3) requires employers to take certain actions when transferring materials that contain at least 0.1 percent beryllium by weight or that are contaminated with beryllium outside a plant for the purpose of disposal, recycling, or reuse. Specifically, paragraph (j)(3)(i) requires that, except for intra-plant transfers, when transferring these materials for any of these purposes the employer must label the materials in accordance with paragraph (m)(3). Paragraph (j)(3)(ii) further requires that those materials designated for disposal must be either cleaned to be as free as practicable of beryllium or placed in enclosures that prevent the release of beryllium-containing particulate or solutions under normal conditions of use, storage, or transport, such as bags or containers. Paragraph (j)(3)(iii) requires the same for materials designated for recycling or reuse.

The final rule makes a number of changes to the previous requirements of paragraph (j)(3). As originally promulgated in the 2017 final rule, paragraph (j)(3)(i) required that materials designated for disposal be disposed of in sealed, impermeable enclosures, such as bags or containers, that are labeled according to paragraph (m)(3) of the beryllium standard, but did not allow employers the alternative option of cleaning such material to be as free as practicable of beryllium. Further, both paragraphs (j)(3)(i) and (j)(3)(ii) required that materials be transferred in sealed, impermeable bags, but did not further define this requirement. Finally, the original paragraph (j)(3) did not explicitly address transfers of materials for the purpose of reuse.[17]

After the promulgation of the final rule in 2017, OSHA learned that some stakeholders were confused about these requirements. For example, stakeholders were uncertain about what types of enclosures would be acceptable under the standard. To help alleviate stakeholder confusion, OSHA proposed a number of changes in the 2018 NPRM that make explicit what had been intended in the 2017 final rulemaking. Specifically, OSHA proposed adding provisions explicitly addressing transferring materials for reuse; clarifying that the rule's requirements for disposal, recycling, and reuse do not apply to intra-plant transfers; and

[17] Subsequent to the 2017 final rule, the 2018 direct final rule clarified that the requirements of paragraph (j)(3) do not apply to materials containing only trace amounts of beryllium (less than 0.1 percent by weight).

allowing for the cleaning of materials bound for disposal. The agency also proposed reorganizing the paragraph's two paragraphs into three that focused on specific topics and making minor changes in terminology to improve the clarity and internal consistency of the standard. Only one of the changes is substantive, which is the inclusion of the option for cleaning instead of enclosure; the remaining edits merely clarify OSHA's original intent. As discussed in more detail below, OSHA is retaining the changes proposed in the 2018 NPRM in the final rule with only one clarifying revision. With these changes, final paragraph (j)(3) provides comprehensive, easy to understand requirements for employers that are transferring materials outside of their plants for disposal, recycling, or reuse that contain at least 0.1 percent beryllium by weight or are contaminated with beryllium.

In response to the 2018 NPRM, a number of commenters, including the DOD, Materion, the USW, and EEI, expressed support for the proposed revisions generally (see, *e.g.,* Document ID 0029, p. 1; 0038, pp. 32–33; 0033, p. 5; 0031, p. 2). For example, DOD stated that the revisions ''are evidence based and provide greater employee protection'' (Document ID 0029, p. 1). Similarly, Materion commented that the revisions ''will provide improved understanding and more practical meaning to manufacturers by improving the clarity and internal consistency of the standard'' (Document ID 0038, p. 32).

Stakeholders also offered specific comments on the individual changes OSHA proposed to paragraph (j)(3). OSHA outlines each of those changes below, along with any specific comments received on those changes and the agency's final determination as to whether to retain the proposed change in the final rule.

OSHA proposed seven changes to the 2017 version of paragraph (j)(3). First, the agency proposed that the provisions address reuse (in addition to disposal and recycling). As noted above, paragraph (j)(3) of the 2017 final rule contained requirements for the labeling and enclosure of certain materials designated for disposal and the labeling and either enclosure or cleaning of materials designated for recycling. The preamble to the 2017 final rule made clear that paragraph (j)(3)'s requirements related to recycling also applied to reuse (see 82 FR at 2695–96), but the standard did not explicitly advise employers of this requirement. To make the agency's original intent clear, OSHA proposed in the 2018 NPRM to include provisions addressing reuse. This proposed change was intended to ensure that workers who may be exposed to materials containing or contaminated with beryllium that are directly reused without first being processed into a different form are appropriately protected. For example, a manufacturer may sell a by-product from a process to a downstream manufacturer that would reuse the by-product as a component of a new product. Recycling, on the other hand, typically involves the further processing of waste materials to separate and recover various components of value. OSHA did not receive any specific comments on the addition addressing reuse of materials in paragraph (j)(3). Therefore, OSHA has finalized the inclusion of requirements related to the reuse of materials in paragraph (j)(3).

Second, OSHA proposed reorganizing paragraph (j)(3)'s original two paragraphs (one on disposal, one on recycling—with the labeling requirements specified in each) into three new paragraphs with each paragraph focusing on a different topic. Proposed paragraph (j)(3)(i) spelled out the labeling requirements, proposed paragraph (j)(3)(ii) included the requirements for cleaning or enclosing materials bound for disposal, and proposed paragraph (j)(3)(iii) laid out the obligations as to materials designated for recycling or reuse. The proposed reorganization allowed the agency to incorporate the new reuse requirements, while also setting out each distinct obligation clearly. OSHA further explained in the proposal that this is not a substantive change to the standard, but rather only a reorganization of the existing provisions (see 83 FR at 63763). One commenter, Materion, addressed the reorganization of paragraph (j)(3), noting that the change would improve the clarity and employers' understanding of the provisions (Document ID 0038, p. 32). Having received no comments to the contrary, OSHA is adopting the new structure to paragraph (j)(3) in the final rule.

Third, OSHA proposed a simplifying change relating to the description of which materials must be labeled and cleaned or enclosed prior to transfer for disposal, recycling, or reuse. The 2018 direct final rule required employers to label and clean or enclose two groups of materials: (1) Materials that contain beryllium in concentrations of 0.1 percent by weight or more, and (2) materials that are contaminated with beryllium. In the 2018 NPRM, OSHA proposed a simplifying edit to the first group of materials. Specifically, the agency proposed replacing the phrase materials ''that contain beryllium in concentrations of 0.1 percent by weight or more'' with a shorter phrase: Materials ''that contain at least 0.1 percent beryllium by weight.'' As the agency explained in the 2018 NPRM, this change is meant to simplify the language and does not change the meaning. OSHA did not receive any comments on the proposed simplification of this language. Therefore, OSHA is adopting the new phrase ''that contain at least 0.1 percent beryllium by weight'' in paragraph (j)(3) in the final rule.

Fourth, OSHA proposed adding an explicit exemption for materials transferred within a plant from the cleaning and enclosure requirements in new paragraphs (j)(3)(ii) and (iii). While this exemption was not explicitly included in the regulatory text of the 2017 final rule, its inclusion in this final rule is not a substantive change. As OSHA noted in the 2018 NPRM, the agency never intended the provisions of paragraph (j)(3) to require employers to clean or enclose materials to be used in another location within the same facility (83 FR at 63756 (citing 82 FR at 2696)).[18] Thus, the inclusion of the exemption in the proposed regulatory text simply makes the agency's intent plain.

The USW supported the proposed inclusion of the ''intra-plant transfer'' exemption in the regulatory text (Document ID 0033, p. 5). Specifically, the USW pointed to its comments on OSHA's 2015 NPRM, which stated that the agency should not require all materials to be decontaminated or sealed in an enclosure (Document ID 0033, p. 5). Rather, the USW explained, the initial intent of the corresponding provision of the model standard it drafted jointly with Materion was ''to ensure that materials *leaving a facility* and designated for recycling be containerized or visibly clean'' (Document ID 0033, p. 5) (emphasis added).

DOD did not submit a comment on the proposed intra-plant transfer exception, but its comment on another part of paragraph (j)(3) suggested that it understood the paragraph to apply to intra-plant transfers (see Document ID

[18] As OSHA noted in the 2018 NPRM, employees who may be exposed to these materials during intra-plant transfers will not go unprotected. On the contrary, other provisions of the beryllium standard require employers to communicate possible hazards to these employees and protect them during such transfers (see, *e.g.,* paragraph (f), Methods of compliance; paragraph (g), Respiratory protection; paragraph (h), Personal protective clothing and equipment; paragraph (m), Communication of hazards).

0029, p. 1 (''To support the proposed revisions that require surface cleaning of equipment and materials to remove beryllium before recycling, re-use, or intra-plant transfers, we recommend the use of the Department of Energy's (DOE's) cleanliness standards as specified in Title 10 Code of Federal Regulations Part 850.'')).[19] As discussed below, OSHA does not agree with DOD's suggested use of DOE's surface limits and, as already stated, OSHA never intended to require employers to clean or enclose materials transferred within a single plant. Rather, the provisions in paragraph (j)(3) have always been intended to protect employees after the materials leave the facility.

Materion commented that beryllium-containing scrap metal or wastes are, in most cases, recycled internally ''either within or between facilities,'' but companies ''also recycle scrap or purchase scrap on the open market'' (Document ID 0038, p. 32). Materion further asserted that OSHA's regulation ''should not be construed as potentially limiting the environmentally beneficial recycling of metals'' (Document ID 0038, p. 32). OSHA agrees that paragraph (j)(3)'s requirements should not be read to discourage the reuse or recycling of metals and reads Materion's statements regarding the manner in which companies recycle scrap metal or wastes (*i.e.,* within or between facilities or on the open market) as purely informational. However, the agency notes that this comment could be read to suggest that the exception for items transferred within a facility also applies to items transferred between two facilities owned by the same employer. Such an interpretation would be incorrect—the *intra*-plant transfer exception only exempts transfers within a single plant; material transfers between plants are not excluded, regardless of plant ownership.

This comment also alerted the agency to a potential ambiguity in the text of proposed paragraph (j)(3)(i). Specifically, OSHA realized that the phrase ''to another party'' could be read to suggest that transfers between two facilities owned by the same employer are exempted from the labeling requirements in paragraph (j)(3)(i). Again, this was not the agency's intent. As noted above, the proposed addition of the explicit intra-plant transfer exception in paragraphs (j)(3)(ii) and (iii) was not a substantive change—the agency never intended to require employers to clean or enclose materials transferred within a single plant. The reorganization of paragraph (j)(3) was also not a substantive change; it merely allowed the agency to make clear that the labeling requirements apply regardless of whether the employer transfers materials for the purpose of disposal, recycling, or reuse (83 FR at 63763, 63756). Because the labeling requirements were part of paragraphs (j)(3)(i) and (ii) in the 2017 final rule, to which the intra-plant exemption applied, and were simply moved to a new stand-alone paragraph without substantive change, the scope of those activities requiring labeling has not changed. Put another way, the intra-plant exemption continues to apply to the labeling provision to the same extent it did prior to the proposal. And, more to the point, the labeling requirement continues to apply to all other transfers for purposes of disposal, recycling, or reuse, regardless of whether they involve transfers between two locations operated by the same employer.

If proposed paragraph (j)(3)(i) was interpreted to only require the labeling of materials transferred to another *employer* (rather than another facility), then an employer could place materials that were designated for reuse in an enclosure and transfer them to another facility *without* a label, so long as the employer owned the second facility. This scheme could potentially put both the transferring *and* receiving employees at risk by failing to appropriately apprise them of the presence of beryllium-containing materials and the hazardous nature of beryllium exposure.

Moreover, such an interpretation could lead to inconsistencies or conflicts with the Hazard Communication standard (HCS) (29 CFR 1910.1200), which requires labeling for all hazardous chemicals leaving a worksite regardless of destination. This is clearly laid out in OSHA's Hazard Communication directive (CPL 02–02–079): ''Manufacturers, importers, and distributors are required to ensure that each container of hazardous chemicals is appropriately labeled. Labeling requirements apply for shipped containers leaving the workplace regardless of whether the intended destination is interstate or intrastate.''

Although the agency's intent was always to exempt only *intra*-plant transfers from the labeling requirement, OSHA sees value in eliminating any ambiguity and ensuring that labeling is consistent with the requirements of the HCS. Therefore, the agency is revising the text of paragraph (j)(3)(i) to more explicitly match the intent expressed in both the 2017 rule and the 2018 proposal. Specifically, OSHA is revising paragraph (j)(3)(i) in the final rule to strike the phrase ''to another party'' and add the ''except for intra-plant transfers'' language that is found in paragraphs (j)(3)(ii) and (iii). Final paragraph (j)(3)(i), therefore, provides that except for intra-plant transfers, when the employer transfers materials that contain at least 0.1 percent beryllium by weight or are contaminated with beryllium for disposal, recycling, or reuse, the employer must label the materials in accordance with paragraph (m)(3) of this standard.

In summary, OSHA is adopting the proposed addition of the explicit intra-plant exception in final paragraphs (j)(3)(ii) and (iii). No commenters opposed these revisions and, therefore, OSHA has decided to retain them, unchanged from the proposal (see Document ID 0038, p. 32; 0033, p. 5). The agency is also revising proposed paragraph (j)(3)(i) to explicitly incorporate the exception. As explained in detail above, none of these changes are substantive, but OSHA expects the clarified language will aid employers in understanding and, thus, carrying out their responsibilities under these provisions.

OSHA's fifth proposed change to paragraph (j)(3) focused on the requirement to place items in ''sealed, impermeable enclosures.'' Specifically, paragraph (j)(3)(i) in the 2017 final rule required employers to place certain materials bound for disposal in ''sealed, impermeable enclosures, such as bags or containers.'' Paragraph (j)(3)(ii) in the 2017 final rule also required enclosure of certain materials that had not been appropriately cleaned. In the preamble to the 2017 final rule, OSHA explained that it intended these requirements to be broad and performance-oriented and clarified that the term ''impermeable'' was not intended to mean absolutely impervious to rupture but, rather, that the enclosures would not allow materials to escape under normal conditions of use (82 FR at 2695). Nevertheless, the agency learned that confusion around the enclosure requirement remained.

To alleviate the confusion regarding the enclosure requirements, OSHA proposed in the 2018 NPRM to clarify the ''sealed, impermeable bag'' requirement to make explicit what had been intended in the 2017 final rulemaking: That employers must utilize enclosures that prevent the release of beryllium-containing

[19] DOD's suggestion regarding DOE's cleanliness standards is addressed below in this section of this final rule as part of the discussion of the seventh and final proposed change to paragraph (j)(3) relating to the cleaning of materials designated for disposal, recycling, or reuse.

particulate or solutions under normal conditions of use, storage, or transport. The agency further explained that the proposed change would reinforce the requirement that employers select the appropriate type of container to prevent release based on the form of beryllium and how it is normally handled. For example, a container that prevents the release of a beryllium particulate may not be effective in preventing the release of a beryllium solution.

One commenter, Materion, submitted comments specific to this proposed change (Document ID 0038, p. 32). Materion was supportive of the revision, noting that it will significantly improve understanding of the requirements for containerization and transport of recycled materials and asserting its belief that without the proposed changes the disposal and recycling provision are technologically and economically infeasible (Document ID 0038, p. 32). According to Materion, the change appropriately accommodates the various physical properties of beryllium materials being recycled, the ''many different applications resulting in many types of container configurations,'' and the ''many types of transfer mechanisms and end use processing applications'' (Document ID 0038, p. 32). No commenters opposed these revisions and, therefore, OSHA has decided to retain them unchanged from the proposal.

Unlike the previous five proposed changes, the sixth proposed change was more than a clarifying change from the 2017 final rule. Under the 2017 final rule, employers could either clean *or* enclose materials designated for recycling. Materials designated for disposal, however, could only be enclosed; the option to clean the materials was not available. The difference in the two provisions stemmed from the concern that municipal and commercial disposal workers should be protected from exposure to beryllium from contact with materials discarded from beryllium work areas in general industry by placing those materials in enclosed containers. However, as OSHA explained in the 2018 NPRM, the agency had not considered situations where it would be impractical to require enclosure because the materials in question were large items, such as machines or structures, that may contain at least 0.1 percent beryllium by weight or be contaminated with beryllium, rather than more common items, such as beryllium scrap metal or shavings.

With that situation in mind, OSHA reconsidered its earlier determination and preliminarily determined that workers handling items designated for disposal, like workers handling items designated for recycling or reuse, would be just as protected from exposure to beryllium if the items are cleaned to be as free as practicable of beryllium as if the items were placed in containers. In accordance with this preliminary determination, OSHA in the 2018 NPRM proposed adding the cleaning option to paragraph (j)(3)(ii). The agency explained that, regardless of whether an employer chooses to clean or enclose materials designated for disposal, the labeling requirements under proposed paragraph (j)(3)(i) would apply and would require that the materials designated for disposal be labeled in accordance with paragraph (m)(3) of this standard. It further noted its expectation that these proposed changes would maintain safety and health protections for workers.

OSHA received no comments on this proposed revision and has therefore finalized it as proposed.

The seventh and final proposed change also relates to the cleaning of materials designated for disposal, recycling, or reuse. Paragraph (j)(3)(ii) in the 2017 final rule required the specified materials to be cleaned to be as free as practicable of surface beryllium contamination. However, the 2017 final rule did not define the term ''surface beryllium contamination'' and other parts of the 2017 final rule used the term ''as free as practicable'' without the ''surface beryllium contamination'' modifier. To alleviate any potential confusion stemming from the agency's use of this new, undefined term, OSHA proposed to eliminate any potential confusion by removing the phrase ''surface beryllium contamination.''

OSHA did not receive any comments that directly addressed the removal of this phrase but one stakeholder, DOD, offered a suggestion. Specifically, DOD recommended the use of the Department of Energy's (DOE's) cleanliness standards as specified in Title 10 Code of Federal Regulations Part 850 (Document ID 0029, p. 1). According to DOD, these standards are ''generally-acceptable criteria for surface contamination and were adopted based on DOE's assessment of practical cleanliness levels and proven feasibility'' (Document ID 0029, p. 1).

OSHA agrees that DOE's standards might be a useful reference for employers seeking advice on how to clean materials prior to transfer for disposal, reuse, or recycling or how to determine the effectiveness of existing cleaning efforts and that wipe sampling in general can be a useful tool for employers to provide feedback on their cleaning procedures. To the extent that DOD's recommendation was intended to suggest an amendment to the proposed provisions, however, OSHA does not believe such an amendment is appropriate. As discussed in the 2018 NPRM, the ''as free as practicable'' standard is well-understood by the regulated community. OSHA has used the phrase in existing substance-specific standards, including those for lead (29 CFR 1910.1025, 29 CFR 1926.62), chromium (VI) (29 CFR 1910.1026), and asbestos (29 CFR 1910.1001), and has previously discussed its meaning in a 2014 letter of interpretation explaining the phrase in the context of the chromium standard (OSHA, Nov. 5, 2014, Letter of Interpretation, available at *https://www.osha.gov/laws-regs/standardinterpretations/2014-11-05*).

Additionally, as discussed in the Summary and Explanation of the definition of the term *dermal contact with beryllium,* the best available scientific evidence on adverse health effects from dermal contact with beryllium does not provide sufficient information to link risk of adverse health effects with specific levels of surface contamination. Therefore, the agency has chosen not to require a specific target level of surface contamination for any of the surface cleanliness requirements of the beryllium standards. Instead, the agency has determined that the more performance-oriented ''as free as practicable'' standard for cleaning—rather than a more prescriptive requirement—is appropriate. The agency finds that the use of the broader standard will better serve employees by allowing employers in a variety of industries flexibility to decide what type of control methods and procedures are best suited to their beryllium operations.

Having received no other comments on this proposed provision, OSHA strikes the phrase ''surface beryllium contamination'' from the regulatory text, as proposed.

In summary, OSHA is finalizing (j)(3) as proposed in 2018, except for the clarifying revision in paragraph (j)(3)(i), which explicitly incorporates the intra-plant exception found in paragraphs (j)(3)(ii) and (j)(3)(iii). OSHA has based this decision on the record and has determined this will maintain or enhance worker protections.

Medical Surveillance.

Paragraph (k) of the beryllium standard for general industry (29 CFR 1910.1024) addresses medical surveillance requirements. The paragraph specifies which employees

must be offered medical surveillance, as well as the frequency and content of medical examinations. It also sets forth the information that must be provided to the employee and employer. The purposes of medical surveillance for beryllium are (1) to identify beryllium-related adverse health effects so that appropriate intervention measures can be taken; (2) to determine if an employee has any condition that might make him or her more sensitive to beryllium exposure; and (3) to determine the employee's fitness to use personal protective equipment such as respirators. The inclusion of medical surveillance in the beryllium standard for general industry is consistent with Section 6(b)(7) of the OSH Act (29 U.S.C. 655(b)(7)), which requires that, where appropriate, medical surveillance programs be included in OSHA health standards to aid in determining whether the health of employees is adversely affected by exposure to the hazards addressed by the standard.

In the 2018 NPRM, OSHA proposed two sets of changes to paragraph (k). The first set of changes proposed is in paragraph (k)(2), which specifies when and how frequently medical examinations were to be offered to those employees covered by the medical surveillance program. Paragraph (k)(2)(i)(B) of the standard requires the employer to provide a medical examination within 30 days after determining that the employee shows signs or symptoms of CBD or other beryllium-related health effects or that the employee has been exposed to beryllium in an emergency. After publication of the 2017 final rule, stakeholders suggested to OSHA that, for individuals exposed one-time during an emergency, 30 days may be insufficient to detect beryllium sensitization, so a longer timeframe for medical examinations may be more appropriate (83 FR at 63757).

In the 2018 NPRM, OSHA acknowledged uncertainty regarding the time period in which sensitization may occur following a one-time exposure to a significant concentration of beryllium in an emergency (83 FR at 63757). In fact, beryllium sensitization can occur several months or more after initial exposure to beryllium among workers with regular occupational exposure to beryllium (see 83 FR at 63757 (citing 82 FR at 2530, 2533)). Based on this evidence and stakeholder feedback, OSHA proposed removing the requirement for a medical examination within 30 days of exposure in an emergency, under paragraph (k)(2)(i)(B), and adding paragraph (k)(2)(iv), which would require the employer to offer a medical examination at least one year after but no more than two years after the employee is exposed to beryllium in an emergency. OSHA requested comments on the appropriateness of this change (83 FR at 63757).

Several stakeholders commented on this issue. NJH supported extending the time to offer medical surveillance to one year after an emergency because 30 days following a high exposure may not be enough time to detect beryllium sensitization (Document ID 0022, p. 8). Materion also agreed with the proposed one-to-two-year timeframe for examinations following exposure during an emergency because 30 days may be too soon to detect an immunological change using the BeLPT (Document ID 0038, p. 33). DOSH similarly commented that delaying the medical examination to one year might improve the detection of sensitization because it may take several months to detect it (Document ID 0023, p. 2). DOSH also expressed concern, however, that workers would not get counseling about signs and symptoms of beryllium-related conditions, an occupational history review, and other medical advice which may allow for the worker to identify a developing condition within the first year after exposure (Document ID 0023, p. 2). DOSH added that if the medical examination will be delayed, it would be appropriate to have a requirement for additional training or a brief medical consultation for workers who are not knowledgeable about beryllium and the potential medical conditions that may be triggered by exposure (Document ID 0023, pp. 2–3).

The ACOEM and NSSP shared DOSH's concerns regarding potential delays in consultations and counseling (Document ID 0024, p. 2; 0027, p. 4). The NSSP recommended an earlier discussion with employees exposed in an emergency to address their individual concerns, the medical path forward, options available, and to answer any questions the employees might have (Document ID 0027, p. 4). It suggested that the medical examination could then be scheduled in keeping with the individual employee's medical needs (Document ID 0027, p. 4). ACOEM opposed the change, arguing that workers who are exposed to beryllium in an emergency deserve prompt medical evaluation to understand the potential health risks, receive baseline testing, if desired, and to receive medical counseling (Document ID 0024, p. 2). ACOEM maintained that it would be ''an extremely insensitive and harsh change in policy'' to require exposed workers to wait more than a year to receive professional medical advice (Document ID 0024, p. 2). On the other hand, Materion argued that the standard protects workers who may have been exposed in an emergency, regardless of when the emergency occurred, by requiring employers to make medical surveillance available to any employees showing signs and symptoms of CBD or other beryllium-related health effects (Document ID 0038, p. 33). Specifically, paragraph (k)(2)(i)(B) requires employers to provide an examination to these employees within 30 days of determining that the employee shows signs or symptoms of CBD.

After considering these comments and the record as a whole on this issue, OSHA reaffirms its preliminary belief that testing conducted during the proposed time period of one to two years is more likely to detect sensitization than testing conducted 30 days following emergency exposure (82 FR at 63757). Nevertheless, DOSH, the NSSP, and ACOEM's concerns about possible delays in medical consultations and examinations and lack of employee knowledge of potential health effects prompted the agency to reevaluate the standard's medical surveillance and training triggers to determine if any employees could potentially be exposed in an emergency but may not be knowledgeable about symptoms, health effects, and medical surveillance because they have not been trained, or if any employees might be exposed but have not recently received a medical examination during which they had the opportunity to talk with a PLHCP about exposure to beryllium.

First, OSHA considered the population of employees affected by emergencies. As noted in the 2018 NPRM, OSHA estimates that a very small number of employees, likely less than 0.1 percent of the affected population, would be affected by emergencies in a given year (83 FR at 63764). Second, OSHA considered if any of the small number of employees exposed in an emergency in a given year would not be knowledgeable about symptoms, health effects, and medical surveillance through the training provided under paragraph (m)(4) at the time of emergency and, thus, might need such training after exposure during an emergency. Paragraph (m)(4)(i) requires the employer to provide information and training in accordance with the Hazard Communication Standard (HCS), 29 CFR 1910.1200(h), for each employee who has, or can reasonably be expected to have, airborne exposure to or dermal contact with beryllium. Final paragraph (m)(4)(ii) requires employers to ensure that each

employee who is, or can reasonably be expected to be, exposed to airborne beryllium can demonstrate knowledge and understanding of a number of specified topics, including (1) the health hazards associated with airborne exposure to and dermal contact with beryllium, including signs and symptoms of CBD; (2) the purpose and a description of the medical surveillance program under paragraph (k) of the standard, including risks and benefits of each test to be offered; (3) the purpose and a description of the medical removal protection provided under paragraph (l) of the standard; and (4) the contents of the standard.

OSHA expects that the vast majority of employees who could be exposed to beryllium in an emergency are those who are regularly exposed to beryllium as part of their normal work duties performed near processes involving beryllium. Therefore, most of those employees are already likely to be trained in accordance with the HCS under paragraph (m)(4)(i) because the training requirements under paragraph (m)(4)(i) are triggered by actual, or reasonably anticipated, airborne exposure at any level or dermal contact with beryllium. In addition, OSHA anticipates that most of these employees would also be knowledgeable about beryllium-related health effects, medical surveillance, medical removal, and the remainder of the standard, as required by paragraph (m)(4)(ii). Nevertheless, if an employee who had not been trained in accordance with paragraph (m)(4) or was not knowledgeable of the subjects covered in paragraph (m)(4)(ii) was exposed in an emergency, the standard would require that the employee be trained after the emergency because the exposure during the emergency would cause them to meet the standard's training triggers. In other words, the standard already provides for training of the very small number of untrained or unknowledgeable employees who might be exposed during an emergency.[20]

Third, OSHA considered if any employees exposed during an emergency would likely not have received a recent examination under the standard. Under paragraph (k)(1)(i), the employer must make medical surveillance available to four groups of employees: (A) Employees who are or are reasonably expected to be exposed at or above the action level for more than 30 days per year, (B) employees who show signs or symptoms of CBD or other beryllium-related health effects, (C) employees who are exposed to beryllium during an emergency, and (D) employees whose most recent written medical surveillance opinion required by paragraph (k)(6) or (k)(7) of the standard recommends periodic medical surveillance. Under paragraph (k)(2)(ii), employees who continue to meet above-triggers (A), (B), or (D) of the standard receive examinations at least every two years after their most recent examination. Employees previously exposed in an emergency (and all other employees who have received an examination, but no longer meet the criteria for periodic examinations) continue to be offered a standardized BeLPT or equivalent test at least every two years, unless they are confirmed positive (paragraph (k)(3)(i)(E); 82 FR at 2705).

As noted above, OSHA expects that the vast majority of employees who could be exposed to beryllium in an emergency are those who are regularly exposed to beryllium as part of their normal work duties that are performed near processes involving beryllium. As a result, OSHA expects that the majority of employees who could be exposed to beryllium in an emergency are likely to be those who meet the trigger for periodic medical surveillance under paragraph (k)(1)(i)(A) (*i.e.,* they are or are reasonably expected to be exposed at or above the action level for more than 30 days per year). Thus, they have likely had an opportunity to consult with a PLHCP at a minimum of every two years (paragraph (k)(2)(ii)). Other employees exposed during an emergency may have also had a recent examination because they have recently met one of the other triggers, such as experiencing signs or symptoms of CBD or other beryllium-related health effects. OSHA recognizes, however, that a much smaller number of employees, such as office and warehouse workers, who do not have regular exposures to beryllium at or above the action level and have also not met one of the other medical surveillance triggers, could potentially be exposed to beryllium in an emergency. These employees may have never received a medical examination or a BeLPT or equivalent test.

OSHA agrees with ACOEM that it is unacceptable to have employees who have not recently been offered a medical examination under the beryllium standard wait for a year or more for a medical consultation and examination after exposure during an emergency. These employees may not have baseline information on their health status, and they may not have had the opportunity to speak to a PLHCP to ask questions related to their concerns, such as possible health risks, symptoms, and medical interventions. In contrast, employees who had a medical examination within the previous two years would have a baseline and have had the opportunity to speak with a health professional. Therefore, to adequately meet the needs of all employees who may be exposed in an emergency, OSHA is deleting final paragraph (k)(2)(iv) and replacing it with paragraphs (k)(2)(iv)(A) and (k)(2)(iv)(B).

New paragraph (k)(2)(iv)(A) addresses the needs of the very small group of employees who are exposed in an emergency but have not received a medical examination under paragraph (k)(1)(i) within the previous two years. Specifically, paragraph (k)(2)(iv)(A) requires that if an employee is exposed to beryllium during an emergency and has not received a medical examination under paragraph (k)(1)(i) within the previous two years, then the employer must provide that employee with a medical examination within 30 days of the date of the emergency. New paragraph (k)(2)(iv)(B), on the other hand, focuses on employees who are exposed during an emergency, but have recently received an examination. Under paragraph (k)(2)(iv)(B), if an employee has received a medical examination under paragraph (k)(1)(i) within the previous two years, then the employer would be required to offer that employee a medical examination that meets the requirements of the standard at least one year but no more than two years after the employee was exposed to beryllium in an emergency.

OSHA concludes that it is appropriate to provide a medical examination within 30 days after the employee was exposed in an emergency, if the employee has not had an examination under the beryllium standard within the last two years. It addresses the concerns of DOSH, ACOEM, and the NSSP that employees receive timely medical consultations and evaluations. If an employee has not had a previous examination under the standard, the examination at 30 days after the emergency allows for collection of baseline values on health status, as recommended by ACOEM. Baseline information about the employee's current health status, such as lung function, will allow for a comparison with changes that might occur in the future. Moreover, if the employee is confirmed positive by the baseline

[20] OSHA notes that the standard would require additional training for workers who were exposed during an emergency who had already been trained if the employer realized that those workers were not knowledgeable about topics such as the potential medical conditions which may result from exposure to beryllium or symptoms that may trigger a medical examination (see paragraph (m)(4)(ii)(A); see also additional training requirements under paragraph (m)(4)(iii)).

BeLPT and there is a possibility that the employee could be exposed to beryllium again in the future, knowledge about the confirmed positive finding would allow the employee to consider risks and options related to employment (82 FR at 2702).

OSHA recognizes, as NJH, DOSH, and Materion noted, that 30 days following the emergency is not the best timeframe for detecting sensitization. However, paragraph (k)(3)(ii)(E) of the beryllium standard for general industry already requires that employees who received a medical examination because of an emergency exposure continue to receive a BeLPT, or an equivalent test, every two years following that examination, unless the employee is confirmed positive. Therefore, the standard already requires the employers to offer these employees a BeLPT for the remainder of their tenure in the workplace where they were exposed in an emergency, rather than limiting the opportunity to detect sensitization to 30 days following the emergency.

OSHA also concludes that it is appropriate to require employers to offer medical surveillance within one to two years after exposure to beryllium in an emergency, if that employee had an examination that meets the requirements of the beryllium standard within the last two years. These employees could include those who undergo periodic medical surveillance at least every two years under paragraph (k)(2)(A) or (D), or who may have received a medical examination within the last two years because they were experiencing symptoms or were exposed in a previous emergency (paragraphs (k)(2)(B) and (C)). These employees would have received a recent medical consultation and examination which would have allowed them to ask questions. In addition, these employees would have received a baseline examination. Like the employees examined within 30 days after exposure to beryllium in an emergency, all these employees examined within one to two years of the emergency will continue to be offered BeLPT testing every two years under paragraph (k)(3)(ii)(E) if they have not been confirmed positive and do not or no longer meet the criteria for full periodic medical examinations under paragraph (k)(2)(ii).

The requirement for continuing BeLPTs for any employee who has received an examination under the beryllium standard, including for an emergency exposure, addresses another concern voiced by NJH, which is that anyone exposed in an emergency should be provided periodic medical surveillance (Document ID 0022, p. 8). If the employee is confirmed positive, or if the licensed physician otherwise deems it appropriate, the licensed physician is to provide in the written medical opinion to the employee a referral to a CBD diagnostic center and a recommendation for continued periodic medical surveillance under paragraph (k)(5)(iii) and (iv). If the employee authorizes the recommendation for referral to be included in the written opinion, the employer must provide an examination at a CBD diagnostic center (discussed in more detail below) (paragraph (k)(6)(iii)). Once an employee is evaluated at a CBD diagnostic center, as described under paragraph (k)(7)(i), the employee may choose to have any subsequent medical examinations for which the employee is eligible, performed at the CBD diagnostic center at no cost to the employee (see final paragraph (k)(7)(vi)). Therefore, the standard already allows for periodic BeLPT testing for all employees exposed in an emergency, and periodic medical surveillance for any of those employees who are confirmed positive.

Another concern that was raised by DOSH is that delaying the medical examination to at least one year following the emergency may result in employees not receiving the examination if their employment ends within that one-year period (Document ID 0023, p. 3). This concern continues to be relevant to employees who are receiving the examination for an emergency exposure at one to two years after the exposure in the emergency (paragraph (k)(2)(iv)(B)). If employment does end before one year after the emergency, paragraphs (k)(2)(iii) and (1)(i)(C) require the employer to offer a medical examination at termination of employment to any employee exposed to beryllium in an emergency, unless the employee received an examination in accordance with the standard within the last 6 months. OSHA is concerned that this provision would not require employers to offer a medical examination to some employees who would receive the emergency examination at one to two years after the emergency exposure. For example, if such an employee, already under medical surveillance, received a medical examination one month before the emergency and then terminated employment two months after the emergency, the employer would not be required to offer a medical examination to that employee exposed during the emergency under the proposed changes, and the employee would not have an opportunity to have an medical exam that could detect any adverse effects that might have occurred because of the emergency. OSHA agrees with DOSH that further revision is necessary to ensure that every employee who is exposed in an emergency receives an examination following the emergency.

Accordingly, OSHA is revising paragraph (k)(2)(iii) to require that each employee who is exposed in an emergency and has not received an examination since the emergency exposure is provided an examination at the time employment is terminated. OSHA finds that this change better protects employees because it allows health effects that could have resulted from the emergency exposure to be more readily detected.

In making these decisions on the appropriate timing for medical examinations for employees exposed to beryllium during an emergency, OSHA considered Materion's point that employees experiencing signs or symptoms or other beryllium-related health effects after an emergency can ask for an examination under paragraph (k)(1)(i)(B) (Document ID 0038, p. 33). As explained above, all employees who are exposed in an emergency will either have previously received training under paragraph (m)(4) or will need to be trained within a reasonable time after exposure. And these employees should already be knowledgeable or will soon become knowledgeable about the health hazards associated with airborne exposure to and dermal contact with beryllium, including signs and symptoms of CBD, as required by paragraph (m)(4)(ii). Therefore, all employees exposed during an emergency should be able to identify and report signs or symptoms of CBD or other beryllium-related health effects either at the time of the emergency or within a reasonable time after it. Materion is, thus, correct in pointing out that if these employees did experience such signs or symptoms, they could ask for a medical examination. Other employees exposed during an emergency that have not had an examination and do not experience these health effects, however, would still not have had the opportunity for a timely consultation and medical examination with a PLHCP. Consequently, OSHA does not find that the signs-or-symptoms trigger is sufficient to resolve the concerns raised by the other stakeholders.

OSHA also proposed one additional change to the paragraph involving emergency exposure. As promulgated in the 2017 final rule, paragraph (k)(2)(i)(B) required the employer to provide a medical examination within 30 days

after the employer determines that an employee shows signs or symptoms of CBD or other beryllium-related health effects or has been exposed to beryllium in an emergency. Because OSHA believes that employers typically will learn of any emergency resulting in exposure immediately or soon after it occurs, OSHA preliminarily determined that it is appropriate to measure the time period from the date of exposure. Therefore, under proposed paragraph (k)(2)(iv), the time period for providing a medical examination begins to run from the date the employee is exposed during an emergency, regardless of when the employer discovers that the exposure occurred. OSHA requested comments on the appropriateness of calculating the time period for a medical examination from the occurrence of the emergency rather than from the employer's determination of eligibility.

Materion agreed with OSHA that most employers will learn about the emergency resulting in exposure immediately or soon after the occurrence, and it supported measuring the time period from the date of the exposure, provided that the employer determined that the incident can be defined as an emergency under the standard (Document ID 0038, pp. 33–34). OSHA did not receive any comments objecting to OSHA's proposal to measure the time period from the date of exposure in an emergency; therefore, OSHA is retaining the proposed language to measure the time period from the date of the exposure in the emergency in final paragraphs (k)(2)(iv)(A) and (B).

Paragraph (k)(2)(iv)(B) does not preclude employers from voluntarily providing a medical examination within the first year after an emergency. Providing a medical examination sooner would not, however, relieve an employer of the duty to provide an exam in the one-to-two-year window. For those employees who are already eligible for periodic medical surveillance, the examination for the emergency exposure could be scheduled to coincide with the next periodic examination that is within two years of the last periodic medical examination and at least one but no more than two years after the emergency exposure, satisfying the requirements of both paragraphs (k)(2)(ii) and (iv)(B).

In summary, OSHA is modifying proposed paragraph (k)(2)(iv) to customize protections for two general groups of employees who could be exposed to beryllium in an emergency. Paragraph (k)(2)(iv)(A) will require the employer to offer a medical examination to an employee within 30 days after the employee was exposed to beryllium in an emergency, if the employee has not had an examination under paragraph (k)(1)(i) within the last two years. This requirement improves protections for what is likely to be a very small group of employees who have not had a medical examination under the beryllium standard within the last two years because it allows those employees to have a timely consultation and examination. Paragraph (k)(2)(iv)(B) will require the employer to offer a medical examination to an employee within one to two years after the employee was exposed to beryllium in an emergency, if the employee had an examination under paragraph (k)(1)(i) of the beryllium standard within the last two years. This provision eliminates the requirement to offer an examination within 30 days to the majority of employees who are likely to be exposed in an emergency and have already received a recent medical examination. Thus, these employees would have received a baseline examination and a recent consultation regarding beryllium. And either group will continue to be offered the BeLPT, or an equivalent test, every two years under paragraph (k)(3)(ii)(E), even if they do not or no longer meet the criteria for full periodic medical examinations under paragraph (k)(ii). OSHA is also revising paragraph (k)(2)(iii) to require that employers offer a medical examination to any employee who has not received an examination since the emergency exposure at the time the employee's employment is terminated. Again, OSHA expects this to be a very small group of employees that would have had an exam within six months of termination but not have had an exam since exposure during an emergency. This change ensures that all employees exposed in an emergency receive a medical examination for the emergency exposure before their employment is terminated.

In addition, other provisions in the standard ensure that either group of employees (*i.e.,* those who receive a medical examination within 30 days or one to two years after an emergency) are knowledgeable about the signs and symptoms of CBD and that if employees are experiencing signs and symptoms, they will be provided a medical examination within 30 days of the employer determining that they are experiencing such signs or symptoms.

The second (and final) set of changes that OSHA proposed to the standard's medical surveillance requirements is in paragraph (k)(7), which contains the requirements for evaluation at a CBD diagnostic center. In this final rule, OSHA is amending paragraph (k)(7) in three ways. First, OSHA is revising paragraph (k)(7)(i) to require that the evaluation must be scheduled within 30 days, and must occur within a reasonable time, of the employer receiving one of the types of documentation listed in paragraph (k)(7)(i)(A) or (B). Second, OSHA is adding a provision, in paragraph (k)(7)(ii), which clarifies that, as part of the evaluation at the CBD diagnostic center, the employer must ensure that the employee is offered any tests deemed appropriate by the examining physician at the CBD diagnostic center, such as pulmonary function testing (as outlined by the American Thoracic Society criteria), bronchoalveolar lavage (BAL), and transbronchial biopsy. The new provision also states that if any of the tests deemed appropriate by the examining physician are not available at the CBD diagnostic center, they may be performed at another location that is mutually agreed upon by the employer and the employee. Third, OSHA is making a handful of minor, non-substantive numbering and reference edits to other provisions in paragraph (k)(7) to account for the addition of new paragraph (k)(7)(ii). Specifically, OSHA is renumbering current paragraphs (k)(7)(ii), (iii), (iv), and (v) as (k)(7)(iii), (iv), (v), and (vi), respectively, and is adding a reference to new paragraph (k)(7)(ii) to the newly renumbered paragraph (k)(7)(vi).

Each of these final revisions differ in some way from the proposed amendments based on stakeholder feedback. With regard to the first change concerning the timing of the exam, the current standard requires employers to provide the examination within 30 days of the employer receiving one of the types of documentation listed in paragraph (k)(7)(i)(A) or (B). The purpose of the 30-day requirement was to ensure that employees receive the examination in a timely manner. As OSHA explained in the proposal, however, since the publication of the 2017 final rule stakeholders have raised concerns that the examination and any required tests could not be scheduled and completed within 30 days (83 FR at 63758).

To address this concern, OSHA proposed that the employer provide an initial consultation with the CBD diagnostic center, which could occur via telephone or virtual conferencing methods, rather than the full evaluation, within 30 days of the employer receiving one of the types of documentation listed in paragraph (k)(7)(i)(A) or (B). OSHA explained that providing a consultation before the full examination at the CBD diagnostic

center would demonstrate that the employer made an effort to begin the process for a medical examination. OSHA also noted that the proposed change would also allow (1) the employee to consult with a physician to discuss concerns and ask questions while waiting for a medical examination, and (2) the physician to explain the types of tests that are recommended based on medical findings about the employee and the risks and benefits of undergoing such testing. OSHA requested comments on the appropriateness of providing the consultation within 30 days and on the sufficiency of a consultation via telephone or virtual conference (83 FR at 63758).

Several stakeholders offered comments on this issue (Document ID 0021, p. 3; 0022, p. 6; 0029, p. 2; 0038, p. 34). The ATS, NJH, and Materion agreed that an examination at the CBD diagnostic center should not be required to occur within 30 days of the referral because it may take weeks or months before the CBD diagnostic center has an opening for an evaluation. In addition, many of the stakeholders noted that work responsibilities, personal and family obligations, or the need to arrange travel may make it difficult for employees to have an evaluation done within that time period.

Materion also supported the proposed requirement for a telephone or virtual consultation within 30 days, claiming that it is a more workable solution that does not reduce protections, while allowing employees to consider medical options available under the standard and offering the employee more flexibility in determining when they can undergo testing based on their availability and preference (Document ID 0038, p. 34). In contrast to Materion, the ATS and NJH opposed the proposed requirement for a consultation that can be performed via telephone or virtual conferencing within 30 days of the employer receiving documentation recommending a referral. NJH commented that a video or phone consultation would add cost and logistical difficulty to scheduling, and that it is not necessary because the PLHCP who sees the employee for screening provides information on the clinical evaluation. Furthermore, they commented, there are HIPAA privacy issues of a phone or video conference to consider (Document ID 0022, p. 6).

The ATS agreed with many of the concerns expressed by NJH, including concerns regarding logistical challenges, the need for an in-person clinical evaluation and review of medical tests to provide effective care, and redundancy with the PLHCP consultation (Document ID 0021, p. 3). The ATS and NJH recommended that the standard be revised to require that the employer make an appointment for the employee to be evaluated at the CBD diagnostic center within 30 days of receiving documentation for the referral (Document ID 0021, p. 3; 0022, p. 6). DOD also opposed requiring an evaluation by telephone or virtual conferencing and stated that an ill worker should be examined immediately; it recommended that the employer make the appointment for evaluation at a CBD diagnostic center within seven days of receiving documentation for a referral (Document ID 0029, p. 2).

After considering these comments, OSHA is convinced that scheduling a phone or virtual consultation with the CBD diagnostic center is an unnecessary step that adds logistical complications and costs. Although the agency understands Materion's point that the additional consultation could provide employees with more time and information to make medical decisions, as well as accommodate other scheduling logistics, OSHA finds that the scheduling approach suggested by the ATS and NJH addresses both the logistical difficulties cited by stakeholders with respect to the requirements in the current standard and the timing concerns Materion raised. Moreover, OSHA finds that employees will have enough information (through trainings under paragraph (m) and discussions with the PLHCP) to allow them to decide whether to be evaluated at the CBD diagnostic center.[21] OSHA is therefore amending paragraph (k)(7)(i) to require that the employer schedule an examination at a CBD diagnostic center within 30 days of receiving one of the types of documentation listed in paragraph (k)(7)(i)(A) or (B). And to maintain the intent of the 2017 final rule and the 2018 NPRM that evaluation at a CBD diagnostic center occurs in a timely manner, OSHA is adding that the evaluation must occur within a reasonable time. Requiring that the evaluation occur within a reasonable time ensures that the evaluation is done as soon as practicable based upon availability of openings at the CBD diagnostic center and the employee's preferences. This revision better addresses OSHA's original intent that the employee be examined within a timely period, while providing employees and employers with maximum flexibility and convenience.

Although OSHA understands DOD's concerns about making a timely appointment, requiring that an appointment be made within a seven-day period might not give the employee enough time to consider his or her future obligations and possibly have discussions with family members to determine the best time period for the examination. OSHA believes that a 30-day period to schedule an appointment for an examination is a reasonable time that allows the employee to consider his or her preferences for an examination date. In addition, a 30-day period offers more administrative convenience for employers because it is consistent with other triggers in the beryllium standard.

The second change that OSHA proposed to paragraph (k)(7)(i) relates to the contents of the examination at the CBD diagnostic center. As discussed in more detail above, the former definition of *CBD diagnostic center*—which stated that the evaluation at the diagnostic center ''must include'' a pulmonary function test as outlined by American Thoracic Society criteria, bronchoalveolar lavage (BAL), and transbronchial biopsy—could have been misinterpreted to mean that the examining physician was required to perform each of these tests during every clinical evaluation at a CBD diagnostic center. That was not OSHA's intent. Rather, the agency merely intended to ensure that any CBD diagnostic center has the capacity to perform any of these tests, which are commonly needed to diagnose CBD. Therefore, OSHA proposed revising the definition to clarify that the CBD diagnostic center must simply have the ability to perform each of these tests when deemed appropriate.

To account for that proposed change to the definition of *CBD diagnostic center* and to ensure that the employer provides those tests if deemed appropriate by the examining physician at the CBD diagnostic center, OSHA proposed expanding paragraph (k)(7)(i) to require that the employer provide, at no cost to the employee and within a reasonable time after consultation with the CBD diagnostic center, any of the three tests mentioned above, if deemed appropriate by the examining physician at the CBD diagnostic center (83 FR at 63764). OSHA explained that the revision would also clarify the agency's original intent that, instead of requiring all three tests to be conducted after referral to a CBD diagnostic center, the standard would allow the examining

[21] Under paragraph (k)(6)(i)(D), the employer is to ensure that the PLHCP explains the results of the medical examination to the employee, including results of tests conducted and medical conditions related to airborne beryllium exposure that require further evaluation or treatment.

physician at the CBD diagnostic center the discretion to select one or more of those tests as appropriate (83 FR at 63764).

Several stakeholders offered opinions on these proposed changes. For example, Materion agreed with the proposed changes to align paragraph (k)(7)(i) with the definition for *CBD diagnostic center* (Document ID 0038, p. 34). However, as discussed above in the Summary and Explanation of paragraph (b), Definitions, the ATS argued that ''not requiring certain diagnostic tests (or an equivalent) could reduce the potential to diagnose CBD and determine disease severity'' (Document ID 0021, p. 3). The ATS further asserted that ''confirmed positive workers should have an assessment of lung function and gas exchange (such as a full set of pulmonary function tests with spirometry, lung volumes and diffusion capacity for carbon monoxide or other similar tests) and also chest imaging'' (Document ID 0021, p. 3). NJH and the AOEC expressed similar concerns, commenting that lung function and imaging tests should be included as part of an evaluation at the CBD diagnostic center (Document ID 0022, p. 3; 0028, p. 2). After reviewing these comments and the remainder of the record on this issue, OSHA agrees that pulmonary function testing, BAL, and transbronchial biopsies are important diagnostic tools, but finds that the examining physician at the CBD diagnostic center is in the best position to determine which diagnostic tests are appropriate for particular workers. The agency believes that the modified definition of the term *CBD diagnostic center,* which requires the centers to have the capacity to perform these three tests, will serve to ensure that healthcare providers at the centers are aware of the importance of and are able to perform pulmonary function testing, BAL, and transbronchial biopsies.

Nevertheless, OSHA understands that the proposed provision could be misinterpreted to mean that the employer does not have to make available additional tests that the examining physician deems appropriate for diagnosing or determining severity of CBD. That was never the agency's intent. In fact, OSHA noted the potential for other tests, as deemed necessary by the CBD diagnostic center physician, several times in the preamble to the 2017 final rule (see, *e.g.,* 82 FR at 2709, 2714). Similar to paragraph (k)(3)(ii)(G), which requires the employer to ensure that the employee is offered as part of the initial or periodic medical examination any test deemed appropriate by the PLHCP, OSHA intends for the employer to ensure the employee is offered any tests deemed appropriate by the examining physician at the CBD diagnostic center, including tests for diagnosing CBD, for determining its severity, and for monitoring progression of CBD following diagnosis. Allowing the physician at the CBD diagnostic center to order additional tests that are deemed appropriate is also consistent with most OSHA substance-specific standards, such as respirable crystalline silica (29 CFR 1910.1053) and chromium (VI) (29 CFR 1910.1026).

To clarify the agency's intent that the physician at the CBD diagnostic center has discretion to order appropriate tests, and to further respond to stakeholder concerns regarding the necessity of pulmonary function testing, BAL, and transbronchial biopsies, OSHA is adding a new sub-paragraph (k)(7)(ii), which focuses on the content of the examination. This new provision requires the employer to ensure that, as part of the evaluation, the employee is offered any tests deemed appropriate by the examining physician at the CBD diagnostic center, such as pulmonary function testing (as outlined by the American Thoracic Society criteria), bronchoalveolar lavage (BAL), and transbronchial biopsy. OSHA intends for the new provision to make clear that the employer must provide additional tests, such as those noted by the ATS, NJH, and the AOEC, at no cost to the employee, if those tests are deemed necessary by the examining physician. The agency also believes that explicitly naming the three examples of tests that may be appropriate will further emphasize their importance to examining physicians at the CBD diagnostic centers.

Consistent with OSHA's original intent, those tests are required to be offered only if deemed appropriate by the physician at the CBD diagnostic center. For example, if lung volume and diffusion tests were performed according to the ATS criteria as part of the periodic medical examination under paragraph (k)(3) and the physician at the CBD diagnostic center found them to be of acceptable quality, those tests would not have to be repeated as part of a CBD evaluation. The addition of paragraph (k)(7)(ii) clarifies that the employer must, however, offer any test that the PLHCP deems appropriate. Consistent with previous health standards and the meaning of the identical phrase in paragraph (k)(3)(ii)(G), OSHA intends the phrase ''deemed appropriate'' to mean that additional tests requested by the physician must be both related to beryllium exposure and medically necessary, based on the findings of the medical examination (see 82 FR at 2709; 81 FR 16286, 16826 (March 25, 2016)).

New paragraph (k)(7)(ii) also addresses the possibility that a test that is deemed appropriate by the examining physician at the CBD diagnostic center might not be available at that center. Although OSHA's intention has been to require any testing to be provided by the same CBD diagnostic center unless the employer and employee agree to a different CBD diagnostic center (see 83 FR at 63758), there may be cases where the CBD diagnostic center does not perform a type of test deemed appropriate by the examining physician. In such a case, OSHA wants to ensure that the employee can receive the appropriate test. Therefore, OSHA is also including in paragraph (k)(7)(ii) a requirement that if any of those tests deemed appropriate by the physician are not available at the CBD diagnostic center, they may be performed at another location that is mutually agreed upon by the employer and the employee. This other location does not need to be a CBD diagnostic center as long as it is able to perform tests according to requirements under paragraph (k). OSHA believes that such circumstances would be very rare because CBD diagnostic centers with the ability to perform pulmonary function testing (as outlined by the ATS criteria), BAL, and transbronchial biopsy are likely to also provide other medical tests related to CBD.[22] As a result, the CBD diagnostic center in the vast majority of cases will be able to offer the additional testing deemed necessary by the examining physician. Given that this standard requires CBD diagnostic centers to be able to perform the three most common tests for diagnosing CBD, and CBD diagnostic centers typically would be able to offer any additional tests deemed necessary, OSHA expects that employees would rarely, if ever, need to travel to a second location.

In summary, final paragraph (k)(7)(i) requires that the employer provide an evaluation at no cost to the employee at a CBD diagnostic center that is mutually agreed to by the employer and the employee. The evaluation must be scheduled within 30 days and must occur within a reasonable time of the employer receiving one of the types of documentation listed in paragraph (k)(7)(i)(A) or (B). Final paragraph (k)(7)(ii) requires the employer to ensure that, as part of the evaluation, the

[22] Document ID OSHA–H005C–2006–0870–0637 provides information from the NJH website, which provides an overview of the types of tests performed.

employee is offered any tests deemed appropriate by the examining physician at the CBD diagnostic center, such as pulmonary function testing (as outlined by the American Thoracic Society criteria), bronchoalveolar lavage (BAL), and transbronchial biopsy. Paragraph (k)(7)(ii) further provides that any test deemed appropriate by the examining physician that is not available at the CBD diagnostic center may be performed at another location that is agreed upon by the employer and employee. Such tests must be provided at no cost to the employee, whether performed at the CBD diagnostic center or at another location.

As noted above, OSHA is also making a handful of minor, non-substantive numbering and reference edits to other provisions in paragraph (k)(7) to account for the addition of new paragraph (k)(7)(ii). Specifically, OSHA is renumbering current paragraphs (k)(7)(ii)–(v) as (k)(7)(iii), (iv), (v), and (vi), accordingly, and is adding a reference to new paragraph (k)(7)(ii) to the newly renumbered paragraph (k)(7)(vi). Paragraph (k)(7)(vi) provided that after an employee received the initial clinical evaluation at the CBD diagnostic center described in paragraph (k)(7)(i), the employee could choose to have any subsequent medical evaluations for which the employee is eligible under paragraph (k) performed at a CBD diagnostic center mutually agreed upon by the employer and employee and that the employer must provide such examinations to the employee at no cost. OSHA is revising the paragraph to add the reference to new paragraph (k)(7)(ii) because the description of the initial clinical evaluation is now split between paragraph (k)(7)(i) and (ii), rather than appearing solely in paragraph (k)(7)(i). OSHA does not expect that this clarifying change will have any substantive effect. Newly renumbered paragraph (k)(7)(vi) (previous paragraph (k)(7)(v)), therefore, continues to require that, after an employee has received the initial clinical evaluation at a CBD diagnostic center, the employee may choose to have any subsequent medical examinations for which the employee is eligible under paragraph (k) of this standard performed at a CBD diagnostic center mutually agreed upon by the employer and the employee, and the employer must provide such examinations at no cost to the employee.

The addition of paragraph (k)(7)(ii) and consequential renumbering of current paragraphs (k)(7)(ii)–(v) as (k)(7)(iii), (iv), (v), and (vi) also affects two other cross-references in the standard. Paragraph (l)(1) of the standard details the eligibility requirements for medical removal. Two of the criteria, those in (l)(1)(i)(B) and (l)(1)(ii) reference paragraphs (k)(7)(ii) and (k)(7)(iii), respectively. In this final rule, OSHA is updating those references to reflect the renumbering in paragraph (k)(7). Therefore, final paragraph (l)(1)(i)(B) references paragraph (k)(7)(iii) and paragraph (l)(1)(ii) references paragraph (k)(7)(iv). These edits, like those noted above in paragraph (k)(7)(vi), do not change the substantive meaning of the provisions.

Communication of Hazards.

Paragraph (m) of the beryllium standard for general industry (29 CFR 1910.1024(m)) sets forth the employer's obligation to comply with the Hazard Communication standard (HCS) (29 CFR 1910.1200) relative to beryllium and to take additional steps to warn and train employees about the hazards of beryllium. Under the HCS, beryllium manufacturers and importers are required to evaluate the hazards of beryllium and prepare labels and safety data sheets (SDSs) and provide both documents to downstream users. Employers whose employees are exposed to beryllium in their workplace must develop a hazard communication program and ensure that employees are trained on the hazards of beryllium. These employers must also ensure that all containers of beryllium are labeled and that employees are provided access to the SDSs. In addition to the requirements under the HCS, paragraph (m)(1)(ii) of the beryllium standard for general industry specifies certain criteria that must be addressed in classifying the hazards of beryllium. Paragraph (m)(2) requires employers to provide and display warning signs with specified wording at each approach to a regulated area. Paragraph (m)(3) requires employers to label each container of clothing, equipment, and materials contaminated with beryllium using specified language. Finally, paragraph (m)(4) details employers' duties to provide information and training to employees.

In the 2018 NPRM, OSHA proposed three revisions to paragraph (m) of the beryllium standard for general industry (83 FR at 63759–60, 63769). The first change is related to paragraph (m)(3), which previously required employers to label ''each bag and container'' of clothing, equipment, and materials contaminated with beryllium. In the 2018 NPRM, OSHA proposed to replace the phrase ''each bag and container'' with the phrase ''each immediate container,'' to clarify that the employer need only label the immediate bag or container of beryllium-contaminated items and not larger containers holding the labeled bag or container. OSHA proposed this change to be consistent with the HCS, which requires only the primary or immediate container to be labeled (see 29 CFR 1910.1200(c)) (definition of ''Label''). OSHA explained that this proposed change would effectuate OSHA's intent, expressed in the 2017 final rule, that the hazard communication requirements of the beryllium standard ''be substantively as consistent as possible'' with the HCS (82 FR at 2694, 2724). As such, OSHA preliminarily determined that the change would maintain safety and health protections for workers.

Next, OSHA proposed two revisions to paragraph (m)(4), which addresses employee information and training. Paragraph (m)(4)(ii) requires the employer to ensure that each employee who is, or can reasonably be expected to be, exposed to airborne beryllium can demonstrate knowledge and understanding of certain specified topics. One of the topics specified in the previous standard was the health hazards associated with ''airborne exposure to and contact with beryllium,'' including the signs and symptoms of CBD (83 FR at 63759). OSHA proposed to modify this language by adding the word ''dermal'' immediately prior to ''contact with beryllium.'' OSHA explained that the change would clarify OSHA's intent that employers must ensure that exposed employees can demonstrate knowledge and understanding of the health hazards caused by dermal contact with beryllium.

OSHA also proposed to modify the language in paragraph (m)(4)(ii)(E), which required the employer to ensure that each employee who is, or can reasonably be expected to be, exposed to airborne beryllium can demonstrate knowledge and understanding of measures employees can take to protect themselves from ''airborne exposure to and contact with beryllium,'' including personal hygiene practices (83 FR at 63759). As with the previous revision, OSHA proposed adding the word ''dermal'' to ''contact with beryllium'' to clarify OSHA's intent that employers must ensure exposed employees can demonstrate knowledge and understanding of measures employees can take to protect themselves from dermal contact with beryllium.

Commenters did not object to any of the changes that OSHA proposed to paragraph (m). In fact, the only stakeholder that offered any comments on these revisions, Materion, generally supported the proposed changes,

commenting that the changes will maintain safety and health protections for employees (Document ID 0038, p. 34). OSHA agrees with this assessment and finds that the proposed changes will clarify employers' requirements for the communication of hazards of beryllium. Therefore, OSHA is finalizing the proposed changes to paragraph (m) in this final rule.

Recordkeeping.

Paragraph (n) of the beryllium standard for general industry requires employers to make and maintain air monitoring data, objective data, and medical surveillance records, and prepare and maintain training records. The 2017 final rule required employers' air monitoring data ((n)(1)(ii)(F)), medical surveillance ((n)(3)(ii)(A)), and training ((n)(4)(i)) records to include employee Social Security Numbers (SSNs). In the 2018 NPRM, OSHA proposed to modify paragraph (n) to remove that requirement. This final rule adopts the proposed revisions, eliminating the requirement to include employee SSNs in these records.

The issue of whether to include employee SSNs in records under OSHA's standards for beryllium dates back to the 2015 beryllium NPRM. In that NPRM, OSHA proposed to require inclusion of employee SSNs in records related to air monitoring, medical surveillance, and training, similar to provisions in previous substance-specific health standards. Some stakeholders objected to the proposed requirement based on employee privacy and identity theft concerns (82 FR at 2730). OSHA recognized the validity of these concerns, but preliminarily concluded that due to the agency's past consistent practice of requiring an employee's SSN on records, any change to this requirement should be comprehensive and apply to all OSHA standards, not just the standards for beryllium (82 FR at 2730).

In 2016, in its Standards Improvement Project-Phase IV (SIP–IV) proposed rule (81 FR 68504, 68526–28 (October 4, 2016)), OSHA proposed to delete the requirement that employers include employee SSNs in records required by the agency's substance-specific standards. The 2017 final rule for beryllium included the SSN requirements, but, in the preamble, OSHA recognized that the SIP–IV rulemaking was ongoing and stated that it would revisit its decision to require employers to include SSNs in beryllium records in light of the SIP–IV rulemaking, if appropriate (82 FR at 2730).

The SIP–IV rulemaking was still ongoing when OSHA published the 2018 NPRM. Consistent with the SIP–IV proposal, OSHA proposed to modify the beryllium standard for general industry by removing the requirement to include SSNs in the recordkeeping provisions in paragraphs (n)(1)(ii)(F) (air monitoring data), (n)(3)(ii)(A) (medical surveillance), and (n)(4)(i) (training). OSHA noted that these proposed revisions would address the privacy concerns raised in response to the 2015 NPRM, while maintaining safety and health protection for workers.

Three commenters, Phylmar Regulatory Roundtable, DOD, and Materion, expressed general support for the proposed changes to the recordkeeping provisions (Document ID 0020, p. 1; 0029, p. 1; 0038, p. 34), and no commenters expressed opposition to OSHA's proposal to remove the requirement to include each employee's SSN in these three sets of records. After reviewing these comments, OSHA is finalizing the proposed deletion of the SSN requirements in this final rule. This change is also consistent with the agency's decision in the SIP–IV rulemaking, which was finalized in the months since the publication of the 2018 NPRM (84 FR 21416 (May 14, 2019)). The SIP–IV final rule deletes the requirement to include employee SSNs in records employers must maintain under the substance-specific standards that existed at the time of OSHA's 2016 SIP–IV proposal (see 84 FR at 21439–40).[23] The deletion of the SSN requirements in the beryllium general industry standard will, thus, bring this standard into line with the majority of OSHA's other substance-specific standards.

OSHA received one other comment related to SSNs in this rulemaking. A private citizen agreed that the proposed changes were ''necessary and appropriate,'' but expressed concerns that there is no additional requirement to remove SSNs from existing records and that allowing employers the option to continue using SSNs will not effectively protect employee privacy (Document ID 0017). OSHA understands the private citizen's concerns. The SIP–IV NPRM did not propose to require employers to remove employee SSNs from existing records or to prohibit employers from using employee SSNs in their records. The agency did, however, request comment on whether employers should be required to use an alternative identification system rather than SSNs, or to remove SSNs from existing records (81 FR at 68528).

As discussed in the preamble to the SIP–IV final rule, the comments that OSHA received in response to the SIP–IV NPRM advocated against requiring employers to use an alternative type of employee identifier or to remove SSNs from existing records (84 FR at 21440). For example, the Construction Industry Safety Coalition (CISC) supported OSHA's statements in the SIP–IV NPRM that employers would not be required to delete employee SSNs from existing records, would not be required to use an alternative employee identifier on existing records, and would still be permitted to use SSNs if they wish to do so. CISC stated that limiting employers' flexibility to come up with an identification system that works best for their situations would create an undue compliance burden (84 FR at 21440). After considering the comments, OSHA decided in the SIP–IV final rule to proceed with removing the SSN collection requirements from previously published standards, but not to require employers to delete employee SSNs from existing records or to use an alternative employee identifier.

In order to maintain consistency among OSHA recordkeeping requirements for substance-specific standards, the agency has decided not to require employers to delete employee SSNs from existing records relating to beryllium or to use an alternative employee identifier. The final rule allows employers the option to still use SSNs or to use some other alternative employee identifier system, as explained in the SIP–IV final rule. This will give employers the flexibility to choose the best option for their particular circumstance and will avoid unnecessarily increasing employers' compliance burdens.

Additional Comments.

The scope of the 2018 proposal was limited to the specific revisions and clarifications to the beryllium standard identified in the NPRM. The NPRM did not invite comment on all of the agency's underlying determinations from the 2017 beryllium final rule. As such, OSHA determined that some comments the agency received in response the 2018 NPRM pertained to subjects outside the scope of the proposal. OSHA briefly addresses these comments below.

Two commenters addressed issues related to OSHA's significant risk finding from the 2017 final rule. One commenter focused on the risk of health effects related to beryllium exposure in the aluminum smelting industry and the methodologies underlying OSHA's risk

[23] The beryllium standard for general industry, which was not published until 2017, was not listed in the SIP–IV NPRM and, therefore, the SIP–IV final rule did not affect the 2017 final rule's requirement to include employee SSNs in records.

assessment of occupational exposure to beryllium (Document ID 0026, Attachment 2, pp. 9–16). Another took issue with OSHA's risk determination pertaining to dermal contact with beryllium and argued that the current standard did not distinguish between the chemical forms of beryllium and its varying risk of injury from dermal contact (Document ID 0038, pp. 13–15). OSHA addressed these concerns about risk in the 2017 final rule and determined that the beryllium standard addresses a significant risk (see 82 FR at 2545–52). The changes and clarifications proposed by the 2018 NPRM do not affect that determination.

Another commenter took issue with the revised PEL for beryllium set in the 2017 final rule, suggesting that a lower PEL was needed to protect workers from CBD and lung cancer (Document ID 0028, p. 1). Although OSHA determined in the 2017 final rule that there remains a significant risk of material impairment of health at the 0.2 μg/m^3 PEL and the 2.0 ug/m^3 STEL, the agency further determined that it could not demonstrate that a lower PEL would be technologically feasible (82 FR at 2552). Again, OSHA did not propose to revisit this finding in this rulemaking.

List of Subjects for 29 CFR Part 1910

Beryllium, General industry, Health, Occupational safety and health.

Authority

Loren Sweatt, Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, directed the preparation of this document. The agency issues the sections under the following authorities: 29 U.S.C. 653, 655, 657; Secretary of Labor's Order 1–2012 (77 FR 3912); 29 CFR part 1911; and 5 U.S.C. 553, as applicable.

Signed at Washington, DC, on May 13, 2020.

Loren Sweatt,

Principal Deputy Assistant Secretary of Labor for Occupational Safety and Health.

Amendments to Standards

For the reasons set forth in the preamble, chapter XVII of title 29, part 1910 is amended to read as follows:

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

■ 1. The authority section for part 1910, subpart Z, continues to read as follows:

Authority: 29 U.S.C. 653, 655, 657; Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), 5–2002 (67 FR 65008), 5–2007 (72 FR 31160), 4–2010 (75 FR 55355), or 1–2012 (77 FR 3912); and 29 CFR part 1911.

All of subpart Z issued under *29 U.S.C. 655(b),* except those substances that have exposure limits listed in Tables Z–1, Z–2, and Z–3 of § 1910.1000. The latter were issued under *29 U.S.C. 655(a).*

Section 1910.1000, Tables Z–1, Z–2 and Z–3 also issued under *5 U.S.C. 553,* but not under 29 CFR part 1911 except for the arsenic (organic compounds), benzene, cotton dust, and chromium (VI) listings.

Section 1910.1001 also issued under *40 U.S.C. 3704* and *5 U.S.C. 553.*

Section 1910.1002 also issued under *5 U.S.C. 553,* but not under *29 U.S.C. 655* or 29 CFR part 1911.

Sections 1910.1018, 1910.1029, and 1910.1200 also issued under *29 U.S.C. 653.*

Section 1910.1030 also issued under *Public Law 106–430, 114 Stat. 1901.*

Section 1910.1201 also issued under 49 U.S.C. 1801–1819 and 5 U.S.C. 553.

■ 2. Amend § 1910.1024 by:

■ A. Revising the definitions for ''Beryllium sensitization,'' ''Beryllium work area,'' ''CBD diagnostic center,'' ''Chronic beryllium disease (CBD),'' and ''Dermal contact with beryllium''.

■ B. Revise paragraphs (f)(1)(i)(D), (f)(ii)(B), (h)(2)(i), (h)(3)(iii), (i)(1) introductory text, (i)(2), (i)(4)(ii), (j)(3), (k)(2)(i)(B), (k)(2)(iii) and (iv), (k)(7)(i) introductory text, (k)(7)(ii) through (vi), (l)(1)(i)(B), (l)(1)(ii), (m)(3), (m)(4)(ii)(A), (m)(4)(ii)(E), (n)(1)(ii)(F), (n)(3)(ii)(A), (n)(4)(i), and Appendix A.

The revisions read as follows:

§ 1910.1024 Beryllium.

* * * * *

(b) * * *

Beryllium sensitization means a response in the immune system of a specific individual who has been exposed to beryllium. There are no associated physical or clinical symptoms and no illness or disability with beryllium sensitization alone, but the response that occurs through beryllium sensitization can enable the immune system to recognize and react to beryllium. While not every beryllium-sensitized person will develop chronic beryllium disease (CBD), beryllium sensitization is essential for development of CBD.

Beryllium work area means any work area where materials that contain at least 0.1 percent beryllium by weight are processed either:

(1) During any of the operations listed in Appendix A of this standard; or

(2) Where employees are, or can reasonably be expected to be, exposed to airborne beryllium at or above the action level.

CBD diagnostic center means a medical diagnostic center that has a pulmonologist or pulmonary specialist on staff and on-site facilities to perform a clinical evaluation for the presence of chronic beryllium disease (CBD). The CBD diagnostic center must have the capacity to perform pulmonary function testing (as outlined by the American Thoracic Society criteria), bronchoalveolar lavage (BAL), and transbronchial biopsy. The CBD diagnostic center must also have the capacity to transfer BAL samples to a laboratory for appropriate diagnostic testing within 24 hours. The pulmonologist or pulmonary specialist must be able to interpret the biopsy pathology and the BAL diagnostic test results.

Chronic beryllium disease (CBD) means a chronic granulomatous lung disease caused by inhalation of airborne beryllium by an individual who is beryllium sensitized.

Confirmed positive means the person tested has had two abnormal BeLPT test results, an abnormal and a borderline test result, or three borderline test results, obtained from tests conducted within a three-year period. It also means the result of a more reliable and accurate test indicating a person has been identified as having beryllium sensitization.

* * * * *

Dermal contact with beryllium means skin exposure to:

(1) Soluble beryllium compounds containing beryllium in concentrations greater than or equal to 0.1 percent by weight;

(2) Solutions containing beryllium in concentrations greater than or equal to 0.1 percent by weight; or

(3) Visible dust, fumes, or mists containing beryllium in concentrations greater than or equal to 0.1 percent by weight. The handling of beryllium materials in non-particulate solid form that are free from visible dust containing beryllium in concentrations greater than or equal to 0.1 percent by weight is not considered dermal contact under the standard.

* * * * *

(f) * * *

(1) * * *

(i) * * *

(D) Procedures for minimizing cross-contamination, including the transfer of beryllium between surfaces, equipment, clothing, materials, and articles within beryllium work areas;

* * * * *

(ii) * * *

(B) The employer is notified that an employee is eligible for medical removal in accordance with paragraph (l)(1) of this standard, referred for evaluation at

a CBD diagnostic center, or shows signs or symptoms associated with exposure to beryllium; or

* * * * *

(h) * * *

(2) * * *

(i) The employer must ensure that each employee removes all beryllium-contaminated personal protective clothing and equipment at the end of the work shift, at the completion of all tasks involving beryllium, or when personal protective clothing or equipment becomes visibly contaminated with beryllium, whichever comes first.

* * * * *

(3) * * *

(iii) The employer must inform in writing the persons or the business entities who launder, clean, or repair the personal protective clothing or equipment required by this standard of the potentially harmful effects of exposure to beryllium and that the personal protective clothing and equipment must be handled in accordance with this standard.

* * * * *

(i) * * *

(1) *General.* For each employee working in a beryllium work area or who can reasonably be expected to have dermal contact with beryllium, the employer must:

* * * * *

(2) *Change rooms.* In addition to the requirements of paragraph (i)(1)(i) of this standard, the employer must provide employees who are required to use personal protective clothing or equipment under paragraph (h)(1)(ii) of this standard with a designated change room in accordance with this standard and the Sanitation standard (§ 1910.141) where employees are required to remove their personal clothing.

* * * * *

(4) * * *

(ii) No employees enter any eating or drinking area with beryllium-contaminated personal protective clothing or equipment unless, prior to entry, it is cleaned, as necessary, to be as free as practicable of beryllium by methods that do not disperse beryllium into the air or onto an employee's body; and

* * * * *

(j) * * *

(3) *Disposal, recycling, and reuse.* (i) Except for intra-plant transfers, when the employer transfers materials that contain at least 0.1 percent beryllium by weight or are contaminated with beryllium for disposal, recycling, or reuse, the employer must label the materials in accordance with paragraph (m)(3) of this standard;

(ii) Except for intra-plant transfers, materials designated for disposal that contain at least 0.1 percent beryllium by weight or are contaminated with beryllium must be cleaned to be as free as practicable of beryllium or placed in enclosures that prevent the release of beryllium-containing particulate or solutions under normal conditions of use, storage, or transport, such as bags or containers; and

(iii) Except for intra-plant transfers, materials designated for recycling or reuse that contain at least 0.1 percent beryllium by weight or are contaminated with beryllium must be cleaned to be as free as practicable of beryllium or placed in enclosures that prevent the release of beryllium-containing particulate or solutions under normal conditions of use, storage, or transport, such as bags or containers.

* * * * *

(k) * * *

(2) * * *

(i) * * *

(B) An employee meets the criteria of paragraph (k)(1)(i)(B) of this standard.

* * * * *

(iii) At the termination of employment for each employee who meets any of the criteria of paragraph (k)(1)(i) of this standard at the time the employee's employment terminates, unless an examination has been provided in accordance with this standard during the six months prior to the date of termination. Each employee who meets the criteria of paragraph (k)(1)(i)(C) of this standard and who has not received an examination since exposure to beryllium during the emergency must be provided an examination at the time the employee's employment terminates.

(iv) For an employee who meets the criteria of paragraph (k)(1)(i)(C) of this standard:

(A) If that employee has not received a medical examination within the previous two years pursuant to paragraph (k)(1)(i) of this standard, then within 30 days after the employee meets the criteria of paragraph (k)(1)(i)(C) of this standard; or

(B) If that employee has received a medical examination within the previous two years pursuant to paragraph (k)(1)(i) of this standard, then at least one year but no more than two years after the employee meets the criteria of paragraph (k)(1)(i)(C) of this standard.

* * * * *

(7) * * *

(i) The employer must provide an evaluation at no cost to the employee at a CBD diagnostic center that is mutually agreed upon by the employer and the employee. The evaluation at the CBD diagnostic center must be scheduled within 30 days, and must occur within a reasonable time, of:

* * * * *

(ii) The employer must ensure that, as part of the evaluation, the employee is offered any tests deemed appropriate by the examining physician at the CBD diagnostic center, such as pulmonary function testing (as outlined by the American Thoracic Society criteria), bronchoalveolar lavage (BAL), and transbronchial biopsy. If any of the tests deemed appropriate by the examining physician are not available at the CBD diagnostic center, they may be performed at another location that is mutually agreed upon by the employer and the employee.

(iii) The employer must ensure that the employee receives a written medical report from the CBD diagnostic center that contains all the information required in paragraph (k)(5)(i), (ii), (iv), and (v) of this standard and that the PLHCP explains the results of the examination to the employee within 30 days of the examination.

(iv) The employer must obtain a written medical opinion from the CBD diagnostic center within 30 days of the medical examination. The written medical opinion must contain only the information in paragraph (k)(6)(i), as applicable, unless the employee provides written authorization to release additional information. If the employee provides written authorization, the written opinion must also contain the information from paragraphs (k)(6)(ii), (iv), and (v), if applicable.

(v) The employer must ensure that each employee receives a copy of the written medical opinion from the CBD diagnostic center described in paragraph (k)(7) of this standard within 30 days of any medical examination performed for that employee.

(vi) After an employee has received the initial clinical evaluation at a CBD diagnostic center described in paragraphs (k)(7)(i) and (ii) of this standard, the employee may choose to have any subsequent medical examinations for which the employee is eligible under paragraph (k) of this standard performed at a CBD diagnostic center mutually agreed upon by the employer and the employee, and the employer must provide such examinations at no cost to the employee.

* * * * *

(l) * * *

(1) * * *

(i) * * *

(B) A written medical report recommending removal from airborne exposure to beryllium in accordance with paragraph (k)(5)(v) or (k)(7)(iii) of this standard; or

(ii) The employer receives a written medical opinion recommending removal from airborne exposure to beryllium in accordance with paragraph (k)(6)(v) or (k)(7)(iv) of this standard.

* * * * *

(m) * * *

(3) *Warning labels.* Consistent with the HCS (§ 1910.1200), the employer must label each immediate container of clothing, equipment, and materials contaminated with beryllium, and must, at a minimum, include the following on the label:

DANGER
CONTAINS BERYLLIUM
MAY CAUSE CANCER
CAUSES DAMAGE TO LUNGS
AVOID CREATING DUST
DO NOT GET ON SKIN

(4) * * *

(ii) * * *

(A) The health hazards associated with airborne exposure to and dermal contact with beryllium, including the signs and symptoms of CBD;

* * * * *

(E) Measures employees can take to protect themselves from airborne exposure to and dermal contact with beryllium, including personal hygiene practices;

* * * * *

(n) * * *

(1) * * *

(ii) * * *

(F) The name and job classification of each employee represented by the monitoring, indicating which employees were actually monitored.

* * * * *

(3) * * *

(ii) * * *

(A) Name and job classification;

* * * * *

(4) * * *

(i) At the completion of any training required by this standard, the employer must prepare a record that indicates the name and job classification of each employee trained, the date the training was completed, and the topic of the training.

* * * * *

(p) *Appendix.* Table A.1 in this appendix sets forth the operations that, where performed under the circumstances described in the column heading above the particular operations, trigger the requirement for a beryllium work area.

Appendix A to § 1910.1024—Operations for Establishing Beryllium Work Areas

Paragraph (b) of this standard defines a *beryllium work area* as any work area where materials that contain at least 0.1 percent beryllium by weight are processed (1) during any of the operations listed in Appendix A of this standard, or (2) where employees are, or can reasonably be expected to be, exposed to airborne beryllium at or above the action level. Table A.1 in this appendix sets forth the operations that, where performed under the circumstances described in the column heading above the particular operations, trigger the requirement for a beryllium work area.

TABLE A.1—OPERATIONS FOR ESTABLISHING BERYLLIUM WORK AREAS WHERE PROCESSING MATERIALS CONTAINING AT LEAST 0.1 PERCENT BERYLLIUM BY WEIGHT

Beryllium metal alloy operations (generally <10% beryllium by weight)	Beryllium composite operations (generally >10% beryllium by weight) and beryllium metal operations	Beryllium oxide operations
Abrasive Blasting.	Abrasive Blasting.	Abrasive Blasting.
Abrasive Processing.	Abrasive Processing.	Abrasive Processing.
Abrasive Sawing.	Abrasive Sawing.	Abrasive Sawing.
Annealing.	Annealing.	Boring.
Bright Cleaning.	Atomizing.	Brazing (>1,100 °C).
Brushing.	Attritioning.	Broaching with green ceramic.
Buffing.	Blanking.	Brushing.
Burnishing.	Bonding.	Buffing.
Casting.	Boring.	Centerless grinding.
Centerless Grinding.	Breaking.	Chemical Cleaning.
Chemical Cleaning.	Bright Cleaning.	Chemical Etching.
Chemical Etching.	Broaching.	CNC Machining.
Chemical Milling.	Brushing.	Cold Isostatic Pressing (CIP).
Dross Handling.	Buffing.	Crushing.
Deburring (grinding).	Burnishing.	Cutting.
Electrical Chemical Machining (ECM).	Casting.	Deburring (grinding).
Electrical Discharge Machining (EDM).	Centerless Grinding.	Deburring (non-grinding).
Extrusion.	Chemical Cleaning.	Destructive Testing.
Forging.	Chemical Etching	Dicing.
Grinding.	Chemical Milling.	Drilling.
Heat Treating (in air).	CNC Machining	Dry/wet Tumbling.
High Speed Machining (>10,000 rpm).	Cold Isostatic Pressing.	Extrusion.
Hot Rolling.	Cold Pilger.	Filing by Hand.
Lapping.	Crushing.	Firing of Green Ceramic.
Laser Cutting.	Cutting.	Firing of Refractory Metallization (>1,100 °C).
Laser Machining.	Deburring.	Grinding.
Laser Scribing.	Dicing.	Honing.
Laser Marking.	Drawing.	Hot Isostatic Pressing (HIP).
Melting.	Drilling.	Lapping.
Photo-Etching.	Dross Handling.	Laser Cutting.
Pickling.	Electrical Chemical Machining (ECM).	Laser Machining.
Point and Chamfer.	Electrical Discharge Machining (EDM).	Laser Scribing.
Polishing.	Extrusion.	Laser Marking.
Torch Cutting (*i.e.*, oxy-acetylene).	Filing by Hand.	Machining.
Tumbling.	Forging.	Milling.
Water-jet Cutting.	Grinding.	Piercing.
Welding.	Heading.	Mixing.

TABLE A.1—OPERATIONS FOR ESTABLISHING BERYLLIUM WORK AREAS WHERE PROCESSING MATERIALS CONTAINING AT LEAST 0.1 PERCENT BERYLLIUM BY WEIGHT—Continued

Beryllium metal alloy operations (generally <10% beryllium by weight)	Beryllium composite operations (generally >10% beryllium by weight) and beryllium metal operations	Beryllium oxide operations
Sanding. Slab Milling.	Heat Treating. Honing. Hot Isostatic Pressing (HIP). Lapping. Laser Cutting. Laser Machining. Laser Scribing. Laser Marking. Machining. Melting. Milling. Mixing. Photo-Etching. Pickling. Piercing. Pilger. Plasma Spray. Point and Chamfer. Polishing. Powder Handling. Powder Pressing. Pressing. Reaming. Roll Bonding. Rolling. Sanding. Sawing (tooth blade). Shearing. Sizing. Skiving. Slitting. Snapping. Sputtering. Stamping. Spray Drying. Tapping. Tensile Testing. Torch Cutting (*i.e.*, oxy acetylene). Trepanning. Tumbling Turning. Vapor Deposition. Water-Jet Cutting. Welding.	Plasma Spray. Polishing. Powder Handling. Powder Pressing. Reaming. Sanding. Sectioning. Shearing. Sintering of Green Ceramic. Sintering of Refractory Metallization (>1,100 °C). Snapping. Spray Drying. Tape Casting. Turning. Water Jet Cutting.

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Part IV

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Parts 3, 4, 11, et al.
Employment Contracts, Mutual to Stock Conversions; Final Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 3, 4, 11, 16, 19, 23, 26, 32, 108, 112, 141, 160, 161, 163, 192, and 195

[Docket ID OCC–2018–0041]

RIN 1557–AE21

Employment Contracts, Mutual to Stock Conversions

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Final rule and technical amendments.

SUMMARY: The OCC is issuing a final rule that repeals the OCC's employment contracts rule for Federal savings associations. This change was recommended in the March 2017 Economic Growth and Regulatory Paperwork Reduction Act report. The final rule also amends the OCC's rule for conversions from mutual to stock form of a savings association to reduce burden, provide clarity, increase flexibility, and update cross-references. Additionally, the final rule updates cross-references to repealed and integrated rules, removes unnecessary definitions, and makes technical changes to other OCC rules.

DATES: This rule is effective on August 13, 2020.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Charlotte Bahin, Senior Advisor for Thrift Supervision, (202) 649–6281, Marta Stewart-Bates, Senior Attorney, (202) 649–5490, Chief Counsel's Office, for persons who are deaf or hearing impaired, TTY, (202) 649–5597, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Background

The OCC continually reviews its regulations with the goal of updating them to reduce burden, increase flexibility, and provide clarity where possible.[1] Section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA) requires that, at least once every 10 years, the Federal Financial Institutions Examination Council (FFIEC) and each appropriate Federal banking agency (Agencies) represented on the FFIEC (the OCC, the Federal Deposit Insurance Corporation (FDIC), and the Board of Governors of the Federal Reserve System (Federal Reserve Board)) conduct a review of their regulations.[2] The purpose of this review is to identify outdated or otherwise unnecessary regulatory requirements imposed on insured depository institutions. Specifically, EGRPRA requires the Agencies to categorize and publish their regulations for comment, requesting commenters to identify areas of the regulations that are outdated, unnecessary, or unduly burdensome, and eliminate unnecessary regulations to the extent that such action is appropriate. The Agencies completed their second EGRPRA review on March 30, 2017, and published a Report to Congress in the **Federal Register**.[3] The OCC published a proposed rule on January 8, 2020,[4] that sought comment on OCC proposed changes recommended in the March 2017 EGRPRA report, including the repeal of 12 CFR 163.39 (Federal savings association employment contracts) and possible amendments to 12 CFR 9.8 and 150.420 (fiduciary recordkeeping) and 9.10 and 150.320 (acceptable collateral for fiduciary funds awaiting investment or distribution).[5]

The OCC also proposed to amend 12 CFR part 192 (Federal savings association conversions from mutual to stock form) to reduce burden, increase flexibility, and replace cross-references to repealed 12 CFR 197 (Securities offerings rules for Federal savings associations) with cross-references to 12 CFR part 16 (Securities offering disclosure rules). The OCC proposed to clarify which forms and accounting standards savings associations must use in connection with a part 192 conversion and to increase flexibility and reduce burden for Federal savings associations by encouraging electronic filing, electronic meetings, providing notice by email, and reducing the number of copies of proxy materials that must be filed with the OCC.

Finally, the proposed rule contained various technical and clarifying amendments to 12 CFR parts 3, 4, 8, 11, 16, 19, 23, 26, 32, 108, 112, 141, 160, 161, and 163.

II. Summary of the Proposals, Comments Received, and the Final Rule

In response to the proposal, the OCC received four comment letters from industry stakeholders and the public. The commenters generally supported the proposed amendments, but requested particular changes and additional clarity.

A. Employment Contracts for Federal Savings Associations

Twelve CFR 163.39 sets forth the requirements for a Federal savings association that enters into an employment contract with its officers and employees. Section 163.39(a) requires written employment contracts for officers and employees that are approved by a Federal savings association's board of directors. Section 163.39(a) also prohibits a Federal savings association from entering into an employment contract with any of its officers or other employees if the employment contract would constitute an unsafe or unsound practice. Under section 163.39(b), a contract must include a Federal savings association's right to terminate the employee at will. There are no similar requirements for national banks.

In March 2017, the FFIEC made its Joint Report to Congress under EGRPRA. One EGRPRA commenter recommended that the OCC eliminate § 163.39 in its entirety because the regulation only applies to Federal savings associations and there is no reason to distinguish Federal savings associations from national banks. Additionally, the EGRPRA commenter stated that it is unnecessary to require board approval of all employment contracts because there are comprehensive safety and soundness standards and interagency guidance on compensation.

The OCC proposed to eliminate § 163.39 in its entirety. Commenters supported the repeal. One commenter agreed that the OCC should eliminate the entire rule because it is confusing and unnecessarily burdensome. Another commenter stated that the requirements are more onerous than those applied to national banks because the current rule applies to all Federal savings association employment contracts and mandates a number of detailed contractual provisions that must be included in each contract. The commenter noted that the OCC already has a robust regulatory framework governing Federal savings association employment contracts, making the rule duplicative and unnecessary, and that there are no persuasive policy reasons for the OCC to impose more stringent

[1] Most recently, the OCC published for notice and comment amendments to 12 CFR part 5 (Rules, Policies, and Procedures for Corporate Activities) and 12 CFR part 7 (Activities & Operations). *See* 85 FR 18728 (April 2, 2020); 85 FR 40794 (July 7, 2020).

[2] Section 2222 of EGRPRA is codified at 12 U.S.C. 3311(b).

[3] 82 FR 15900 (March 30, 2017).

[4] 85 FR 1052 (January 8, 2020).

[5] See FFIEC Joint Report to Congress (March 2017), available at *https://www.ffiec.gov/pdf/2017_FFIEC_EGRPRA_Joint-Report_to_Congress.pdf*.

regulatory requirements on the employment contracts of Federal savings associations as opposed to national banks. The commenter stated that the current rule increases a Federal savings association's litigation risks and limits its ability to tailor its compensation programs in ways that best suit its size and complexity.

The OCC is repealing 12 CFR 163.39 in its entirety. The repeal provides for consistent treatment of Federal savings associations and national banks with respect to employment contracts and compensation. The OCC believes that the current framework of rules and guidance on compensation and employment contracts, independent of § 163.39, is adequate to address and safeguard against unsafe and unsound employment and compensation practices for Federal savings associations. Federal savings associations, like national banks, are subject to the safety and soundness standards of 12 U.S.C. 1818; 12 CFR part 30, the prohibition on unsafe and unsound compensation in appendix A to part 30; the prompt corrective action restrictions on compensation to senior executive officers in 12 CFR 6.6(a)(3) and section 38 of the Federal Deposit Insurance Act (FDIA); and are informed by the 2010 Interagency Guidance on Sound Incentive Compensation Policies. Moreover, the boards of directors at national banks and Federal savings associations have oversight responsibilities for compensation, benefits arrangements, and employment contracts for their executive officers and employees.

The repeal of § 163.39 also reduces burden and increases flexibility for Federal savings associations by eliminating the requirement for written contracts that the board of directors must approve, although Federal savings associations are not prohibited from voluntarily using those procedures for their employment contracts. It is a good corporate governance practice to have agreements relating to employment and compensation in writing and that the board, or committee thereof, review and approve those agreements. The repeal of § 163.39 does not alter any other obligation with regard to employment agreements entered into by a Federal savings association. For example, if there are other laws and regulations that apply to a Federal savings association regarding employment contracts, the repeal of § 163.39 does not affect the application of those laws.

B. Fiduciary Recordkeeping

12 CFR part 9 sets forth the standards that apply to national bank fiduciary activities. Twelve CFR part 150 sets forth the standards that apply to the fiduciary activities of Federal savings associations. Sections 9.8 and 150.420 contain requirements for the documentation and retention of records for fiduciary accounts at national banks and Federal savings associations, respectively. Sections 9.8(b) and 150.420 require national banks and Federal savings associations to retain fiduciary account records for a period of three years from the later of the termination of the account or the termination of any litigation relating to the account. During the 2017 EGRPRA process, a commenter recommended that the OCC amend 12 CFR 9.8(b) to require the retention of documents for a ''necessary period'' or to refer to applicable State law on the retention of documents, instead of the current three-year requirement. The commenter explained that three years may be inadequate to protect beneficiaries in some situations, such as a suit filed by a beneficiary against a predecessor trustee more than three years after an account is closed but before a State statute of limitations has run.

In the proposal, the OCC requested comment on whether to amend §§ 9.8(b) and 150.420 to require a national bank or Federal savings association to retain fiduciary account records for the later of three years from the termination of account, three years from the termination of any litigation relating to the account, or the minimum period required by applicable fiduciary State law. The OCC noted that this approach could place additional burdens on institutions by increasing the number of years an institution would be required to retain records, and because this approach may require institutions to monitor changes to states' fiduciary laws. The OCC received no comments in response and declines to amend §§ 9.8(b) and 150.420. The OCC notes that nothing in §§ 9.8(b) and 150.420 prohibits financial institutions from holding fiduciary account records longer than the three-year period.

C. Acceptable Collateral for Self-Deposited Trust Funds

Under 12 U.S.C. 92a(d), 12 CFR 9.10(b)(1), 12 U.S.C. 1464(n)(3), and 12 CFR 150.310, a national bank or Federal savings association may deposit trust funds awaiting investment or distribution in the commercial, savings, or other department of the bank, unless prohibited by applicable law. To the extent the funds are not insured by the Federal Deposit Insurance Corporation (FDIC), the national bank or Federal savings association must set aside U.S. bonds or other securities and assets designated by the OCC as collateral for the deposit. Sections 9.10(b)(2) and 150.320 list acceptable collateral types for national banks and Federal savings associations, respectively. During the notice and comment period for the 2017 EGRPRA report, one commenter suggested an expansion of the § 9.10(b)(2) list of acceptable collateral for fiduciary funds to allow for other instruments that provide similar protection from loss.

In the proposed rule, the OCC requested comment on whether to expand the list of acceptable collateral in §§ 9.10(b)(2) and 150.320 to include additional types of instruments. The OCC received one comment in response. The commenter requested that the OCC expand the list of acceptable collateral to include Federal Home Loan Bank (FHLB) letters of credit. The same commenter also requested that, with respect to surety bonds as an acceptable form of collateral, the OCC remove the phrase ''unless prohibited by applicable law'' from 12 CFR 9.10(b)(2)(iv) and 150.320(d) because the phrase requires institutions to conduct burdensome 50-state surveys to ensure compliance. The OCC plans to take these comments into consideration in any future proposal to revise the OCC's fiduciary rules.

D. Amendments to Securities Offering Disclosure Rules

Twelve CFR 16.8 provides an exemption from the registration and prospectus requirements for offers and sales of national bank- or Federal savings association-issued securities that satisfy the requirements of SEC Regulation A (17 CFR part 230) (General rules and regulations, Securities Act of 1933). The SEC's Form 1–A, the offering statement required by Regulation A, requires audited financial statements for certain offerings. However, a national bank or Federal savings association in organization does not have an operating history and cannot generate detailed financial statements that require an audit. The audited financial statements of a national bank or Federal savings association in organization typically do not add materially to the information already available to the OCC through the chartering process. The OCC proposed to amend § 16.15(e) to clarify that a national bank or Federal savings association in organization is not required to include audited financial statements as part of its offering statement for the issuance of securities pursuant to § 16.8, unless the OCC determines otherwise.

Twelve CFR 16.17 sets forth the filing requirements and inspection of

documents for securities offerings. The OCC proposed to add a sentence to § 16.17(b) to clarify that all registration statements, offering documents, amendments, notices, or other documents relating to a mutual to stock conversion pursuant to 12 CFR part 192 must be filed with the appropriate OCC licensing office and not the Securities and Corporate Practices Division of the OCC.

The OCC received one comment in support of the amendments to the securities offering disclosure rules in §§ 16.15 and 16.17. The OCC is finalizing those amendments as proposed.

E. Removal, Suspension, or Debarment of Independent Public Accountants

Section 36(g)(4)(A) of the FDIA (12 U.S.C. 1831m(g)(4)(A)) provides that the FDIC or an appropriate Federal banking agency may remove, suspend, or bar an independent public accountant, upon a showing of good cause, from performing audit services required by section 36. The OCC's implementing rules for insured national banks and insured Federal branches of foreign banks are set forth in subpart P to 12 CFR part 19. The former Office of Thrift Supervision (OTS) implemented section 36(g)(4) with respect to insured savings associations at 12 CFR 513.8, and these rules are substantively identical to subpart P. However, when republishing the former OTS rules as OCC rules pursuant to Title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the OCC inadvertently did not republish 12 CFR 513.8 nor amend subpart P of part 19 to apply to Federal savings associations. In the proposed rule, the OCC proposed amendments that would correct that error by amending subpart P to also apply to insured Federal savings associations.

In addition, the OCC proposed several clarifying amendments to subpart P. First, the OCC proposed amending § 19.243(b)(2), which provides that hearings will be conducted in the same manner as other hearings under the Uniform Rules of Practice and Procedure (12 CFR part 19, subpart A), by adding a cross-reference to the specific rules and limitations for subpart P hearings set forth in § 19.243(c)(4). Second, the OCC proposed a clarifying change to § 19.243(c)(3), which currently states that an accountant or firm immediately suspended from performing audit services may, within 10 calendar days after service of the notice of immediate suspension, file a petition to stay the immediate suspension with the OCC and that, if no petition is filed, the immediate suspension will remain in effect. The OCC proposed to clarify that if the accountant or firm has not filed a petition within 10 calendar days, they have waived their right to file a petition. The OCC also proposed to revise § 19.243(c)(3) (petition for stay of immediate suspension) to add a cross-reference to § 19.243(c)(2), which sets forth the rules for when the OCC may lift an immediate suspension. Third, the OCC proposed to amend § 19.243(c)(4), which provides that upon request of a stay petition, the Comptroller must designate a presiding officer who must fix a place and time for the hearing that is not more than 10 calendar days after receipt of the petition, unless extended by the OCC at the request of petitioner. The amendment provides that a later hearing date may occur only if permitted by the OCC, and, therefore, the request for an extension would not receive automatic approval. This change would allow the OCC some discretion as to how far into the future a hearing may take place. Fourth, the OCC proposed a technical correction to subpart P by adding ''insured Federal branches of foreign banks'' where appropriate and removing references to Federal ''agencies.'' Section 36(g)(4) of the FDIA only applies to insured depository institutions and no insured Federal agencies exist. Finally, the OCC proposed to replace the word ''shall'' with ''must,'' ''will,'' or other appropriate language, which is the recommended drafting style of the **Federal Register**.

The OCC received one comment on the proposed amendments to subpart P of part 19. The commenter supports the application of subpart P of part 19 to Federal savings associations. The commenter also supports the clarifying amendments to subpart P of part 19 that provide more detailed procedures for the removal, suspension, or debarment of an independent public accountant. With respect to the proposed amendment to § 192.243(c)(4) that would give the OCC 10 days to hold a stay petition hearing (unless the presiding officer allows further time requested by the petitioner), the commenter urges the OCC to exercise reasonable judgment in each circumstance. Therefore, the OCC finalizes the amendments to subpart P of part 19 as proposed. Under both the current rule and the amended rule, the presiding officer is expected to exercise reasonable judgment in their discretion to determine whether to allow further time requested by the petitioner in § 192.243(c)(4).

F. Definitions of Loans to Small Businesses and Loans to Small Farms in Lending Limits Rules

The OCC proposed to revise the definitions of ''small business loans'' and ''small farm loans or extensions of credit'' in 12 CFR 32.2(cc) and (dd) of the lending limits rule to align the definitions with the language of the Call Report instructions. The revisions to § 32.2(dd) clarify that the $500,000 limit contained within the ''loans to small farms'' definition in the Call Report instructions does not apply for purposes of the supplemental lending limit program.

The OCC received one comment on the proposed changes. The commenter encouraged the OCC to work collaboratively with other federal agencies on the definitions of a ''small business'' and a ''small farm'' so that there is greater consistency across all prudential financial regulators and regulations. The commenter believes this will assist banks as they lend to these segments of the economy. The commenter recommended that the definitions in the Call Report should also be consistent with the definitions adopted. The commenter filed a corresponding letter in response to the Federal banking agencies' request for comment [6] on ways to modify the current requirements for reporting data on loans to small businesses and small farms in the Call Report.

Because the OCC did not propose to amend the definitions of ''small businesses'' and ''small farms'' in the proposal and because this final rule is not an interagency rulemaking, the OCC is unable to make the changes recommended by the commenter in this final rule. However, the federal banking agencies received and are considering the corresponding comment letter submitted in response to the agencies' request for comment on ways to modify the current requirements for reporting data on loans to small businesses and small farms in the Call Report.

Therefore, the OCC is finalizing the changes to § 32.2(cc) and (dd) and making the technical change of replacing the terms ''small business loans'' and ''small farm loans or extensions of credit'' with the terms ''loans to small businesses'' and ''loans or extensions of credit to small farms,'' respectively, to conform with the Call Report instructions. These technical changes are made to §§ 32.2(cc), 32.2(dd), 32.7(a)(1), 32.7(a)(2), and 32.7(d).

[6] 84 FR 55687 (October 17, 2019).

G. Savings Association Conversions From Mutual to Stock Form

The OCC proposed amendments to 12 CFR part 192, which governs how a savings association may convert from mutual to stock form of ownership under standard and voluntary supervisory conversions. The amendments reduce burden, provide clarity, and increase flexibility for savings associations and make several technical amendments. Unless otherwise noted, part 192 applies to both Federal and State savings associations.

Forms. The OCC proposed to amend § 192.5(b) to clarify that a savings association must use the forms prescribed under part 192 and 12 CFR part 16 (the securities offering disclosure rules for Federal savings associations and national banks), including the applicable form for a registration statement under § 16.15. Use of the registration forms required by § 16.15 is currently the standard industry practice, and should not increase burden on savings associations. The OCC also proposed to clarify the accounting guidance and requirements used in the preparation and filing of these forms, financial statements, and related financial data under part 192. The accounting guidance and requirements that applied to part 192 conversions and proxy materials were repealed in 2017.[7] New § 192.5(d) would provide that the institution must prepare and present the form and content of financial statements and related financial data in a filing under part 192 in accordance with U.S. Generally Accepted Accounting Principles (GAAP), pursuant to 12 U.S.C. 1463(b)(2)(A), and other applicable accounting guidance and requirements as specified by the OCC in the relevant mutual to stock conversion forms required under § 192.5(b). The OCC notes that it is currently revising its forms under part 192, including Form AC (Application for Conversion); Form PS (Proxy Statement); Form OC (Offering Circular); and Form OF (Order Form), to conform with these amendments to part 192.

The OCC proposed a technical change to this section by defining ''OCC'' as the Office of the Comptroller of the Currency in the text of § 192.5(b).

The OCC received one comment on the proposed changes to § 192.5. The commenter supports the proposed changes to § 192.5 that would specify which forms a Federal savings association must use when converting from mutual to stock form because the changes would increase clarity. The OCC is finalizing the amendments to § 192.5 as proposed.

Electronic filing and computation of time. The OCC proposed a new § 192.7 to encourage the electronic filing of all part 192 applications, notices, or other documents through *http://www.banknet.gov,* consistent with other licensing-related filings [8] and a new § 192.8 to clarify the computation of time under part 192 when the last day of a time period falls on a Saturday, Sunday, or Federal holiday. Specifically, in computing the time period, the OCC would exclude the day of the act or event (*e.g.,* the date an application is received by the OCC) from when the period begins to run. When the last day of a time period is a Saturday, Sunday, or Federal holiday, the time period would run until the end of the next day that is not a Saturday, Sunday, or Federal holiday. This amendment makes the computation of time under part 192 consistent with the computation of time rule that applies to corporate activities and transactions pursuant to 12 CFR part 5.[9]

The OCC received one comment in support of the additions of new §§ 192.7 and 192.8. The OCC is finalizing §§ 192.7 and 192.8 as proposed.

Definitions. In § 192.25, the OCC proposed to add definitions of ''community offering,'' ''offering circular,'' and ''voluntary supervisory conversion,'' because these terms are currently undefined in part 192. The proposal defined ''community offering'' as the offering to sell to members of the general public in the savings association's community the securities not subscribed for in the subscription offering and provides that the community offering may occur concurrently with the subscription offering and any syndicated community offering or upon conclusion of the subscription offering. The proposal defined ''offering circular'' as the securities offering materials for the conversion. The proposal defined ''voluntary supervisory conversion'' as a mutual to stock conversion for a savings association that is unable to complete a standard mutual to stock conversion under subpart A to part 192 and that meets the eligibility requirements of § 192.625.

The OCC also proposed to add several definitions to § 192.25 that are currently included in 12 CFR part 141 (Definition for regulations affecting Federal savings associations), and 12 CFR part 161 (Definitions for regulations affecting all savings associations). Although the definitions in parts 141 and 161 apply to part 192, the OCC believes that it is more appropriate, for clarity and as an aid to the reader, to include these definitions in part 192 than in a separate rule. Specifically, the proposal would add the definition of: (1) ''appropriate Federal banking agency'' from § 161.7, which is defined in section 3 of the FDIA (12 U.S.C. 1813(q)); (2) ''demand accounts'' from § 161.16, as meaning non-interest-bearing demand deposits that are subject to check or to withdrawal or transfer on negotiable or transferable order to the savings association and that are permitted to be issued by statute, regulation, or otherwise and are payable on demand; (3) ''Federal savings association'' from § 141.11, which means a Federal savings association or Federal savings bank chartered under section 5 of the Home Owners' Loan Act (HOLA) (12 U.S.C. 1464); (4) ''savings account'' from § 161.42, which means any withdrawable account, including a demand account, except this term does not mean a tax and loan account, a note account, a United States Treasury general account, or a United States Treasury time deposit-open account; and (5) ''savings association'' from § 161.43, which means a savings association as defined in section 3 of the FDIA (12 U.S.C. 1813(b)(1)). In addition, the OCC proposed to add the definition of ''state'' to mean any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands. This definition would be the same as the definition in § 161.50 as amended by this rule, discussed below.

Finally, the OCC proposed to add a definition of ''state savings association,'' defined to have the same definition as in section 3 of the FDIA (12 U.S.C. 1813(b)(3)). This definition is not included in parts 141 or 161. However, the OCC believes it would be helpful to define this term in part 192 because the proposed rule adds the definitions of other related terms.

The OCC received one comment on the amendments to § 192.25. The commenter supports the definitions of ''community offering'' and ''offering circular'' in § 192.25 because the commenter believes the definitions reflect common sense and clarity. However, the commenter believes that the definition of ''voluntary supervisory conversion'' is incomplete because it does not specify what is needed to

[7] *See* 82 FR 8082 (January 23, 2017).

[8] *See* 12 CFR 5.2(d).

[9] *See* 12 CFR 5.12.

qualify for a voluntary supervisory conversion. The commenter believes that it would be more helpful to have a definition of the term that also includes the full eligibility requirements for a voluntary supervisory conversion. In the interest of keeping the definition concise, the OCC believes the cross-reference to § 192.625 in the definition of ''voluntary supervisory conversion'' to be sufficient, as the cross-reference directs the reader to the subpart of part 192 that specifies the eligibility requirements for this type of conversion. Therefore, the OCC is finalizing the amendments to § 192.25 as proposed.

Prior to conversion. Twelve CFR 192.100 (Preparing for a conversion) requires that a savings association's board, or subcommittee of the board, meet with the appropriate Federal banking agency before adopting its plan of conversion. The OCC proposed to increase flexibility by allowing in person or electronic board meetings for purposes of § 192.100. The OCC also proposed to amend § 192.115 (Review of business plan by the appropriate Federal banking agency) to clarify that the business plan must be filed as a confidential exhibit to Form AC (Application for Conversion).

The OCC received one comment in support of the proposed changes to §§ 192.100 and 192.115. The OCC is finalizing the amendments to §§ 192.100 and 192.115 as proposed.

Plan of conversion. Twelve CFR 192.135 (Notifying members of plan of conversion) requires that a savings association promptly notify its members that its board of directors adopted a plan of conversion and that a copy of the plan is available for the members' inspection in its home office and its branch offices. The savings association must make this notice by mailing a letter to each member or by publishing a notice in the local newspaper in every local community where the savings association has an office. The savings association may also issue a press release. The OCC proposed to increase flexibility and reduce burden by allowing a savings association to email a letter with a notification of the plan of conversion instead of mailing a letter to its members who receive electronic communication. The amendment also allows a savings association to make the press release available on its website.

The OCC received one comment in support of its proposed changes to § 192.135. The OCC is finalizing the amendments to § 192.135 as proposed.

Rejection of application for conversion. Twelve CFR 192.150 (Information required in an application for conversion) provides that the appropriate Federal banking agency will not accept for filing, and will return, any application for conversion that is executed improperly, materially deficient, substantially incomplete, or that provides for unreasonable conversion expenses. The OCC proposed to amend § 192.150(b) to permit, rather than require, the appropriate Federal banking agency to return any application for conversion that is executed improperly, materially deficient, substantially incomplete, or that provides for unreasonable conversion expenses. A materially deficient or substantially incomplete application may not always be returned, especially if it is submitted electronically as a PDF document or if there are supervisory or enforcement reasons to retain the application.

The OCC received one comment in support of its proposed changes to § 192.150. The OCC finalizes the amendments to § 192.150 as proposed.

Notice of filing of application and comment process. Twelve CFR 192.185 sets forth the process for commenters to submit public comments on an application for conversion. Section 192.185 currently requires a commenter to file the original and one copy of any comments on an application for conversion with the appropriate OCC licensing office. The OCC proposed to amend § 192.185 to require the commenter to file only one copy of the comment instead of both an original and copy of any comments with the appropriate OCC licensing office.

The OCC received one comment on the amendment to § 192.185. The commenter supports the proposed change because it eliminates unnecessary paperwork. The OCC finalizes the amendment to § 192.185 as proposed.

Proxy solicitation. Twelve CFR 192.275 requires a savings association to file seven copies of its revised proxy materials and related documents as an amendment to its application for conversion. The OCC proposed to revise § 192.275 to reduce burden for savings associations by requiring the filing of only one copy of these materials with the OCC. The OCC also proposed to amend § 192.275(c) to remove the requirement that four copies of the revised proxy solicitation materials be marked to clearly indicate the changes from the prior filing. Instead, the savings association would need to file only one copy of the revised proxy solicitation materials that clearly indicates the changes.

The OCC received one comment on the proposed amendments to § 192.275. The commenter believes the amendments would eliminate unnecessary paperwork. The OCC is finalizing the amendments to § 192.275 as proposed.

Offering circular requirements. Twelve CFR 192.300 currently requires a Federal savings association to file its offering circular with the Securities and Corporate Practices Division of the OCC and that a State savings association file its offering circular with the appropriate FDIC region in compliance with part 192 and Form OC, and, where applicable, part 197. The OCC proposed to amend § 192.300 to replace the cross-reference to repealed part 197 with a more specific cross-reference to the applicable SEC registration statement form required under 12 CFR 16.15. Additionally, the OCC proposed to clarify that a Federal savings association must file its offering circular with the appropriate OCC licensing office, not the Securities and Corporate Practices Division.

As a corresponding change, the OCC proposed to amend § 16.17 (Filing requirements and inspection of documents) to clarify that all registration statements, offering documents, amendments, notices, or other documents relating to a mutual to stock conversion pursuant to part 192 must be filed with the appropriate OCC licensing office.

The OCC proposed to amend §§ 192.305(b) and (c), 192.310(a), and 192.310(b) to clarify that the SEC, not the ''appropriate Federal banking agency,'' declares Federal savings association holding company offering circulars effective in mutual to stock conversions under part 192.

The OCC received one comment on the amendments to §§ 192.300, 192.305, and 192.310 and no comments on the amendment to § 16.17. The commenter supports the proposed changes to § 192.300 that would specify where the offering circular must be filed and what forms must be included because the changes will reduce the potential for confusion. The same commenter also supports the clarifications in §§ 192.305(b), (c), 192.310(a), and 192.310(b). The OCC finalizes the amendments to §§ 192.300, 192.305, 192.310, and 16.17 as proposed.

Offers and sales of stock. Section 192.340(d) states that any person who is found to have violated the restrictions in § 192.340(b) may face prosecution or other legal action. To clarify and make consistent the actions that may result from engaging in any of the prohibited activities listed in § 192.340, the OCC proposed to amend § 192.340(d) to state that persons engaged in any of the activities listed in § 192.340(a) and

§ 192.340(b) may be subject to enforcement actions, civil money penalties, or criminal prosecution.

The OCC received one comment on the amendment to § 192.340. The commenter disagrees with the proposed changes to § 192.340(d) that impose sanctions for violating the conversion share restrictions found in § 192.340(a) and (b). The commenter believes that the OCC already has broad powers to seek an enforcement action and that the proposed changes are unnecessary. The OCC is finalizing the amendment to § 192.340 as proposed because the change clarifies the variety of tools available to address violations of §§ 192.340(a) and (b).

Priority of accounts. Twelve CFR 192.430 describes the requirements for charter amendments, charter cancellations, and new charters that apply to a savings association conducting a conversion under part 192. The OCC proposed to add a new paragraph in § 192.430 to require that, in any conversion pursuant to this section that involves a mutual holding company, the charter of each resulting subsidiary savings association of the holding company must contain a provision, specified in § 192.430(d), indicating that the claims of depositors of the savings association have the same priority as the claims of general creditors of the savings association not having priority (other than any priority arising or resulting from consensual subordination) over other general creditors of the association. The former OTS regulation for mutual holding companies, 12 CFR 575.9(b) (2011), originally required the inclusion of a similar priority of accounts provision in the charters of subsidiary savings associations of mutual holding companies, regardless of whether the subsidiary had a State or Federal charter. When promulgating 12 CFR 575.9(b), the OTS stated that the purpose of the priority of accounts provision was to ensure that claims of depositors of the insured institution were not relegated to a lower priority because the deposits confer membership rights in the association's mutual holding company.[10] However, after the enactment of the Dodd-Frank Act, which transferred the holding company regulations of the former OTS to the Federal Reserve Board,[11] the Federal Reserve Board republished 12 CFR 575.9(b) as a Federal Reserve Board regulation without including this charter requirement because it related to savings associations and not mutual holding companies.[12] The OCC believes that the priority of accounts provision in the former OTS regulation protected member rights, and the amendment reinstates this charter requirement for all savings association subsidiaries of a mutual holding company.[13]

The OCC received one comment on the addition of new paragraph (d) to § 192.430. The commenter is uncertain that the addition regarding priority of accounts is necessary. While the commenter acknowledges that the OCC may view the addition as protective of depositor rights, the commenter also believes that the FDIC rules for conservatorship and receivership would govern any asset distribution. Because the FDIC has the definitive role, the commenter believes that it is not clear that the new language on priority of accounts is needed. Further, the commenter suggests that if the OCC includes the new priority of accounts language in § 192.430(d), it also adds a proviso that recognizes that the rights of depositors are ''subject to any applicable legal and regulatory requirements affecting depositors' rights.'' In response, the OCC notes that, notwithstanding this priority of accounts provision, if a savings association is placed in conservatorship or receivership, its assets would be distributed in accordance with the FDIA, 12 U.S.C. 1811, *et seq.,* and the depositor preference provisions of section 11(d)(11) of the FDIA, 12 U.S.C. 1821(d)(11). The OCC believes the addition of the priority of accounts provision is crucial to protecting members' rights by ensuring that claims of depositors of the insured institution are not relegated to a lower priority because the deposits confer membership rights in the association's mutual holding company. For these reasons, the OCC is finalizing § 192.430(d) as proposed.

Liquidation account. A liquidation account represents the potential interest of all the savings association's eligible account holders and supplemental eligible account holders in the savings association's net worth at the time of conversion. A liquidation sub-account represents the potential interest of each individual eligible account holder and supplemental account holder in the liquidation account. Twelve CFR 192.460 sets forth how a savings association determines the initial balances of liquidation sub-accounts. The OCC proposed to revise § 192.460(a)(1) to provide that a savings association must calculate the initial liquidation sub-account balance of each eligible and supplemental eligible account holder at the time of the conversion. Because current § 192.460 does not explain when a savings association must perform the calculation, this amendment clarifies that the initial liquidation sub-accounts must be calculated at the time of the conversion.

Section 192.460(a)(1) provides the calculation for a savings account held by an eligible account holder, which is to multiply the initial balance of the liquidation account by a fraction that has as its numerator the qualifying deposit in the savings account expressed in dollars on the eligibility record date and as its denominator the total qualifying deposits of all eligible account holders on the eligibility record date. Section 192.460(a)(2) provides the same calculation for a savings account held by a supplemental eligible account holder, except that the eligibility record date is replaced with the supplemental eligibility record date. However, the denominator used for the calculation of the initial sub-account balances for both eligible account holders and supplemental eligible account holders is incorrect because the denominator in the current regulation does not include both the deposits of eligible account holders and the deposits of the supplemental eligible account holders. This results in both eligible account holders and supplemental account holders having a greater claim than their appropriate portion of the liquidation account.

The amendments correct this error by inserting language in § 192.460 similar to that in the previous OTS regulation, renumbering the § 192.460(a)(1) and (a)(2) calculations to be in § 192.460(a)(2) and (a)(3), making the denominator in the fractions in § 192.460(a)(2) and (a)(3) the total sub-account balances of eligible account holders *and* supplemental eligible account holders as calculated in proposed revised § 192.460(a)(5). As proposed, § 192.460(a)(5) provides that the denominator for calculating the initial sub-account balance of each eligible and supplemental eligible account holder is the sum of the numerator calculations in § 192.460(a)(2) through (a)(4). These changes make clear that the eligible account holders and the supplemental

[10] *See* 56 FR 1126, 1133 (January 11, 1991).

[11] Section 312(b)(1), Public Law 111–203. 121 Stat. 1376 (July 21, 2010).

[12] *See* 76 FR 56508, 56523 (September 13, 2011) (''[This section] contains the provisions from section 575.9 concerning charters, as revised to delete unnecessary provisions specific to savings associations and to reflect the change in supervisory authority.'') *See also,* 12 CFR 239.13.

[13] Twelve CFR 5.21 requires all Federal mutual savings association charters to include this priority of accounts provision.

eligible account holders would be allocated their proportionate shares of the liquidation account (the association's net worth, as defined in 12 CFR 192.455).

In addition, the 2002 OTS amendments to the liquidation account provision inadvertently removed language that addressed savings accounts that increased in value between the eligible record date and the supplemental eligibility record date.[14] As a result, the current regulation does not address accounts that increased in value between the two dates. Therefore, the OCC proposed to add language in § 192.460(a)(4) providing that for a savings account held on both the eligibility record date and the supplemental eligibility record date, the amount of the qualifying deposit for calculating the sub-account is the higher account balance of the savings account on either the eligibility record date or the supplemental eligibility record date. The initial sub-account is calculated by multiplying the liquidation account balance by the following fraction: The numerator is the higher amount of the qualifying deposit in the savings account on either the eligibility record date or the supplemental eligibility record date and the denominator is the calculation in proposed § 192.460(a)(5).

The OCC invited comment on whether the proposed changes to § 192.460 help to clarify the computation of liquidation sub-account balances, asking specifically whether commenters have any alternative methods for clarifying these computations. The OCC received one comment in response. The commenter requested that, with respect to the calculation of the initial balance of liquidation sub-accounts and required adjustments in §§ 192.460 and 192.470, the OCC provide a more detailed explanation as to how the calculation of sub-accounts prohibits sub-account increases. The commenter believes that the statements in §§ 192.460(b) and 192.470(b) that a Federal savings association may not increase the balance of liquidation sub-accounts are insufficient to prevent confusion. The commenter appears to suggest that the statements should instead be included in the calculation formulas set forth in §§ 192.460(a) and 192.470(a).

In response to the comment, § 192.470(a)(1) is revised to clarify that the liquidation sub-account balance must not be increased and to provide that a savings association must reduce the balance of an eligible account holder's or supplemental eligible account holder's sub-account if the deposit balance in the account holder's savings account at the close of business on any annual closing date (ACD)[15] falls below the lesser of: (i) The deposit balance in the account holder's savings account as of the relevant eligibility record date; or (ii) the deposit balance in the account holder's savings account as of its lowest balance as of any subsequent ACD. Also, § 192.470(a)(2) is revised to clarify that the proportionate reduction in the liquidation sub-account must be made from its balance at the time of conversion and to provide that the reduction in the account holder's liquidation sub-account from its balance at the time of conversion must be proportionate to the reduction in the account holder's savings account from its balance at the time of conversion. In addition, § 192.470(e) is revised to clarify that, if there is a complete liquidation, the savings association must provide the account holder of a liquidation sub-account with a liquidation distribution in the amount of the account holder's remaining liquidation sub-account balance.

For example, at the time of conversion, the account holder's savings account balance is $10,000 and the account holder's liquidation sub-account balance is $1,000. At ACD 1, if the savings account balance is $8,000, then the liquidation sub-account balance is proportionately reduced from $1,000 by 20 percent to $800. At ACD 2, if the savings account balance is $9,000, then the liquidation sub-account balance is $800. At ACD 3, if the savings account balance is $5,000, then the liquidation sub-account balance is proportionately reduced from $1,000 by 50 percent to $500.

Contributions to charitable organizations. Twelve CFR 192.550 permits a savings association to contribute some of its conversion shares or proceeds to a charitable organization, provided certain requirements are met. One of these requirements, set forth at 12 CFR 192.575(a)(3), is that the charitable organization must annually provide the appropriate Federal banking agency with a copy of the annual report that it submitted to the IRS. The OCC proposed to remove this requirement because it is often not used and, if necessary, the OCC may obtain it from the IRS or request it directly from the charitable organization.

The OCC received one comment in support of removal of paragraph (a)(3) in § 192.575 and finalizes the amendment as proposed.

Prohibition on self-dealing for charitable organizations. 12 CFR 192.575 (Other requirements for charitable organizations) provides that a charitable organization may not engage in self-dealing. The OCC proposed to amend § 192.575(a) to provide that a charitable organization *must* not engage in self-dealing, to emphasize the prohibition on self-dealing. The OCC also proposed to move the requirement that the charitable organization comply with all laws necessary to maintain its tax-exempt status under the Internal Revenue Code to a new paragraph (a)(5) in § 192.575.

The OCC received no comments on the proposed amendments to § 192.575(a) and finalizes the amendments as proposed.

Voluntary supervisory conversions. Section 192.600 describes the purposes of subpart B to part 192, which governs voluntary supervisory mutual to stock conversions. A voluntary supervisory conversion is a transaction to recapitalize an eligible mutual savings association where the association's members have no rights of approval or participation and no rights to the continuance of any legal or beneficial ownership interest in the converted association pursuant to a plan of voluntary supervisory conversion approved by a majority of the board of directors of the converting savings association. The OCC proposed new language in § 192.600 to clarify that a voluntary supervisory mutual to stock conversion would be appropriate when the appropriate Federal banking agency and, in the case of a State-chartered savings association, the appropriate State banking regulator, determines that the savings association has demonstrated that it is unable to complete a standard mutual to stock conversion under subpart A to part 192.

Section 192.650 sets forth the information required to be included in a plan of voluntary supervisory conversion. Among other things, current § 192.650 requires the savings association's name and address; the

[14] *See* 67 FR 52009 (August 9, 2002). The pre-2002 OTS regulation at 12 CFR 563b.3(f)(4) stated ''The initial subaccount balance for a savings account held by an eligible account holder and/or supplemental eligible account holder shall be determined by multiplying the opening balance in the liquidation account by a fraction of which the numerator is the amount of qualifying deposits in such savings account on the eligibility record date and/or the supplemental eligibility record date and the denominator is the total amount of qualifying deposits of all eligible account holders and supplemental eligible account holders in the converting savings association on such dates. For savings accounts in existence at both dates, separate subaccounts shall be determined on the basis of the qualifying deposits in such saving accounts on such record dates.''

[15] For purposes of § 192.470, the annual closing date (ACD) is the end of the savings association's fiscal year.

name, address, date and place of birth, and social security number of each proposed purchaser of conversion shares. The OCC proposed to remove the personal identifying information from the plan of voluntary supervisory conversion (*i.e.,* the name, address, date and place of birth, and social security number of each proposed purchaser of conversion shares) as the OCC does not believe the inclusion of such information is necessary or appropriate. The plan is a publicly available document and the OCC believes that requiring this information raises privacy concerns. The OCC also proposed to amend § 192.650 to remove from the plan of voluntary supervisory conversion the title, per-unit par value, number, and per-unit and aggregate offering price of shares that the savings association will issue; and the number and percentage of shares that each investor will purchase. The OCC does not find this information to be necessary in the plan of voluntary supervisory conversion. In addition, the OCC proposed to move the information required in the plan by § 192.650(e) (the aggregate number and percentage of shares that each director, officer, and any affiliates or associates of the director or officer will purchase) to the application for voluntary supervisory conversion in § 192.660(d)(5). The OCC believes this information more appropriately belongs in the application, rather than the plan, because the OCC reviews these proposed purchases during the application review process and because the proposed purchases may change during the review of the application. As a result, under revised § 192.650, a plan for voluntary supervisory conversion would be required to contain a complete description of the proposed voluntary supervisory conversion that also describes plans for any liquidation account and certified copies of all resolutions relating to the conversion adopted by the savings association's board of directors.

Twelve CFR 192.660 specifies the information a savings association must include in its application for voluntary supervisory conversion. To assist in its review of these applications, the OCC proposed to require the application to contain some additional information. As described in the preceding paragraph, the OCC proposed to relocate the information contained in current § 192.650(e) (the aggregate number and percentage of shares that each director, officer, and any affiliates or associates of the director or officer will purchase) to § 192.660(d)(5). The OCC proposed to add a new § 192.660(e)(3) to require that the voluntary supervisory conversion application include any securities offering circular and other securities disclosure materials that the savings association has prepared to use in connection with the proposed voluntary supervisory conversion. In addition, the OCC proposed to require that the application include a statement indicating the role in the successor savings association each director, officer, and affiliate of the savings association or associate of the director or officer will have after the conversion. The OCC finds that information on the role that each director, officer, affiliate, and associate will have after the conversion to be necessary for consideration of the decision factors in § 192.670(c) and (d).[16] Finally, the OCC proposed to require as part of this application any other information requested by the OCC, as authorized by law.

The OCC received one comment letter on subpart B of part 192 concerning voluntary supervisory conversions. As a general matter, the commenter believes that the policy objectives of this subpart are confusing and that it could benefit from further review and consultation with industry stakeholders to clarify the goals of the subpart. The commenter urged the OCC to clearly state the policy objectives and goals of voluntary supervisory conversions and describe in general terms its expectations for the conversion.

The commenter also had several specific recommendations for subpart B of part 192 that are unrelated to the OCC's proposed amendments. First, the commenter states that it is not clear when a financial institution qualifies as ''significantly undercapitalized'' under § 192.625(a)(1). The commenter asserts that, in the past, the OTS tied the component to capital standards and Prompt Corrective Action (PCA). The commenter believes that the OCC should clarify whether PCA levels are a triggering event for a voluntary supervisory conversion and, if so, expressly cross-reference those provisions and state whether there will be PCA waivers or growth restrictions.

In response to the comment regarding PCA, the OCC may take into account the PCA levels and other capital standards when determining a savings association's eligibility for a voluntary supervisory conversion. However, the PCA levels are not the sole determinant of: A ''significantly undercapitalized'' or ''undercapitalized'' determination on eligibility under § 192.625(a)(1); a ''severe financial circumstances'' determination on eligibility under § 192.625(a)(2); and an ''adequately capitalized'' determination on viability after a voluntary supervisory conversion under § 192.625(b)(1). The PCA category is only one factor in making these decisions. Among other factors, these decisions may include the OCC assessing capital adequacy based on the savings association's risk profile and risk management.[17] Therefore, the OCC declines to cross-reference the PCA provisions in § 192.625.

Second, the commenter asserts that the market supporting voluntary supervisory conversions is limited and that subordinated debt may be an alternative means to help an undercapitalized Federal savings association become adequately capitalized and viable. Because the OCC did not propose any subordinated debt-related amendments in the proposed rule, the OCC declines to address this concern in the final rule.

Finally, the commenter believes that the provision in § 192.670(d) that generally limits employment contracts to one year for existing management of Federal savings associations that are undergoing voluntary supervisory conversions is in potential conflict with the provision in § 192.660(d)(5) which recognizes that directors, officers, and their affiliates and associates may participate in a voluntary supervisory conversion. The commenter is concerned that an officer with a one-year contract is unlikely to make a significant investment in a Federal savings association. The OCC disagrees that § 192.670(d) and 192.660(d)(5) are in conflict. The OCC believes that it is not likely that the deciding factor for significant investment hinges on whether the officer's employment contract is limited to one year and that

[16] Under § 192.670(c) and (d), the appropriate Federal banking agency will generally approve a voluntary supervisory conversion application unless it determines the savings association or its acquiror, or the controlling parties or directors and officers of the savings association or its acquiror, have engaged in unsafe or unsound practices in connection with the voluntary supervisory conversion, or the savings association fails to justify an employment contract incidental to the conversion, or the employment contract will be an unsafe or unsound practice or represent a sale of control.

[17] The PCA capital categories generally are not to be considered indications of capital adequacy under 12 CFR 3, the OCC's capital rules. For example, a bank that is well capitalized for the purposes of PCA may be found by the OCC to have inadequate capital for the purposes of 12 CFR 3. The OCC assesses capital adequacy based on the bank's risk profile relative to its risk management. *See* OCC Bulletin 2018–33, Prompt Corrective Action: Guidelines and Rescissions (September 28, 2018), available at *https://www.occ.gov/news-issuances/bulletins/2018/bulletin-2018-33.html.*

there is no evidence of correlation between contract length and investment.

Federal Home Loan Bank (FHLB) membership. The OCC proposed to remove the references to FHLB membership in §§ 192.135(b)(12) and 192.660(g)(4) because Federal savings associations are no longer required to be members of the FHLB System.[18] The existing provisions of part 192 that reference FHLB membership were drafted when FHLB System membership was required for Federal savings associations. Whether the Federal savings association retains FHLB membership has no impact on the OCC's consideration of an application for a voluntary supervisory conversion in § 192.660(g)(4), nor would it be of interest to members as part of the notice in § 192.135(b)(12).

The OCC received one comment in support of the removal of the references to FHLB membership in §§ 192.135 and 192.660 and finalizes these amendments as proposed.

Technical amendments. The OCC proposed several global technical changes to part 192. First, the OCC proposed to change the text of part 192 from the OTS question and answer format to the standard format of the national bank rules in 12 CFR parts 1 through 50. Second, the OCC proposed to add paragraph headings in compliance with **Federal Register** guidelines. Third, the OCC proposed to clarify that calendar days are used for computations of time under part 192. Finally, the OCC proposed to replace cross-references to the repealed 12 CFR part 197 (2017) (Securities offering disclosure rules) with cross-references to the OCC rule that now applies to Federal savings associations, 12 CFR part 16.

Furthermore, the OCC proposed to make a number of technical changes to specific sections of part 192. First, the OCC proposed to amend § 192.200 to remove the cross-reference to the FDIC's repealed capital rules in subpart Z to 12 CFR part 390. In addition, the OCC proposed to remove from § 192.520(b) the cross-reference to 12 CFR part 167 and replace it with a cross-reference to integrated 12 CFR part 3. Finally, the OCC proposed to amend § 192.660 by replacing an outdated cross-reference to the Thrift Financial Report with the Call Report.

The OCC received one comment in support of the technical amendments to part 192 and finalizes the amendments as proposed.

[18] In 1999, HOLA was amended to no longer require Federal savings associations to become FHLB members. *See* 12 U.S.C. 1464(f); Public Law 106–102 section 603 (1999).

H. Miscellaneous Technical Amendments

The OCC proposed to amend subpart J to 12 CFR part 3 to correct an out-of-date cross-reference. Currently, at 12 CFR 3.601(b), OCC regulations provide, in part, that a capital directive (*i.e.,* an order issued by the OCC to a national bank or Federal savings association to take certain actions to achieve and/or maintain a specified capital ratio) is enforceable in the same manner and to the same extent as a final cease and desist order as defined under 12 U.S.C. 1818(k). Because section 1818(k) has been repealed, the OCC proposed to amend § 3.601(b) to provide instead that a capital directive is enforceable under section 1818(i) in the same manner and to the same extent as an effective and outstanding cease and desist order issued pursuant to section 1818(b) that has become final. This revision is consistent with the OCC's existing authority as set forth under the International Lending Supervision Act at 12 U.S.C. 3907(b) and is not intended to have any substantive impact on the procedures for the enforcement of a capital directive.

The OCC proposed to amend 12 CFR 4.14(a)(9) to remove cross-references to 12 CFR parts 194 (2017) and 197, which have been repealed. The requirements in former parts 194 and 197 have been added to 12 CFR parts 11 and 16, respectively, and the cross-references to those parts have been added to § 4.14(a)(9) accordingly.

The OCC proposed to amend 12 CFR 4.34(c)(2), 4.37(a)(2)(ii), 108.6(d), 108.7(c) and (d), and 112.4 to change ''the OCC's Enforcement and Compliance Division'' to ''the OCC's Law Department.'' Similarly, the proposal would amend 12 CFR 11.3(a), 16.17(a) and (f), and 16.30(a) by removing the phrase ''the OCC's Securities and Corporate Practices Division'' and replacing it with ''the OCC's Law Department.''

The OCC proposed to amend 12 CFR 8.2 to change ''full service'' to ''full-service.''

The OCC proposed to amend 12 CFR 23.6 to change an incorrect singular subject and verb to the correct plural subject and verb.

The OCC proposed to amend 12 CFR 26.6(b)(4) to correct a cross-reference. The cross-reference to § 5.51(c)(6) is incorrect; the correct cross-reference is § 5.51(c)(7).

The OCC proposed to remove several definitions in the OCC's rules for Federal and State savings associations that are no longer necessary. These definitions are currently included in 12 CFR part 141 (Definition for regulations affecting Federal savings associations) and 12 CFR part 161 (Definitions for regulations affecting all savings associations). These definitions apply only to the OCC's rules in 12 CFR parts 100 through 195 that the former OTS originally issued and the OCC republished as OCC rules pursuant to the Dodd-Frank Act. Because the OCC has integrated and amended a number of these rules, many of the terms defined in parts 141 and 161 are no longer used in parts 100 through 195 and, therefore, these definitions are no longer necessary. Specifically, the OCC proposed to remove the definitions of ''Act,'' ''debit card,'' ''improved nonresidential real estate,'' ''improved residential real estate,'' ''interim Federal savings association,'' ''interim state savings association,'' ''unimproved real estate,'' ''withdrawal value of a savings account,'' ''accountholder,'' ''audit period,'' ''land loan,'' ''low-rent housing,'' ''Money Market Deposit Accounts,'' ''Negotiable Order of Withdrawal (NOW) accounts,'' ''nonresidential construction loan,'' ''nonwithdrawable account,'' ''parent company,'' ''principal office,'' ''service corporation,'' and ''subordinated debt security.''

The OCC also proposed to amend the definition of ''state'' in 12 CFR 161.50 so that it is identical to the definition of this term in section 3 of the FDIA (12 U.S.C. 1813(a)(3)). Specifically, the definition includes any territory of the United States, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands, in addition to a State, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

The OCC proposed to amend 12 CFR 160.60(b)(3) to remove a cross-reference to the repealed 12 CFR 163.43 and replace it with 12 CFR 31.2. The rule also amends parts 160 and 163 to define ''OCC'' as the Office of the Comptroller of the Currency in the text of §§ 160.1 and 163.47 and to define ''FDIC'' as the Federal Deposit Insurance Corporation in § 163.80.

Finally, the OCC proposed to update the authority citation for 12 CFR 195.11(a) to include a citation to section 312 of the Dodd-Frank Act (12 U.S.C. 5412(b)(2)(B)).

The OCC received one comment in support of the miscellaneous, technical amendments and finalizes them as proposed.

III. Regulatory Analysis

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* (RFA), requires an agency, in connection with a final rule, to prepare a final Regulatory Flexibility Analysis describing the impact of the rule on small entities (defined by the Small Business Administration (SBA) for purposes of the RFA to include commercial banks and savings institutions with total assets of $600 million or less and trust companies with total revenue of $41.5 million or less) or to certify that the final rule would not have a significant economic impact on a substantial number of small entities. The OCC currently supervises approximately 782 small entities, of which 258 are Federal savings associations.[19] The final rule places one new mandate on Federal savings associations to submit additional information to the OCC as part of their voluntary supervisory conversion applications to convert from mutual to stock form pursuant to 12 CFR 192.660. Because the additional reporting requirement for Federal savings associations that are converting from mutual to stock form through a voluntary supervisory conversion would likely require minimal additional effort and cost relative to the overall cost of the conversion, the costs associated with this additional information would likely be *de minimis.* Therefore, the OCC certifies that the final rule would not have a significant economic impact on a substantial number of OCC-supervised small entities.

Unfunded Mandates Reform Act of 1995

Consistent with the Unfunded Mandates Reform Act, the OCC's review considers whether the mandates imposed by the final rule may result in an expenditure of $100 million or more (currently $154 million adjusted for inflation) by state, local, and tribal governments, or by the private sector, in any one year. The final rule places one new mandate on Federal savings associations to submit additional information to the OCC as part of their voluntary supervisory conversion applications to convert from mutual to stock form pursuant to 12 CFR 192.660. This additional requirement for Federal savings associations to submit additional information to the OCC would likely require minimal effort and cost relative to the overall cost of the conversion. Therefore, we conclude that the final rule would not result in the expenditure of $100 million or more annually ($154 million adjusted for inflation) by state, local, and tribal governments, or by the private sector.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995,[20] the OCC may not conduct or sponsor, and a person is not required to respond to, an information collection unless the information collection displays a valid OMB control number. The OCC submitted the information collection requirements contained in the final rule at the proposed rule stage. OMB filed a comment on the submission instructing the OCC to resubmit the collection at the final rule stage. Therefore, the OCC has submitted the information collection requirements imposed by the final rule to OMB for review.

The final rule adds a new § 192.660(e)(3) to require that the voluntary supervisory conversion application include a statement indicating the role in the successor savings association each director, officer, and affiliate of the savings association or associate of the director or officer will have after the conversion. This burden for this requirement will be added to the existing information collection for OCC's Licensing Manual.

Title: Voluntary Supervisory Conversion Application: Successor Savings Association Roles.

OMB Control No.: 1557–NEW.

Frequency of Response: On occasion.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 1.

Estimated Burden per Respondent: 2 hours.

Estimated Total Annual Burden: 2 hours.

In the proposed rule, the OCC invited comments on:

(a) Whether the collections of information are necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimates of the burden of the collections of information;

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

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

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The OCC received no comments on the information collection requirements.

Riegle Community Development and Regulatory Improvement Act of 1994

Pursuant to section 302(a) of the Riegle Community Development and Regulatory Improvement Act (RCDRIA),[21] in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on IDIs, each Federal banking agency must consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, section 302(b) of RCDRIA requires new regulations and amendments to regulations that impose additional reporting, disclosures, 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.[22]

In accordance with these provisions of RCDRIA, the OCC considered any administrative burdens, as well as benefits, that the final rule would place on IDIs and their customers in determining the effective date and administrative compliance requirements of the final rule. The final rule contains one new mandate for IDIs in the form of additional reporting requirements for voluntary supervisory conversion applications under 12 CFR 192.660(e)(3). Because the additional reporting requirements for Federal savings associations that are converting from mutual to stock form through a voluntary supervisory conversion would likely require minimal additional effort and cost relative to the overall cost of the conversion, we expect that the additional burden of collecting this information for the application will be *de minimis.* In conjunction with the

[19] The OCC bases its estimate of the number of small entities on the SBA's size thresholds for commercial banks and savings institutions, and trust companies, which are $600 million and $41.5 million, respectively. Consistent with the General Principles of Affiliation 13 CFR 121.103(a), the OCC counts the assets of affiliated financial institutions when determining if we should classify an OCC-supervised institution a small entity. The OCC uses December 31, 2018, to determine size because a ''financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year.'' See footnote 8 of the U.S. Small Business Administration's *Table of Size Standards.*

[20] 44 U.S.C. 3501 *et seq.*

[21] 12 U.S.C. 4802(a).

[22] *Id.* at 4802(b).

requirements of RCDRIA, the final rule is effective on August 13, 2020.

Congressional Review Act

For purposes of Congressional Review Act (CRA), the Office of Management and Budget (OMB) makes a determination as to whether a final rule constitutes a ''major'' rule.[23] If a rule is deemed a ''major rule'' by the OMB, the CRA generally provides that the rule may not take effect until at least 60 days following its publication.[24]

The CRA defines a ''major rule'' as any rule that the Administrator of the Office of Information and Regulatory Affairs of the OMB finds has resulted in or is likely to result in (1) an annual effect on the economy of $100,000,000 or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or (3) 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.[25] As required by the CRA, the OCC will submit the final rule and other appropriate reports to Congress and the Government Accountability Office for review.

List of Subjects

12 CFR Part 3

Administrative practice and procedure, Banks, banking, Federal Reserve System, Investments, National banks.

12 CFR Part 4

Administrative practice and procedure, Freedom of Information, Individuals with disabilities, Minority businesses, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Women.

12 CFR Part 11

Business information, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 16

National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 19

Crime, Equal access to justice, Investigations, National banks, Penalties, Securities.

12 CFR Part 23

Banks, banking, National banks, Reporting and recordkeeping requirements.

12 CFR Part 26

Antitrust, Holding companies, National banks.

12 CFR Part 32

National banks, Reporting and recordkeeping requirements.

12 CFR Part 108

Administrative practice and procedure, Crime, Savings associations.

12 CFR Part 112

Administrative practice and procedure, Investigations.

12 CFR Part 141

Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 160

Consumer protection, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 161

Administrative practice and procedure, Savings associations.

12 CFR Part 163

Accounting, Administrative practice and procedure, Advertising, Crime, Currency, Investments, Mortgages, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 192

Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 195

Community development, Credit, Investments, Reporting and recordkeeping requirements, Savings associations.

For the reasons set out in the preamble, the OCC amends 12 CFR chapter I as follows:

PART 3—CAPITAL ADEQUACY STANDARDS

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

Authority: 12 U.S.C. 93a, 161, 1462, 1462a, 1463, 1464, 1818, 1828(n), 1828 note, 1831n note, 1835, 3907, 3909, and 5412(b)(2)(B).

§ 3.2 [Amended]

■ 2. Section 3.2 is amended in in paragraph (1) of the definition of ''Qualifying master netting agreement'' by adding ''and'' after ''counterparty;''.

■ 3. Section 3.601 is amended by revising paragraph (b) to read as follows:

§ 3.601 Purpose and scope.

* * * * *

(b) A directive issued under this rule, including a plan submitted under a directive, is enforceable under the provisions of 12 U.S.C. 1818(i) in the same manner and to the same extent as an effective and outstanding cease and desist order issued pursuant to 12 U.S.C. 1818(b) that has become final. Violation of a directive may result in assessment of civil money penalties in accordance with 12 U.S.C. 3909(d).

PART 4—ORGANIZATION AND FUNCTIONS, AVAILABILITY AND RELEASE OF INFORMATION, CONTRACTING OUTREACH PROGRAM, POST-EMPLOYMENT RESTRICTIONS FOR SENIOR EXAMINERS

■ 4. The authority citation for part 4 continues to read as follows:

Authority: 5 U.S.C. 301, 552; 12 U.S.C. 1, 93a, 161, 481, 482, 484(a), 1442, 1462a, 1463, 1464 1817(a), 1818, 1820, 1821, 1831m, 1831p–1, 1831o, 1833e, 1867, 1951 *et seq.,* 2601 *et seq.,* 2801 *et seq.,* 2901 *et seq.,* 3101 *et seq.,* 3401 *et seq.,* 5321, 5412, 5414; 15 U.S.C. 77uu(b), 78q(c)(3); 18 U.S.C. 641, 1905, 1906; 29 U.S.C. 1204; 31 U.S.C. 5318(g)(2), 9701; 42 U.S.C. 3601; 44 U.S.C. 3506, 3510; E.O. 12600 (3 CFR, 1987 Comp., p. 235).

§ 4.14 [Amended]

■ 5. Section 4.14 is amended in paragraph (a)(9) by removing the phrase ''parts 11, 16, 194 or 197 of this chapter'' and adding in its place ''part 11 or 16 of this chapter''.

§ 4.34 [Amended]

■ 6. Section 4.34 is amended in paragraph (c)(2) by removing the phrase ''and Compliance''.

§ 4.37 [Amended]

■ 7. Section 4.37 is amended in paragraph (a)(2)(ii) by removing the phrase ''and Compliance''.

PART 11—SECURITIES EXCHANGE ACT DISCLOSURE RULES

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

Authority: 12 U.S.C. 93a, 1462a, 1463, 1464 and 5412(b)(2)(B); 15 U.S.C. 78j–1(m), 78m, 78n, 78p, 78w, 78l, 7241, 7242, 7243, 7244, 7261, 7262, 7264, and 7265.

§ 11.3 [Amended]

■ 9. Section 11.3 is amended:

[23] 5 U.S.C. 801 *et seq.*

[24] 5 U.S.C. 801(a)(3).

[25] 5 U.S.C. 804(2).

■ a. In paragraph (a)(1)(i) and the second sentence of paragraph (a)(1)(ii) by removing the phrase ''the Securities and Corporate Practices Division'' and by adding the phrase ''the OCC's Law Department'' in its place; and
■ b. In the first sentence of paragraph (a)(1)(ii) by removing the phrase ''the OCC's Securities and Corporate Practices Division'' and by adding the phrase ''the OCC's Law Department'' in its place.

PART 16—SECURITIES OFFERING DISCLOSURE RULES

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

Authority: 12 U.S.C. 1 *et seq.,* 93a, 1462a, 1463, 1464, and 5412(b)(2)(B).

§ 16.15 [Amended]

■ 11. Section 16.15 is amended in paragraph (e) by adding the phrase ''or as part of its offering statement for the offer and sale of its securities pursuant to 12 CFR 16.8,'' after ''registration statement for the offer and sale of its securities,''.

■ 12. Section 16.17 is amended:
■ a. In paragraph (a), by removing the phrase ''the OCC's Securities and Corporate Practices Division'' and by adding the phrase ''the OCC's Law Department'' in its place;
■ b. In paragraph (b), by adding a sentence at the end; and
■ c. In the first and second sentences of paragraph (f), by removing the phrase ''the OCC's Securities and Corporate Practices Division'' and by adding the phrase ''the OCC's Law Department'' in its place.

The addition reads as follows:

§ 16.17 Filing requirements and inspection of documents.

* * * * *

(b) * * * All registration statements, offering documents, amendments, notices, or other documents relating to a mutual to stock conversion pursuant to 12 CFR part 192 must be filed with the appropriate OCC licensing office at *http://www.banknet.gov/.*

* * * * *

§ 16.30 [Amended]

■ 13. Section 16.30 is amended in paragraph (a) by removing the phrase ''the OCC's Securities and Corporate Practices Division'' and by adding the phrase ''the OCC's Law Department'' in its place.

PART 19—RULES OF PRACTICE AND PROCEDURE

■ 14. The authority citation for part 19 continues to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 93(b), 93a, 164, 481, 504, 1817, 1818, 1820, 1831m, 1831o, 1832, 1884, 1972, 3102, 3108(a), 3110, 3909, and 4717; 15 U.S.C. 78(h) and (i), 78o–4(c), 78o–5, 78q–1, 78s, 78u, 78u–2, 78u–3, 78w, and 1639e; 28 U.S.C. 2461 note; 31 U.S.C. 330 and 5321; and 42 U.S.C. 4012a.

§ 19.241 [Amended]

■ 15. Section 19.241 is amended by:
■ a. Removing the phrase ''Federal Deposit Insurance Act (FDI Act)'' and adding in its place ''FDIA'';
■ b. Removing the phrase ''section 36 of the FDI Act'' and adding in its place ''section 36 of the FDIA''; and
■ c. Removing the phrase ''insured national banks and Federal branches and agencies of foreign banks'' and adding in its place the phrase ''insured national banks, insured Federal savings associations, and insured Federal branches of foreign banks''.

§ 19.242 [Amended]

■ 16. Section 19.242 is amended:
■ a. By removing the word ''shall'' in the introductory text; and
■ b. In paragraph (b), by adding ''(12 U.S.C. 1831m)'' after the phrase ''section 36 of the FDIA''.

■ 17. Section 19.243 is amended:
■ a. In paragraph (a)(1) introductory text, by adding ''(12 U.S.C. 1831m)'' after ''section 36 of the FDIA'';
■ b. In paragraph (a)(1) introductory text, by adding the phrase '', insured Federal savings associations, or insured Federal branches of foreign banks'' after the phrase ''national banks'';
■ c. In paragraphs (a)(1)(vi) and (vii), by removing the word ''state'' and adding the word ''State'' in its place;
■ d. In paragraph (a)(3), by removing the phrase ''particular national bank or class of national banks'' and adding in its place the phrase ''particular insured national bank, insured Federal savings association, or insured Federal branch of a foreign bank or class of insured national banks, insured Federal savings associations, or insured Federal branches of foreign banks'';
■ e. In paragraph (b)(2) by:
■ i. Removing the word ''shall'' and adding in its place the word ''will''; and
■ ii. Adding the phrase '', subject to the limitations in § 19.243(c)(4)'' at the end of the second sentence;
■ f. In paragraph (c)(1) introductory text, by adding the phrase '', insured Federal savings associations, or insured Federal branches of foreign banks'' after the phrase ''national banks'';
■ g. In paragraph (c)(3), by revising the last sentence;
■ h. In paragraph (c)(4) by:
■ i. Removing the phrase ''who shall fix a place'' in the first sentence and adding in its place the phrase ''who will fix a place'';
■ ii. Removing the phrase ''unless extended'' in the first sentence and adding in its place the phrase ''unless further time is allowed by the presiding officer'';
■ iii. Removing the phrase ''there shall be no discovery'' in the last sentence and adding in its place the phrase ''there will be no discovery''; and
■ iv. Removing the phrase ''of this part shall apply'' and adding in its place ''of this part apply'';
■ i. In paragraph (c)(5), by removing the word ''shall'' in the first sentence and adding in its place the word ''will''; and
■ j. In paragraph (c)(6), by removing the word ''shall'' wherever it appears and adding in its place the word ''will''.

The revision reads as follows:

§ 19.243 Removal, suspension, or debarment.

* * * * *

(c) * * *

(3) * * * If no petition is filed within 10 calendar days, the right to a petition is waived and the immediate suspension remains in effect pursuant to paragraph (c)(2).

* * * * *

■ 18. Section 19.244 is amended:
■ a. By revising the section heading;
■ b. In paragraph (a) introductory text, by adding the phrase '', insured Federal savings associations, or insured Federal branches of foreign banks'' after the phrase ''national banks'';
■ c. In paragraph (a)(1) by:
■ i. Adding the word ''former'' before the phrase ''Office of Thrift Supervision''; and
■ ii. Adding ''(12 U.S.C. 1831m)'' after the phrase ''section 36 of the FDIA'';
■ d. In paragraph (b) by:
■ i. Adding the word ''insured'' before the phrase ''national banks'';
■ ii. Adding the phrase '', insured Federal savings associations, or insured Federal branches of foreign banks'' after the phrase ''national banks''; and
■ iii. Removing the word ''shall'' and adding in its place the word ''must''.

The revision reads as follows:

§ 19.244 Automatic removal, suspension, or debarment.

* * * * *

§ 19.245 [Amended]

■ 19. Section 19.245 is amended:
■ a. By adding a comma after the word ''suspension'' in the section heading;
■ b. In paragraph (a), by removing the word ''shall'' and adding in its place the word ''will'';
■ c. In paragraph (b) introductory text by:

■ i. Adding the word ''insured'' before the phrase ''national bank''; and
■ ii. Adding the phrase '', insured Federal savings association, or insured Federal branch of a foreign bank'' after the phrase ''national bank'';
■ d. In paragraph (b)(1), by removing ''§ 19.243(a)(1)(vi) through (a)(1)(vii) or § 19.244(a)(2) through (a)(3)'' and adding in its place ''§ 19.243(a)(1)(vi) through (vii) or § 19.244(a)(2) and (3)'';
■ e. In paragraph (b)(2), by removing the phrase ''Sarbanes-Oxley Act)'' and adding in its place the phrase ''Sarbanes-Oxley Act''; and
■ f. In paragraph (c), by removing the word ''shall'' and adding in its place the word ''must''.

§ 19.246 [Amended]

■ 20. Section 19.246 is amended:
■ a. In paragraph (a), by removing the word ''shall'' and adding in its place the word ''must''; and
■ b. In paragraph (b):
■ i. By removing the phrase ''shall bear'' wherever it appears and adding in its place the word ''bears''; and
■ ii. In the penultimate and last sentences, by removing the word ''shall'' and adding in its place the word ''will''.

PART 23—LEASING

■ 21. The authority citation for part 23 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 24(Seventh), 24(Tenth), and 93a.

§ 23.6 [Amended]

■ 22. Section 23.6 is amended by:
■ a. Removing the word ''lease'' before the phrase ''entered into pursuant to this part'' and adding in its place the word ''leases''; and
■ b. Removing the word ''is'' before the phrase ''subject to the lending limits prescribed'' and adding in its place the word ''are''.

PART 26—MANAGEMENT INTERLOCKS

■ 23. The authority citation for part 26 continues to read as follows:

Authority: 12 U.S.C. 1, 93a, 1462a, 1463, 1464, 3201–3208, 5412(b)(2)(B).

§ 26.6 [Amended]

■ 24. Section 26.6 is amended in paragraph (b)(4) by removing ''5.51(c)(6)'' and adding in its place ''5.51(c)(7)''.

PART 32—LENDING LIMITS

■ 25. The authority citation for part 32 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 12 U.S.C. 84, 93a, 1462a, 1463, 1464(u), 5412(b)(2)(B), and 15 U.S.C. 1639h.

■ 26. Section 32.2 is amended by revising paragraphs (cc) and (dd) to read as follows:

§ 32.2 Definitions.

* * * * *

(cc) *Loans to small businesses* means loans or extensions of credit ''secured by nonfarm nonresidential properties'' or ''commercial and industrial loans'' as defined in the instructions for preparation of the Consolidated Report of Condition and Income.

(dd) *Loans or extensions of credit to small farms* means ''loans secured by farmland'' or ''loans to finance agricultural production and other loans to farmers'' as defined in the instructions for preparation of the Consolidated Report of Condition and Income.

* * * * *

■ 27. Section 32.7 is amended by revising the section heading and paragraphs (a) and (d) to read as follows:

§ 32.7 Residential real estate loans, loans to small businesses, and loans or extensions of credit to small farms (''Supplemental Lending Limits Program'').

(a) *Residential real estate, loans to small businesses, and loans or extensions of credit to small farms.* (1) In addition to the amount that a national bank or savings association may lend to one borrower under § 32.3, an eligible national bank or eligible savings association may make residential real estate loans or extensions of credit to one borrower in the lesser of the following two amounts: 10 percent of its capital and surplus; or the percent of its capital and surplus, in excess of 15 percent, that a State bank or savings association is permitted to lend under the State lending limit that is available for residential real estate loans or unsecured loans in the State where the main office of the national bank or savings association is located. Any such loan or extension of credit must be secured by a perfected first-lien security interest in 1–4 family real estate in an amount that does not exceed 80 percent of the appraised value of the collateral at the time the loan or extension of credit is made.

(2) In addition to the amount that a national bank or savings association may lend to one borrower under § 32.3, an eligible national bank or eligible savings association may make loans to small businesses to one borrower in the lesser of the following two amounts: 10 percent of its capital and surplus; or the percent of its capital and surplus, in excess of 15 percent, that a State bank is permitted to lend under the state lending limit that is available for loans to small businesses or unsecured loans in the state where the main office of the national bank or home office of the savings association is located.

(3) In addition to the amount that a national bank or savings association may lend to one borrower under § 32.3, an eligible national bank or eligible savings association may make loans or extensions of credit to small farms to one borrower in the lesser of the following two amounts: 10 percent of its capital and surplus; or the percent of its capital and surplus, in excess of 15 percent, that a State bank or savings association is permitted to lend under the State lending limit that is available for loans or extensions of credit to small farms or unsecured loans in the State where the main office of the national bank or savings association is located.

* * * * *

(d) *Discretionary termination of authority.* The appropriate supervisory office may rescind a bank's or savings association's authority to use the supplemental lending limits in paragraphs (a)(1), (2), and (3) of this section based upon concerns about credit quality, undue concentrations in the bank's or savings association's portfolio of residential real estate, loans to small businesses, or loans or extensions of credit to small farms, or concerns about the bank's or savings association's overall credit risk management systems and controls. The bank or savings association must cease making new loans or extensions of credit in reliance on the supplemental lending limits upon receipt of written notice from the appropriate supervisory office that its authority has been rescinded.

* * * * *

PART 108—REMOVALS, SUSPENSIONS, AND PROHIBITIONS WHERE A CRIME IS CHARGED OR PROVEN

■ 28. The authority citation for part 108 continues to read as follows:

Authority: 12 U.S.C. 1464, 1818, 5412(b)(2)(B).

§ 108.6 [Amended]

■ 29. Section 108.6 is amended in paragraph (d) by removing the phrase ''and Compliance''.

§ 108.7 [Amended]

■ 30. Section 108.7 is amended in the first sentence of paragraph (c) and in paragraph (d) by removing the phrase ''and Compliance''.

§ 108.13 [Amended]

■ 31. Section 108.13 is amended in paragraph (c) by removing the phrase ''and Compliance''.

PART 112—RULES FOR INVESTIGATIVE PROCEEDINGS AND FORMAL EXAMINATION PROCEEDINGS

■ 32. The authority citation for part 112 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467, 1467a, 1813, 1817(j), 1818(n), 1820(c), 5412(b)(2)(B); 15 U.S.C. 78*l*.

§ 112.4 [Amended]

■ 33. Section 112.4 is amended in the second sentence by removing the phrase ''and Compliance''.

PART 141—DEFINITIONS FOR REGULATIONS AFFECTING FEDERAL SAVINGS ASSOCIATIONS

■ 34. The authority citation for part 141 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 5412(b)(2)(B).

§§ 141.2, 141.8, 141.15, 141.16, 141.18, and 141.19 [Removed and Reserved]

■ 35. Sections 141.2, 141.8, 141.15, 141.16, 141.18, and 141.19 are removed and reserved.

§§ 141.27 and 141.28 [Removed]

■ 36. Sections 141.27 and 141.28 are removed.

PART 160—LENDING AND INVESTMENT

■ 37. The authority for part 160 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1701j–3, 1828, 3803, 3806, 5412(b)(2)(B); 42 U.S.C. 4106.

§ 160.1 [Amended]

■ 38. Section 160.1 is amended in paragraph (a) by removing ''OCC'' and adding in its place the phrase ''Office of the Comptroller of the Currency (OCC)''.

§ 160.60 [Amended]

■ 39. Section 160.60 is amended in paragraph (b)(3) by removing the phrase ''12 CFR part 32 and § 163.43 of this chapter'' and adding in its place ''12 CFR 31.2 and part 32 of this chapter''.

PART 161—DEFINITIONS FOR REGULATIONS AFFECTING All SAVINGS ASSOCIATIONS

■ 40. The authority citation for part 161 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 5412(b)(2)(B).

§§ 161.3, 161.6, 161.26, 161.27, 161.28. 161.29, 161.30, 161.31 [Removed and Reserved]

■ 41. Sections 161.3, 161.6, 161.26, 161.27, 161.28, 161.29, 161.30, and 161.31 are removed and reserved.

§ 161.37 [Amended]

■ 42. Section 161.37 is amended by removing the first sentence.

§§ 161.39 and 161.45 [Removed and Reserved]

■ 43. Sections 161.39 and 161.45 are removed and reserved.

■ 44. Section 161.50 is revised to read as follows:

§ 161.50 State.

The term ''State'' means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

§ 161.51 [Removed and Reserved]

■ 45. Section 161.51 is removed and reserved.

PART 163—SAVINGS ASSOCIATIONS—OPERATIONS

■ 46. The authority citation for part 163 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1817, 1820, 1828, 1831o, 3806, 5101 *et seq.*, 5412(b)(2)(B); 31 U.S.C. 5318; 42 U.S.C. 4106.

§ 163.39 [Removed and Reserved]

■ 47. Section 163.39 is removed and reserved.

§ 163.47 [Amended]

■ 48. Section 163.47 is amended in paragraph (d) by removing ''OCC'' and adding in its place the phrase ''Office of the Comptroller of the Currency (OCC)''.

§ 163.76 [Amended]

■ 49. Section 163.76 is amended:

■ a. In paragraph (b), by removing the phrase ''§ 197.10 of this chapter'' and adding in its place ''§ 16.32 of this chapter''; and

■ b. In paragraph (c), in the Form of Certification, by removing '']'' after the phrase ''I should call the Office of the Comptroller of the Currency''.

§ 163.80 [Amended]

■ 50. Section 163.80 is amended in paragraph (c) by removing the phrase ''or the FDIC'' and adding in its place the phrase ''or the Federal Deposit Insurance Corporation (FDIC)''.

§ 163.180 [Amended]

■ 51. Section 163.180 is amended by removing the first paragraph designation of (d)(12)(i)(A) and its subject heading ''General rule'' and redesignating the paragraph as paragraph (d)(12)(i) introductory text.

■ 52. Part 192 is revised to read as follows:

PART 192—CONVERSIONS FROM MUTUAL TO STOCK FORM

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192.7 Electronic filing.
192.8 Computation of time.
192.10 Forming a holding company upon conversion.
192.15 Forming a charitable organization upon conversion.
192.20 Acquiring another insured depository institution upon conversion.
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Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 2901 *et seq.,* 5412(b)(2)(B); 15 U.S.C. 78c, 78*l*, 78m, 78n, 78w.

§ 192.5 Purpose, prescribed forms, waiver.

(a) *General.* This part governs how a savings association may convert from the mutual to the stock form of ownership. Subpart A of this part governs standard mutual-to-stock conversions. Subpart B of this part governs voluntary supervisory mutual-to-stock conversions. This part supersedes all inconsistent charter and bylaw provisions of Federal savings associations converting to stock form.

(b) *Prescribed forms.* A savings association must use the forms prescribed under this part and part 16 and provide such information as the appropriate Federal banking agency may require under the forms and by regulation. The forms required under this part include: Form AC (Application for Conversion); Form PS (Proxy Statement); Form OC (Offering Circular); Form OF (Order Form); and the applicable form for a registration statement under 12 CFR 16.15. Forms AC, PS, OC, and OF are available on the website of the Office of the Comptroller of the Currency (OCC) at *http://www.occ.gov*.

(c) *Waivers.* The appropriate Federal banking agency may waive any requirement of this part or a provision in any prescribed form. To obtain a waiver, a savings association must file a written request with the appropriate Federal banking agency that:

(1) Specifies the requirement(s) or provision(s) the savings association wants the appropriate Federal banking agency to waive;

(2) Demonstrates that the waiver is equitable; is not detrimental to the savings association, its account holders, or other savings associations; and is not contrary to the public interest; and

(3) Includes an opinion of counsel demonstrating that applicable law does not conflict with the waiver of the requirement or provision.

(d) *Financial statements.* The form and content of financial statements and related financial data in a filing under this part must be prepared and presented in accordance with U. S. generally accepted accounting principles and other applicable accounting guidance and requirements

as specified by the OCC in the forms required under paragraph (b) of this section.

§ 192.7 Electronic filing.

For Federal savings associations, the OCC encourages the electronic filing of all applications, notices, or other documents required by this part through *http://www.banknet.gov/*. The Comptroller's Licensing Manual describes the OCC's electronic filing procedures.

§ 192.8 Computation of time.

In computing the period of days, the OCC excludes the day of the act or event (*e.g.,* the date an application is received by the OCC) from when the period begins to run. When the last day of a time period is a Saturday, Sunday, or Federal holiday, the time period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday.

§ 192.10 Forming a holding company upon conversion.

A savings association may convert to the stock form of ownership as part of a transaction where the savings association organizes a holding company to acquire all of the savings association's shares upon their issuance. In this transaction, the savings association's holding company will offer rights to purchase its shares instead of the savings association's shares. Regulations of the Board of Governors of the Federal Reserve System address holding company application requirements.

§ 192.15 Forming a charitable organization upon conversion.

When a savings association converts to the stock form, it may form a charitable organization. A savings association's contributions to the charitable organization are governed by the requirements of §§ 192.550 through 192.575.

§ 192.20 Acquiring another insured depository institution upon conversion.

When a savings association converts to stock form, it may acquire for cash or stock another insured depository institution that is already in the stock form of ownership.

§ 192.25 Definitions.

The following definitions apply to this part and the forms prescribed under this part:

Acting in concert has the same meaning as in 12 CFR 5.50(d)(2). The rebuttable presumptions of 12 CFR 5.50(f)(2), other than 12 CFR 5.50(f)(2)(ii)(A) and (B), apply to the share purchase limitations at §§ 192.355 through 192.395.

Affiliate of, or a person *affiliated with,* a specified person is a person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the specified person.

Appropriate Federal banking agency means appropriate Federal banking agency as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)).

Associate of a person is:

(1) A corporation or organization (other than a savings association or its majority-owned subsidiaries), if the person is a senior officer or partner, or beneficially owns, directly or indirectly, 10 percent or more of any class of equity securities of the corporation or organization.

(2) A trust or other estate, if the person has a substantial beneficial interest in the trust or estate or is a trustee or fiduciary of the trust or estate. For purposes of §§ 192.370 through 192.395 and 192.505, a person who has a substantial beneficial interest in a savings association's tax-qualified or non-tax-qualified employee stock benefit plan, or who is a trustee or a fiduciary of the plan, is not an associate of the plan. For the purposes of § 192.370, a savings association's tax-qualified employee stock benefit plan is not an associate of a person.

(3) Any person who is related by blood or marriage to such person and:

(i) Who lives in the same home as the person; or

(ii) Who is the savings association's director or senior officer, or a director or senior officer of the savings association's holding company or its subsidiary.

Association members or *members* are persons who, under applicable law, are eligible to vote at the meeting on conversion.

Community offering means the offer to sell to the members of the general public in the savings association's community the securities not subscribed for in the subscription offering. The community offering may occur concurrently with the subscription offering and any syndicated community offering, or upon conclusion of the subscription offering.

Control (including *controlling, controlled by,* and *under common control with*) means the direct or indirect power to direct or exercise a controlling influence over the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise as described in 12 CFR 5.50.

Demand accounts means non-interest-bearing demand deposits that are subject to check or to withdrawal or transfer on negotiable or transferable order to the savings association and that are permitted to be issued by statute, regulation, or otherwise and are payable on demand.

Eligibility record date is the date for determining eligible account holders. The eligibility record date must be at least one year before the date a savings association's board of directors adopts the plan of conversion.

Eligible account holders are any persons holding qualifying deposits on the eligibility record date.

Federal savings association means a Federal savings association or Federal savings bank chartered under section 5 of the Home Owners' Loan Act (HOLA) (12 U.S.C. 1464).

IRS is the Internal Revenue Service.

Local community includes:

(1) Every county, parish, or similar governmental subdivision in which a savings association has a home or branch office;

(2) Each county's, parish's, or subdivision's metropolitan statistical area;

(3) All zip code areas in a savings association's Community Reinvestment Act assessment area; and

(4) Any other area or category that a savings association sets out in its plan of conversion, as approved by the appropriate Federal banking agency.

Offer, offer to sell, or *offer for sale* is an attempt or offer to dispose of, or a solicitation of an offer to buy, a security or interest in a security for value. Preliminary negotiations or agreements with an underwriter, or among underwriters who are or will be in privity of contract with a savings association, are not offers, offers to sell, or offers for sale.

Offering circular means the securities offering materials for the conversion.

Person is an individual, a corporation, a partnership, an association, a joint-stock company, a limited liability company, a trust, an unincorporated organization, or a government or political subdivision of a government.

Proxy soliciting material includes a proxy statement, form of proxy, or other written or oral communication regarding the conversion.

Purchase or *buy* includes every contract to acquire a security or interest in a security for value.

Qualifying deposit is the total balance in an account holder's savings accounts at the close of business on the eligibility or supplemental eligibility record date. A savings association's plan of conversion may provide that only

savings accounts with total deposit balances of $50 or more will qualify.

Sale or *sell* includes every contract to dispose of a security or interest in a security for value. An exchange of securities in a merger or acquisition approved by the appropriate Federal banking agency is not a sale.

Savings account means any withdrawable account, including a demand account, except this term does not mean a tax and loan account, a note account, a United States Treasury general account, or a United States Treasury time deposit-open account.

Savings association means a savings association as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1)).

Solicitation and *solicit* is a request for a proxy, whether or not accompanied by or included in a form of proxy; a request to execute, not execute, or revoke a proxy; or the furnishing of a form of proxy or other communication reasonably calculated to cause a savings association's members to procure, withhold, or revoke a proxy. Solicitation or solicit does not include providing a form of proxy at the unsolicited request of a member, the acts required to mail communications for members, or ministerial acts performed on behalf of a person soliciting a proxy.

State means any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands.

State savings association means a State savings association as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(3)).

Subscription offering is the offering of shares through nontransferable subscription rights to:

(1) Eligible account holders under § 192.355;

(2) Tax-qualified employee stock ownership plans under § 192.380;

(3) Supplemental eligible account holders under § 192.355; and

(4) Other voting members under § 192.365.

Supplemental eligibility record date is the date for determining supplemental eligible account holders. The supplemental eligibility record date is the last day of the calendar quarter before the appropriate Federal banking agency approves a savings association's conversion and will only occur if such agency has not approved such conversion within 15 months after the eligibility record date.

Supplemental eligible account holders are any persons, except a savings association's officers, directors, and their associates, holding qualifying deposits on the supplemental eligibility record date.

Tax-qualified employee stock benefit plan is any defined benefit plan or defined contribution plan, such as an employee stock ownership plan, stock bonus plan, profit-sharing plan, or other plan, and a related trust, that is qualified under section 401 of the Internal Revenue Code (26 U.S.C. 401).

Underwriter is any person who purchases any securities from a savings association with a view to distributing the securities, offers or sells securities for a savings association in connection with the securities' distribution, or participates or has a direct or indirect participation in the direct or indirect underwriting of any such undertaking. Underwriter does not include a person whose interest is limited to a usual and customary distributor's or seller's commission from an underwriter or dealer.

Voluntary supervisory conversion is a mutual to stock conversion for a savings association that is unable to complete a standard mutual to stock conversion under part 192, subpart A, and that meets the eligibility requirements of § 192.625.

Subpart A—Standard Conversions

Prior to Conversion

§ 192.100 Preparing for a conversion.

(a) *Meeting with appropriate Federal banking agency prior to passing plan.* A savings association's board, or a subcommittee of its board, must meet, in person or electronically, with the appropriate Federal banking agency before the savings association passes its plan of conversion. At this meeting the savings association must provide the appropriate Federal banking agency with a written strategic plan that outlines the objectives of the proposed conversion and the intended use of the conversion proceeds.

(b) *Consultation with appropriate Federal banking agency before filing application.* A savings association also should consult with the appropriate Federal banking agency before filing its application for conversion. The appropriate Federal banking agency will discuss the information that the savings association must include in the application for conversion, general issues that it may confront in the conversion process, and any other pertinent issues.

§ 192.105 Information required in business plan.

(a) *Minimum requirements.* Prior to filing an application for conversion, a savings association must adopt a business plan reflecting its intended plans for deployment of the proposed conversion proceeds. The savings association's business plan is required, under § 192.150, to be included in its application for conversion. At a minimum, the business plan must address:

(1) The savings association's projected operations and activities for three years following the conversion. These projections must include how the savings association will accomplish the following by the final year of the business plan:

(i) Deploy the conversion proceeds at the converted savings association (and holding company, if applicable);

(ii) What opportunities are available to reasonably achieve its planned deployment of conversion proceeds in the proposed market areas; and

(iii) How the deployment will provide a reasonable return on investment commensurate with investment risk, investor expectations, and industry norms. The savings association must include three years of projected financial statements. The business plan must provide that the converted savings association must retain at least 50 percent of the net conversion proceeds. The appropriate Federal banking agency may require that a larger percentage of proceeds remain in the institution.

(2) The savings association's plan for deploying conversion proceeds to meet credit and lending needs in the proposed market areas. The appropriate Federal banking agencies strongly discourage business plans that provide for a substantial investment in mortgage securities or other securities, except as an interim measure to facilitate orderly, prudent deployment of proceeds during the three years following the conversion or as part of a properly managed leverage strategy.

(3) The risks associated with the savings association's plan for deployment of conversion proceeds, and the effect of this plan on management resources, staffing, and facilities.

(4) The expertise of the savings association's management and board of directors, or plans for adequate staffing and controls to prudently manage the growth, expansion, new investment, and other operations and activities proposed in the business plan.

(b) *Prohibited information.* The savings association may not project returns of capital or special dividends in any part of the business plan. A newly

converted company may not plan on stock repurchases in the first year of the business plan.

§ 192.110 Review of business plan by chief executive officer and board of directors.

(a) *Review and approval.* A savings association's chief executive officer and members of the board of directors must review, and at least two-thirds of the board of directors must approve, the business plan.

(b) *Certification.* A savings association's chief executive officer and at least two-thirds of the board of directors must certify that the business plan accurately reflects the intended plans for deployment of conversion proceeds, and that any new initiatives reflected in the business plan are reasonably achievable. The savings association must submit these certifications with its business plan, as part of its application for conversion under § 192.150.

§ 192.115 Review of business plan by the appropriate Federal banking agency.

(a) *Agency review.* The appropriate Federal banking agency will review the savings association's business plan to determine that it demonstrates a safe and sound deployment of conversion proceeds, as part of its review of the application for conversion. In making its determination, the appropriate Federal banking agency will consider how the savings association has addressed the applicable factors of § 192.105. No single factor will be determinative.

(b) *Filing of business plan.* A savings association must file its business plan as a separate confidential exhibit to the Form AC with the appropriate OCC licensing office if it is a Federal savings association, or with the appropriate Federal Deposit Insurance Corporation (FDIC) region if it is a State savings association. The appropriate Federal banking agency may request additional information, if necessary, to support its determination under paragraph (a) of this section.

(c) *Operation within business plan.* If the appropriate Federal banking agency approves a savings association's application for conversion and the conversion is completed, the savings association must operate within the parameters of its business plan. The savings association must obtain the prior written approval of the appropriate Federal banking agency for any material deviations from its business plan.

§ 192.120 Confidentiality of conversion information.

(a) *Permitted disclosure.* A savings association may discuss information about its conversion with individuals that the savings association authorizes to prepare documents for its conversion.

(b) *Confidential information.* Except as permitted under paragraph (a) of this section, a savings association must keep all information about its conversion confidential until its board of directors adopts the plan of conversion.

(c) *Violations of confidentiality.* If a savings association violates this section, the appropriate Federal banking agency may require the savings association to take remedial action. For example, the appropriate Federal banking agency may require the savings association to take any or all of the following actions:

(1) Publicly announce that the savings association is considering a conversion;

(2) Set an eligibility record date acceptable to the appropriate Federal banking agency;

(3) Limit the subscription rights of any person who violates or aids a violation of this section; or

(4) Any other action to assure that the conversion is fair and equitable.

Plan of Conversion

§ 192.125 Adoption of plan of conversion by board of directors.

Prior to filing an application for conversion, a savings association's board of directors must adopt a plan of conversion that conforms to §§ 192.320 through 192.485 and 192.505. The savings association's board of directors must adopt the plan by at least a two-thirds vote. Pursuant to § 192.150, the savings association must include the plan of conversion in the application for conversion.

§ 192.130 Information required in plan of conversion.

A savings association must include the information included in §§ 192.320 through 192.485 and 192.505 in its plan of conversion. The appropriate Federal banking agency may require the savings association to delete or revise any provision in its plan of conversion if it determines the provision is inequitable; is detrimental to the savings association, its account holders, or other savings associations; or is contrary to public interest.

§ 192.135 Notifying members of adopted plan of conversion.

(a) *Notice.* A savings association must promptly notify its members that the board of directors adopted a plan of conversion and that a copy of the plan is available for the members' inspection in the savings association's home office and in its branch offices. The savings association must provide this notice by sending to each member a letter, through the mail or electronically if the member receives electronic communication, or by publishing a notice in the local newspaper in every local community where the savings association has an office. The savings association also may issue a press release and may make this notice available on its website. The appropriate Federal banking agency may require broader publication, if necessary, to ensure adequate notice to the savings association's members.

(b) *Contents of notice.* The savings association may include only the following statements and descriptions in the letter, notice, or press release.

(1) The savings association's board of directors adopted a proposed plan to convert from a mutual to a stock savings institution.

(2) The savings association will send its members a proxy statement with detailed information on the proposed conversion before the savings association convenes a members' meeting to vote on the conversion.

(3) The savings association's members will have an opportunity to approve or disapprove the proposed conversion at a meeting. A majority of the eligible votes must approve the conversion.

(4) The savings association will not vote existing proxies to approve or disapprove the conversion. The savings association will solicit new proxies for voting on the proposed conversion.

(5) The appropriate Federal banking agency, and in the case of a State-chartered savings association, the appropriate State regulator, must approve the conversion before the conversion will be effective. The savings association's members will have an opportunity to file written comments, including objections and materials supporting the objections, with the appropriate Federal banking agency.

(6) The IRS must issue a favorable tax ruling, or a tax expert must issue an appropriate tax opinion, on the tax consequences of the savings association's conversion before the appropriate Federal banking agency will approve the conversion. The ruling or opinion must indicate the conversion will be a tax-free reorganization.

(7) The appropriate Federal banking agency, and in the case of a State-chartered savings association, the appropriate State regulator, might not approve the conversion, and the IRS or a tax expert might not issue a favorable tax ruling or tax opinion.

(8) Savings account holders will continue to hold accounts in the converted savings association with the same dollar amounts, rates of return, and general terms as existing deposits.

The FDIC will continue to insure the accounts.

(9) The savings association's conversion will not affect borrowers' loans, including the amount, rate, maturity, security, and other contractual terms.

(10) The savings association's business of accepting deposits and making loans will continue without interruption.

(11) The savings association's current management and staff will continue to conduct current services for depositors and borrowers under current policies and in existing offices.

(12) The savings association may substantively amend its proposed plan of conversion before the members' meeting.

(13) The savings association may terminate the proposed conversion.

(14) After the appropriate Federal banking agency, and in the case of a State-chartered savings association, the appropriate State regulator, approves the proposed conversion, the savings association will send proxy materials providing additional information. After the savings association sends proxy materials, members may telephone or write to the savings association with additional questions.

(15) The proposed record date for determining the eligible account holders who are entitled to receive subscription rights to purchase the savings association's shares.

(16) A brief description of the circumstances under which supplemental eligible account holders will receive subscription rights to purchase the savings association's shares.

(17) A brief description of how voting members may participate in the conversion.

(18) A brief description of how directors, officers, and employees will participate in the conversion.

(19) A brief description of the proposed plan of conversion.

(20) The par value (if any) and approximate number of shares the savings association will issue and sell in the conversion.

(c) *Other requirements.* (1) The savings association may not solicit proxies, provide financial statements, describe the benefits of conversion, or estimate the value of its shares upon conversion in the letter, notice, or press release.

(2) If the savings association responds to inquiries about the conversion, it may address only the matters listed in paragraph (b) of this section.

§ 192.140 Amendments to plan of conversion.

A savings association may amend its plan of conversion before it solicits proxies. After the savings association solicits proxies, it may amend the plan of conversion only if the appropriate Federal banking agency concurs.

Filing Requirements

§ 192.150 Information required in an application for conversion.

(a) *Required information.* A savings association's application for conversion must include all of the following information.

(1) The savings association's plan of conversion.

(2) Pricing materials meeting the requirements of § 192.200(b).

(3) Proxy soliciting materials under § 192.270, including:

(i) A preliminary proxy statement with signed financial statements;

(ii) A form of proxy meeting the requirements of § 192.255; and

(iii) Any additional proxy soliciting materials, including press releases, personal solicitation instructions, radio or television scripts that the savings association plans to use or furnish to its members, and a legal opinion indicating that any marketing materials comply with all applicable securities laws.

(4) An offering circular described in § 192.300.

(5) The documents and information required by Form AC. The savings association may obtain Form AC from the appropriate Federal banking agency.

(6) Where indicated, written consents, signed and dated, of any accountant, attorney, investment banker, appraiser, or other professional who prepared, reviewed, passed upon, or certified any statement, report, or valuation for use. *See* Form AC, instructions.

(7) The savings association's business plan, submitted as a separately bound, confidential exhibit. *See* § 192.160.

(8) Any additional information that the appropriate Federal banking agency requests.

(b) *Rejection of filing.* The appropriate Federal banking agency will not accept for filing, and may return, any application for conversion that is executed improperly, materially deficient, substantially incomplete, or that provides for unreasonable conversion expenses.

§ 192.155 Filing an application for conversion.

A Federal savings association must file Form AC with the appropriate OCC licensing office. A State savings association must file its application with the appropriate FDIC region.

§ 192.160 Request for confidential treatment.

(a) *In general.* The appropriate Federal banking agency makes all filings under this part available to the public, but may keep portions of the application for conversion confidential under paragraph (b) of this section.

(b) *Requests for confidential treatment.* A savings association may request that the appropriate Federal banking agency keep portions of the savings association's application confidential. To make this request, the savings association must clearly designate as ''confidential'' any portion of its application for conversion that it deems confidential. The savings association must provide a written statement specifying the grounds supporting its request for confidentiality. The appropriate Federal banking agency will not treat as confidential the portion of a savings association's application describing how it plans to meet Community Reinvestment Act (CRA) objectives. The CRA portion of a savings association's application may not incorporate by reference information contained in the confidential portion of the application.

(c) *Determination of confidential treatment.* The appropriate Federal banking agency will determine whether confidential information must be made available to the public under 5 U.S.C. 552 and 12 CFR part 4 or 12 CFR part 309, as appropriate. The appropriate Federal banking agency will advise the savings association before it makes information designated as ''confidential'' available to the public.

§ 192.165 Amendments to an application for conversion.

To amend its application for conversion, a savings association must:

(a) File an amendment with an appropriate facing sheet;

(b) Number each amendment consecutively;

(c) Respond to all issues raised by the appropriate Federal banking agency; and

(d) Demonstrate that the amendment conforms to all applicable regulations.

Notice of Filing of Application and Comment Process

§ 192.180 Public notice of an application for conversion.

(a) *In general.* A Federal savings association must publish a public notice of the application in accordance with the procedures in 12 CFR 5.8. The Federal savings association must simultaneously prominently post the notice in its home office and all branch

offices and may also make this notice available on its website.

(b) *Additional notice.* If the appropriate Federal banking agency does not accept a savings association's application for conversion under § 192.200 and requires the savings association to file a new application, the savings association must publish and post a new notice and allow an additional 30 calendar days for comment.

§ 192.185 Public comment on application for conversion.

Commenters may submit comments on a Federal savings association's application in accordance with the procedures in 12 CFR 5.10.

Agency Review of the Application for Conversion

§ 192.200 Review, approval, or denial of application for conversion.

(a) *Standards for review of application.* The appropriate Federal banking agency may approve an application for conversion only if:

(1) The conversion complies with this part;

(2) The savings association will meet its regulatory capital requirements under 12 CFR part 3 or part 324, as applicable, after the conversion; and

(3) The conversion will not result in a taxable reorganization under the Internal Revenue Code of 1986, as amended.

(b) *Standards for review of appraisal.* The appropriate Federal banking agency will review the appraisal required by § 192.150(a)(2) in determining whether to approve the application. The appropriate Federal banking agency will review the appraisal under the following requirements.

(1) Independent persons experienced and expert in corporate appraisal, and acceptable to the appropriate Federal banking agency, must prepare the appraisal report.

(2) An affiliate of the appraiser may serve as an underwriter or selling agent, if the savings association ensures that the appraiser is separate from the underwriter or selling agent affiliate and the underwriter or selling agent affiliate does not make recommendations or affect the appraisal.

(3) The appraiser may not receive any fee in connection with the conversion other than for appraisal services.

(4) The appraisal report must include a complete and detailed description of the elements of the appraisal, a justification for the appraisal methodology, and sufficient support for the conclusions.

(5) If the appraisal is based on a capitalization of the savings association's pro forma income, it must indicate the basis for determining the income to be derived from the sale of shares, and demonstrate that the earnings multiple used is appropriate, including future earnings growth assumptions.

(6) If the appraisal is based on a comparison of the savings association's shares with outstanding shares of existing stock associations, the existing stock associations must be reasonably comparable in size, market area, competitive conditions, risk profile, profit history, and expected future earnings.

(7) The appropriate Federal banking agency may decline to process the application for conversion and deem it materially deficient or substantially incomplete if the initial appraisal report is materially deficient or substantially incomplete.

(8) A savings association may not represent or imply that the appropriate Federal banking agency approved the appraisal.

(c) *Compliance with the Community Reinvestment Act.* The appropriate Federal banking agency will review the savings association's compliance record under 12 CFR part 195 and its business plan to determine how the savings association will serve the convenience and needs of its communities after the conversion.

(1) Based on this review, the appropriate Federal banking agency may approve the application, deny the application, or approve the application on the condition that the savings association will improve its CRA performance or that the savings association will address the particular credit or lending needs of the communities that it will serve.

(2) The appropriate Federal banking agency may deny the application if the savings association's business plan does not demonstrate that its proposed use of conversion proceeds will help the savings association to meet the credit and lending needs of the communities that it will serve.

(d) *Additional information.* The appropriate Federal banking agency may request that a savings association amend its application if further explanation is necessary, material is missing, or material needs correction.

(e) *Denial of application.* The appropriate Federal banking agency will deny an application if the application does not meet the requirements of this subpart, unless the appropriate Federal banking agency waives the requirement under § 192.5(c).

§ 192.205 Court review of final action on application for conversion.

(a) *In general.* Any person aggrieved by the appropriate Federal banking agency's final action on a savings association's application for conversion may ask the court of appeals of the United States for the circuit in which the principal office or residence of such person is located, or the U.S. Court of Appeals for the District of Columbia Circuit, to review the action under 12 U.S.C. 1464(i)(2)(B).

(b) *Filing procedures.* To obtain court review of the action, this statute requires the aggrieved person to file a written petition requesting that the court modify, terminate, or set aside the final appropriate Federal banking agency action. The aggrieved person must file the petition with the court within the later of 30 calendar days after the appropriate Federal agency publishes notice of its final action in the **Federal Register** or 30 calendar days after the savings association mails the proxy statement to its members under § 192.235.

Vote by Members

§ 192.225 Approval of plan of conversion by members.

(a) *In general.* After the appropriate Federal banking agency approves a plan of conversion, the savings association must submit the plan of conversion to its members for approval. The savings association must obtain this approval at a meeting of its members, which may be a special or annual meeting, unless the savings association is State-chartered and State law requires approval via an annual meeting.

(b) *Approval.* The savings association's members must approve the plan of conversion by a majority of the total outstanding votes, unless the savings association is State-chartered and State law prescribes a higher percentage.

(c) *Voting method.* Savings association members may vote in person or by proxy.

(d) *Notification to non-voting members.* The savings association may notify eligible account holders or supplemental eligible account holders who are not voting members of its proposed conversion. The savings association may include only the information in § 192.135 in its notice.

§ 192.230 Members' voting eligibility.

A savings association determines members' eligibility to vote by setting a voting record date. The savings association must set a voting record date that is not more than 60 calendar days nor less than 20 calendar days before its

meeting, unless the savings association is State-chartered and State law requires a different voting record date.

§ 192.235 Notice of members' meeting.

(a) *In general.* A savings association must notify its members of the meeting to consider its conversion by sending the members a proxy statement cleared by the appropriate Federal banking agency.

(b) *Timing of notice.* The savings association must notify its members 20 to 45 calendar days before the meeting, unless the savings association is State-chartered and State law requires a different notice period.

(c) *Notice to beneficial account holders.* The savings association must also notify each beneficial holder of an account held in a fiduciary capacity:

(1) If the savings association is a Federal savings association, and the name of the beneficial holder is disclosed on the savings association's records; or

(2) If the savings association is a State-chartered savings association and the beneficial holder possesses voting rights under State law.

§ 192.240 Submission of documents to the appropriate Federal banking agency after the members' meeting.

(a) *Filings after members' meeting.* Promptly after the members' meeting, a savings association must file all of the following information with the appropriate OCC licensing office, if the savings association is Federally-chartered, and with the appropriate FDIC region if the savings association is State-chartered.

(1) A certified copy of each adopted resolution on the conversion.

(2) The total votes eligible to be cast.

(3) The total votes represented in person or by proxy.

(4) The total votes cast in favor of and against each matter.

(5) The percentage of votes necessary to approve each matter.

(6) An opinion of counsel that the savings association conducted the members' meeting in compliance with all applicable State or Federal laws and regulations.

(b) *Filing after conversion.* Promptly after completion of the conversion, the savings association must submit an opinion of counsel that it complied with all laws applicable to the conversion.

Proxy Solicitation

§ 192.250 Compliance with proxy solicitation provisions.

(a) *Savings association compliance.* A savings association must comply with these proxy solicitation provisions when it provides proxy solicitation material to members for the meeting to vote on the plan of conversion.

(b) *Member compliance.* Members of the savings association must comply with these proxy solicitation provisions when they provide proxy solicitation materials to members for the meeting to vote on the conversion, pursuant to § 192.280, except where:

(1) The member solicits 50 people or fewer and does not solicit proxies on the savings association's behalf; or

(2) The member solicits proxies through newspaper advertisements after the savings association's board of directors adopts the plan of conversion. Any newspaper advertisements may include only the following information:

(i) The name of the savings association;

(ii) The reason for the advertisement;

(iii) The proposal or proposals to be voted upon;

(iv) Where a member may obtain a copy of the proxy solicitation material; and

(v) A request for the savings association's members to vote at the meeting.

§ 192.255 Form of proxy requirements.

The form of proxy must include all of the following:

(a) A statement in bold face type stating that management is soliciting the proxy.

(b) Blank spaces where the member must date and sign the proxy.

(c) Clear and impartial identification of each matter or group of related matters that members will vote upon. The savings association must include any proposed charitable contribution as an item to be voted on separately.

(d) The phrase ''Revocable Proxy'' in bold face type (at least 18 point).

(e) A description of any charter or State law requirement that restricts or conditions votes by proxy.

(f) An acknowledgment that the member received a proxy statement before he or she signed the form of proxy.

(g) The date, time, and the place of the meeting, when available.

(h) A way for the member to specify by ballot whether he or she approves or disapproves of each matter that members will vote upon.

(i) A statement that management will vote the proxy in accordance with the member's specifications.

(j) A statement in bold face type indicating how management will vote the proxy if the member does not specify a choice for a matter.

§ 192.260 Previously executed proxies.

A savings association may not use previously executed proxies for the plan of conversion vote. If members consider the plan of conversion at an annual meeting, the savings association may vote proxies obtained through other proxy solicitations only on matters not related to the plan of conversion.

§ 192.265 Proxies executed under this part.

A savings association may vote a proxy obtained under this part on matters that are incidental to the conduct of the meeting. The savings association may not vote a proxy obtained under this subpart at any meeting other than the meeting (or any adjournment of the meeting) to vote on the plan of conversion.

§ 192.270 Proxy statement requirements.

(a) *Content requirements.* A savings association must prepare its proxy statement in compliance with this part and Form PS.

(b) *Other requirements.* (1) The appropriate Federal banking agency will review the proxy solicitation material when it reviews the application for conversion and will clear the proxy solicitation material.

(2) The savings association must provide a cleared written proxy statement to its members before or at the same time it provides any other soliciting material. The savings association must mail cleared proxy solicitation material to its members within 10 calendar days after the appropriate Federal banking agency clears the solicitation.

§ 192.275 Filing revised proxy materials.

(a) *In general.* A savings association must file revised proxy solicitation materials as an amendment to its application for conversion. The proxy solicitation materials must be in the form in which it furnished the materials to its members.

(b) *Content of filing.* To revise its proxy solicitation materials, the savings association must file:

(1) Its revised proxy materials as required by Form PS;

(2) Its revised form of proxy, if applicable;

(3) Any additional proxy solicitation material subject to § 192.270; and

(4) A copy of the revised proxy solicitation materials marked to clearly indicate changes from the prior filing.

(c) *When to file.* The savings association must file no later than the date that it sends or gives the proxy solicitation material to its members. The savings association must indicate the date that it will release the materials.

(d) *Material not required to be filed.* Unless requested by the appropriate Federal banking agency, the savings association does not have to file copies of replies to inquiries from its members or copies of communications that merely request members to sign and return proxy forms.

§ 192.280 Mailing member's proxy solicitation materials.

(a) *In general.* A savings association must mail the member's cleared proxy solicitation material if:

(1) The savings association's board of directors adopted a plan of conversion;

(2) A member requests in writing that the savings association mail the proxy solicitation material;

(3) The appropriate Federal banking agency has cleared the member's proxy solicitation; and

(4) The member agrees to defray the savings association's reasonable expenses.

(b) *Required information.* As soon as practicable after the savings association receives a request under paragraph (a) of this section, it must mail or otherwise furnish the following information to the member:

(1) The approximate number of members that the savings association solicited or will solicit, or the approximate number of members of any group of account holders that the member designates; and

(2) The estimated cost of mailing the proxy solicitation material for the member.

(c) *Timing.* The savings association must mail cleared proxy solicitation material to the designated members promptly after the member furnishes the materials, envelopes (or other containers), and postage (or payment for postage) to the savings association.

(d) *Content.* The savings association is not responsible for the content of a member's proxy solicitation material.

(e) *Sharing of proxy material.* A member may furnish other members its own proxy solicitation material, cleared by the appropriate Federal banking agency, subject to the rules in this section.

§ 192.285 Prohibited solicitations.

(a) *False or misleading statements.* (1) No one may use proxy solicitation material for the members' meeting if the material contains any statement which, considering the time and the circumstances of the statement:

(i) Is false or misleading with respect to any material fact;

(ii) Omits any material fact that is necessary to make the statements not false or misleading; or

(iii) Omits any material fact that is necessary to correct a statement in an earlier communication that has become false or misleading.

(2) No one may represent or imply that the appropriate Federal banking agency determined that the proxy solicitation material is accurate, complete, not false or not misleading, or passed upon the merits of or approved any proposal.

(b) *Other prohibited solicitations.* No person may solicit:

(1) An undated or post-dated proxy;

(2) A proxy that states it will be dated after the date it is signed by a member;

(3) A proxy that is not revocable at will by the member; or

(4) A proxy that is part of another document or instrument.

§ 192.290 Remedial measures for prohibited solicitations.

(a) *In general.* If a solicitation violates § 192.285, the appropriate Federal banking agency may require remedial measures, including:

(1) Correction of the violation by a retraction and a new solicitation;

(2) Rescheduling the members' meeting; or

(3) Any other actions necessary to ensure a fair vote.

(b) *Other action.* The appropriate Federal banking agency also may bring an enforcement action against the violator.

§ 192.295 Re-solicitation of proxies.

If a savings association amends its application for conversion, the appropriate Federal banking agency may require the savings association to re-solicit proxies for its members' meeting as a condition of approval of the amendment.

Offering Circular

§ 192.300 Offering circular requirements.

(a) *Content and filing requirements.* A savings association must prepare and file its offering circular in compliance with this part, Form OC, and the applicable SEC registration statement form required under 12 CFR 16.15. A Federal savings association must file its offering circular with the appropriate OCC licensing office and a State savings association must file its offering circular with the appropriate FDIC region. If filing an amendment, the savings association also must comply with §§ 192.155 and 192.165.

(b) *Member approval.* A savings association must condition its stock offering upon member approval of its plan of conversion.

(c) *Agency review.* The appropriate Federal banking agency will review the offering circular and may comment on the included disclosures and financial statements. The appropriate Federal banking agency will not approve the adequacy or accuracy of the offering circular or the disclosures.

(d) *Revised filings.* A savings association must file any revised offering circular, final offering circular, and any post-effective amendment to the final offering circular in accordance with the procedures in §§ 192.155 and 192.165.

(e) *Request for effectiveness.* After a savings association satisfactorily addresses the appropriate Federal banking agency's comments, the savings association must request that the appropriate Federal banking agency declare the offering circular effective for a time period. The time period may not exceed the maximum time period for the completion of the sale of all of the savings association's shares under § 192.400.

§ 192.305 Distribution of offering circular.

(a) *Preliminary offering circular.* A savings association may distribute a preliminary offering circular at the same time as or after it mails the proxy statement to its members.

(b) *Early distribution prohibited.* A savings association may not distribute a final offering circular for stock issued in the transaction until after the appropriate Federal banking agency declares the offering circular effective or the Securities and Exchange Commission declares the registration statement for the offering circular effective. The savings association must have the offering circular delivered in accordance with this part.

(c) *Effective offering circular.* A savings association must distribute a final offering circular for stock issued in the transaction to persons listed in its plan of conversion within 10 calendar days after the appropriate Federal banking agency declares the offering circular effective or the Securities and Exchange Commission declares the registration statement for the offering circular effective.

§ 192.310 Filing a post-effective amendment to an offering circular.

(a) *In general.* A savings association must file a post-effective amendment to the offering circular with the appropriate Federal banking agency or have its proposed stock holding company file a post-effective amendment to its registration statement for the offering circular with the Securities and Exchange Commission, when a material event or change of circumstances occurs.

(b) *Timing of delivery.* After the appropriate Federal banking agency or the Securities and Exchange Commission declares the post-effective amendment effective, the savings association must immediately have the amendment to the offering circular delivered to each person who subscribed for or ordered shares in the offering.

(c) *Content.* The post-effective amendment must indicate that each person may increase, decrease, or rescind their subscription or order.

(d) *Post-effective offering period.* The post-effective offering period must remain open no less than 10 calendar days nor more than 20 calendar days, unless the appropriate Federal banking agency approves a longer rescission period.

Offers and Sales of Stock

§ 192.320 Order of priority to purchase conversion shares.

A savings association must offer to sell its shares in the following order:

(a) Eligible account holders.

(b) Tax-qualified employee stock ownership plans.

(c) Supplemental eligible account holders.

(d) Other voting members who have subscription rights.

(e) The savings association's community, its community and the general public, or the general public.

§ 192.325 Timing of offer to sell conversion shares.

(a) *In general.* A savings association may offer to sell its conversion shares after the appropriate Federal banking agency approves the conversion, clears the proxy statement, and declares the offering circular effective.

(b) *Timing.* The offer may commence at the same time the savings association starts the proxy solicitation of its members.

§ 192.330 Pricing of conversion shares.

(a) *In general.* A savings association must sell its conversion shares at a uniform price per share and at a total price that is equal to the estimated pro forma market value of its shares after the conversion.

(b) *Maximum price.* The maximum price must be no more than 15 percent above the midpoint of the estimated price range in the savings association's offering circular.

(c) *Minimum price.* The minimum price must be no more than 15 percent below the midpoint of the estimated price range in the savings association's offering circular.

(d) *Increase in price.* If the appropriate Federal banking agency permits, the savings association may increase the maximum price of conversion shares sold. The maximum price, as adjusted, must be no more than 15 percent above the maximum price computed under paragraph (b) of this section.

(e) *Price range.* The maximum price must be between $5 and $50 per share.

(f) *Inclusion in preliminary offering circular.* The savings association must include the estimated price in any preliminary offering circular.

§ 192.335 Procedures for the sale of conversion shares.

(a) *Distribution of order forms.* A savings association must distribute order forms to all eligible account holders, supplemental eligible account holders, and other voting members to enable them to subscribe for the conversion shares they are permitted under the plan of conversion. The savings association may either send the order forms with its offering circular or after the savings association distributes its offering circular.

(b) *Sale of shares.* A savings association may sell its conversion shares in a community offering, a public offering, or both. The savings association may begin the community offering, the public offering, or both at any time during the subscription offering or upon conclusion of the subscription offering.

(c) *Underwriting commissions and fees.* A savings association may pay underwriting commissions (including underwriting discounts). The appropriate Federal banking agency may object to the payment of unreasonable commissions. The savings association may reimburse an underwriter for accountable expenses in a subscription offering if the public offering is limited. If no public offering occurs, the savings association may pay an underwriter a consulting fee. The appropriate Federal banking agency may object to the payment of unreasonable consulting fees.

(d) *Sequence of order fulfillment.* If a savings association conducts the community offering, the public offering, or both at the same time as the subscription offering, the savings association must fill all subscription orders first.

(e) *Preparation of order form.* A savings association must prepare its order form in compliance with this part and Form OF.

§ 192.340 Prohibited sales practices.

(a) *Offers, sales, or purchases of conversion shares.* In connection with offers, sales, or purchases of conversion shares under this part, a savings association and its directors, officers, agents, or employees may not:

(1) Employ any device, scheme, or artifice to defraud;

(2) Obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary to make the statements, in light of the circumstances under which they were made, not misleading; or

(3) Engage in any act, transaction, practice, or course of business that operates or would operate as a fraud or deceit upon a purchaser or seller.

(b) *Conversion.* During the conversion, no person may:

(1) Transfer, or enter into any agreement or understanding to transfer, the legal or beneficial ownership of subscription rights for the savings association's conversion shares or the underlying securities to the account of another;

(2) Make any offer, or any announcement of an offer, to purchase any of the savings association's conversion shares from anyone but the savings association; or

(3) Knowingly acquire more than the maximum purchase allowable under the savings association's plan of conversion.

(c) *Exceptions.* The restrictions in paragraphs (b)(1) and (2) of this section do not apply to offers for more than 10 percent of any class of conversion shares by:

(1) An underwriter or a selling group, acting on the savings association's behalf, that makes the offer with a view toward public resale; or

(2) One or more of the savings association's tax-qualified employee stock ownership plans so long as the plan or plans do not beneficially own more than 25 percent of any class of the savings association's equity securities in the aggregate.

(d) *Violations.* Any person found to have violated the restrictions in paragraph (a) or (b) of this section may become subject to an enforcement action, civil money penalties, criminal prosecution, or other legal action.

§ 192.345 Permissible forms of subscriber payment.

(a) *In general.* A subscriber may purchase conversion shares with cash, by a withdrawal from a savings account, or a withdrawal from a certificate of deposit. If a subscriber purchases shares by a withdrawal from a certificate of deposit, the savings association may not assess a penalty for the withdrawal.

(b) *Prohibition.* A savings association may not extend credit to any person to purchase the savings association's conversion shares.

§ 192.350 Interest on payments for conversion shares.

(a) *In general.* A savings association must pay interest from the date the savings association receives a payment for conversion shares until the date the savings association completes or terminates the conversion. The savings association must pay interest at no less than its passbook rate for amounts paid in cash, check, or money order.

(b) *Interest on withdrawals from savings accounts.* If a subscriber withdraws money from a savings account to purchase conversion shares, the savings association must pay interest on the payment until the savings association completes or terminates the conversion as if the withdrawn amount remained in the account.

(c) *Interest on withdrawals from certificates of deposit.* If a depositor fails to maintain the applicable minimum balance requirement because he or she withdraws money from a certificate of deposit to purchase conversion shares, the savings association may cancel the certificate and pay interest at no less than its passbook rate on any remaining balance.

§ 192.355 Subscription rights for eligible account holders and supplemental eligible account holders.

(a) *Eligible account holders.* A savings association must give each eligible account holder subscription rights to purchase conversion shares in an amount equal to the greater of:

(1) The maximum purchase limitation established for the community offering or the public offering under § 192.395;

(2) One-tenth of one percent of the total stock offering; or

(3) Fifteen times the following number: The total number of conversion shares that the savings association will issue, multiplied by the following fraction. The numerator is the total qualifying deposit of the eligible account holder. The denominator is the total qualifying deposits of all eligible account holders. The savings association must round down the product of this multiplied fraction to the next whole number.

(b) *Supplemental eligible account holders.* The savings association must give subscription rights to purchase shares to each supplemental eligible account holder in the same amount as described in paragraph (a) of this section, except that the savings association must compute the fraction described in paragraph (a)(3) of this section as follows: The numerator is the total qualifying deposit of the supplemental eligible account holder. The denominator is the total qualifying deposits of all supplemental eligible account holders.

§ 192.360 Officers, directors, and associates as eligible account holders.

A savings association's officers, directors, and their associates may be eligible account holders. However, if an officer, director, or his or her associate receives subscription rights based on increased deposits in the year before the eligibility record date, the savings association must subordinate subscription rights for these deposits to subscription rights exercised by other eligible account holders.

§ 192.365 Purchase of conversion shares by other voting members.

(a) *In general.* A savings association must give rights to purchase its conversion shares in the conversion to voting members who are neither eligible account holders nor supplemental eligible account holders. The savings association must allocate rights to each voting member that are equal to the greater of:

(1) The maximum purchase limitation established for the community offering and the public offering under § 192.395; or

(2) One-tenth of one percent of the total stock offering.

(b) *Subordination of voting rights.* The savings association must subordinate the voting members' rights to the rights of eligible account holders, tax-qualified employee stock ownership plans, and supplemental eligible account holders.

§ 192.370 Limits on aggregate purchases by officers, directors, and associates.

(a) *In general.* When a savings association converts, its officers, directors, and their associates may not purchase, in the aggregate, more than the following percentage of the savings association's total stock offering:

TABLE 1 TO § 192.370(a)

Institution size	Officer and director purchases (percent)
$50,000,000 or less	35
$50,000,001–100,000,000	34
$100,000,001–150,000,000	33
$150,000,001–200,000,000	32
$200,000,001–250,000,000	31
$250,000,001–300,000,000	30
$300,000,001–350,000,000	29
$350,000,001–400,000,000	28
$400,000,001–450,000,000	27
$450,000,001–500,000,000	26
Over $500,000,000	25

(b) *Exception.* The purchase limitations in this section do not apply to shares held in tax-qualified employee stock benefit plans that are attributable to the savings association's officers, directors, and their associates.

§ 192.375 Allocation of oversubscribed conversion shares.

(a) *Eligible account holders.* If a savings association's conversion shares are oversubscribed by its eligible account holders, the savings association must allocate shares among the eligible account holders so that each, to the extent possible, may purchase 100 shares.

(b) *Supplemental eligible account holders.* If a savings association's conversion shares are oversubscribed by its supplemental eligible account holders, the savings association must allocate shares among the supplemental eligible account holders so that each, to the extent possible, may purchase 100 shares.

(c) *Eligible and supplemental eligible account holders.* If a person is an eligible account holder and a supplemental eligible account holder, the savings association must include the eligible account holder's allocation in determining the number of conversion shares that the savings association may allocate to the person as a supplemental eligible account holder.

(d) *Additional allocations.* For conversion shares that the savings association does not allocate under paragraphs (a) and (b) of this section, the savings association must allocate the shares among the eligible or supplemental eligible account holders equitably, based on the amounts of qualifying deposits. The savings association must describe this method of allocation in its plan of conversion.

(e) *Oversubscription.* If shares remain after the savings association has allocated shares as provided in paragraphs (a) and (b) of this section, and if the savings association's voting members oversubscribe, the savings association must allocate its conversion shares among those members equitably. The savings association must describe the method of allocation in its plan of conversion.

§ 192.380 Purchase of conversion shares by employee stock ownership plan.

(a) *In general.* A savings association's tax-qualified employee stock ownership plan may purchase up to 10 percent of the total offering of the savings association's conversion shares.

(b) *Revised stock valuation range.* If the appropriate Federal banking agency approves a revised stock valuation range as described in § 192.330(e), and the final conversion stock valuation range

exceeds the former maximum stock offering range, a savings association may allocate conversion shares to its tax-qualified employee stock ownership plan, up to the 10 percent limit in paragraph (a) of this section.

(c) *Open market purchase.* If a savings association's tax-qualified employee stock ownership plan is not able to or chooses not to purchase stock in the offering, it may, with prior appropriate Federal banking agency approval and appropriate disclosure in the savings association's offering circular, purchase stock in the open market, or purchase authorized but unissued conversion shares.

(d) *Charitable organizations.* A savings association may include stock contributed to a charitable organization in the conversion in the calculation of the total offering of conversion shares under paragraphs (a) and (b) of this section, unless the appropriate Federal banking agency objects on supervisory grounds.

§ 192.385 Purchase limitations.

(a) *In general.* A savings association may limit the number of shares that any person, group of associated persons, or persons otherwise acting in concert, may subscribe to up to five percent of the total stock sold.

(b) *Modification of purchase limit.* If a savings association sets a limit of five percent under paragraph (a) of this section, the savings association may modify that limit with appropriate Federal banking agency approval to provide that any person, group of associated persons, or persons otherwise acting in concert subscribing for five percent, may purchase between five and 10 percent as long as the aggregate amount that the subscribers purchase does not exceed 10 percent of the total stock offering.

(c) *Minimum purchase.* A savings association may require persons exercising subscription rights to purchase a minimum number of conversion shares. The minimum number of shares must equal the lesser of the number of shares obtained by a $500 subscription or 25 shares.

(d) *Aggregation.* In setting purchase limitations under this section, a savings association may not aggregate conversion shares attributed to a person in the savings association's tax-qualified employee stock ownership plan with shares purchased directly by, or otherwise attributable to, that person.

§ 192.390 Community offering of conversion shares.

(a) *Purchase preference in subscription offering.* In a subscription offering, a savings association may give a purchase preference to eligible account holders, supplemental eligible account holders, and voting members residing in its local community.

(b) *Purchase preference in community offering.* In a community offering, a savings association must give a purchase preference to natural persons residing in its local community.

§ 192.395 Other conditions for community and public offerings.

A savings association must offer and sell its stock to achieve a widespread distribution of the stock. If a savings association offers shares in a community offering, a public offering, or both, it must first fill orders for its stock up to a maximum of two percent of the conversion stock on a basis that will promote a widespread distribution of stock. The savings association must allocate any remaining shares on an equal number of shares per order basis until it fills all orders.

Completion of the Offering

§ 192.400 Time period for completion of sale of stock.

A savings association must complete all sales of its stock within 45 calendar days after the last day of the subscription period, unless the offering is extended under § 192.405.

§ 192.405 Extension of the offering period.

(a) *In general.* A savings association must submit a request in writing to the appropriate Federal banking agency for an extension of any offering period. The appropriate Federal banking agency will not grant any single extension of more than 90 calendar days.

(b) *Post-effective amendment to offering circular.* If the appropriate Federal banking agency grants a savings association's request for an extension of time, the savings association must provide a post-effective amendment to the offering circular under § 192.310 to each person who subscribed for or ordered stock. The amendment must indicate that the appropriate Federal banking agency extended the offering period and that each person who subscribed for or ordered stock may increase, decrease, or rescind their subscription or order within the time remaining in the extension period.

Completion of the Conversion

§ 192.420 Time period for completion of conversion.

In its plan of conversion, a savings association must set a date by which the conversion must be completed. This date must not be more than 24 months from the date that the savings association's members approve the plan of conversion. The date, once set, may not be extended by the savings association or by the appropriate Federal banking agency. The savings association must terminate the conversion if it is not completed by that date. The conversion is complete on the date that the savings association accepts the offers for its stock.

§ 192.425 Termination of conversion.

A conversion may be terminated by:

(a) A savings association's members failing to approve the conversion at its members' meeting;

(b) A savings association before its members' meeting; or

(c) A savings association after the members' meeting, but only if the appropriate Federal banking agency concurs.

§ 192.430 Charter amendments.

(a) *Conversion from Federally-chartered mutual savings association or savings bank to Federally-chartered stock savings association or savings bank.* If the savings association is a Federally-chartered mutual savings association or savings bank and it converts to a Federally-chartered stock savings association or savings bank, it must apply to the OCC to amend its charter and bylaws consistent with 12 CFR 5.22, as part of the savings association's application for conversion. The savings association may only include OCC pre-approved anti-takeover provisions in its amended charter and bylaws. *See* 12 CFR 5.22(g)(7).

(b) *Conversion from Federally-chartered mutual savings association or savings bank to State-chartered stock savings association or savings bank.* If the savings association is a Federally-chartered mutual savings association or savings bank and is converting to a State-chartered stock savings association under this part, the savings association must surrender its charter to the OCC for cancellation promptly after the State issues its new State stock charter. The savings association must promptly file a copy of its new State stock charter with the FDIC.

(c) *Conversion from State-chartered mutual savings association or savings bank to Federally State-chartered stock savings association or savings bank.* If the savings association is a State-chartered mutual savings association or savings bank, and is converting to a Federally chartered stock savings association or savings bank, it must apply to the OCC for a new charter and bylaws consistent with 12 CFR 5.22. The savings association may only include OCC pre-approved anti-takeover

provisions in its charter and bylaws. *See* 12 CFR 5.22(g)(7).

(d) *Priority of accounts.* In any conversion described in this section that involves a mutual holding company, the charter of each resulting subsidiary savings association of the holding company must contain the following provision:

> In any situation in which the priority of the accounts of the association is in controversy, all such accounts must, to the extent of their withdrawable value, be debts of the association having the same priority as the claims of general creditors of the association not having priority (other than any priority arising or resulting from consensual subordination) over other general creditors of the association.

(e) *Liquidation account.* The savings association's new or amended charter must require the savings association to establish and maintain a liquidation account for eligible and supplemental eligible account holders under § 192.450.

§ 192.435 Corporate existence after conversion.

A savings association's corporate existence will continue following its conversion, unless it converts to a State-chartered stock savings association and State law prescribes otherwise.

§ 192.440 Stockholder voting rights after conversion.

A savings association must provide its stockholders with exclusive voting rights, except as provided in § 192.445(c).

§ 192.445 Savings account holder's account after conversion.

(a) *In general.* The savings association must provide each savings account holder, without payment, a withdrawable savings account or accounts in the same amount and under the same terms and conditions as their accounts before the conversion.

(b) *Liquidation account.* The savings association must provide a liquidation account for each eligible and supplemental eligible account holder under § 192.450.

(c) *Voting rights.* If the savings association is State-chartered and State law requires the savings association to provide voting rights to savings account holders or borrowers, the charter must:

(1) Limit these voting rights to the minimum required by State law; and

(2) Require the savings association to solicit proxies from the savings account holders and borrowers in the same manner that the savings association solicits proxies from its stockholders.

Liquidation Account

§ 192.450 Liquidation accounts.

(a) *In general.* A liquidation account represents the potential interest of eligible account holders and supplemental eligible account holders in the savings association's net worth at the time of conversion. A savings association must maintain a sub-account to reflect the interest of each account holder.

(b) *Distribution of liquidation.* Before a savings association may provide a liquidation distribution to common stockholders, it must give a liquidation distribution to those eligible account holders and supplemental eligible account holders who hold savings accounts from the time of conversion until liquidation.

(c) *Recording of liquidation account in financial statements.* A savings association may not record the liquidation account in its financial statements. The savings association must disclose the liquidation account in the footnotes to the savings association's financial statements.

§ 192.455 Initial balance of liquidation account.

The initial balance of the liquidation account is the savings association's net worth in the statement of financial condition included in the final offering circular.

§ 192.460 Initial balance of liquidation sub-account.

(a) *General rule.* (1) A savings association must calculate the initial liquidation sub-account balance of each eligible and supplemental eligible account holder at the time of the conversion.

(2) The initial liquidation sub-account balance for a savings account held by an eligible account holder, for a savings account not held by the eligible account holder on the supplemental eligibility record date, is calculated by multiplying the initial liquidation account balance by the following fraction: The numerator is the qualifying deposit in the savings account on the eligibility record date and the denominator is the calculation in paragraph (a)(5) of this section.

(3) The initial liquidation sub-account balance for a savings account held by a supplemental eligible account holder, for a savings account not held by the supplemental eligible account holder on the eligibility record date, is calculated by multiplying the initial liquidation account balance by the following fraction: The numerator is the qualifying deposit in the savings account on the supplemental eligibility record date and the denominator is the calculation in paragraph (a)(5) of this section.

(4) For a savings account held on both the eligibility record date and the supplemental eligibility record date, the amount of the qualifying deposit for calculating the initial liquidation sub-account is the higher account balance of the savings account on either the eligibility record date or the supplemental eligibility record date. The initial liquidation sub-account balance is calculated by multiplying the liquidation account balance by the following fraction: The numerator is the higher amount of the qualifying deposit in the savings account on either the eligibility record date or the supplemental eligibility record date and the denominator is the calculation in paragraph (a)(5) of this section.

(5) The denominator for calculating the initial liquidation sub-account balance of each eligible and supplemental eligible account holder is the sum of the numerator calculations in paragraphs (a)(2) through (4) of this section.

(b) *Balance increases and decreases.* A savings association must not increase the initial liquidation and sub-account balances. It must decrease the initial liquidation account and the sub-account balances under § 192.470 as depositors reduce or close their savings accounts.

§ 192.465 Retention of voting rights based on liquidation sub-accounts.

Eligible account holders or supplemental eligible account holders do not retain any voting rights based on their liquidation sub-accounts.

§ 192.470 Required adjustments to liquidation sub-accounts.

(a) *Reductions.* (1) A savings association must reduce the balance of an eligible account holder's or supplemental eligible account holder's liquidation sub-account if the deposit balance in the account holder's savings account at the close of business on any annual closing date, which for purposes of this section is the savings association's fiscal year end, falls below the lesser of:

(i) The deposit balance in the account holder's savings account as of the relevant eligibility record date; or

(ii) The deposit balance in the account holder's savings account as of its lowest balance as of any subsequent annual closing date.

(2) The reduction in the account holder's liquidation sub-account from its balance at the time of conversion must be proportionate to the reduction in the account holder's savings account

from its balance at the time of conversion.

(b) *Prohibition on increases.* If a savings association reduces the balance of a liquidation sub-account, it may not subsequently increase it if the deposit balance increases.

(c) *Liquidation account adjustments.* A savings association is not required to adjust the liquidation account and sub-account balances at each annual closing date if the savings association maintains sufficient records to make the computations if a liquidation subsequently occurs.

(d) *Maintenance of liquidation sub-account.* A savings association must maintain the liquidation sub-account for each account holder as long as the account holder maintains an account with the same social security number.

(e) *Complete liquidation.* If there is a complete liquidation, the savings association must provide the account holder of a liquidation sub-account with a liquidation distribution in the amount of the account holder's remaining liquidation sub-account balance.

§ 192.475 Definition of liquidation.

(a) *In general.* A liquidation is a sale of a savings association's assets and settlement of its liabilities with the intent to cease operations and close. Upon liquidation, a savings association must return its charter to the governmental agency that issued it. The government agency must cancel the savings association's charter.

(b) *Other transactions.* A merger, consolidation, or similar combination or transaction with another depository institution, is not a liquidation. If a savings association is involved in such a transaction, the surviving institution must assume the liquidation account.

§ 192.480 Effect of liquidation account on net worth.

The liquidation account does not affect a savings association's net worth.

§ 192.485 Required liquidation account provision in new Federal charter.

If a savings association converts to Federal stock form, it must include the following provision in its new charter: ''Liquidation Account. Under appropriate Federal banking agency regulations, the association must establish and maintain a liquidation account for the benefit of its savings account holders as of _____. If the association undergoes a complete liquidation, it must comply with appropriate Federal banking agency regulations with respect to the amount and priorities on liquidation of each of the savings account holder's interests in the liquidation account. A savings account holder's interest in the liquidation account does not entitle the savings account holder to any voting rights.''

Post-Conversion

§ 192.500 Permissible management stock benefit plans after conversion.

(a) *In general.* During the 12 months after its conversion, a savings association may implement a stock option plan (Option Plan), an employee stock ownership plan or other tax-qualified employee stock benefit plan (collectively, ESOP), and a management recognition plan (MRP), provided that the savings association meets all of the following requirements:

(1) The savings association discloses the plans in its proxy statement and offering circular and indicates in its offering circular that there will be a separate shareholder vote on the Option Plan and the MRP at least six months after the conversion. No shareholder vote is required to implement the ESOP. The savings association's ESOP must be tax-qualified.

(2) The savings association's Option Plan does not encompass more than 10 percent of the number of shares that the savings association issued in the conversion.

(3)(i) The savings association's ESOP and MRP do not encompass, in the aggregate, more than 10 percent of the number of shares that the savings association issued in the conversion. If the savings association has tangible capital of 10 percent or more following the conversion, the appropriate Federal banking agency may permit the ESOP and MRP to encompass, in the aggregate, up to 12 percent of the number of shares issued in the conversion; and

(ii) The savings association's MRP does not encompass more than three percent of the number of shares that the savings association issued in the conversion. If the savings association has tangible capital of 10 percent or more after the conversion, the appropriate Federal banking agency may permit the MRP to encompass up to four percent of the number of shares that the savings association issued in the conversion.

(4) No individual receives more than 25 percent of the shares under any plan.

(5) The savings association's directors who are not officers of the savings association do not receive more than five percent of the shares of the MRP or Option Plan individually, or 30 percent of any such plan in the aggregate.

(6) The savings association's shareholders approve each of the Option Plan and the MRP by a majority of the total votes eligible to be cast at a duly called meeting before the savings association establishes or implements the plan. The savings association may not hold this meeting until six months after its conversion.

(7) When the savings association distributes proxies or related material to shareholders in connection with the vote on a plan, the savings association states that the plan complies with the appropriate Federal banking agency's regulations and that the appropriate Federal banking agency does not endorse or approve the plan in any way. The savings association may not make any written or oral representations to the contrary.

(8) The savings association does not grant stock options at less than the market price at the time of grant.

(9) The savings association does not fund the Option Plan or the MRP at the time of the conversion.

(10) The savings association's plan does not begin to vest earlier than one year after shareholders approve the plan, and does not vest at a rate exceeding 20 percent per year.

(11) The savings association's plan permits accelerated vesting only for disability or death, or if the savings association undergoes a change of control.

(12) The savings association's plan provides that its executive officers or directors must exercise or forfeit their options in the event the institution becomes critically undercapitalized (as defined in 12 CFR 6.4 or 324.403, as applicable), is subject to appropriate Federal banking agency enforcement action, or receives a capital directive under 12 CFR part 6, subpart B or 12 CFR 308.201, as applicable.

(13) The savings association files a copy of the proposed Option Plan or MRP with the appropriate Federal banking agency and certify to such agency that the plan approved by the shareholders is the same plan that the savings association filed with, and disclosed in, the proxy materials distributed to shareholders in connection with the vote on the plan.

(14) The savings association files the plan and the certification with the appropriate Federal banking agency within five calendar days after its shareholders approve the plan.

(b) *Stock splits or other adjustments.* The savings association may provide dividend equivalent rights or dividend adjustment rights to allow for stock splits or other adjustments to its stock in the ESOP, MRP, and Option Plan.

(c) *Plans implemented more than 12 months after conversion.* The

restrictions in paragraph (a) of this section do not apply to plans implemented more than 12 months after the conversion, provided that materials pertaining to any shareholder vote regarding such plans are not distributed within the 12 months after the conversion. If a plan adopted in conformity with paragraph (a) of this section is amended more than 12 months following the conversion, shareholders must ratify any material deviations to the requirements in paragraph (a).

§ 192.505 Restrictions on the trading of shares by directors, officers, and associates.

(a) *Sales restriction.* Directors and officers who purchase conversion shares may not sell the shares for one year after the date of purchase, except that in the event of the death of the officer or director, the successor in interest may sell the shares.

(b) *Notice of sales restriction on stock certificate.* The savings association must include notice of the restriction described in paragraph (a) of this section on each certificate of stock that a director or officer purchases during the conversion or receives in connection with a stock dividend, stock split, or otherwise with respect to such restricted shares.

(c) *Stock purchase restrictions.* For three years after the conversion, the savings association's officers, directors, and their associates may purchase the savings association's stock only from a broker or dealer registered with the Securities and Exchange Commission. However, the savings association's officers, directors, and their associates may engage in a negotiated transaction involving more than one percent of the savings association's outstanding stock, and may purchase stock through any of the savings association's management or employee stock benefit plans.

(d) *Communication of restrictions with transfer agent.* The savings association must instruct its stock transfer agent about the transfer restrictions in this section.

§ 192.510 Repurchase of shares after conversion.

(a) *Repurchases during first year after conversion.* A savings association may not repurchase its shares in the first year after the conversion except:

(1) In extraordinary circumstances, a savings association may make open market repurchases of up to five percent of its outstanding stock in the first year after the conversion if the savings association files a notice under § 192.515(a) and the appropriate Federal banking agency does not disapprove the repurchase. The appropriate Federal banking agency will not approve such repurchases unless the repurchase meets the standards in § 192.515(c), and the repurchase is consistent with paragraph (c) of this section.

(2) A savings association may repurchase qualifying shares of a director or conduct an appropriate Federal banking agency-approved repurchase pursuant to an offer made to all shareholders of the savings association.

(3) Repurchases to fund management recognition plans that have been ratified by shareholders do not count toward the repurchase limitations in this section. Repurchases in the first year to fund such plans require prior written notification to the appropriate Federal banking agency.

(4) Purchases to fund tax qualified employee stock benefit plans do not count toward the repurchase limitations in this section.

(b) *Repurchases following first year after conversion.* After the first year, a savings association may repurchase its shares, subject to all other applicable regulatory and supervisory restrictions and paragraph (c) of this section.

(c) *Restrictions on all repurchases.* All stock repurchases are subject to the following restrictions.

(1) A savings association may not repurchase its shares if the repurchase will reduce the savings association's regulatory capital below the amount required for its liquidation account under § 192.450. The savings association must comply with the capital distribution requirements at 12 CFR 5.55.

(2) The restrictions on share repurchases apply to a charitable organization under § 192.550. A savings association must aggregate purchases of shares by the charitable organization with the savings association's repurchases.

§ 192.515 Information to be filed with Federal banking agency prior to repurchase of shares.

(a) *Notice requirement.* To repurchase stock in the first year following conversion, other than repurchases under § 192.510(a)(3) or (4), a savings association must file a written notice with the appropriate OCC licensing office if Federally chartered, and with the appropriate FDIC region if State-chartered. The savings association must provide the following information:

(1) The proposed repurchase program;

(2) The effect of the repurchases on the savings association's regulatory capital; and

(3) The purpose of the repurchases and, if applicable, an explanation of the extraordinary circumstances necessitating the repurchases.

(b) *Filing of notice.* A Federal savings association must file its notice with the appropriate OCC licensing office, and a State savings association must file its notice with the appropriate regional director of the FDIC, at least 10 calendar days before the savings association begins its repurchase program.

(c) *Agency review.* A savings association may not repurchase its shares if the appropriate Federal banking agency objects to the repurchase program. The appropriate Federal banking agency will not object to a repurchase program if:

(1) The repurchase program will not adversely affect the savings association's financial condition;

(2) The savings association submits sufficient information to evaluate the proposed repurchases;

(3) The savings association demonstrates extraordinary circumstances and a compelling and valid business purpose for the share repurchases; and

(4) The repurchase program would not be contrary to other applicable regulations.

§ 192.520 Declaring and paying dividends after the conversion.

A savings association may declare or pay a dividend on its shares after the conversion if:

(a) The dividend will not reduce the savings association's regulatory capital below the amount required for the liquidation account under § 192.450;

(b) The savings association complies with all capital requirements under 12 CFR part 3 after it declares or pays dividends;

(c) The savings association complies with the capital distribution requirements under 12 CFR 5.55; and

(d) The savings association does not return any capital, other than ordinary dividends, to purchasers during the term of the business plan submitted with the conversion.

§ 192.525 Restrictions on acquisition of shares after conversion.

(a) *Prior agency approval.* For three years after conversion, no person may, directly or indirectly, acquire or offer to acquire the beneficial ownership of more than 10 percent of any class of the savings association's equity securities without the appropriate Federal banking agency's prior written approval. If a person violates this prohibition, the savings association may not permit the person to vote shares in excess of 10

percent, and may not count the shares in excess of 10 percent in any shareholder vote.

(b) *Beneficial ownership.* A person acquires beneficial ownership of more than 10 percent of a class of shares when he or she holds any combination of the savings association's stock or revocable or irrevocable proxies under circumstances that give rise to a conclusive control determination or rebuttable control determination under 12 CFR 5.50. The appropriate Federal banking agency will presume that a person has acquired shares if the acquiror entered into a binding written agreement for the transfer of shares. For purposes of this section, an offer is made when it is communicated. An offer does not include non-binding expressions of understanding or letters of intent regarding the terms of a potential acquisition.

(c) *Exceptions.* Notwithstanding the restrictions in this section:

(1) Paragraphs (a) and (b) of this section do not apply to any offer with a view toward public resale made exclusively to the savings association, to the underwriters, or to a selling group acting on the savings association's behalf.

(2) Unless the appropriate Federal banking agency objects in writing, any person may offer or announce an offer to acquire up to one percent of any class of shares. In computing the one percent limit, the person must include all of his or her acquisitions of the same class of shares during the prior 12 months.

(3) A corporation whose ownership is, or will be, substantially the same as the savings association's ownership may acquire or offer to acquire more than 10 percent of the savings association's common stock, if it makes the offer or acquisition more than one year after the savings association's conversion.

(4) One or more of the savings association's tax-qualified employee stock benefit plans may acquire the savings association's shares, if the plan or plans do not beneficially own more than 25 percent of any class of the savings association's shares in the aggregate.

(5) An acquiror does not have to file a separate application to obtain the appropriate Federal banking agency's approval under paragraph (a) of this section if the acquiror files an application under 12 CFR 5.50 that specifically addresses the criteria listed under paragraph (d) of this section and the savings association does not oppose the proposed acquisition.

(d) *Factors for agency denial.* The appropriate Federal banking agency may deny an application under paragraph (a) of this section if the proposed acquisition:

(1) Is contrary to the purposes of this part;

(2) Is manipulative or deceptive;

(3) Subverts the fairness of the conversion;

(4) Is likely to injure the savings association;

(5) Is inconsistent with the savings association's plan to meet the credit and lending needs of its proposed market area;

(6) Otherwise violates laws or regulations; or

(7) Does not prudently deploy the savings association's conversion proceeds.

§ 192.530 Other post-conversion requirements.

After a savings association converts, it must:

(a) Promptly register its shares under the Securities Exchange Act of 1934 (15 U.S.C. 78a–78jj, as amended). The savings association may not deregister the shares for three years.

(b) Encourage and assist a market maker to establish and to maintain a market for its shares. A market maker for a security is a dealer who:

(1) Regularly publishes bona fide competitive bid and offer quotations for the security in a recognized inter-dealer quotation system;

(2) Furnishes bona fide competitive bid and offer quotations for the security on request; or

(3) May effect transactions for the security in reasonable quantities at quoted prices with other brokers or dealers.

(c) Use its best efforts to list its shares on a national or regional securities exchange or on the National Association of Securities Dealers Automated Quotation system.

(d) File all post-conversion reports that the appropriate Federal banking agency requires.

Contributions to Charitable Organizations

§ 192.550 Donating conversion shares or conversion proceeds to a charitable organization.

A savings association may contribute some of its conversion shares or proceeds to a charitable organization if:

(a) The savings association's plan of conversion provides for the proposed contribution;

(b) The savings association's members approve the proposed contribution; and

(c) The IRS either has approved, or approves within two years after formation, the charitable organization as a tax-exempt charitable organization under the Internal Revenue Code.

§ 192.555 Member approval of charitable contributions.

At the meeting to consider the conversion, a savings association's members must separately approve, by a majority of the total eligible votes, a charitable contribution of conversion shares or proceeds. If the savings association is in mutual holding company form and adding a charitable contribution as part of a second step stock conversion, the savings association must also have its minority shareholders separately approve the charitable contribution by a majority of their total eligible votes.

§ 192.560 Limitations on charitable contributions.

A savings association may contribute a reasonable amount of conversion shares or proceeds to a charitable organization if such contribution will not exceed limits for charitable deductions under the Internal Revenue Code and the appropriate Federal banking agency does not object on supervisory grounds. If the savings association is well-capitalized, the appropriate Federal banking agency generally will not object if the savings association contributes an aggregate amount of eight percent or less of the conversion shares or proceeds.

§ 192.565 Contents of organizational documents of charitable organization.

The charitable organization's charter (or trust agreement) and gift instrument must provide that:

(a) The charitable organization's primary purpose is to serve and make grants in the savings association's local community;

(b) As long as the charitable organization controls shares, it must vote those shares in the same ratio as all other shares voted on each proposal considered by the savings association's shareholders;

(c) For at least five years after its organization, one seat on the charitable organization's board of directors (or board of trustees) is reserved for an independent director (or trustee) from the savings association's local community. This director may not be an officer, director, or employee of the savings association or of an affiliate of the savings association, and should have experience with local community charitable organizations and grant making; and

(d) For at least five years after its organization, one seat on the charitable organization's board of directors (or board of trustees) is reserved for a director from the savings association's board of directors or the board of

directors of an acquiror or resulting institution in the event of a merger or acquisition of the savings association.

§ 192.570 Conflicts of interest among directors.

(a) *In general.* A person is subject to 12 CFR 163.200 if that person:

(1) Is a director, officer, or employee of the savings association; has the power to direct the savings association's management or policies; or otherwise owes a fiduciary duty to the savings association (for example, holding company directors); and

(2) Will serve as an officer, director, or employee of the charitable organization. *See* Form AC for further information on operating plans and conflict of interest plans.

(b) *Identification and recusal of directors.* Before the savings association's board of directors may adopt a plan of conversion that includes a charitable organization, the savings association must identify its directors that will serve on the charitable organization's board. These directors may not participate in the board's discussions concerning contributions to the charitable organization, and may not vote on the matter.

§ 192.575 Other requirements for charitable organizations.

(a) *Charter and gift instrument requirements.* The charitable organization's charter (or trust agreement) and the gift instrument for the contribution must provide that:

(1) The appropriate Federal banking agency may examine the charitable organization at the charitable organization's expense;

(2) The charitable organization must comply with all supervisory directives that the appropriate Federal banking agency imposes;

(3) The charitable organization must operate according to written policies adopted by its board of directors (or board of trustees), including a conflict of interest policy;

(4) The charitable organization must not engage in self-dealing; and

(5) The charitable organization must comply with all laws necessary to maintain its tax-exempt status under the Internal Revenue Code.

(b) *Stock certificate requirement.* The savings association must include the following legend in the stock certificates of shares that the savings association contributes to the charitable organization or that the charitable organization otherwise acquires: ''The board of directors must consider the shares that this stock certificate represents as voted in the same ratio as all other shares voted on each proposal considered by the shareholders, as long as the shares are controlled by the charitable organization.''

(c) *Voting ratio.* As long as the charitable organization controls shares, the savings association must consider those shares as voted in the same ratio as all of the shares voted on each proposal considered by the savings association's shareholders.

(d) *Filing requirement.* After the savings association completes its stock offering, it must submit copies of the following documents to the appropriate OCC licensing office if it is a Federal savings association or with the appropriate FDIC region if it is a State savings association:

(1) The charitable organization's charter and bylaws (or trust agreement);

(2) The charitable organization's operating plan (within six months after the savings association's stock offering);

(3) The charitable organization's conflict of interest policy; and

(4) The gift instrument for the contributions of either stock or cash to the charitable organization.

Subpart B—Voluntary Supervisory Conversions

§ 192.600 Voluntary supervisory conversions.

(a) *In general.* A savings association must comply with this subpart and part 16 to engage in a voluntary supervisory conversion. This subpart applies to all voluntary supervisory conversions under sections 5(i)(1), (i)(2), and (p) of HOLA, 12 U.S.C. 1464(i)(1), (i)(2), and (p).

(b) *Application of subpart A.* Subpart A of this part also applies to a voluntary supervisory conversion, unless a requirement is clearly inapplicable.

§ 192.605 Conducting a voluntary supervisory conversion.

A savings association may conduct a voluntary supervisory conversion through one of the following methods:

(a) A savings association may sell its shares or the shares of a holding company to the public under the requirements of subpart A of this part.

(b) A savings association may convert to stock form by merging into an interim Federal- or State-chartered stock association.

(c) A savings association may sell its shares directly to an acquiror, who may be a person, company, depository institution, or depository institution holding company.

(d) A savings association may merge or consolidate with an existing or newly created depository institution. The merger or consolidation must be authorized by, and is subject to, other applicable laws and regulations.

§ 192.610 Member rights in a voluntary supervisory conversion.

Savings association members do not have the right to approve or participate in a voluntary supervisory conversion, and will not have any legal or beneficial ownership interests in the converted association, unless the appropriate Federal banking agency provides otherwise. Savings association members may have interests in a liquidation account, if one is established.

Eligibility

§ 192.625 Eligibility for a voluntary supervisory conversion.

(a) *Eligibility.* An insured savings association may be eligible to convert under this subpart B if:

(1) The savings association is significantly undercapitalized (or undercapitalized and a standard conversion that would make the savings association adequately capitalized is not feasible) and the savings association will be a viable entity following the conversion;

(2) Severe financial conditions threaten the savings association's stability and a conversion is likely to improve its financial condition;

(3) The FDIC will assist the savings association under section 13 of the Federal Deposit Insurance Act, 12 U.S.C. 1823; or

(4) The savings association is in receivership and a conversion will assist the savings association.

(b) *Requirements for viability after conversion.* The savings association will be a viable entity following the conversion if it satisfies all of the following:

(1) The savings association will be adequately capitalized as a result of the conversion;

(2) The savings association, its proposed conversion, and its acquiror(s) comply with applicable supervisory policies;

(3) The transaction is in the savings association's best interest, and the best interest of the Deposit Insurance Fund and the public; and

(4) The transaction will not injure or be detrimental to the savings association, the Deposit Insurance Fund, or the public interest.

§ 192.630 Eligibility of State-chartered savings bank for voluntary supervisory conversion.

A State-chartered savings bank may be eligible to convert to a Federal stock savings bank under this subpart if:

(a) The FDIC certifies under section 5(o)(2)(C) of the HOLA that severe financial conditions threaten the savings bank's stability and that the voluntary supervisory conversion is likely to improve its financial condition; or

(b) The savings bank meets the following conditions:

(1) The savings bank's liabilities exceed its assets, as calculated under generally accepted accounting principles, assuming the savings bank is a going concern; and

(2) The savings bank will issue a sufficient amount of permanent capital stock to meet its applicable FDIC capital requirement immediately upon completion of the conversion, or the FDIC determines that the savings bank will achieve an acceptable capital level within an acceptable time period.

Plan of Supervisory Conversion

§ 192.650 Contents of plan of voluntary supervisory conversion.

A majority of the board of directors of the savings association must adopt a plan of voluntary supervisory conversion. The savings association must include all of the following information in its plan of voluntary supervisory conversion.

(a) The savings association's name and address.

(b) A complete description of the proposed voluntary supervisory conversion transaction that also describes plans for any liquidation account.

(c) Certified copies of all resolutions relating to the conversion adopted by the board of directors of the savings association.

Voluntary Supervisory Conversion Application

§ 192.660 Contents of voluntary supervisory conversion application.

A savings association must include all of the following information and documents in a voluntary supervisory conversion application to the appropriate OCC licensing office if it is a Federal savings association and to the appropriate FDIC region if it is a State savings association under this subpart:

(a) *Eligibility.* (1) Evidence establishing that the savings association meets the eligibility requirements under § 192.625 or § 192.630.

(2) An opinion of qualified, independent counsel or an independent, certified public accountant regarding the tax consequences of the conversion, or an IRS ruling indicating that the transaction qualifies as a tax-free reorganization.

(3) An opinion of independent counsel indicating that applicable State law authorizes the voluntary supervisory conversion, if the conversion involves a State-chartered savings association converting to State stock form.

(b) *Plan of conversion.* A plan of voluntary supervisory conversion that complies with § 192.650.

(c) *Business plan.* A business plan that complies with § 192.105, when required by the appropriate Federal banking agency.

(d) *Financial data.* (1) The savings association's most recent audited financial statements and Consolidated Reports of Condition and Income or Call Report, as appropriate. The savings association must explain how its current capital levels make the savings association eligible to engage in a voluntary supervisory conversion under § 192.625 or § 192.630.

(2) A description of the savings association's estimated conversion expenses.

(3) Evidence supporting the value of any non-cash asset contributions. Appraisals must be acceptable to the appropriate Federal banking agency and the non-cash assets must meet all other appropriate Federal banking agency policy guidelines.

(4) Pro forma financial statements that reflect the effects of the transaction. The savings association must identify its tangible, core, and risk-based capital levels and show the adjustments necessary to compute the capital levels. The savings association must prepare its pro forma statements in conformance with the appropriate Federal banking agency's regulations and the applicable accounting requirements.

(5) A statement describing the aggregate number and percentage of shares that each director, officer, and any affiliates or associates of the director or officer will purchase.

(e) *Proposed documents.* (1) The savings association's proposed charter and bylaws.

(2) The savings association's proposed stock certificate form.

(3) Any securities offering circular and other securities disclosure materials to be used in connection with the proposed voluntary supervisory conversion.

(f) *Agreements.* (1) A copy of any agreements between the savings association and proposed purchasers.

(2) A copy and description of all existing and proposed employment contracts. The savings association must describe the term, salary, and severance provisions of the contract, the identity and background of the officer or employee to be employed, and the amount of any conversion shares to be purchased by the officer or employee or his or her affiliates or associates.

(g) *Related filings and applications.* (1) All filings required under the securities offering rules of 12 CFR parts 16 and 192.

(2) Any required Change in Bank Control Act notice and rebuttal of control submissions under 12 U.S.C. 1817(j) and 12 CFR 5.50, or copies of any Holding Company Act applications, including prior-conduct certifications listed under the appropriate Federal banking agency's regulatory guidance.

(3) A subordinated debt application, if applicable.

(4) Applications for permission to organize a stock association and for approval of a merger, if applicable, and a copy of any application for FDIC insurance of accounts, if applicable.

(5) A statement describing any other applications required under Federal or State banking laws for all transactions related to the conversion, copies of all dispositive documents issued by regulatory authorities relating to the applications, and, if requested by the appropriate Federal banking agency, copies of the applications and related documents.

(h) *Other information.* (1) A statement indicating the role each director, officer, and affiliate of the savings association or associate of the director or officer will have after the conversion.

(2) Any additional information requested by the OCC, as authorized by law.

(i) *Waiver request.* A description of any of the features of the savings association's application that do not conform to the requirements of this subpart, including any request for waiver of these requirements.

Appropriate Federal Banking Agency Review of the Voluntary Supervisory Conversion Application

§ 192.670 Approval of voluntary supervisory conversion application.

The appropriate Federal banking agency will generally approve a savings association's application to engage in a voluntary supervisory conversion unless it determines:

(a) The savings association does not meet the eligibility requirements for a voluntary supervisory conversion under § 192.625 or § 192.630 or because the proceeds from the sale of conversion stock, less the expenses of the conversion, would be insufficient to satisfy any applicable viability requirement;

(b) The transaction is detrimental to or would cause potential injury to the savings association or the Deposit

Insurance Fund or is contrary to the public interest;

(c) The savings association or its acquiror, or the controlling parties or directors and officers of the savings association or its acquiror, have engaged in unsafe or unsound practices in connection with the voluntary supervisory conversion; or

(d) The savings association fails to justify an employment contract incidental to the conversion, or the employment contract will be an unsafe or unsound practice or represent a sale of control. In a voluntary supervisory conversion, the appropriate Federal banking agency generally will not approve employment contracts of more than one year for existing management.

§ 192.675 Conditions imposed upon approval of voluntary supervisory conversion application.

(a) *Required condition.* The appropriate Federal banking agency will condition approval of a voluntary supervisory conversion application on all of the following.

(1) The savings association must complete the conversion stock sale within three months after the appropriate Federal banking agency approves the application. The appropriate Federal banking agency may grant an extension for good cause.

(2) The savings association must comply with all filing requirements of this part, and 12 CFR part 16.

(3) The savings association must submit an opinion of independent legal counsel indicating that the sale of its shares complies with all applicable State securities law requirements.

(4) The savings association must comply with all applicable laws, rules, and regulations.

(5) The savings association must satisfy any other requirements or conditions the appropriate Federal banking agency may impose.

(b) *Discretionary conditions.* The appropriate Federal banking agency may condition approval of a voluntary supervisory application for conversion on either of the following:

(1) The savings association must satisfy any conditions and restrictions the appropriate Federal banking agency imposes to prevent unsafe or unsound practices, to protect the Deposit Insurance Fund and the public interest, and to prevent potential injury or detriment to the savings association before and after the conversion. The appropriate Federal banking agency may impose these conditions and restrictions on the savings association (before and after the conversion) or, as appropriate, the savings association's acquiror, controlling parties, or its directors and officers; or

(2) The savings association must infuse a larger amount of capital, if necessary, for safety and soundness reasons.

Offers and Sales of Stock

§ 192.680 Offer and sale of shares in a voluntary supervisory conversion.

If a savings association converts under this subpart, it must offer and sell its shares in accordance with the applicable requirements of 12 CFR parts 16 and 192.

Post-Conversion

§ 192.690 Restrictions on acquisition of additional shares after voluntary supervisory conversion.

For three years after the completion of a voluntary supervisory conversion, neither the savings association nor its controlling shareholder(s) may acquire shares from minority shareholders without the appropriate Federal banking agency's prior approval.

PART 195—COMMUNITY REINVESTMENT

■ 54. The authority citation for part 195 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1814, 1816, 1828(c), 2901 through 2908, and 5412(b)(2)(B).

■ 55. Section 195.11 is amended by revising paragraph (a) to read as follows:

§ 195.11 Authority, purposes, and scope.

(a) *Authority.* This part is issued under the Community Reinvestment Act of 1977 (CRA), as amended (12 U.S.C. 2901 *et seq.*); section 5, as amended, and sections 3, and 4, as added, of the Home Owners' Loan Act of 1933 (12 U.S.C. 1462a, 1463, and 1464); sections 4, 6, and 18(c), as amended of the Federal Deposit Insurance Act (12 U.S.C. 1814, 1816, 1828(c)); and section 312 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5412(b)(2)(B)).

* * * * *

Brian P. Brooks,

Acting Comptroller of the Currency.

[FR Doc. 2020–12784 Filed 7–8–20; 4:15 pm]

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Part V

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1
Federal Acquisition Regulations; Interim Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR–2020–0051, Sequence No. 4]

Federal Acquisition Regulation; Federal Acquisition Circular 2020–08; Introduction

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of an interim rule.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rule agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) in this Federal Acquisition Circular (FAC) 2020–08. A companion document, the *Small Entity Compliance Guide* (SECG), follows this FAC.

DATES: For effective date see the separate document, which follows.

FOR FURTHER INFORMATION CONTACT: *Farpolicy@gsa.gov* or call 202–969–4075. Please cite FAC 2020–08, FAR case 2019–009.

RULE LISTED IN FAC 2020–08

Subject	FAR Case
Prohibition on Contracting with Entities Using Certain Telecommunications and Video Surveillance Services or Equipment	2019–009

ADDRESSES: The FAC, including the SECG, is available via the internet at *https://www.regulations.gov.*

SUPPLEMENTARY INFORMATION: A summary for each FAR rule follows. For the actual revisions and/or amendments made by this FAR case, refer to the specific subject set forth in the document following this summary. FAC 2020–08 amends the FAR as follows:

Prohibition on Contracting With Entities Using Certain Telecommunications and Video Surveillance Services or Equipment (FAR Case 2019–009)

This interim rule amends the Federal Acquisition Regulation to implement section 889(a)(1)(B) of Title VII of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232). Paragraph (a)(1)(B) of section 889 prohibits executive agencies from entering into, or extending or renewing, a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, on or after August 13, 2020 unless an exception applies or a waiver is granted.

To implement paragraph (a)(1)(B) of section 889, the provision at 52.204–24 requires all offerors to represent, after conducting a reasonable inquiry, whether covered telecommunications equipment or services are used by the offeror, and if so, to provide further information. The clause at 52.204–25 prohibits the head of an executive agency from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception applies or a waiver is granted. The contractor must report use of any such equipment, systems, or services discovered during contract performance.

This rule applies to all acquisitions, including acquisitions at or below the simplified acquisition threshold and to acquisitions of commercial items, including commercially available off-the-shelf items. It may have a significant economic impact on a substantial number of small entities.

This interim rule is being implemented as a national security measure to protect Government information and information and communication technology systems.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Federal Acquisition Circular (FAC) 2020–08 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator of National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2020–08 is effective July 14, 2020 except for FAR Case 2019–009, which is effective [August 13, 2020].

Kim Herrington,

Acting Principal Director, Defense Pricing and Contracting, Department of Defense.

Jeffrey A. Koses,

Senior Procurement Executive/Deputy CAO, Office of Acquisition Policy, U.S. General Services Administration.

William G. Roets, II,

Acting Assistant Administrator, Office of Procurement, National Aeronautics and Space Administration.

[FR Doc. 2020–15292 Filed 7–13–20; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 4, 13, 39, and 52

[FAC 2020–08; FAR Case 2019–009; Docket No. FAR–2019–0009, Sequence No. 1]

RIN 9000–AN92

Federal Acquisition Regulation: Prohibition on Contracting With Entities Using Certain Telecommunications and Video Surveillance Services or Equipment

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule.

SUMMARY: DoD, GSA, and NASA are amending the Federal Acquisition Regulation (FAR) to implement section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232).

DATES:

Effective: August 13, 2020.

Applicability: Contracting officers shall include the provision at FAR 52.204–24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment and clause at FAR 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment as prescribed—

- In solicitations issued on or after August 13, 2020, and resultant contracts; and
- In solicitations issued before August 13, 2020, provided award of the resulting contract(s) occurs on or after August 13, 2020.

Contracting officers shall modify, in accordance with FAR 1.108(d), existing indefinite delivery contracts to include the FAR clause for future orders, prior to placing any future orders.

If exercising an option or modifying an existing contract or task or delivery order to extend the period of performance, contracting officers shall include the clause. When exercising an option, agencies should consider modifying the existing contract to add the clause in a sufficient amount of time to both provide notice for exercising the option and to provide contractors with adequate time to comply with the clause.

The contracting officer shall include the provision at 52.204–24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment, in all solicitations for an order, or notices of intent to place an order, including those issued before the effective date of this rule, under an existing indefinite delivery contract.

Comment date: Interested parties should submit written comments to the Regulatory Secretariat Division at one of the addresses shown below on or before September 14, 2020 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2019–009 via the Federal eRulemaking portal at *Regulations.gov* by searching for ''FAR Case 2019–009''. Select the link ''Comment Now'' that corresponds with FAR Case 2019–009. Follow the instructions provided at the ''Comment Now'' screen. Please include your name, company name (if any), and ''FAR Case 2019–009'' on your attached document. If your comment cannot be submitted using *https://www.regulations.gov,* call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite FAR Case 2019–009, in all correspondence related to this case. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two to three days after submission to verify posting.

All filers using the portal should use the name of the person or entity submitting comments as the name of their files, in accordance with the instructions below. Anyone submitting business confidential information should clearly identify the business confidential portion at the time of submission, file a statement justifying nondisclosure and referencing the specific legal authority claimed, and provide a non-confidential version of the submission.

Any business confidential information should be in an uploaded file that has a file name beginning with the characters ''BC.'' Any page containing business confidential information must be clearly marked ''BUSINESS CONFIDENTIAL'' on the top of that page. The corresponding non-confidential version of those comments must be clearly marked ''PUBLIC.'' The file name of the non-confidential version should begin with the character ''P.'' The ''BC'' and ''P'' should be followed by the name of the person or entity submitting the comments or rebuttal comments. All filers should name their files using the name of the person or entity submitting the comments. Any submissions with file names that do not begin with a ''BC'' or ''P'' will be assumed to be public and will be made publicly available through *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: *Farpolicy@gsa.gov* or call 202–969–4075. Please cite ''FAR Case 2019–009.''

SUPPLEMENTARY INFORMATION:

I. Background

Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year 2019 (Pub. L. 115–232) prohibits executive agencies from entering into, or extending or renewing, a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The provision goes into effect August 13, 2020.

The statute covers certain telecommunications equipment and services produced or provided by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of those entities) and certain video surveillance products or telecommunications equipment and services produced or provided by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of those entities). The statute is not limited to contracting with entities that use end-products produced by those companies; it also covers the use of any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

Section 889 has two key sections, Section 889(a)(1)(A) and Section(a)(1)(B). Section (a)(1)(A) went into effect via FAR Case 2018–017 at 84 FR 40216 on August 13, 2019. The 889(a)(1)(A) rule does the following:

- It amends the FAR to include the 889(a)(1)(A) prohibition, which prohibits agencies from procuring or obtaining equipment or services that use covered telecommunications equipment or services as a substantial or essential component or critical technology. (FAR 52.204–25)
- It requires every offeror to represent prior to award whether or not it will

provide covered telecommunications equipment or services and, if so, to furnish additional information about the covered telecommunications equipment or services. (FAR 52.204–24)

• It mandates that contractors report (within one business day) any covered telecommunications equipment or services discovered during the course of contract performance. (FAR 52.204–25)

In order to decrease the burden on contractors, the FAR Council published a second interim rule for 889(a)(1)(A), at 84 FR 68314 on December 13, 2019. This rule allows an offeror that represents ''does not'' in the annual representation at FAR 52.204–26 to skip the offer-by-offer representation within the provision at FAR 52.204–24.

The FAR Council will address the public comments received on both previous interim rules in a subsequent rulemaking. In addition, each agency has the opportunity under 889(a)(1)(A) to issue agency-specific procedures (as they do for any acquisition-related requirement). For example, GSA issued a FAR deviation [1] where GSA categorized risk to eliminate the representations for low and medium risk GSA-funded orders placed under GSA indefinite-delivery contracts. For agency-specific procedures, please consult with the requiring agency.

This rule implements 889(a)(1)(B) and requires submission of a representation with each offer that will require all offerors to represent, after conducting a reasonable inquiry, whether covered telecommunications equipment or services are used by the offeror. DoD, GSA, and NASA recognize that some agencies may need to tailor the approach to the information collected based on the unique mission and supply chain risks for their agency.

In order to reduce the information collection burden imposed on offerors subject to the rule, DoD, GSA, and NASA are currently working on updates to the System for Award Management (SAM) to allow offerors to represent annually after conducting a reasonable inquiry. Only offerors that provide an affirmative response to the annual representation would be required to provide the offer-by-offer representation in their offers for contracts and for task or delivery orders under indefinite-delivery contracts. Similar to the initial rule for section 889(a)(1)(A), that was published as an interim rule on August 13, 2019 and was followed by a second interim rule on December 13, 2019 to update the System for Award Management, the FAR Council intends to publish a subsequent rulemaking once the updates are ready in SAM.

Overview of the Rule

This rule implements section 889 (a)(1)(B) and applies to Federal contractors' use of covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The rule seeks to avoid the disruption of Federal contractor systems and operations that could in turn disrupt the operations of the Federal Government, which relies on contractors to provide a range of support and services. The exfiltration of sensitive data from contractor systems arising from contractors' use of covered telecommunications equipment or services could also harm important governmental, privacy, and business interests. Accordingly, due to the privacy and security risks associated with using covered telecommunications equipment or services as a substantial or essential component or critical technology of any system, the prohibition applies to any use that meets the threshold described above.

It amends the following sections of the FAR:

• FAR subpart 4.21, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

• The provision at 52.204–24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment.

• The contract clause at 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

Definitions Discussed in This Rule

This rule does not change the definition adopted in the first interim rule of ''critical technology,'' which was included in the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA) (Section 1703 of Title XVII of the NDAA for FY 2019, Pub. L. 115–232, 50 U.S.C. 4565(a)(6)(A)). The rule does not change the definitions of ''Covered foreign country,'' ''Covered telecommunications equipment or services,'' and ''Substantial or essential component.'' The term offeror will continue to refer to only the entity that executes the contract.

This rule also adds new definitions for ''backhaul,'' ''interconnection arrangements,'' ''reasonable inquiry,'' and ''roaming,'' to provide clarity regarding when an exception to the prohibition applies. These terms are not currently defined in Section 889 or within the FAR. These definitions were developed based on consultation with subject matter experts as well as analyzing existing telecommunications regulations and case law.[2]

The FAR Council is considering as part of finalization of this rulemaking with an effective date no later than August 13, 2021, to expand the scope to require that the prohibition at 52.204–24(b)(2) and 52.204–25(b)(2) applies to the offeror and any affiliates, parents, and subsidiaries of the offeror that are domestic concerns, and expand the representation at 52.204–24(d)(2) so that the offeror represents on behalf of itself and any affiliates, parents, and subsidiaries of the offeror that are domestic concerns, as to whether they use covered telecommunications equipment or services. Section IV of this rule is requesting specific feedback regarding the impact of this potential change, as well as other pertinent policy questions of interest, in order to inform finalization of this and potential future subsequent rulemakings.

II. Discussion and Analysis

To implement section 889(a)(1)(B), the contract clause at 52.204–25 was amended to prohibit agencies ''from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system,'' unless an exception applies or a waiver is granted. This prohibition applies at the prime contract level to an entity that uses any equipment, system, or service that itself uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, regardless of whether that usage is in performance of work under a Federal contract.

The 52.204–25 prohibition under section 889(a)(1)(A) will continue to flow down to all subcontractors; however, as required by statute the prohibition for section 889(a)(1)(B) will not flow down because the prime contractor is the only ''entity'' that the agency ''enters into a contract'' with, and an agency does not directly ''enter into a contract'' with any subcontractors, at any tier.

The rule also adds text in subpart 13.2, Actions at or Below the Micro-

[1] *https://www.acquisition.gov/gsa-deviation/supply-chain-aug13.*

[2] *See FiberTower Spectrum Holdings, LLC* v. *F.C.C.,* 782 F.3d 692, 695 (D.C. Cir. 2015); *Worldcall Interconnect, Inc.* v. *Fed. Commc'ns Comm'n,* 907 F.3d 810, 814 (Nov. 15, 2018).

Purchase Threshold, to address section 889(a)(1)(B) with regard to micro-purchases. The prohibition will apply to all FAR contracts, including micro-purchase contracts.

Representation Requirements

Representations and Certifications are requirements that anyone wishing to apply for Federal contracts must complete. They require entities to represent or certify to a variety of statements ranging from environmental rules compliance to entity size representation.

Similar to the previous rule for section 889(a)(1)(A), that was published as an interim rule on August 13, 2019, and was followed by a second interim rule on December 13, 2019, that updated the System for Award Management (SAM), the FAR Council is in the process of making updates to SAM requiring offerors to represent whether they use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services within the meaning of this rule. This rule will add a new OMB Control Number to the list at FAR 1.106 of OMB approvals under the Paperwork Reduction Act. Offerors will consult SAM to validate whether they use equipment or services listed in the definition of ''covered telecommunications equipment or services'' (see FAR 4.2101).

An entity may represent that it does not use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services within the meaning of this rule, if a reasonable inquiry by the entity does not reveal or identify any such use. A reasonable inquiry is an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity. A reasonable inquiry need not include an internal or third-party audit.

Grants

Grants are not part of this FAR based regulation and are handled separately. Please note guidance on Section 889 for grants, which are not covered by this rule, was posted for comment at *https://www.federalregister.gov/documents/2020/01/22/2019-28524/guidance-for-grants-and-agreements.*

Agency Waiver Process

Under certain circumstances, section 889(d)(1) allows the head of an executive agency to grant a one-time waiver from 889(a)(1)(B) on a case-by-case basis that will expire no later than August 13, 2022. Executive agencies must comply with the prohibition once the waiver expires. The executive agency will decide whether or not to initiate the formal waiver process based on market research and feedback from Government contractors during the acquisition process, in concert with other internal factors. The submission of an offer will mean the offeror is seeking a waiver if the offeror makes a representation that it uses covered telecommunications equipment or services as a substantial or essential component of a system, or as critical technology as part of any system and no exception applies. Once an offeror submits its offer, the contracting officer will first have to decide if a waiver is necessary to make an award and then request the offeror to provide: (1) A compelling justification for the additional time to implement the requirements under 889(a)(1)(B), for consideration by the head of the executive agency in determining whether to grant a waiver; (2) a full and complete laydown of the presences of covered telecommunications or video surveillance equipment or services in the entity's supply chain; and (3) a phase-out plan to eliminate such covered telecommunications equipment or services from the entity's systems. This does not preclude an offeror from submitting this information with their offer, in advance of a contracting officer decision to initiate the formal waiver request through the head of the executive agency.

Since the formal waiver is initiated by an executive agency and the executive agency may not know if covered telecommunications equipment or service will be used as part of the supply chain until offers are received, a determination of whether a waiver should be considered may not be possible until offers are received and the executive agency analyzes the representations from the offerors.

Given the extent of information necessary for requesting a waiver, the FAR Council anticipates that any waiver would likely take at least a few weeks to obtain. Where mission needs do not permit time to obtain a waiver, agencies may reasonably choose not to initiate one and to move forward and make award to an offeror that does not require a waiver.

Currently, FAR 4.2104 directs contracting officers to follow agency procedures for initiating a waiver request. Since a waiver is based on the agency's judgment concerning particular uses of covered telecommunications equipment or services, a waiver granted for one agency will not necessarily shed light on whether a waiver is warranted in a different procurement with a separate agency. This agency waiver process would be the same for both new and existing contracts. If a waiver is granted, with respect to particular use of covered telecommunications equipment or services, the contractor will still be required to report any additional use of covered telecommunications equipment or services discovered or identified during contract performance in accordance with 52.204–25(d).

Before granting a waiver, the agency must: (1) Have designated a senior agency official for supply chain risk management, responsible for ensuring the agency effectively carries out the supply chain risk management functions and responsibilities described in law, regulation, and policy; additionally this senior agency official will serve as the primary liaison with the Federal Acquisition Security Council (FASC); (2) establish participation in an information-sharing environment when and as required by the FASC to facilitate interagency sharing of relevant supply chain risk information; and (3) notify and consult with the Office of the Director of National Intelligence (ODNI) on the issue of the waiver request: The agency may only grant the waiver request after consulting with ODNI and confirming that ODNI does not have existing information suggesting that the waiver would present a material increase in risk to U.S. national security. Agencies may satisfy the consultation requirement by making use of one or more of the following methods as made available to agencies by ODNI (as appropriate): Guidance, briefings, best practices, or direct inquiry. If the agency has met the three conditions enumerated above and intends to grant the waiver requested, the agency must notify the ODNI and the FASC 15 days prior to granting the waiver, and provide notice to the appropriate Congressional committees within 30 days of granting the waiver. The notice must include:

(1) An attestation by the agency that granting of the waiver would not, to the agency's knowledge having conducted the necessary due diligence as directed by statute and regulation, present a material increase in risk to U.S. national security; and

(2) The required full and complete laydown of the presences of covered telecommunications or video surveillance equipment or services in the entity's supply chain; and

(3) The required phase-out plan to eliminate covered telecommunications or video surveillance equipment or services from the entity's systems.

The laydown described above must include a description of each category of covered telecommunications or video surveillance equipment or services discovered after a reasonable inquiry, as well as each category of equipment, system, or service used by the entity in which such covered technology is found after such an inquiry.

In the case of an emergency, including a declaration of major disaster, in which prior notice and consultation with the ODNI and prior notice to the FASC is impracticable and would severely jeopardize performance of mission-critical functions, the head of an agency may grant a waiver without meeting the notice and consultation requirements to enable effective mission critical functions or emergency response and recovery. In the case of a waiver granted in response to an emergency, the head of an agency granting the waiver must make a determination that the notice and consultation requirements are impracticable due to an emergency condition, and within 30 days of award, notify the ODNI, the FASC, and Congress of the waiver issued under emergency circumstances.

The provision of a waiver does not alter or amend any other requirements of U.S. law, including any U.S. export control laws and regulations or protections for sensitive sources and methods. In particular, any waiver issued pursuant to these regulations is not authorization by the U.S. Government to export, reexport, or transfer (in-country) items subject to the Export Administration or International Traffic in Arms Regulations (15 CFR 730–774 and 22 CFR 120–130, respectively).

Director of National Intelligence Waiver

The statute also permits the Director of National Intelligence (DNI) to provide a waiver if the Director determines one is in the national security interests of the United States.[3] The statute does not include an expiration date for the DNI waiver. This authority is separate and distinct from that granted to an agency head as outlined above.

ODNI Categorical Scenarios

Additionally, the ODNI, in consultation with the FASC, will issue on an ongoing basis, for use in informing agency waiver decisions, guidance describing categorical uses or commonly-occurring use scenarios where presence of covered telecommunications equipment or services is likely or unlikely to pose a national security risk.

Other Technical Changes

The solicitation provision at 52.204–24 has two representations, one for 889(a)(1)(A) and one for 889(a)(1)(B). This rule adds the representation for 889(a)(1)(B). The solicitation provision at 52.204–24 also has two disclosure sections, one for 889(a)(1)(A) and one for 889(a)(1)(B). This rule adds the disclosure section for 889(a)(1)(B) with separate reporting elements depending on whether the procurement is for equipment, services related to item maintenance, or services not associated with item maintenance. The reporting elements within the disclosure are different for each category because the information needed to identify whether the prohibition applies varies for these three types of procurements. This rule also administratively renumbers the paragraphs under the disclosure section. Finally, this rule will add cross-references in FAR parts 39, Acquisition of Information Technology, and to the coverage of the section 889 prohibition at FAR subpart 4.21.

Expected Impact of This Rule

The FAR Council recognizes that this rule could impact the operations of Federal contractors in a range of industries—including in the health-care, education, automotive, aviation, and aerospace industries; manufacturers that provide commercially available off-the-shelf (COTS) items; and contractors that provide building management, billing and accounting, and freight services. The rule seeks to minimize disruption to the mission of Federal agencies and contractors to the maximum extent possible, consistent with the Federal Government's ability to ensure effective implementation and enforcement of the national security measures imposed by Section 889. As set forth in Section III.C below, the FAR Council recognizes the substantial benefits that will result from this rule.

To date, there is limited information on the extent to which the various industries will be impacted by this rule implementing the statutory requirements of section 889. To better understand the potential impact of section 889 (a)(1)(B), DoD hosted a public meeting on March 2, 2020 (See 85 FR 7735) to facilitate the Department's planning for the implementation of Section 889(a)(1)(B).

NASA also hosted a Section 889 industry engagement event on January 30, 2020, to obtain additional information on the impact this prohibition will have on NASA contractors' operations and their ability to support NASA's mission.

In addition, the FAR Council hosted a public meeting on July 19, 2019, and GSA hosted an industry engagement event on November 6, 2019 (*https://interact.gsa.gov/FY19NDAASection889*) to gather additional information on how section 889 could affect GSA's business and supply chain. The presentations are located at *https://interact.gsa.gov/FY19NDAASection889.*

Please note presentations and comments from the public meetings are *not* considered public comments on this rule.

The FAR Council notes this rule is one of a series of actions with regard to section 889 and the impact and costs to all industry sectors, including COTS items manufacturers, resellers, consultants, etc. is not well understood and is still being assessed. For example, in a filing to the Federal Communications Commission, the Rural Wireless Association estimated that at least 25% of its carriers would be impacted.[4]

In addition, while the rule will be effective as of August 13, 2020, the FAR Council is seeking public comment, including, as indicated below, on the potential impact of the rule on the affected industries. After considering the comments received, a final rule will be issued, taking into account and addressing the public comments. *See* 41 U.S.C. 1707.

Industry Costs for New Representation and Scope of Section 889(a)(1)(B)

The statute includes two exceptions at 889 (a)(2)(A) and (B). The exception at 889(a)(2)(A) allows the head of executive agency to procure with an entity ''to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements.'' The exception at 889(a)(2)(B) allows an entity to procure ''telecommunications equipment that cannot route or redirect user data traffic or [cannot] permit visibility into any user data or packets that such equipment transmits or otherwise handles.'' The exception allowing for procurement of services that connect to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements applies only to a Government agency that is contracting with an entity to provide a service. Therefore, the exception does

[3] Sec. 889(d)(2).

[4] *https://ecfsapi.fcc.gov/file/12080817518045/FY%202019%20NDAA%20Reply%20Comments%20-%20FINAL.pdf.*

not apply to a contractor's use of a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements. As a result, the Federal Government is prohibited from contracting with a contractor that uses covered telecommunications equipment or services to obtain backhaul services from an internet service provider, unless a waiver is granted.

III. Regulatory Impact Analysis Pursuant to Executive Orders 12866 and 13563

The costs and transfer impacts of section 889(a)(1)(B) are discussed in the analysis below. This analysis was developed by the FAR Council in consultation with agency procurement officials and OMB. We request public comment on the costs, benefits, and transfers generated by this rule.

A. Risks to Industry of Not Complying With 889

As a strictly contractual matter, an organization's failure to submit an accurate representation to the Government constitutes a breach of contract that can lead to cancellation, termination, and financial consequences.

Therefore, it is important for contractors to develop a compliance plan that will allow them to submit accurate representations to the Government in the course of their offers.

B. Contractor Actions Needed for Compliance

Adopting a robust, risk-based compliance approach will help reduce the likelihood of noncompliance. During the first year that 889(a)(1)(B) is in effect, contractors and subcontractors will need to learn about the provision and its requirements as well as develop a compliance plan. The FAR Council assumes the following steps would most likely be part of the compliance plan developed by any entity.

1. *Regulatory Familiarization.* Read and understand the rule and necessary actions for compliance.

2. *Corporate Enterprise Tracking.* The entity must determine through a reasonable inquiry whether the entity itself uses ''covered telecommunications'' equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. This includes examining relationships with any subcontractor or supplier for which the prime contractor has a Federal contract and uses the supplier or subcontractor's ''covered telecommunications'' equipment or services as a substantial or essential component of any system. A reasonable inquiry is an inquiry designed to uncover any information in the entity's possession—primarily documentation or other records—about the identity of the producer or provider of covered telecommunications equipment or services used by the entity. A reasonable inquiry need not include an internal or third-party audit.

3. *Education.* Educate the entity's purchasing/procurement, and materials management professionals to ensure they are familiar with the entity's compliance plan.

4. *Cost of Removal (if the entity independently decides to).* Once use of covered equipment and services is identified, implement procedures if the entity decides to replace existing covered telecommunications equipment or services and ensure new equipment and services acquired for use by the entity are compliant.

5. *Representation.* Provide representation to the Government regarding whether the entity uses covered telecommunications equipment and services and alert the Government if use is discovered during contract performance.

6. *Cost to Develop a Phase-out Plan and Submit Waiver Information.* For entities for which a waiver will be requested, (1) develop a phase-out plan to phase-out existing covered telecommunications equipment or services, and (2) provide waiver information to the Government to include the phase-out plan and the complete laydown of the presence of the covered telecommunications equipment or services.

C. Benefits

This rule provides significant national security benefits to the general public. According to the White House article ''A New National Security Strategy for a New Era'', the four pillars of the National Security Strategy (NSS) are to protect the homeland, promote American prosperity, preserve peace through strength, and advance American influence.[5] The purpose of this rule is to align with the NSS pillar to protect the homeland, by protecting the homeland from the impact of Federal contractors using covered telecommunications equipment or services that present a national security concern.

The United States faces an expanding array of foreign intelligence threats by adversaries who are using increasingly sophisticated methods to harm the Nation.[6] Threats to the United States posed by foreign intelligence entities are becoming more complex and harmful to U.S. interests.[7] Foreign intelligence actors are employing innovative combinations of traditional spying, economic espionage, and supply chain and cyber operations to gain access to critical infrastructure, and steal sensitive information and industrial secrets.[8] The exploitation of key supply chains by foreign adversaries represents a complex and growing threat to strategically important U.S. economic sectors and critical infrastructure.[9] The increasing reliance on foreign-owned or controlled telecommunications equipment, such as hardware or software, and services, as well as the proliferation of networking technologies may create vulnerabilities in our nation's supply chains.[10] The evolving technology landscape is likely to accelerate these trends, threatening the security and economic well-being of the American people.[11]

Since the People's Republic of China possesses advanced cyber capabilities that it actively uses against the United States, a proactive cyber approach is needed to degrade or deny these threats before they reach our nation's networks, including those of the Federal Government and its contractors. China is increasingly asserting itself by stealing U.S. technology and intellectual property in an effort to erode the United States' economic and military superiority.[12] Chinese companies, including the companies identified in this rule, are legally required to cooperate with their intelligence services.[13] China's reputation for persistent industrial espionage and close collaboration between its government and industry in order to amass technological secrets presents additional threats for U.S. Government contractors.[14] Therefore, there is a risk

[5] *https://www.whitehouse.gov/articles/new-national-security-strategy-new-era/.*

[6] National Counterintelligence Strategy of the United States of America 2020–2022.

[7] National Counterintelligence Strategy of the United States of America 2020–2022.

[8] National Counterintelligence Strategy of the United States of America 2020–2022.

[9] National Counterintelligence Strategy of the United States of America 2020–2022.

[10] National Counterintelligence Strategy of the United States of America 2020–2022.

[11] National Counterintelligence Strategy of the United States of America 2020–2022.

[12] National Counterintelligence Strategy of the United States of America 2020–2022.

[13] NATO Cooperative Cyber Defense Center of Excellence Report on Huawei, 5G and China as a Security Threat.

[14] NATO Cooperative Cyber Defense Center of Excellence Report on Huawei, 5G and China as a Security Threat.

that Government contractors using 5th generation wireless communications (5G) and other telecommunications technology from the companies covered by this rule could introduce a reliance on equipment that may be controlled by the Chinese intelligence services and the military in both peacetime and crisis.[15]

The 2019 Worldwide Threat Assessment of the Intelligence Community[16] highlights additional threats regarding China's cyber espionage against the U.S. Government, corporations, and allies. The U.S.-China Economic and Security Review Commission Staff Annual Reports[17] provide additional details regarding the United States' national security interests in China's extensive engagement in the U.S. telecommunications sector. In addition, the U.S. Senate Select Committee on Intelligence Open Hearing on Worldwide Threats[18] further elaborates on China's approach to gain access to the United States' sensitive technologies and intellectual property. The U.S. House of Representatives Investigative Report on the U.S. National Security Issues Posed by Chinese Telecommunications Companies Huawei and ZTE[19] further identifies how the risks associated with Huawei's and ZTE's provision of equipment to U.S. critical infrastructure could undermine core U.S. national-security interests.

Currently, Government contractors may not consider broad national security interests of the general public when they make decisions. This rule ensures that Government contractors keep public national security interests in mind when making decisions, by ensuring that, pursuant to statute, they do not use covered telecommunications equipment or services that present national security concerns. This rule will also assist contractors in mitigating supply chain risks (*e.g.* potential theft of trade secrets and intellectual property) due to the use of covered telecommunications equipment or services.

D. Public Costs

During the first year after publication of the rule, contractors will need to learn about the provisions and its requirements. The DOD, GSA, and NASA (collectively referred to here as the Signatory Agencies) estimate this cost by multiplying the time required to review the regulations and guidance implementing the rule by the estimated compensation of a general manager.

To estimate the burden to Federal offerors associated with complying with the rule, the percentage of Federal contractors that will be impacted was pulled from Federal databases. According to data from the System for Award Management (SAM), as of February 2020, there were 387,967 unique vendors registered in SAM. As of September 2019, about 74% of all SAM entities registered for all awards were awarded to entities with the primary NAICS code as small; therefore, it is assumed that out of the 387,967 unique vendors registered in SAM in February 2020, 287,096 entities are unique small entities. According to data from the Federal Procurement Data System (FPDS), as of February 2020, there was an average of 102,792 unique Federal awardees for FY16–FY19, of which 73%, 75,112, are unique small entities. Based on data in SAM for FY16–FY19, the Signatory Agencies anticipates there will be an average of 79,319[20] new entities registering annually in SAM, of which 74%, 57,956, are anticipated to be small businesses.

We estimate that this rule will also affect businesses which become Federal contractors in the future. As stated above, we estimate that there are 79,319[21] new entrants per year.

1. Time To Review the Rule

Below is a list of compliance activities related to regulatory familiarization that the Signatory Agencies anticipate will occur after issuance of the rule:

a. *Familiarization with FAR 52.204–24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment.* The Signatory Agencies assume that it will take all vendors who plan to submit an offer for a Federal award 20[22] hours to familiarize themselves with the amendment to the offer-by-offer representation at 52.204–24, Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment. The Signatory Agencies assume that all entities registered in SAM, or 387,967[23] entities, plan to submit an offer for a Federal award, since there is no data available on number of offerors for Federal awards. Therefore, the Signatory Agencies calculated the total estimated cost for this part of the rule to be *$735 million* (= 20 hours × $94.76[24] per hour × 387,967). Of the 387,967 entities impacted by this part of the rule, it is assumed that 74%[25] or 287,096 entities are unique small entities.

In subsequent years, these costs will be incurred by 79,319[26] new entrants each year. Therefore, the Signatory Agencies calculated the total estimated cost for this part of the rule to be *$150 million* (= 20 hours × $94.76 per hour × 79,319) per year in subsequent years.

b. *Familiarization with FAR 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.* The Signatory Agencies estimate that it will take all vendors who plan to submit an offer for a Federal award 8[27] hours to familiarize themselves with the amendment to the clause at 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment. The average number of unique awardees for FY16–FY19, or 102,792[28] entities, will be impacted by this part of the rule, assuming all entities awarded Federal contracts would have to familiarize themselves with the clause. Therefore, the Signatory Agencies calculated the total estimated cost for this part of the rule to be *$78 million* (= 8 hours × $94.76 per hour × 102,792). Of the 102,792 unique Federal awardees assumed to be impacted by this part of the rule, 73% or 75,038, are unique small entities.

In subsequent years, these costs are estimated will be incurred by 26%[29] of new entrants, or 20,623 entities because it is assumed that 26% of new entrants will be awarded a Federal contract and will be required to familiarize

[15] NATO Cooperative Cyber Defense Center of Excellence Report on Huawei, 5G and China as a Security Threat.

[16] *https://www.dni.gov/files/ODNI/documents/2019-ATA-SFR---SSCI.pdf.*

[17] *https://www.uscc.gov/annual-reports/archives.*

[18] *https://www.intelligence.senate.gov/sites/default/files/hearings/CHRG-115shrg28947.pdf.*

[19] *https://intelligence.house.gov/news/documentsingle.aspx?DocumentID=96.*

[20] This value is based on data on new registrants in *SAM.gov* on average for FY16, FY17, FY18, and FY19.

[21] This value is based on data on new registrants in *SAM.gov* for FY19 and FY20.

[22] The 20 hours are an assumption based on historical familiarization hours and subject matter expert judgment.

[23] According to data from the System for Award Management (SAM), as of February 2020, there were 387,967 unique vendors registered in SAM.

[24] The rate of $94.76 assumes an FY19 GS 13 Step 5 salary (after applying a 100% burden to the base rate) based on subject matter judgment.

[25] As of September 2019, about 74% of all SAM entities registered for all awards were awarded to entities with the primary NAICS code as small.

[26] This value is based on data on new registrants in *SAM.gov* on average for FY16, FY17, FY18, and FY19.

[27] The 8 hours is an assumption based on historical familiarization hours and subject matter expert judgment.

[28] As of February 2020, there was an average of 102,792 unique Federal awardees for FY16–FY19.

[29] The percentage of 26% is the percentage of active entities registered in *SAM.gov* in FY20 that were awarded contracts.

themselves with the clause. Therefore, the Signatory Agencies calculated the total estimated cost for this part of the rule to be *$15.6 million* (= 8 hours × $94.76 per hour × 20,623) per year in subsequent years.

The total cost estimated to review the amendments to the provision and the clause is estimated to be *$813 million* in the first year after publication. In subsequent years, this cost is estimated to be *$166 million* annually. The FAR Council acknowledges that there is substantial uncertainty underlying these estimates.

2. Time To Establish a Corporate Enterprise Tracking Tool and Verify Covered Telecom Is Not Used Within the Corporation or by the Corporation and Ensure There Are No Future Buys

In order to complete the representation, the entity must determine, by conducting a reasonable inquiry whether the entity itself uses ''covered telecommunications'' equipment or services. This includes a relationship with any subcontractor or supplier in which the prime contractor has a Federal contract and uses the supplier or subcontractor's ''covered telecommunications equipment or services'' regardless of whether that usage is in performance of work under a Federal contract. The Signatory Agencies do not have reliable data to form an estimate as to the processes vendors will adopt to conduct a reasonable inquiry or the costs, in time and other resources, for conducting such an inquiry. The Signatory Agencies intend to evaluate any information on this topic in the comments submitted by the public.

3. Time To Complete Corporate-Wide Training on Compliance Plan

The Signatory Agencies estimate that most entities have already begun to understand the impact of Section 889 (a)(1)(A) and have already educated the appropriate personnel to that part of the prohibition. Section 889 (a)(1)(B) requires a more robust training of the organization's compliance plan, which include business partners that are outside of the typical ''covered telecommunications equipment or services'' purchases; such as day-day office supplies. The Signatory Agencies estimate that it will take all vendors at least 4 [30] hours of training to ensure personnel understand the organization's compliance plan for tracking partners that procure ''covered telecommunications equipment and services'' that may be indirectly related to their respective business activities. Therefore, the Signatory Agencies calculated the total estimated cost for this part of the rule to be *$147 million* (= 4 hours × $94.76 per hour × 387,967).

Of the 387,967 [31] entities impacted by this part of the rule, it is assumed that 74% or 287,096 entities are unique small entities.

In subsequent years, we assume that 50% [32] of the 79,319 [33] new entrants will incur these costs. Therefore, the Signatory Agencies calculated the total estimated cost for this part of the rule to be *$15 million* (= 4 hours × $94.76 per hour× 50% × 79,319) per year in subsequent years. The FAR Council acknowledges that there is substantial uncertainty underlying these estimates.

4. Time To Remove and Replace Existing Equipment or Services (if Contractor Decides to) in Order To Be Eligible for a Federal Contract

Data on the extent of the presence of the covered telecommunications equipment and services in the global supply chain is extremely limited, as is information as to the costs of removing and replacing covered equipment or services where it does exist. Furthermore, no data exists as to how many entities will receive a 2-year waiver from executive agency heads or a non-time-limited waiver from the ODNI. Accordingly, the Signatory Agencies are unable to form any estimate of the costs of this rule with regard to removing and replacing existing equipment and services. The Signatory Agencies intend to evaluate any information provided on this topic in comments submitted by the public.

5. Time To Complete the Representation

52.204–24

For the offer-by-offer representation at FAR 52.204–24 the Signatory Agencies assumed the cost for this portion of the rule to be *$11 billion* (= 3 [34] hours × $94.76 per hour × 102,792 unique entities × 378 [35] responses per entity).

In subsequent years, we assume that 26% [36] of new entrants will complete an offer and need to complete the offer-by-offer representation. Therefore, these costs will be incurred by 26% of the 79,319 [37] new entrants each year. Therefore, the Signatory Agencies calculated the total estimated cost for this part of the rule to be *$2.2 billion* (= 3 hours × $94.76 per hour × 26% × 79,319 × 378 responses per entity) per year in subsequent years.

The FAR Council notes that these costs are based on offer-by-offer representations; upon completion of the updates to SAM, offerors will be able to make annual representations, which is anticipated to reduce the burden.

52.204–25

FAR 52.204–25 requires a written report in cases where a contractor (or subcontractor to whom the clause has been flowed down) identifies or receives notification from any source that an entity in the supply chain uses any covered telecommunications equipment or services. The signatory agencies estimate that 5% [38] of the unique entities awarded a contract (5,140) will submit approximately 5 [39] written reports annually pursuant to FAR 52.204–25. Therefore, the Signatory Agencies calculated the total estimated cost for this part of the rule to be *$7.3 million* (= 3 hours × $94.76 per hour × 5,140 entities × 5 responses per entity) per year in subsequent years.

In subsequent years, we assume that half of the entities impacted in year 1 will incur these costs for 52.204–25. Therefore, the Signatory Agencies calculated the total estimated cost for this part of the rule to be *$3.6 million* (= 3 hours × $94.76 per hours 2,570 entities × 5 responses per entity) per year in subsequent years.

The total estimated burden for the representation and the clause for year one is *$11 billion.* The total annual cost for both representations in subsequent years is calculated as: *$2.2 billion.* The FAR Council acknowledges that there is substantial uncertainty underlying these estimates.

[30] The hours are an assumption based on subject matter expert judgment.

[31] According to data from the System for Award Management (SAM), as of February 2020, there were 387,967 unique vendors registered in SAM.

[32] The 50% value is an assumption based on subject matter expert judgment. In the absence, to be conservative, it assumes that 50% of new entrants will decide to perform corporate-wide training.

[33] This value is based on data on new registrants in *SAM.gov* on average for FY16, FY17, FY18, and FY19.

[34] The hours are an assumption based on subject matter expert judgment.

[35] The responses per entity is calculated by dividing the average number of annual awards in FY16–19 by the average number of unique entities awarded a contract (38,854,291 awards/102,792 unique awardees = 378).

[36] The percentage of 26% is the percentage of active entities registered in *SAM.gov* in FY20 that were awarded contracts.

[37] This value is based on data on new registrants in *SAM.gov* on average for FY16, FY17, FY18, and FY19.

[38] The 5% value was derived from subject matter expert judgment.

[39] The 5 reports value was derived from subject matter expert judgment.

6. Time To Develop a Full and Complete Laydown and Phase-Out Plan To Support Waiver Requests

The calculation at #2 above captures the time to develop a full and complete laydown. There is no way to accurately estimate the time required for offerors to develop a phase-out plan or the number of offerors for which a waiver will be requested.

The total cost of the above Public Cost Estimate in Year 1 is at least: *$12 billion.*

The total cost of the above Cost Estimate in Year 2 is at least: *$2.4 billion.*

The total cost estimate per year in subsequent years is at least: *$2.4 billion.*

The following is a summary of the estimated costs calculated in perpetuity at a 3 and 7-percent discount rate:

Summary (billions)	Total costs
Present Value (3%)	$89
Annualized Costs (3%)	2.7
Present Value (7%)	43
Annualized Costs (7%)	3

The FAR Council acknowledges that there is substantial uncertainty underlying these estimates, including elements for which an estimate is unavailable given inadequate information. As more information becomes available, including through comment in response to this notice, the FAR Council will seek to update these estimates which could very likely increase the estimated costs.

E. Government Cost Analysis

The FAR Council anticipates significant impact to the Government as a result of this rule. These impacts will appear as higher costs, reduced competition, and inability to meet some mission needs. These costs are justified in light of the compelling national security objective that this rule will advance.

The primary cost to the Government will be to review the representations and to process the waiver request. The cost to review the representations uses the same variables as the cost to the public to fill out the representation resulting in a total cost to the Government of $11 billion as the hourly rate, hours to review, and number of representations are the same as the industry calculations. The other cost to the Government, is the cost to review the written reports required by the clause and the calculation uses the same variables as the cost to the public to complete the report, resulting in a total cost to the Government of $7.3 million.

Higher Costs and Reduced Competition: It is anticipated that at least three factors will each lead to the Government paying higher prices for services and products it buys: (1) Contractors will pass along some of the new costs of compliance; (2) due to anticipated compliance costs, some contractors will choose to exit the Federal market, particularly for commercial services and products and a reduced level of competition would increase prices; and (3) the risk of commercial firms choosing not to do business with the Government may be heightened in areas of high technological innovation such as digital services. In recent years, DoD and GSA, among other Departments and agencies, have placed particular emphasis on recruiting non-traditional contractors to provide emerging tech services and this rule could discourage innovative technology firms from competing on Federal Government contracts.

It is also anticipated that many Federal contractors may need to hire or contract for consultants to aid them in reviewing and updating their supply chains. Market principles suggest that this may increase the costs for such experts, making it more difficult for small businesses to afford them.

Inability to Meet Mission Needs: The Government uses Competition in Contracting Act exceptions (FAR subpart 6.3) to use sole source acquisitions to meet agency needs. These acquisitions would be impacted as offerors will also be subject to the section 889 requirements. There are industries where the Government makes up a small portion of the total market. There may be markets where the vendors will choose to no longer do business with the Government; leaving no sources to meet those specific requirements for the Government. This will reduce agencies' abilities to satisfy some mission needs.

The total cost of the above Government Cost Estimate in Year 1 is: *$11 billion.*

The total cost of the above Cost Estimate in Year 2 is: *$2.2 billion.*

The total cost estimate per year in subsequent years is: *$2.2 billion.*

The following is a summary of the estimated costs calculated in perpetuity at a 3 and 7-percent discount rate:

Summary (billions)	Total costs
Present Value (3%)	$82.5
Annualized Costs (3%)	2.5
Present Value (7%)	40
Annualized Costs (7%)	2.8

F. Analysis of Alternatives

Alternative 1: The FAR Council could take no regulatory action to implement this statute. However, this alternative would not provide any implementation and enforcement of the important national security measures imposed by the law. Moreover, the general public would not experience the benefits of improved national security resulting from the rule as detailed above in Section C. As a result, we reject this alternative.

Alternative 2: The FAR Council could provide uniform procedures for how agency waivers must be initiated and processed. The statute provides this waiver authority to the head of each executive agency. Each executive agency operates a range of programs that have unique mission needs as well as unique security concerns and vulnerabilities. Since the waiver approval process will be based on each agency's judgment concerning particular use cases, standardizing the waiver process across agencies is not feasible. We believe that this alternative would not be able to best serve the public, as it would lead to inefficient waiver determinations at agencies whose ideal waiver process differs from the best possible uniform approach. As a result, we reject this alternative.

IV. Specific Questions for Comment

To understand the exact scope of this impact and how this impact could be affected in subsequent rulemaking, DoD, GSA, and NASA welcome input on the following questions regarding anticipated impact on affected parties.

- To what extent do you currently use any equipment, system, or service that itself uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system?

○ The FAR Council is considering as part of finalization of this rulemaking to expand the scope to require that the prohibition at 52.204–24(b)(2) and 52.204–25(b)(2) applies to the offeror and any affiliates, parents, and subsidiaries of the offeror that are domestic concerns, and expand the representation at 52.204–24(d)(2) so that the offeror represents on behalf of itself and any affiliates, parents, and subsidiaries of the offeror that are domestic concerns, as to represent whether they use covered telecommunications equipment or services. If the scope of rule was extended to cover affiliates, parents, and subsidiaries of the offeror that are domestic concerns, how would that

impact your ability to comply with the prohibition?

- To the extent you use any equipment, system or service that uses covered telecommunications equipment or services, how much do you estimate it would cost if you decide to cease such use to come into compliance with the rule?
- To what extent do you have insight into existing systems and their components?
- What equipment and services need to be checked to determine whether they include any covered telecommunications equipment or services?
  - What are the best processes and technology to use to identify covered telecommunications equipment or services?
  - Are there automated solutions?
- What are the challenges involved in identifying uses of covered telecommunications equipment or services (domestic, foreign and transnational) that would be prohibited by the rule?
- Do you anticipate use of any products or services that are unrelated to a service provided to the Federal Government and connects to the facilities of a third-party (*e.g.* backhaul, roaming, or interconnection arrangements) that uses covered telecommunications equipment or services?
- To what extent do you currently have direct control over existing equipment, systems, or services in use (*e.g.,* physical security systems) and their components, as contrasted with contracting for equipment, systems, or services that are used by you within meaning of the statute yet provided by a separate entity (*e.g.,* landlords)? How long will it take if you decide to remove and replace covered telecommunications equipment or services that your company uses?
- When a company identifies covered telecommunications equipment or services, what are the steps to take if you decide to replace the equipment or services?
  - What do companies do if their factory or office is located in foreign country where covered telecommunications equipment or services are prevalent and alternative solutions may be unavailable?
  - What are some best practices (*e.g.,* sourcing strategies) or technologies that can assist companies with replacing covered telecommunications equipment or services?
- Are there specific use cases in the supply chain where it would not be feasible to cease use of equipment, system(s), or services that use covered telecommunications equipment and services? Please be specific in explaining why cessation of use is not feasible.
  - Will the requirement to comply with this rule impact your willingness to offer goods and services to the Federal Government? Please be specific in describing the impact (*e.g.,* what types of products or services may no longer be offered, or offered in a modified form, and why)
  - The FAR Council recognizes there could be further costs associated with this rule (*e.g.* lost business opportunities, having to relocate a building in foreign country where there is no market alternative). What are they?
  - What additional information or guidance do you view as necessary to effectively comply with this rule?
  - What other challenges do you anticipate facing in effectively complying with this rule?
- Do you have data on the extent of the presence of covered telecommunications equipment or services? If so, please provide that data.
- Do you have data on the fully burdened cost to remove and replace covered telecommunications equipment or services, if that is a decision that you decide to make? If so, please provide that data and identify how you would revise the estimated costs in the cost analysis.

V. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

This rule does not add any new provisions or clauses. The rule does not change the applicability of existing provisions or clauses to contracts at or below the SAT and contracts for the acquisition of commercial items, including COTS items. The rule is updating the provision at FAR 52.204–24 and the clause at FAR 52.204–25 to implement section 889(a)(1)(B).

A. Applicability to Contracts at or Below the Simplified Acquisition Threshold

41 U.S.C. 1905 governs the applicability of laws to acquisitions at or below the simplified acquisition threshold (SAT). Section 1905 generally limits the applicability of new laws when agencies are making acquisitions at or below the SAT, but provides that such acquisitions will not be exempt from a provision of law under certain circumstances, including when, as in this case, the FAR Council makes a written determination and finding that it would not be in the best interest of the Federal Government to exempt contracts and subcontracts in amounts not greater than the SAT from the provision of law.

B. Applicability to Contracts for the Acquisition of Commercial Items, Including Commercially Available Off-the-Shelf Items

41 U.S.C. 1906 governs the applicability of laws to contracts for the acquisition of commercial items, and is intended to limit the applicability of laws to contracts for the acquisition of commercial items. Section 1906 provides that if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt commercial item contracts, the provision of law will apply to contracts for the acquisition of commercial items.

Finally, 41 U.S.C. 1907 states that acquisitions of commercially available off-the-shelf (COTS) items will be exempt from a provision of law unless certain circumstances apply, including if the Administrator for Federal Procurement Policy makes a written determination and finding that it would not be in the best interest of the Federal Government to exempt contracts for the procurement of COTS items from the provision of law.

C. Determinations

The FAR Council has determined that it is in the best interest of the Government to apply the rule to contracts at or below the SAT and for the acquisition of commercial items. The Administrator for Federal Procurement Policy has determined that it is in the best interest of the Government to apply this rule to contracts for the acquisition of COTS items.

While the law does not specifically address acquisitions of commercial items, including COTS items, there is an unacceptable level of risk for the Government in contracting with entities that use equipment, systems, or services that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. This level of risk is not alleviated by the fact that the equipment or service being acquired has been sold or offered for sale to the general public, either in the same form or a modified form as sold to the Government (*i.e.,* that it is a commercial item or COTS item), nor by the small size of the purchase (*i.e.,* at or below the SAT).

VI. Interim Rule Determination and Executive Orders 12866, 13563, and 13771

A determination has been made under the authority of the Secretary of Defense (DoD), Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling circumstances necessitate that this interim rule go into effect earlier than 60 days after its publication date.

Since Section 889 of the NDAA was signed on August 13, 2018, the FAR Council has been working diligently to implement the statute, which has multiple effective dates embedded in Section 889. Like many countries, the United States has increasingly relied on a global industrial supply chain. As threats have increased, so has the Government's scrutiny of its contractors and their suppliers. Underlying these efforts is the concern a foreign government will be able to expropriate valuable technologies, engage in espionage with regard to sensitive U.S. Government information, and/or exploit vulnerabilities in products or services. It is worth noting this rule follows a succession of other FAR and DOD rules dealing with supply chain and cybersecurity.

Government agencies are already authorized to exclude certain contractors and products from specified countries. For example, Section 515 of the Consolidated Appropriations Act of 2014 required certain non-DoD agencies to conduct a supply chain risk assessment before acquiring high- or-moderate-impact information systems. The relevant agencies are required to conduct the supply chain risk assessments in conjunction with the FBI to determine whether any cyber-espionage or sabotage risk associated with the acquisition of these information systems exist, with a focus on cyber threats from companies ''owned, directed, or subsidized by the People's Republic of China.''

More recently, U.S. intelligence agencies raised concerns that Kaspersky Lab executives were closely tied to the Russian government, and that a Russian cybersecurity law would compel Kaspersky to help Russian intelligence agencies conduct espionage. As a result, DHS issued a Binding Operational Directive effectively barring civilian Government agencies from using the software. In the FY 2018 NDAA, Congress prohibited the entire U.S. Government from using products and services from Kaspersky or related entities. In June 2018, this prohibition was implemented as an interim rule across the U.S. Government by FAR 52.204–23.

Section 889 differs from the previous efforts in substantial ways. Unlike the blanket prohibition on agency use of goods and services from Kaspersky Labs, the prohibitions in Section 889 apply to multiple companies, and apply with slightly different characterizations to products and services from the various named companies. Additionally, section 889 contains carve-outs under which the prohibitions do not apply, further complicating interpretation and implementation of rulemaking. Finally, section 889 contains distinct prohibitions related to contracting, with the first applying to products and services purchased for use by the Government, and the second applying to use of the covered telecommunications equipment or services by contractors. Given the various provisions of Section 889, including the focus in the (a)(1)(A) prohibition on addressing risk to the Government's own use of covered telecommunications equipment and services and the shorter time period available to implement that prohibition, the FAR Council first developed and published at 84 FR 40216 on August 13, 2019, FAR Case 2018–017 to implement that prohibition. As discussed in the background section of this rule, that rule focused on products and services sold to the Government (directly or indirectly through a prime contract). Changes necessary to the System for Award Management to reduce the burden of the rule were not available by the effective date of the first rule, so in order to decrease the burden on contractors from this first rule, the FAR Council published a second interim rule on Section 889(a)(1)(A) at 84 FR 68314 on December 13, 2019. After the publication of this second rule, the FAR Council accelerated its ongoing work on the provisions of Section 889(a)(1)(B). Section 889(a)(1)(B) focuses on the Federal Government's ability to contract with companies that use the covered products or services at the requisite threshold.

Given the expansiveness and complexity of Section 889(a)(1)(B), this rule required substantial up-front analysis. As described elsewhere in the rule, all three signatory agencies held public meetings to hear directly from industry on concerns with this rule, with the first occurring in July of 2019 and the most recent occurring in March of 2020. The rule was prepared in part in the spring of 2020 as the nation began shutdown due to the COVID–19 pandemic and work across the Government was diverted to respond to the national emergency; the concentration of all available resources on the response to the pandemic very significantly delayed the Government's ability to finish the rule. These factors have left the FAR Council with insufficient time to publish the rule with 60 days before the legislatively established effective date of August 13, 2020, or to complete full public notice and comment before the rule becomes effective. As noted, however, the agencies are seeking public comment on this interim rule and will consider and address those comments.

Having an implementing regulation in place by the effective date is critically important to avoid confusion, uncertainty, and potentially substantial legal consequences for agencies and the vendor community. The statute requires contractors to identify the use of covered telecommunications equipment and services in their operations and the prohibitions will take effect on August 13, 2020. If they did so without an implementing regulation in place, contractors would have no guidance as to how to comply with the requirements of Section 889(a)(1)(B), leading to situations where contractors could refuse to contract with the Government over fears that lack of compliance could yield claims for breach of contract, or claims under the False Claims Act. Concerns of this sort were expressed during the outreach conducted by the FAR Council, with contractors expressing confusion as to the scope of the statutory prohibition, and asking for explicit guidance regarding what is required to comply with the requirement; this guidance is provided by the rule in the form of instructions regarding a reasonable inquiry and what must be represented to the Government. Absent coverage in the FAR to implement these requirements in a uniform manner as of the effective date, agencies would also be forced to implement the statute on their own, absent that unifying guidance, leading to rapidly divergent implementation paths, and creating substantial additional confusion and duplicative costs for the regulated contracting community. Publication of a proposed rule under these circumstances, while providing some indication of the direction the Government intended to take, would not provide sufficient clarity or certainty to avoid these consequences, given the complexity of the subject rule.

For the foregoing reasons, pursuant to 41 U.S.C. 1707(d), the FAR Council finds that urgent and compelling circumstances make compliance with

the notice and comment and delayed effective date requirements of 41 U.S.C. 1707(a) and (b) impracticable, and invokes the exception to those requirements under 1707(d). While a public comment process will not be completed prior to the rule's effective date, the FAR Council has incorporated feedback solicited through extensive outreach already undertaken, including through public meetings conducted over the course of nine months, and the feedback received through the two rulemakings associated with Section 889(a)(1)(A). The FAR Council will also consider comments submitted in response to this interim rule in issuing a subsequent rulemaking.

This interim rule is economically significant for the purposes of Executive Orders 12866 and 13563. This rule is not subject to the requirements of E.O. 13771 (82 FR 9339, February 3, 2017) because the benefit-cost analysis demonstrates that the regulation is anticipated to improve national security as its primary direct benefit. This rule is meant to mitigate risks across the supply chains that provide hardware, software, and services to the U.S. Government and further integrate national security considerations into the acquisition process.

The Office of Information and Regulatory Affairs (OIRA) has determined that this is a major rule under the Congressional Review Act (CRA) (5 U.S.C. 804(2)). Under the CRA (5 U.S.C. 801(a)(3)), a major rule generally may not take effect until 60 days after a report on the rule is received by Congress. As a result of the factors identified above, the FAR Council has insufficient time to prepare and complete a full public notice and comment rulemaking proceeding and to timely complete a final rule prior to the effective date of August 13, 2020. Because of the substantial additional impact to the regulated community if the rule is not in place on the effective date, the FAR Council has found good cause to forego notice and public procedure, the Council also determines, pursuant to 5 U.S.C. 808(2), that this interim rule will take effect on August 13, 2020.

Pursuant to 41 U.S.C. 1707 and FAR 1.501–3(b), DoD, GSA, and NASA will consider public comments received in response to this interim rule in the formation of the final rule.

VII. Regulatory Flexibility Act

DoD, GSA, and NASA expect that this rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* An Initial Regulatory Flexibility Analysis (IRFA) has been performed, and is summarized as follows:

The reason for this interim rule is to implement section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232).

The objective of the rule is to provide an information collection mechanism that relies on an offer-by-offer representation that is required to enable agencies to determine and ensure that they are complying with section 889(a)(1)(B).

The legal basis for the rule is section 889(a)(1)(B) of the NDAA for FY 2019, which prohibits the Government from entering into, or extending or renewing, a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, on or after August 13, 2020, unless an exception applies or a waiver has been granted. This prohibition applies to an entity that uses at the prime contractor level any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, regardless of whether that usage is in performance of work under a Federal contract. This prohibition does not flow-down to subcontractors.

This collection includes a burden for requiring an offeror to represent if it ''does'' or ''does not'' use any equipment, system, or service that uses covered telecommunications equipment or services.

The representation requirement being added to the FAR provision at 52.204–24 will be included in all solicitations, including solicitations for contracts with small entities and is an offer-by-offer representation. A data set was generated from the Federal Procurement Data System (FPDS) for FY 2016, 2017, 2018 and 2019 for use in estimating the number of small entities affected by this rule.

The FPDS data indicates that the Government awarded contracts to an average of 102,792 unique entities, of which 75,112 (73 percent) were small entities. DoD, GSA, and NASA estimate that the representation at 52.204–24 will impact all unique entities awarded Government contracts, of which 75,112 are small entities.

This rule amends the solicitation provision at 52.204–24 to require all vendors to represent on an offer-by-offer basis, that it ''does'' or ''does not'' use any covered telecommunications equipment or services, or any equipment, system, or service that uses covered telecommunications equipment or services and if it does to provide an additional disclosure.

If the offeror selects ''does'' in the representation at 52.204–24(d)(2), the offeror is required to further disclose, per paragraph (e), substantial detail regarding the basis for selecting ''does'' in the representation.

This rule will impact some small businesses and their ability to provide Government services at the prime contract level, since some small entities lack the resources to efficiently update their supply chain and information systems, which may be useful to comply with the prohibition.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

The FAR Council intends to publish a subsequent rulemaking to allow offerors, including small entities, to represent annually in the System for Award Management (SAM) after conducting a reasonable inquiry. Only offerors that provide an affirmative response to the annual representation would be required to provide the offer-by-offer representation at 52.204–24(d)(2). The annual representation is anticipated to reduce the burden on small entities.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2019–009) in correspondence.

VIII. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA) provides that an agency generally cannot conduct or sponsor a collection of information, and no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, unless that collection has obtained OMB approval and displays a currently valid OMB Control Number.

DoD, GSA, and NASA requested, and OMB authorized, emergency processing of the collection of information involved in this rule, consistent with 5 CFR 1320.13. DoD, GSA, and NASA have determined the following conditions have been met:

a. The collection of information is needed prior to the expiration of time periods normally associated with a routine submission for review under the provisions of the PRA, because the prohibition in section 889(a)(1)(B) goes into effect on August 13, 2020.

b. The collection of information is essential to the mission of the agencies to ensure the Federal Government complies with section 889(a)(1)(B) on the statute's effective date in order to protect the Government supply chain

from risks posed by covered telecommunications equipment or services.

c. Moreover, DoD, GSA, and NASA cannot comply with the normal clearance procedures because public harm is reasonably likely to result if current clearance procedures are followed. Authorizing collection of this information on the effective date will ensure that agencies do not enter into, extend, or renew contracts with any entity that uses equipment, systems, or services that use telecommunications equipment or services from certain named companies as a substantial or essential component or critical technology as part of any system in violation of the prohibition in section 889(a)(1)(B).

DoD, GSA, and NASA intend to provide a separate 60-day notice in the **Federal Register** requesting public comment on the information collections contained within this rule under OMB Control Number 9000–0201.

The annual public reporting burden for this collection of information is estimated as follows:

Agency: DoD, GSA, and NASA.
Type of Information Collection: New Collection.
Title of Collection: Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment.
FAR Clause: 52.204–24.
Affected Public: Private Sector—Business.
Total Estimated Number of Respondents: 102,792.
Average Responses per Respondents: 378.
Total Estimated Number of Responses: 38,854,291.
Average Time (for both positive and negative representations) per Response: 3 hours.
Total Annual Time Burden: 116,562,873.

Agency: DoD, GSA, and NASA.
Type of Information Collection: New Collection.
Title of Collection: Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.
FAR Clause: 52.204–25.
Affected Public: Private Sector—Business.
Total Estimated Number of Respondents: 5,140.
Average Responses per Respondents: 5.
Total Estimated Number of Responses: 25,700.
Average Time per Response: 3 hours.
Total Annual Time Burden: 77,100.

Agency: DoD, GSA, and NASA.
Type of Information Collection: New Collection.
Title of Collection: Waiver from Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.
FAR Clause: 52.204–25.
Affected Public: Private Sector—Business.
Total Estimated Number of Respondents: 20,000.
Average Responses per Respondents: 1.
Total Estimated Number of Responses: 20,000.
Average Time per Response: 160 hours.
Total Annual Time Burden: 3,200,000.

The public reporting burden for this collection of information consists of a representation to identify whether an offeror uses covered telecommunications equipment or services for each offer as required by 52.204–24 and reports of identified use of covered telecommunications equipment or services as required by 52.204–25. The representation at 52.204–24 is estimated to average 3 hours per response to review the prohibitions, research the source of the product or service, and complete the additional detailed disclosure, if applicable. Reports required by 52.204–25 are estimated to average 3 hours per response, including the time for reviewing definitions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the report.

If the Government seeks a waiver from the prohibition, the offeror will be required to provide a full and complete laydown of the presences of covered telecommunications or video surveillance equipment or services in the entity's supply chain and a phase-out plan to eliminate such covered telecommunications equipment or services from the offeror's systems. There is no way to estimate the total number of waivers at this time. For the purposes of complying with the PRA analysis, the FAR Council estimates 20,000 waivers; however there is no data for the basis of this estimate. This estimate may be higher or lower once the rule is in effect.

The subsequent 60-day notice to be published by DoD, GSA, and NASA will invite public comments.

List of Subjects in 48 CFR Parts 1, 4, 13, 39, and 52

Government procurement.

William F. Clark,

Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

Therefore, DoD, GSA, and NASA are amending 48 CFR parts 1, 4, 13, 39, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 4, 13, 39, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

■ 2. In section 1.106 amend the table by revising the entries for ''4.21'', ''52.204–24'' and ''52.204–25'' to read as follows:

1.106 OMB approval under the Paperwork Reduction Act.

* * * * *

FAR segment	OMB control No.
* * * * *	
4.21	9000–0199 and 9000–0201.
* * * * *	
52.204–24	9000–0199 and 9000–0201.
52.204–25	9000–0199 and 9000–0201
* * * * *	

PART 4—ADMINISTRATIVE AND INFORMATION MATTERS

4.2100 [Amended]

■ 3. Amend section 4.2100 by removing ''paragraph (a)(1)(A)'' and adding ''paragraphs (a)(1)(A) and (a)(1)(B)'' in its place.

■ 4. Amend section 4.2101 by adding in alphabetical order the definitions ''Backhaul'', ''Interconnection arrangements'', ''Reasonable inquiry'' and ''Roaming'' to read as follows:

4.2101 Definitions.

* * * * *

Backhaul means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (*e.g.,* connecting cell phones/towers to the core telephone network). Backhaul can be wireless (*e.g.,* microwave) or wired (*e.g.,* fiber optic, coaxial cable, Ethernet).

* * * * *

Interconnection arrangements means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (*e.g.,* connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

Reasonable inquiry means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

Roaming means cellular communications services (*e.g.,* voice,

video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

* * * * *

■ 5. Amend section 4.2102 by revising paragraphs (a) and (c) to read as follows:

4.2102 Prohibition.

(a) Prohibited equipment, systems, or services.

(1) On or after August 13, 2019, agencies are prohibited from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (b) of this section applies or the covered telecommunications equipment or services are covered by a waiver described in 4.2104.

(2) On or after August 13, 2020, agencies are prohibited from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (b) of this section applies or the covered telecommunications equipment or services are covered by a waiver described in 4.2104. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract.

* * * * *

(c) *Contracting Officers.* Unless an exception at paragraph (b) of this section applies or the covered telecommunications equipment or service is covered by a waiver described in 4.2104, Contracting Officers shall not—

(1) Procure or obtain, or extend or renew a contract (*e.g.,* exercise an option) to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or

(2) Enter into a contract, or extend or renew a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

* * * * *

■ 6. Amend section 4.2103 by revising paragraph (a)(2) to read as follows:

4.2103 Procedures.

(a) * * *

(2)(i) If the offeror selects ''will not'' in paragraph (d)(1) of the provision at 52.204–24 or ''does not'' in paragraph (d)(2) of the provision at 52.204–24, the contracting officer may rely on the representations, unless the contracting officer has reason to question the representations. If the contracting officer has a reason to question the representations, the contracting officer shall follow agency procedures.

(ii) If an offeror selects ''will'' in paragraph (d)(1) of the provision at 52.204–24, the offeror must provide the information required by paragraph (e)(1) of the provision at 52.204–24, and the contracting officer shall follow agency procedures.

(iii) If an offeror selects ''does'' in paragraph (d)(2) of the provision at 52.204–24, the offeror must complete the disclosure at paragraph (e)(2) of the provision at 52.204–24, and the contracting officer shall follow agency procedures.

* * * * *

■ 7. Amend section 4.2104 by revising paragraphs (a)(1) introductory text and (a)(2), and adding paragraphs (a)(3) and (4) to read as follows:

4.2104 Waivers.

(a) * * *

(1) *Waiver.* The waiver may be provided, for a period not to extend beyond August 13, 2021 for the prohibition at 4.2102(a)(1), or beyond August 13, 2022 for the prohibition at 4.2102(a)(2), if the Government official, on behalf of the entity, seeking the waiver submits to the head of the executive agency—

* * * * *

(2) *Executive agency waiver requirements for the prohibition at 4.2102(a)(2).* Before the head of an executive agency can grant a waiver to the prohibition at 4.2102(a)(2), the agency must—

(i) Have designated a senior agency official for supply chain risk management, responsible for ensuring the agency effectively carries out the supply chain risk management functions and responsibilities described in law, regulation, and policy;

(ii) Establish participation in an information-sharing environment when and as required by the Federal Acquisition Security Council (FASC) to facilitate interagency sharing of relevant acquisition supply chain risk information;

(iii) Notify and consult with the Office of the Director of National Intelligence (ODNI) on the waiver request using ODNI guidance, briefings, best practices, or direct inquiry, as appropriate; and

(iv) Notify the ODNI and the FASC 15 days prior to granting the waiver that it intends to grant the waiver.

(3) *Waivers for emergency acquisitions.*

(i) In the case of an emergency, including a declaration of major disaster, in which prior notice and consultation with the ODNI and prior notice to the FASC is impracticable and would severely jeopardize performance of mission-critical functions, the head of an agency may grant a waiver without meeting the notice and consultation requirements under 4.2104(a)(2)(iii) and 4.2104(a)(2)(iv) to enable effective mission critical functions or emergency response and recovery.

(ii) In the case of a waiver granted in response to an emergency, the head of an agency granting the waiver must—

(A) Make a determination that the notice and consultation requirements are impracticable due to an emergency condition; and

(B) Within 30 days of award, notify the ODNI and the FASC of the waiver issued under emergency conditions in addition to the waiver notice to Congress under 4.2104(a)(4).

(4) *Waiver notice.*

(i) For waivers to the prohibition at 4.2102(a)(1), the head of the executive agency shall, not later than 30 days after approval—

(A) Submit in accordance with agency procedures to the appropriate congressional committees the full and complete laydown of the presences of covered telecommunications or video surveillance equipment or services in the relevant supply chain; and

(B) The phase-out plan to eliminate such covered telecommunications or video surveillance equipment or services from the relevant systems.

(ii) For waivers to the prohibition at 4.2102(a)(2), the head of the executive agency shall, not later than 30 days after approval submit in accordance with agency procedures to the appropriate congressional committees—

(A) An attestation by the agency that granting of the waiver would not, to the agency's knowledge having conducted the necessary due diligence as directed by statute and regulation, present a material increase in risk to U.S. national security;

(B) The full and complete laydown of the presences of covered

telecommunications or video surveillance equipment or services in the relevant supply chain, to include a description of each category of covered technology equipment or services discovered after a reasonable inquiry, as well as each category of equipment, system, or service used by the entity in which such covered technology is found after conducting a reasonable inquiry; and

(C) The phase-out plan to eliminate such covered telecommunications or video surveillance equipment or services from the relevant systems.

* * * * *

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

■ 8. Amend section 13.201 by redesignating paragraph (j) as (j)(1) and adding paragraph (j)(2) to read as follows:

13.201 General.

* * * * *

(j)(1) * * *

(2) On or after August 13, 2020, agencies are prohibited from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception applies or a waiver is granted (see subpart 4.21). This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract.

PART 39—ACQUISITION OF INFORMATION TECHNOLOGY

■ 9. Amend section 39.101 by redesignating paragraph (f) as (f)(1) and adding paragraph (f)(2) to read as follows:

39.101 Policy.

* * * * *

(f)(1) * * *

(2) On or after August 13, 2020, agencies are prohibited from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception applies or a waiver is granted (see subpart 4.21). This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 10. Revise section 52.204–24 to read as follows:

52.204–24 Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment.

As prescribed in 4.2105(a), insert the following provision:

Representation Regarding Certain Telecommunications and Video Surveillance Services or Equipment (AUG 2020)

The Offeror shall not complete the representation at paragraph (d)(1) of this provision if the Offeror has represented that it ''does not provide covered telecommunications equipment or services as a part of its offered products or services to the Government in the performance of any contract, subcontract, or other contractual instrument'' in the provision at 52.204–26, Covered Telecommunications Equipment or Services—Representation, or in paragraph (v) of the provision at 52.212–3, Offeror Representations and Certifications–Commercial Items.

(a) *Definitions.* As used in this provision-

Backhaul, covered telecommunications equipment or services, critical technology, interconnection arrangements, reasonable inquiry, roaming, and *substantial or essential component* have the meanings provided in the clause 52.204–25, Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

(b) *Prohibition.* (1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. Nothing in the prohibition shall be construed to—

(i) Prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract or extending or renewing a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract. Nothing in the prohibition shall be construed to—

(i) Prohibit the head of an executive agency from procuring with an entity to provide a service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or

(ii) Cover telecommunications equipment that cannot route or redirect user data traffic or cannot permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(c) *Procedures.* The Offeror shall review the list of excluded parties in the System for Award Management (SAM) (*https://www.sam.gov*) for entities excluded from receiving federal awards for ''covered telecommunications equipment or services.''

(d) *Representations.* The Offeror represents that—

(1) It [ ] will, [ ] will not provide covered telecommunications equipment or services to the Government in the performance of any contract, subcontract or other contractual instrument resulting from this solicitation. The Offeror shall provide the additional disclosure information required at paragraph (e)(1) of this section if the Offeror responds ''will'' in paragraph (d)(1) of this section; and

(2) After conducting a reasonable inquiry, for purposes of this representation, the Offeror represents that—

It [ ] does, [ ] does not use covered telecommunications equipment or services, or use any equipment, system, or service that uses covered telecommunications equipment or services. The Offeror shall provide the additional disclosure information required at paragraph (e)(2) of this section if the Offeror responds ''does'' in paragraph (d)(2) of this section.

(e) *Disclosures.* (1) Disclosure for the representation in paragraph (d)(1) of this provision. If the Offeror has responded ''will'' in the representation in paragraph (d)(1) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment—

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the original equipment manufacturer (OEM) or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(ii) For covered services—

(A) If the service is related to item maintenance: A description of all covered

telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the Product Service Code (PSC) of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(1) of this provision.

(2) Disclosure for the representation in paragraph (d)(2) of this provision. If the Offeror has responded ''does'' in the representation in paragraph (d)(2) of this provision, the Offeror shall provide the following information as part of the offer:

(i) For covered equipment—

(A) The entity that produced the covered telecommunications equipment (include entity name, unique entity identifier, CAGE code, and whether the entity was the OEM or a distributor, if known);

(B) A description of all covered telecommunications equipment offered (include brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); and

(C) Explanation of the proposed use of covered telecommunications equipment and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

(ii) For covered services—

(A) If the service is related to item maintenance: A description of all covered telecommunications services offered (include on the item being maintained: Brand; model number, such as OEM number, manufacturer part number, or wholesaler number; and item description, as applicable); or

(B) If not associated with maintenance, the PSC of the service being provided; and explanation of the proposed use of covered telecommunications services and any factors relevant to determining if such use would be permissible under the prohibition in paragraph (b)(2) of this provision.

(End of provision)

■ 11. Amend section 52.204–25 by—

■ a. Revising the date of the clause;

■ b. In paragraph (a), adding in alphabetical order the definitions ''Backhaul'', ''Interconnection arrangements'', ''Reasonable inquiry'' and ''Roaming'';

■ c. Revising paragraph (b); and

■ d. Removing from paragraph (e) ''this paragraph (e)'' and adding ''this paragraph (e) and excluding paragraph (b)(2)'' in its place.

The revisions read as follows:

52.204–25 Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment.

* * * * *

Prohibition on Contracting for Certain Telecommunications and Video Surveillance Services or Equipment (AUG 2020)

(a) * * *

Backhaul means intermediate links between the core network, or backbone network, and the small subnetworks at the edge of the network (*e.g.,* connecting cell phones/towers to the core telephone network). Backhaul can be wireless (*e.g.,* microwave) or wired (*e.g.,* fiber optic, coaxial cable, Ethernet).

* * * * *

Interconnection arrangements means arrangements governing the physical connection of two or more networks to allow the use of another's network to hand off traffic where it is ultimately delivered (*e.g.,* connection of a customer of telephone provider A to a customer of telephone company B) or sharing data and other information resources.

Reasonable inquiry means an inquiry designed to uncover any information in the entity's possession about the identity of the producer or provider of covered telecommunications equipment or services used by the entity that excludes the need to include an internal or third-party audit.

Roaming means cellular communications services (*e.g.,* voice, video, data) received from a visited network when unable to connect to the facilities of the home network either because signal coverage is too weak or because traffic is too high.

* * * * *

(b) *Prohibition.* (1) Section 889(a)(1)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232) prohibits the head of an executive agency on or after August 13, 2019, from procuring or obtaining, or extending or renewing a contract to procure or obtain, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. The Contractor is prohibited from providing to the Government any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104.

(2) Section 889(a)(1)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (Pub. L. 115–232) prohibits the head of an executive agency on or after August 13, 2020, from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception at paragraph (c) of this clause applies or the covered telecommunication equipment or services are covered by a waiver described in FAR 4.2104. This prohibition applies to the use of covered telecommunications equipment or services, regardless of whether that use is in performance of work under a Federal contract.

* * * * *

■ 12. Amend section 52.212–5 by—

■ a. Revising the date of the clause;

■ b. Removing from paragraphs (a)(3) and (e)(1)(iv) ''AUG 2019'' and adding ''AUG 2020'' in their places, respectively;

■ c. Revising the date of Alternate II; and

■ d. In Alternate II, amend paragraph (e)(1)(ii)(D) by removing ''AUG 2019'' and adding ''AUG 2020'' in its place.

The revisions read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (AUG 2020)

* * * * *

Alternate II (AUG 2020). * * *

* * * * *

■ 13. Amend section 52.213–4 by—

■ a. Revising the date of the clause;

■ b. Removing from paragraph (a)(1)(iii) ''AUG 2019'' and adding ''AUG 2020'' in its place; and

■ c. Removing from paragraph (a)(2)(viii) ''JUN 2020'' and adding ''AUG 2020'' in its place.

The revision reads as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (AUG 2020)

* * * * *

■ 14. Amend section 52.244–6 by—

■ a. Revising the date of the clause; and

■ b. Removing from paragraph (c)(1)(vi) ''AUG 2019'' and adding ''AUG 2020'' in its place.

The revision reads as follows:

52.244–6 Subcontracts for Commercial Items.

* * * * *

Subcontracts for Commercial Items (AUG 2020)

* * * * *

[FR Doc. 2020–15293 Filed 7–13–20; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

[Docket No. FAR–2020–0051, Sequence No. 4]

Federal Acquisition Regulation; Federal Acquisition Circular 2020–08; Small Entity Compliance Guide

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of DOD, GSA, and NASA. This *Small Entity Compliance Guide* has been prepared in accordance with section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of the rule appearing in Federal Acquisition Circular (FAC) 2020–08, which amends the Federal Acquisition Regulation (FAR). An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding this rule by referring to FAC 2020–08, which precedes this document. These documents are also available via the internet at *https://www.regulations.gov.*

DATES: July 14, 2020.

FOR FURTHER INFORMATION CONTACT: *Farpolicy@gsa.gov* or call 202–969–4075. Please cite FAC 2020–08, FAR case 2019–009.

RULE LISTED IN FAC 2020–08

Subject	FAR case
* Prohibition on Contracting with Entities Using Certain Telecommunications and Video Surveillance Services or Equipment	2019–009

ADDRESSES: The FAC, including the SECG, is available via the internet at *https://www.regulations.gov.*

SUPPLEMENTARY INFORMATION: A summary for each FAR rule follows. For the actual revisions and/or amendments made by this FAR case, refer to the specific subject set forth in the document following this summary. FAC 2020–08 amends the FAR as follows:

Prohibition on Contracting With Entities Using Certain Telecommunications and Video Surveillance Services or Equipment (FAR Case 2019–009)

This interim rule amends the Federal Acquisition Regulation to implement section 889(a)(1)(B) of Title VII of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232). Paragraph (a)(1)(B) of section 889 prohibits executive agencies from entering into, or extending or renewing, a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, on or after August 13, 2020 unless an exception applies or a waiver is granted.

To implement paragraph (a)(1)(B) of section 889, the provision at 52.204–24 requires all offerors to represent, after conducting a reasonable inquiry, whether covered telecommunications equipment or services are used by the offeror, and if so, to provide further information. The clause at 52.204–25 prohibits the head of an executive agency from entering into a contract, or extending or renewing a contract, with an entity that uses any equipment, system or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system, unless an exception applies or a waiver is granted. The contractor must report use of any such equipment, systems, or services discovered during contract performance.

This rule applies to all acquisitions, including acquisitions at or below the simplified acquisition threshold and to acquisitions of commercial items, including commercially available off-the-shelf items. It may have a significant economic impact on a substantial number of small entities.

This interim rule is being implemented as a national security measure to protect Government information and information and communication technology systems.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2020–15294 Filed 7–13–20; 8:45 am]

BILLING CODE 6820–EP–P

FEDERAL REGISTER

Vol. 85 Tuesday,
No. 135 July 14, 2020

Part VI

The President

Executive Order 13935—White House Hispanic Prosperity Initiative

Federal Register
Vol. 85, No. 135
Tuesday, July 14, 2020

Presidential Documents

Title 3—

The President

Executive Order 13935 of July 9, 2020

White House Hispanic Prosperity Initiative

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to improve Hispanic Americans' access to educational and economic opportunities, it is hereby ordered as follows:

Section 1. *Purpose*. The success of Hispanic Americans is integral to the economic future of our country. As more than 60 million Hispanics live in the United States today, Hispanics are the largest minority group in the country. Hispanics are also the Nation's youngest major racial or ethnic group. Generations of Hispanics constituting different backgrounds and cultures have contributed to building a strong and prosperous America. Their collective contributions continue a legacy of inspiration that is a cherished part of the American experience.

While we celebrate the many ways Hispanic Americans have contributed to our Nation, we also recognize that they face challenges in accessing educational and economic opportunities. In the last 3 years, my Administration has supported school choice, Hispanic-Serving Institutions (HSIs), and new career pathways, including apprenticeships and work-based learning initiatives, because quality education options offering multiple pathways to economic success are critical to developing our Nation's potential for the jobs of tomorrow. My Administration has also supported investment in economically distressed communities, including through Opportunity Zones, and economic opportunities for small and minority-owned businesses. The initiative set forth in this order increases emphasis on the connection between educational and economic opportunities, and exploring and promoting opportunities for Hispanic Americans, both through and outside traditional education options, that lead to economic prosperity. Today, Americans have more paths to prosperity than any previous generation, and it is necessary to ensure that Hispanic Americans have every opportunity to access these pathways and to fulfill their educational and economic aspirations.

Sec. 2. *White House Hispanic Prosperity Initiative.* There is established the White House Hispanic Prosperity Initiative (Initiative), housed in the Department of Education (Department).

(a) The mission of the Initiative shall be to improve access by Hispanic Americans to educational and economic opportunities. Consistent with its mission, the Initiative shall:

(i) identify and promote educational and workforce development practices that have improved educational, professional, and economic outcomes for Hispanic Americans;

(ii) encourage private-sector initiatives and foster public-private partnerships that improve access to educational and economic opportunities for Hispanic Americans;

(iii) develop a national network of individuals, organizations, and communities, with which to consult and collaborate regarding practices and policies that improve access to educational and economic opportunities for Hispanic Americans;

(iv) monitor the development, implementation, and coordination of Federal Government educational, workforce, and business development programs designed to improve outcomes for Hispanic Americans; and

(v) advise the President, through the Secretary of Education (Secretary), on issues of importance to Hispanic Americans and policies relating to Hispanic Americans' prosperity.

(b) The Initiative shall be led by an Executive Director, designated by the Secretary. The Executive Director shall also serve as Executive Director of the Commission created by section 3 of this order. In addition to leading the work of the Initiative, the Executive Director shall coordinate the work of, and provide administrative support for, the Commission. As appropriate, the Department shall provide the Initiative with staff, resources, and administrative support, to the extent permitted by law and subject to the availability of appropriations.

(c) All executive departments and agencies (agencies) shall, to the extent permitted by law, provide such information, support, and assistance to the Initiative as the Secretary may request.

(d) The Initiative, acting through the Executive Director, shall provide regular reports on its activities to appropriate officials in the Executive Office of the President, including the Director of the Office of Management and Budget, the Director of the Office of Science and Technology Policy, the Assistant to the President for the Office of American Innovation, the Assistant to the President for the Office of Economic Initiatives, the Assistant to the President for Domestic Policy, the Director of the Office of Public Liaison, and the Director of Intergovernmental Affairs.

(e) As part of the Initiative, there is established an Interagency Working Group (Working Group) to collaborate regarding resources and opportunities available across the Federal Government to increase educational and economic opportunities for Hispanic Americans. The Working Group shall also serve as a channel for communication between the Initiative and other agencies.

(i) The Working Group shall be chaired by the Executive Director of the Initiative and shall consist of a senior official from the Domestic Policy Council, the Office of American Innovation, the Office of Public Liaison, and each agency that develops or implements policies relating to Hispanic American prosperity, as identified by the Secretary.

(ii) The Department shall provide the Working Group with administrative support to the extent permitted by law and subject to the availability of appropriations.

Sec. 3. *The President's Advisory Commission on Hispanic Prosperity.* There is established in the Department the President's Advisory Commission on Hispanic Prosperity (Commission).

(a) The Commission shall be composed of not more than 20 members, who shall be appointed by the President. The Commission may include individuals from outside the Federal Government with relevant experience or subject matter expertise in promoting educational opportunities and economic success in the Hispanic American community. The Commission shall also include the following officers, or their designees:

(i) the Secretary of Commerce;

(ii) the Secretary of Labor;

(iii) the Secretary of Housing and Urban Development;

(iv) the Secretary of Education; and

(v) the Administrator of the Small Business Administration.

(b) The functions of the Commission shall be to:

(i) promote pathways to in-demand jobs for Hispanic American students, including apprenticeships, internships, fellowships, mentorships, and work-based learning initiatives;

(ii) strengthen HSIs, as defined by the Higher Education Act of 1965, as amended, and increase the participation of the Hispanic American community, Hispanic-serving school districts, and HSIs in the programs of the Department and other agencies;

(iii) promote local-based and national private-public partnerships to promote high-quality education, training, and economic opportunities for Hispanic Americans;

(iv) promote awareness of educational opportunities for Hispanic American students, including options to enhance school choice, personalized learning, family engagement, and civics education;

(v) promote public awareness of the educational and training challenges that Hispanic Americans face and the causes of these challenges;

(vi) monitor changes in Hispanic Americans' access to educational and economic opportunities; and

(vii) advise the President and the Initiative on educational and economic opportunities for the Hispanic American community.

(c) The Commission shall periodically report to the President, through the Secretary and after consulting with the Executive Director, on progress in providing Hispanic American students, workers, and communities with increased access to educational and economic opportunities. The reports shall identify efforts of agencies to improve educational and economic opportunities for Hispanic Americans. The reports shall also include, as appropriate, recommendations for improving Federal education, workforce, small business, and other programs.

(d) The Commission shall have a Chair and two Vice Chairs, designated by the President from among the members of the Commission. The Chair and Vice Chairs shall work with the Executive Director to convene regular meetings of the Commission, determine its agenda, and direct its work, consistent with this order.

(i) The Department shall provide funding and administrative support for the Commission, to the extent permitted by law and subject to the availability of appropriations.

(ii) Members of the Commission shall serve without compensation but shall be reimbursed for travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the Government service (5 U.S.C. 5701–5707).

(iii) Insofar as the Federal Advisory Committee Act, as amended (5 U.S.C. App.), may apply to the Commission, any functions of the President under that Act, except that of reporting to the Congress, shall be performed by the Secretary, in accordance with the guidelines issued by the Administrator of General Services.

(e) The Commission shall terminate 2 years after the date of this order unless extended by the President.

Sec. 4. *General Provisions.* (a) This order supersedes Executive Order 13555 of October 19, 2010 (White House Initiative on Educational Excellence for Hispanics), and section 1(u) of Executive Order 13889 of September 27, 2019 (Continuance of Certain Federal Advisory Committees).

(b) Nothing in this order shall be construed to impair or otherwise affect:

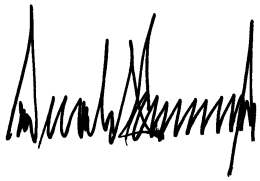
(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(c) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(d) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any

party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
July 9, 2020.

[FR Doc. 2020–15338
Filed 7–13–20; 11:15 am]
Billing code 3295–F0–P

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